New South Wales.

ANNO SEXTO

EDWARDI VII REGIS.

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Act No. 49, 1906.

An Act to consolidate and amend the law relating to mining; to give further facilities for the development of mining; to amend the Crown Lands Act of 1884 and Acts amending the same; and for other purposes. [Assented to, 28th December, 1906.]

BE it enacted by the King'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:—

PART I.

Preliminary.

Short title.

1. This Act shall come into operation on a date to be fixed by proclamation by the Governor, and may be cited as the "Mining Act, 1906," and is divided into Parts, as follows:— Short title and division of Act.

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Repeal.

Repeal.

2. (1) The Acts mentioned in the First Schedule are to the extent therein expressed repealed.

Persons appointed under repealed Acts.

(2) Persons appointed under any Act hereby repealed, and holding office at the commencement of this Act, shall be deemed to have been appointed hereunder.

(3)

(3) Rules, regulations, proclamations, and notifications made under any Act hereby repealed, and being in force at the commencement of this Act, shall be deemed to have been made hereunder, and any references therein to any enactments hereby repealed shall be construed as references to the corresponding provisions of this Act. Rules, &c., under repealed Acts.

(4) Applications pending at the commencement of this Act shall, except as hereinafter provided, be dealt with in accordance with the provisions of the Acts hereby repealed and the regulations thereunder. Applications pending.

(5) Miner's rights, mineral licenses, business licenses, leases, and authorities issued under any Act hereby repealed and in force at the commencement of this Act shall, except as hereinafter in this Act provided, continue in force for the respective periods named therein and confer the same rights and privileges, and entail the same obligations and penalties, as if this Act had not passed; and every right, title, and interest acquired under and by virtue thereof shall remain and continue valid subject to the limitations contained therein: Provided that with respect to any gold-mining lease of Crown lands so issued and in force the annual rent per acre shall be five shillings, and the term for which such lease was granted is extended a further period of five years. Miners' rights, leases, &c.

(6) Every gold-field, mining district, and division existing at the commencement of this Act shall continue as then constituted, until dealt with by proclamation under this Act. Existing gold-fields, &c.

Interpretation.

3. In this Act, unless the context or subject-matter otherwise indicates,— Interpretation.
37 Vic. No. 13 s. 2.
43 Vic. No. 28, s. 1.
48 Vic. No. 10, s. 5.
57 Vic. No. 32, s. 2.

"Adjoining" as applicable to claims or leases means that the lands comprised in such claims or leases have a common boundary, or are only separated by a road or stream.

"Business" means profession, trade, calling, or occupation, except mining.

"Claim" means a portion of Crown land lawfully taken possession of for the purpose of mining, or any number of such portions lawfully amalgamated by the holders. But does not include land comprised in a mining lease or lease for mining purposes.

"Crown lands," except for the purpose of Part V, means lands vested in His Majesty, and includes—

(a) lands under lease from the Crown except as hereinafter provided;

(b) lands reserved, dedicated, appropriated, or resumed for public purposes, whether vested in His Majesty or in any person as constructing authority or trustee for public purposes;

(c) lands under any navigable waters, or under any harbour, estuary, bay, river, or creek vested in His Majesty, whether navigable or not; and

(d) lands which the Governor may declare by proclamation to be Crown lands; but

but does not include—

(e) lands alienated or in process of alienation from the Crown, or lawfully contracted to be granted by the Crown; or

(f) lands subject to a conditional lease, conditional purchase lease, or lease under this Act;

(g) conditional purchases or homestead selections.

"Crown Lands Acts" means Crown Lands Act of 1884, the Western Lands Act of 1901, and the Acts amending the same.

"Earth" means rock, stone, quartz, clay, sand, soil, or mineral.

"Gold" means gold, or earth containing gold, or having gold mixed in the substance thereof, or set apart for the purpose of extracting gold therefrom.

"Gold-field" means lands heretofore or hereafter proclaimed a gold-field.

"Justice" means justice of the peace, and includes a stipendiary or police magistrate.

"Mine" includes any place, pit, shaft, drive, level, or other excavation, drift, gutter, lead, vein, lode, or reef, whereon, wherein, or whereby any operation for or in connection with mining purposes is carried on.

"Mineral field" means lands constituted a mineral field under this Act.

"Minerals" means silver, copper, tin, iron, antimony, cinnabar, galena, nickel, cobalt, platinum, bismuth, manganese, marble, kaolin, mineral pigments, mercury, lead, wolfram, coal, shale, scheelite, chromite, opal, turquoise, diamond, ruby, sapphire, emerald, zircon, apatite and other phosphates, serpentine, molybdenite, alunite and alum, barytes, asbestos, gypsum, mineral oils, monazite, and any other substance which may from time to time be declared a "mineral" within the meaning of this Act by proclamation of the Governor published in the Gazette.

"Mining Appeal Court" means District Court sitting as a court of appeal under this Act.

"Mining purpose" includes cutting and constructing any tunnel, water-race, drain, dam or reservoir, or constructing any railway or tramway, or laying any pipes for the purpose of mining, erecting buildings and machinery to be used for any process whatsoever in connection with the extracting of gold or minerals, pumping or raising water to or from land mined or worked or intended to be worked for the extraction of gold or minerals therefrom, treatment of tailings on abandoned land, and any other work which the Governor may by proclamation declare to be a mining purpose.

"Mining surveyor" means licensed surveyor specially appointed to carry out surveys under this Act. "Minister"

"Minister" means Secretary for Mines.
"Notification" means notification in the Gazette.
"Prescribed" means prescribed by this Act or the regulations.
"Proclamation" means proclamation in the Gazette.
"Prospecting board" means Board appointed to administer the Prospecting Vote.
"Race" includes any artificial channel, flume, aqueduct, tunnel, culvert, or pipe for the conveyance of water or detritus.
"River" includes a frontage creek, or any stream of water, whether perennial or intermittent, flowing in a natural channel not included in a deed of grant or embraced in an area in process of alienation.
"Schedule" means schedule to this Act.
"Small coal" means coal which will pass through a screen the bars of which are not more than three-quarters of an inch apart.
"Tenement" means land lawfully occupied under a miner's right or business license.
"The regulations" means the regulations made under this Act or any Act hereby repealed.
"The State" means the State of New South Wales.
"The warden" includes any warden appointed under this Act.
"To mine" means to disturb, remove, cart, carry, wash, sift, smelt, refine, crush, or otherwise deal with any earth by any mode or method for the purpose of obtaining gold or minerals therefrom.
"To prospect" means to search for gold or any mineral.
"Town or village" means city, town, or village, or site for a city, town, or village, and suburban lands to be attached thereto, declared, proclaimed, reserved, or set apart under the Crown Lands Acts; and includes any township site for a mining settlement which the Minister may notify in the Gazette.

Department of Mines, school, and museum of mines.

4. (1) The Governor may establish and maintain in connection with the Department of Mines, schools of mines and museums for the purpose of providing instruction by means of classes, lectures, or otherwise in geology, mineralogy, and chemistry, in their scientific and practical application to mining pursuits, and may also establish and maintain offices for the assaying of mineral ores. He may appoint such professors and readers in any of the said sciences, and such assayers, curators, keepers, and servants as may, in his opinion, be requisite to give effect to the provisions of this section. Schools of mines and museums may be established. 37 Vic. No. 13, s. 8.

(2) Such schools, museums, and offices, and the staffs thereof, shall be under the control and management of the Minister. Control and management.

(3)

Control by University.

(3) Provided that if the Governor thinks it desirable that any school or museum should be managed in connection with the University of Sydney, and so proclaims, the same shall, so long as such connection continues, be under the control and management of the Senate of the University, and such Senate shall in that case appoint such professors and readers and other persons as aforesaid as may be required.

School, &c., already established.

(4) This section shall apply to the school of mines, museum, and assay offices established at the commencement of this Act, as if they had been established under this section.

Gold and mineral fields, mining districts, and divisions.

Gold-fields may be proclaimed.
37 Vic. No. 13, s. 10.

5. (1) The Governor, by proclamation, on the recommendation of the Minister, may constitute any lands as a gold-field or mineral field, and may fix and alter the name and boundaries thereof.

Mining districts.
Ibid. s. 9.

(2) In like manner, mining districts and divisions of mining districts may be constituted, and their names and boundaries fixed and altered.

Cancellation.
Ibid. ss. 9, 10.

(3) The proclamation of any gold-field, mineral field, mining district, or division, whether made under the Mining Act, 1874, or this Act, may be varied or cancelled in like manner by a subsequent proclamation.

Officers.

Governor may appoint officers.
Ibid. s. 12.

6. (1) The Governor may appoint so many wardens, registrars, mining surveyors, mining engineers, mining appraisers, clerks, bailiffs, assistants, and other officers as he may think necessary for the administration of this Act.

Powers and duties.

(2) The persons so appointed shall have the powers and perform the duties prescribed by the regulations in addition to any powers and duties specified in this Act.

Warden.

(3) Every warden so appointed shall be a warden for the whole State.

Minister or officer not to be interested in any mining venture.
Ibid.

7. The Minister shall not, nor shall any warden, registrar, surveyor, engineer, or other officer charged with any judicial or official duties under this Act during his tenure of office, hold either directly or indirectly any beneficial interest in any mining tenement or lease or other mining venture in the State, and if, while holding such interest, he acts in his office he shall be guilty of a misdemeanour.

Royal prerogative.

Saving of Royal prerogative.
Ibid. s. 5.

8. Nothing in this Act, except so far as is herein expressly enacted, shall abridge or control the prerogative rights and powers of His Majesty in respect to gold mines and silver mines.

PART

PART II.

MINERS' RIGHTS AND BUSINESS LICENSES.

DIVISION 1.—ISSUE AND TRANSFER.

Issue of miner's rights.

9. A miner's right shall be issued on the application of any person.

37 Vic. No. 13, s. 14. cf. 60 Vic. No. 7, s. 2.

Any such right shall be in the form of Schedule Two and shall be in force for any term not less than six months and not exceeding twenty years from the date of issue.

There shall, on the issue of any such right, be paid a fee calculated at the rate of five shillings for every year or two shillings and sixpence for every half-year of the term of the right.

Issue of business licenses.

10. A business license shall be issued to any person applying for the same.

37 Vic. No. 13, s. 21.

Duration.

Ibid.

Such license shall be in the form of the Schedule three, and shall be in force for any term not less than six months and not exceeding twenty years from the date of issue.

There shall, on the issue of any such license, be paid a fee calculated at the rate of one pound for every year or ten shillings for every half-year of the term of the license.

Renewal of miner's rights and business licenses.

Ibid. s. 24.

11. (1) The holder of any miner's right or business license shall be entitled on application and payment of the prescribed fee to a new miner's right or business license, dating from the expiration of the previous right or license.

(2) The application may be made—

(a) within one month before the date of such expiration, in which case the fee payable shall be the same as in the case of the issue of a miner's right or business license in the first instance; or

(b) within seven days after the date of such expiration on production of the expired miner's right or business license and on payment of the fee aforesaid; or

(c) after seven days and within one month after the date of such expiration on production of the expired right or license, but in that case a sum equal to fifty per centum of the amount of the fee aforesaid shall be added thereto.

Transfer.

12. A miner's right or business license may be transferred by endorsement thereon under the hand of the transferror and by registration in the prescribed manner.

Duplicate rights and licenses.

13. On proof to the satisfaction of the warden that any miner's right or business license has been accidentally lost or destroyed, a duplicate right or license may be issued on payment of a fee of one shilling.

Division 2.—Occupation.

Exempted Crown lands.

Certain exemptions.
37 Vic. No. 13, s. 34.
43 Vic. No. 28, s. 1.
48 Vic. No. 10, s. 5.
57 Vic. No 32, s. 5.

14. (1) The following classes of Crown lands are (save where otherwise in this Act provided) exempted from occupation under any miner's right or business license, namely,—

(a) lands reserved, dedicated, appropriated, or resumed for public purposes (except land reserved for a temporary common or for mining purposes), whether vested in His Majesty or in any person as constructing authority or trustee for public purposes.

(b) lands held from the Crown under residential lease, settlement lease, or special lease for other than pastoral or grazing purposes;

(c) lands held under lease for water supply in virtue of any special Act or otherwise; and

(d) lands granted or vested in trust by the Crown for purposes of a racecourse, cricket-ground, recreation reserve, park, or permanent common, or for any other public purpose;

(e) lands the subject of a pending application for a lease under this Act:

Provided that where any such lease or grant contains a reservation of all or any rights or right conferred by any Act relating to mining, the land comprised in such lease or grant shall to the extent so reserved be open to occupation as aforesaid.

Crown lands used as orchard, &c.
37 Vic. No. 13, s. 25.

(2) Crown lands lawfully and bona fide used as a yard, garden, cultivated field, or orchard, or upon which any house, outhouse, shed, or other building, actually used and occupied, or any artificial dam or reservoir, is lawfully standing are exempted from occupation, as aforesaid, except upon payment of compensation to be assessed by the warden.

Warden to fix distance.
cf. 57 Vic. No. 32, s. 6.

The warden shall fix at what depth from the surface the workings on such land shall be carried on, and on failure to observe his order the person in occupation of the land shall be deemed to be a trespasser.

37 Vic. No. 13, s. 26.

(3) The Governor, by notification, on the recommendation of the Minister, may exempt from occupation as aforesaid any Crown lands, and may revoke or amend any such notification.

Rights conferred by a miner's right.

Rights of occupation in respect of Crown lands.
Ibid. s. 15.
60 Vic. No. 7, s. 3.

15. (1) Except as against His Majesty a holder of a miner's right, or any number of persons being each the holder of a miner's right, may, subject to the regulations and to the exemptions in this Part—

(a) take possession of and exclusively occupy as a claim any Crown land for mining purposes, and mine therein; (b)

(b) have and possess any gold or other minerals found in such land whilst so occupied;

(c) erect any building, structure, or machinery upon land so occupied, and remove the same at any time during such occupation;

(d) exercise any rights of the nature of easements in connection with land so occupied;

(e) occupy Crown lands, and construct and use thereon races, dams, reservoirs, roads and tramways for mining purposes;

(f) take or divert water from any lake, pool, spring, or stream, situate in or flowing through Crown lands not exempted from occupation under a miner's right or business license, and use such water for mining or domestic purposes;

(g) procure and remove for mining, smelting, building, or other purposes for his or their personal use only, any bark, or live or dead timber, or any stone or gravel from any Crown lands not

(i) exempted from occupation under a miner's right or business license; or

(ii) within the operation of any proclamation or notification prohibiting the cutting or removal of such timber, bark, stone, or gravel:

Provided that this right to procure and remove bark or timber may be exercised only by persons (not being corporations) actually holding miners' rights;

(h) while following the occupation of a miner or prospector, graze upon Crown lands not exempted as aforesaid such horses or other animals as may be necessary for his or their subsistence and for the carrying on of prospecting or mining:

(2) Provided that for the purposes of taking possession of more than one tenement of any specific class, the person so taking possession must hold an additional miner's right for each additional tenement after the first of the same class. The different classes may be prescribed by the regulations.

Residence area.

cf. 37 Vic. No. 13, s. 15.

16. (1) Except as against His Majesty, a holder of a miner's right may, subject to the exemptions in this Part, take possession of and occupy Crown lands (hereinafter referred to as a "residence area") for the purpose of residing thereon.

(2) The area to be so occupied by any one such holder shall not exceed one quarter of an acre within the boundaries of a town or village, or two acres outside such boundaries: Provided that the occupation shall extend only to the surface and the prescribed depth below the surface, and that no area greater than one quarter of an acre shall be so occupied unless with the approval of the warden.

(3) Every such area shall be taken possession of in the prescribed manner. No person shall hold more than one such area at the same time.

(4)

(4) The proviso to section forty-six of the Crown Lands Act of 1884 is amended by substituting the words, "the areas to be sold shall not exceed one quarter of an acre within the boundaries of a town or village, as defined in the Mining Act, 1906, or two acres outside such boundaries," for the words "the areas to be sold shall not exceed one quarter of an acre for town lands, and one acre for suburban or other lands."

Authority to prospect.

17. (1) A holder of a miner's right may apply to the Minister for an authority to prospect on any Crown lands, whether exempted from occupation under this Part or not, and the Minister may, on the recommendation of the warden or the prospecting board, grant such authority. The area to be held under such authority, the term, rent, and the conditions as to labour and other matters shall be fixed by the Minister. Failure to comply with any conditions so fixed shall render the authority liable to be cancelled by the Minister.

(2) Such authority shall entitle the holder to take possession of the area on payment in advance of the rent fixed as aforesaid, and survey fee if necessary, and to carry on prospecting operations during the term of such authority.

Report of discovery.

(3) On discovery of gold or other minerals, the holder of the authority shall report, within fourteen days from the date of such discovery, to the warden of the district, who shall thereupon report to the Minister on the nature of the discovery. The Minister may thereupon call upon the holder of the authority to apply for a lease of the land or such part thereof as he may deem advisable or to continue prospecting operations.

Rights conferred by business license.

Holder may occupy land and erect buildings.

37 Vic. No. 13, s. 22.

18. A holder of a business license may, except as against His Majesty, and subject to the regulations—

(a) for the purpose of carrying on any business, except mining, occupy the prescribed area of Crown land within a goldfield or mineral field (hereinafter referred to as a "business area") not exceeding a quarter of an acre within the boundaries of a town or village, or one acre outside such boundaries: Provided that such occupation shall extend only to the surface and to the prescribed depth below the surface;

(b) have and possess the land so occupied;

(c) for the purpose aforesaid erect any building or structure upon the land so occupied, and remove the same at any time within one month or within such further time, not exceeding three months, as the warden may order and direct, after ceasing to occupy such land.

Only one area to be occupied in same town or village.

But no such holder may occupy at the same time more than one such area or carry on mining operations upon or in any such area.

DIVISION 3.—REGISTRATION.

Holder to register. 37 Vic. No. 13, s. 16

19. (1) Where any person takes possession under this Part of a tenement (other than a prospecting area or a block claim, or a residence area not exceeding one quarter of an acre outside the boundaries of any town or village or such other tenement as may be prescribed), he shall, within twenty-eight days thereafter register the same in the prescribed manner in the office of the mining registrar of the division wherein the same is situated.

Transmission.

(2) Where any interest in a tenement required to be registered is transferred to, vests in (absolutely or as security only), or devolves upon any person, such person shall within twenty-eight days thereafter register the same in the prescribed manner in the office aforesaid.

Right to be produced. *Ibid.* s. 16.

(3) On every registration of a tenement the person requiring registration shall produce his miner's right or business license to the registering officer.

Neglect to register. *Ibid.* s. 124.

(4) Any person neglecting to register a claim or a share in a claim within the period aforesaid shall, if he works or mines in such claim, incur the penalty hereinafter in this Act prescribed for unauthorised mining on Crown lands.

Proviso.

(5) Provided that if it is shown to the satisfaction of the warden that the person whose duty is to register was or would be prevented by sickness or any other like disability from effecting such registration, the warden may extend the said period to a further period not exceeding twenty-eight days from the expiration of the first-mentioned period.

DIVISION 4.—MISCELLANEOUS PROVISIONS.

Division of interest in claim. *Ibid.* s. 17.

20. (1) The owner of any registered claim may, subject to the regulations, divide his interest therein into shares and allot any of such shares to any person.

Amalgamation. *Ibid.* s. 17.

(2) The owners of any two or more adjoining claims may, with the consent of the warden, and subject to such conditions as he may impose, and in the prescribed manner, amalgamate the same before or after registration. The amalgamated claim so formed shall be registered, and may be divided into shares or dealt with as an ordinary claim.

Assignment. *Ibid.* s. 15.

(3) The owner of any registered claim or share in a claim may, subject to the regulations, assign, encumber, or create any interest in the same.

Rights held on behalf of owners. cf. *Ibid.* ss. 17, 20.

21. The holding of miners' rights in respect of a claim shall be deemed a holding on behalf of the owners of the claim or of any shares in the same or of any interests therein, and it shall not be necessary for separate miners' rights to be held by the owners of such shares or interests.

22.

Default to contribute.
cf. 37 Vic. No. 13, s. 70.

22. If the owner of a share in a registered claim fails to represent his share by labour or to contribute his proportion of the working expenses, the warden on the application of one or more of the remaining shareholders may declare such share to be abandoned, and may order the remaining shareholders to be put in possession of such share; and such declaration and order shall be carried out.

PART III.

Leases of Crown lands.

Division 1.—What leases may be granted.

Governor may grant leases.
37 Vic. No. 13, s. 28.

23. (1) The Governor, in the name and on behalf of His Majesty, may lease Crown lands and any street, road, or highway, as follows:—

(a) He may grant mining leases, of the surface and the subjacent soil, or of the soil below a certain depth from the surface only, which may be—

Ibid. s. 33.

(i) gold-mining leases, authorising mining on the land for gold and for purposes connected with gold-mining;

Ibid. s 56.

(ii) mineral leases, authorising mining on the land for the minerals therein specified, and for purposes connected with such mining,

Act No. 10, 1902, s. 4.

(b) He may grant leases (to be called leases for mining purposes) of the surface only, and to a limited depth below the surface. Such leases authorise the use of the land for mining purposes, but do not authorise mining on the land or the removal of any gold or minerals won therefrom.

(2) Provided that—

37 Vic. No. 13, s. 34 (2).

(a) A claim lawfully occupied under a miner's right shall not be leased unless the holder of the right consents to the leasing, in which case the claim shall be deemed to be abandoned, and the title thereto shall be absolutely extinguished, whether the application for the lease is granted or refused.

(b) Crown land occupied as a business or residence area, or for a dam, reservoir, race, or for machinery, shall only be leased from such depth below the surface as the Minister deems sufficient to secure the surface and any buildings, works, and improvements thereon from damage occasioned by mining operations.

(c)

(c) The surface of Crown land held under lease from the Crown for purposes other than pastoral purposes shall only be leased subject to the payment of compensation, to be assessed by the warden. 37 Vic. No. 13, s. 34 (1).

(d) Auriferous alluvial Crown land shall not be leased unless in the opinion of the Minister— *Ibid.* s. 34 (3).

(i) the land has been worked and abandoned; or

(ii) the land is suitable to be leased by reason of the difficulties and cost attending the construction of mine works upon or of mining such land;

(iii) the land may be leased for mining purposes only.

(e) The Governor, by notification, on the recommendation of the Minister, may exempt any Crown lands from the leasing provisions of this Act, and may revoke or amend any such notification.

Conversion of applications.

24. (1) An application for a lease under any Act hereby repealed may, at the request of the applicant, be converted into an application for a lease under this Act.

(2) An authority to mine granted under section twenty-eight of the Mining Act, 1874, may, on application of the holder thereof, be converted into a gold-mining lease or a mineral lease as the case may be under this Act, subject to such conditions as the Governor thinks fit.

(3) A registered claim under the said Acts or this Act may, on the application of the owner thereof, be converted into a gold-mining lease or mineral lease as the case may be under this Act. *Ibid.* s. 38.

Division 2.—Applications.

Form of application.

Applications to be subject to condition s.

25. Applications for leases shall be made in the prescribed form and manner, and shall be subject to the prescribed conditions as to marking out the land applied for, taking possession thereof, and otherwise, and shall be accompanied by payment of one year's rent in advance, at the rate prescribed. *Ibid.* s. 56 (3). 46 Vic. No. 7, s. 1.

Priority of application.

First applicant to have priority.

26. (1) If more than one application is made for a lease of the same land, the application of the person who has first taken possession shall be first considered and dealt with, and so on, according to priority of possession. 37 Vic. No. 13, ss. 49, 56 (4).

For

Possession.

For the purposes of this subsection, "possession" means the act of erecting a datum post, provided that the mode of taking possession prescribed by the regulations is forthwith complied with:

Provided that if, upon inquiry being held as provided in section thirty-four, the warden is of opinion that possession has been taken simultaneously by two or more applicants for the same area, the question of priority may be decided by ballot.

Other applications.

(2) If any application for a lease is refused or abandoned, any other application for a lease of the same land may be considered and dealt with, regard being had, where necessary, to the rule of priority aforesaid.

Grant or refusal of application.

Irregular application may be granted.
48 Vic. No. 17, s. 1.

27. (1) Leases under this Part shall be granted by the Governor in the name and on behalf of His Majesty. The Governor may in his discretion grant a lease, notwithstanding that the applicant has not in every respect complied with the regulations, or notwithstanding that the description of the land in such application does not strictly correspond with the land as marked out by the applicant.

Lease granted with modifications.
37 Vic. No. 13, s. 47.

(2) The Governor may, subject to the provisions of this Act, grant an application for a lease in such modified or amended form as he may think fit.

Refusal to take effect on publication.

(3) The Governor may refuse any application for a lease, and such refusal shall take effect from the time of publication of such refusal in the Gazette.

Occupation by and rights of applicant.

Applicant may mine upon land.
Ibid. ss. 39, 56 (3).

28. When any application for a mining lease has been duly made, the applicant may, by virtue of his application, until such lease is granted or refused—

(a) occupy the land applied for, and mine upon and in the same: Provided that nothing herein shall affect the right, title, or interest of any other person in or to the said land, or in or to any gold or mineral obtained or that may be obtained therefrom;

Applicant may sue for trespass.
Ibid., s. 40.

(b) proceed in the warden's court for trespass against any person entering upon, occupying, or interfering with such land, not having a lawful title thereto originating prior to such application.

Rights of applicant.

(c) proceed in the warden's court against any person claiming to have an interest in such land under a miner's right or mineral or business license, for the purpose of having such claim declared invalid.

Injunction.
cf. *Ibid.* s. 58.

(d) apply to the warden for an injunction under this Act against any person claiming to be legally or equitably interested in the land.

29.

May claim damages. 37 Vic. No. 13, s. 40.

29. (1) In any such proceedings for trespass the complainant may claim damages for such trespass, and for the recovery of any gold or mineral taken by the defendant from such land, or the value thereof. But he shall not be entitled to succeed unless he proves to the satisfaction of the court that he has complied with the regulations relating to the lodging of the application and payment of rent, so far as such regulations were at the time of the trespass capable of being complied with.

Proof of compliance with regulations. *Ibid.*

(2) If the warden decides in favour of the complainant he shall, unless the application for the lease has been already determined, order the defendant to lodge with the warden, any sum awarded as damages, and any gold or mineral he may adjudge the complainant entitled to, or the value thereof.

Warden may order money, gold, &c., to be lodged. *Ibid*

(3) If such application is granted, the warden shall order the said sum and the said gold or mineral, or the value thereof, to be delivered or paid to the complainant; but if such application is refused, he shall order delivery or payment to the person entitled thereto.

Payment out of money, &c., lodged. *Ibid.* s. 40.

Pendency of application.

When application pending. 46 Vic. No. 7, s. 1.

30. (1) An application for any lease under this Part shall be pending from the taking possession of the land for that purpose in the prescribed manner, or from the lodging of the application for conversion into a lease by any person entitled to apply for such conversion.

Land exempt from sale or lease or occupation.

(2) During the pendency of any such application, the land shall be exempt from sale or lease by the Crown, or from occupation as a tenement.

Application for benefit of applicant and his representatives.

(3) Any such application shall subsist for the benefit of the applicant or, in the event of his death or bankruptcy, of his legal representatives, who shall be deemed to hold the land under promise of a lease until default occurs in making or prosecuting the application, or the Governor refuses the same or voids the lease before issue, and notice thereof is published in the Gazette.

Survey of land.

Application for survey. 37 Vic. No. 13, s. 41.

31. If at the time of lodging an application for a lease, the land applied for has not been surveyed by a mining surveyor, or the marks of a previous survey have been removed or obliterated, the applicant shall deliver to the warden a written application for a survey of such land, accompanied by the prescribed survey fee.

Objections.

Lodging and service of objections. *Ibid.* s. 42.

32. (1) Any person may object to the issue of any lease by lodging with the warden and serving upon the applicant within the prescribed time, a written notice of his objection. Such

Such notice may be served by post by registered letter addressed to the last known address of the applicant, or if the applicant's address cannot be ascertained by posting the same on the datum post on the land applied to be leased.

Deposit of security. 37 Vic. No. 13, s. 43.

(2) The person so objecting shall, at the time of lodging notice of his objection, deposit with the warden or the warden's clerk the prescribed sum as security for any costs which may be awarded against him by the warden in any inquiry in relation to such objection.

If no objection lodged. *Ibid.* s. 44.

33. (1) Where no notice of objection has been so lodged, the warden shall forward the application, together with a report thereon, to the Minister.

If objection lodged. *Ibid.* ss. 44, 57.

(2) When notice of objection has been so lodged, the warden shall appoint a place and time for the hearing of the application and objection, and shall give not less than three clear days' notice thereof to the applicant and the objector respectively. Where an objection has been lodged by several persons jointly, notice to one of them shall be sufficient.

Warden to inquire. *Ibid.*

34. (1) On the day so appointed, the warden shall inquire into the truth of the particulars stated by the applicant and objector respectively, and may, if necessary, adjourn the inquiry for any time not exceeding one month, or to any other place, on such conditions as to costs as he may think fit. Notice of such adjournment shall be given to the applicant and to each objector.

Inquiry may be adjourned. *Ibid.* s. 45.

Report to be transmitted. *Ibid.* s. 47.

(2) At the conclusion of such inquiry the warden shall announce in open court the purport of his report to the Minister, and shall thereafter transmit to the Minister the application, objections, and evidence, the report, plan, and map, if any, of the mining surveyor, and his report as aforesaid, recommending the granting or refusal of the lease applied for.

Copy of report. *Ibid.* s. 48.

(3) Any person shall, upon application and payment of the prescribed fee, be furnished with a copy of the mining surveyor's report and plan of any land so applied for, and of any evidence taken as aforesaid, and of the warden's recommendation.

Further inquiry.

(4) The Minister may at any time, whether any notice of objection has been lodged or not, authorise and direct the warden to hold an inquiry or a further inquiry with reference to any matter concerning such application, and thereupon the warden shall appoint the time and place and give the notices and proceed with such inquiry and transmit the evidence and documents relating thereto, and his report, in the manner hereinbefore provided.

Inquiry to be in open court. *Ibid.* s. 44.

(5) Every inquiry under this section shall be conducted in open court, and the warden shall have the powers of a wardens' court. On the application of either party to the dispute, the warden may conduct the inquiry at the place in dispute.

DIVISION 3—CONDITIONS.

Area and dimensions of leases.

Areas of leases.

35. (1) Subject to this section the Minister shall fix the respective areas of leases under this Part.

Area of gold-mining lease. 37 Vic. No. 13, s. 36. Dimensions and form.

(2) The area of a gold-mining lease shall not exceed twenty-five acres, and the land leased shall be of the form and dimensions prescribed.

Area of mineral leases. *Ibid.* s. 56 (1).

(3) The area of a mineral lease shall not exceed six hundred and forty acres for coal or shale, nor eighty acres for other minerals, excepting opal.

(4) The area of a lease for mining for opal shall not exceed ten acres: Provided that no such lease shall be granted unless the prospecting board certifies that the land is suitable to be leased by reason of the difficulties and cost attending the construction of mine works upon or of mining such land.

Leases for mining purposes.

(5) The area and dimensions of leases for mining purposes only shall be such as the Minister may, subject to the regulations, determine.

Special leases.

(6) This section shall not apply to special leases granted under the provisions hereinafter in this Act contained.

Rent, royalty, and labour conditions.

Gold leases. Rent. *Ibid.* ss. 37, 56. cf. 48 Vic. No. 10, s. 4.

36. (1) The annual rent for a gold-mining lease granted under this Part shall be five shillings per acre or portion of an acre, and for a lease so granted to mine for any mineral other than coal or shale five shillings per acre or portion of an acre.

Coal leases. Rent and royalty.

(2) The annual rent for a lease so granted to mine for coal or shale shall be one shilling per acre or portion of an acre, and a royalty shall be paid of sixpence per ton on all shale or large coal and threepence per ton on all small coal won from the land demised.

For mining purposes. Rent. Act No. 10, 1902, s. 4.

(3) The rent, terms, and conditions of leases so granted for mining purposes only, shall, subject to this Act, be fixed by the Minister.

Rent payable in advance.

(4) All such rent shall be payable annually in advance at the times and in the manner prescribed, the first payment in all cases being made at the time of making application for the lease.

Royalty, how payable. 48 Vic. No. 10, s. 4.

(5) The royalty shall be payable at the times and in the manner prescribed: Provided that if the royalty payable in respect of any lease during any one year exceeds the rent paid for such year, the amount paid as rent may be deducted from the amount of the royalty; but if the royalty in any one year amounts to less than the rent paid for such year the lessee shall not for such year be required to pay royalty: Provided also that the Minister may at his discretion remit the amount of royalty payable on coal used for raising steam for motive power at a colliery.

(6) Rent and royalty shall be payable by the lessee to the Crown, and may be recovered as a Crown debt.

Labour conditions.

37. Every mining lease shall contain such labour conditions as the Minister may, subject to the regulations, determine.

Duration and renewal of leases.

Term of lease.
cf. 37 Vic. No. 13, ss. 36, 54, 56 (2), (9).

38. (1) A lease granted under this Part may be for any term not exceeding twenty years.

Renewal.
cf. *Ibid.* ss. 36, 54, 56 (2), (9).

(2) Any such lease may, with the consent of the Governor, be renewed for a further term not exceeding twenty years: Provided that application for such renewal shall be made during the last five years of the term of the lease.

Terms of renewal.

(3) Such renewal shall be at the rent and royalty, and subject to such other covenants and conditions as are prescribed by the Acts and regulations in force at the time of such renewal, and to such further covenants and conditions as the Governor may think fit to impose.

Leases under repealed Acts.
Ibid. s. 56 (2), (9).

39. A lease of Crown lands granted under any Act hereby repealed may be renewed for the term, on the conditions, with the covenants, and under the circumstances stated and prescribed in and by such Act or any Act amending the same hereby repealed and the regulations thereunder, save as regards payment of any fine upon such renewal: Provided that with respect to a gold-mining lease so granted the annual rent on renewal shall be five shillings per acre, and the term of the renewed lease may be for five years in excess of the term prescribed by the said Acts for such leases when renewed thereunder.

DIVISION 4.—SPECIAL LEASES.

Governor may grant special leases.
cf. *Ibid.* s. 53.
48 Vic. No. 10, s. 7.

40. (1) The Governor may, upon the recommendation of the Minister, grant a special mining lease of Crown land for mining other than coal or shale mining if the Minister is satisfied that by reason of the difficulties and cost attending the construction of mine works upon or of mining such land it is necessary that such lease be granted.

Inquiry and report.

(2) The Minister may, on application being made for such lease, direct the prospecting board or the warden to inquire and report—

(a) whether by reason of the difficulties and cost attending the construction of mine works upon and of mining such land, it is necessary that an area in excess of the limit prescribed should be leased; and

(b) upon the rent and royalty to be paid; and

(c) upon such other matters as the Minister may direct.

Conditions of leases.

(3) The Governor may fix the form of and area to be comprised in any such lease, the rent and royalty to be paid, and the labour and other conditions, reservations, and exceptions to be contained in the same, but in all other respects such special lease and the application for the same shall be subject to the provisions of this Act in respect of ordinary leases under this Part.

DIVISION 5.—MINERALS NOT INCLUDED IN LEASE.

Mining for other minerals under mineral lease. 37 Vic. No. 13, s. 61.

41. (1) The Minister may, upon application in writing by the holder of any mineral lease under this Part or under any Act hereby repealed, grant authority upon such terms as he may think fit permitting such holder to mine on the land comprised in his lease for any mineral other than that in respect of which such lease has been granted, and may vary or revoke any such authority.

Forfeiture for unauthorised mining.

(2) If the holder of any mineral lease mines for any mineral other than that in respect of which his lease or any such authority as aforesaid was granted, his lease shall be liable to forfeiture.

Mining for gold under mineral lease. *Ibid.* s. 62.

42. (1) Where gold is associated or combined with any mineral in any land comprised in any such mineral lease, and

(a) the holder of such lease desires to mine for such gold, or

(b) the nature of the mining operations under his lease is such as to lead to the removal of such gold,

the Minister may, if the value of the gold in the ore does not exceed fifty per centum of the value of the ore, upon application in writing by such holder, grant authority, upon such terms as he thinks fit, permitting such holder to mine for gold on the said land.

But if the value of the gold exceeds fifty per centum of the value of the ore, the lessee must apply for and obtain a gold-mining lease; and in that case a gold-mining lease may be granted for the area so held under the mineral lease, although the area exceeds twenty-five acres, and the dimensions are not in accordance with those prescribed. Application for such gold-mining lease shall be made in manner prescribed.

Forfeiture for unauthorised mining.

(2) If any such gold is so mined for or removed by such holder without obtaining such authority or lease, the mineral lease aforesaid shall be liable to forfeiture.

Mining for other minerals under gold-mining lease.

43. (1) The Minister may, upon application in writing by the holder of any gold-mining lease under this Part or under any Act hereby repealed, grant authority upon such terms as he may think fit permitting such holder to mine on the land comprised in such lease for any mineral other than gold.

Forfeiture for unauthorised mining.

(2) If any such mineral is so mined for or removed by him without obtaining such authority the lease shall be liable to forfeiture.

DIVISION 6.—OWNERSHIP OF TAILINGS AND ORE.

Tailings on abandoned Crown land. cf. *Ibid.* s. 56 (10).

44. (1) Any lessee under this Part, whose occupancy is by any means determined, may, within thirty days after such determination, apply to the Minister for leave to enter the land and treat or remove any tailings, ore, or stone left thereon by him. The Minister may grant such leave upon payment of a sum to be fixed by him, and may fix a time within which such treatment or removal is to be completed.

Any

Any application for a lease of any land upon which such tailings, ore, or stone have been so left, and any occupation of such land under a miner's right, shall be subject to the right of the Minister to grant such leave, and to the right of the person to whom such leave is granted, to act in accordance therewith; and any lease granted may contain a reservation of such tailings, ore, or stone, and of the right of any person to whom leave may be or has been granted to treat or remove the same.

Form.

(2) The form and mode of application for, and the conditions of such leave, shall be as prescribed.

Forfeiture of tailings, &c.

(3) If such leave is not applied for within the said thirty days, or such treatment or removal is not completed within the time fixed, such tailings, ore, or stone shall become the absolute property of the Crown, and shall form part of the land.

PART IV.

MINING ON PRIVATE LANDS.

DIVISION 1.—PRELIMINARY.

Interpretation.

Interpretation.
57 Vic. No. 32, s. 2.

45. In this Part and in any regulations relating to matters thereunder, unless the context or subject-matter otherwise indicates,—

"Authority to enter" means authority to enter upon private lands granted under this Part.

"Lease" means lease under this Part.

"Occupier" means person in occupation of any private land, whether under any special Act or otherwise, or a tenant.

"Owner" includes trustee, guardian in infancy, committee or guardian in lunacy, mortgagee in possession, and conditional lessee.

"Private lands" means lands other than Crown lands but does not include any lands situate within the boundaries of a town or village unless the Governor by proclamation (which he is hereby authorised to make, alter and revoke) declares that they are private lands for the purposes of this Part.

In this Part the word "minerals" shall not include coal or shale, nor shall coal or shale be included within the substances which may be declared minerals by proclamation of the Governor.

Lands open to mining under this Part.

For gold and other metals.
Ibid. s. 3.
Act No. 101, 1902, s. 3.

46. (1) All private lands shall be open to mining under this Part for gold and for any ore of which gold is the chief or most profitable metallic product, and for silver when such mineral is reserved to the Crown.

(2)

(2) If the Crown grant of any private land contains, or if not yet issued will when issued contain, a reservation to the Crown of all minerals, the said land shall also be open to mining under this Part for all minerals. For other minerals.

(3) Provided that, except as hereinafter in this Act provided, no application for an authority to enter shall be granted under this Part in respect of any land in or upon which any person other than the applicant is at the time of the making of the application entitled under this Part to search or prospect for gold or any mineral or in or upon which any person other than the applicant is lawfully carrying on mining operations, whether under this Act or the Acts hereby repealed. Exempted land.

For the purposes of this proviso, a person shall, as to an area not exceeding eighty acres, be deemed to be lawfully carrying on mining operations in respect of any substance notwithstanding that such substance was not a mineral at the time when such mining operations were authorised if such substance has subsequently come within the definition of a mineral under this Act or any Act hereby repealed.

47. No authority to enter and no lease under this Part shall, except with the consent of the owner, extend to— Not to extend to within certain distance of garden, or improved land without consent. 57 Vic. No. 32, s. 11.

(a) within fifty yards on the surface of any land bona fide in use as a garden or orchard; or

(b) within two hundred yards on the surface of the principal residence of the owner or occupier; or

(c) any land whereon is any substantial building, bridge, dam, reservoir, well, or other valuable improvement other than an improvement effected for mining purposes and not bona fide used for any other purpose. The Minister shall determine whether any such improvement is substantial or valuable, and may define an area adjoining such improvement within which no mining operations shall be carried on.

48. No authority to enter and no lease under this Part shall, except with the consent of the owner and occupier, extend to the surface of any land enclosed and under cultivation when the application for the authority was made; and without such consent no operations under such authority shall be conducted, and no such lease shall be granted below the surface of any such land, except with the authority of the Minister, and at such depth as the Minister may, after full inquiry, deem to be sufficient to prevent damage to the surface: Provided that Not to extend to surface of cultivated land without consent. *Ibid.* s. 12. 60 Vic. No. 40, s. 5.

(a) a lease under this Part may be granted of such portion of the surface of such land as the Minister may deem necessary for giving access to the gold or minerals therein; but before any such lease is granted the warden shall assess the amount to be paid as compensation for any loss of or damage to any crop or improvements on such land; and

(b) the Minister may decide, in case of dispute, whether any land is or is not under cultivation.

DIVISION 2.—AUTHORITY TO ENTER.

Interim permit.

Interim permit to enter.

49. (1) The warden may at the request of any applicant for an authority to enter grant an interim permit in the prescribed form authorising such applicant to enter the land the subject of the application for the purpose of defining the boundaries of the area applied for.

(2) Such interim permit shall be for any period not exceeding fourteen days, and shall not entitle the holder thereof to and he shall not carry on any prospecting operations on the said land.

(3) If such holder carries on such operations in contravention of this section, he shall be liable to a penalty not exceeding ten pounds.

Application for and grant of authority.

Warden may grant authority.
cf. 57 Vic. No. 32, s. 8.

50. (1) The warden, on application made as prescribed, may, subject to any stipulations or conditions which he may think necessary to impose, grant to any holder of a miner's right one or more authority or authorities in the prescribed form to enter, subject to the provisions of this Act, on any private lands.

Discretion to refuse.
cf. *Ibid.* s. 8.

(2) The warden may, whether any inquiry has been held as hereinafter in this Act provided or not, refuse any application for authority to enter—

(a) if the land is the subject of an application or holding under this Part or under any Act hereby repealed, or is exempted from lease under this Part; or

(b) if, after the prescribed notice to measure the land to be included in the authority has been given by the warden to the applicant, such applicant fails to attend for the purpose of pointing out the location of the area applied for.

Time to be stated.
57 Vic. No. 32, s. 8.
Deposit to be lodged.

(3) The time during which such authority is required shall be stated in such application, and the applicant shall lodge therewith a deposit of five shillings, to be applied towards payment of the rent or compensation for damage. If any such application is withdrawn or abandoned, before the rent and compensation have been paid in full, the deposit may, if the warden so orders, be forfeited to the Crown.

Rent to be fixed.
cf. *Ibid.* ss. 16, 17, 41.
60 Vic. No. 40, s. 2 (*b*).

51. (1) Before issuing such authority in respect of any land the warden shall hold an inquiry, of which due notice shall be given to the owner and occupier, if any, or their respective local agents (if registered as such as prescribed), and fix the annual rent per acre of the land. Such rent shall be paid by the applicant to the owner of the land quarterly in advance from the date of the authority. If the authority is to continue for less than three months one quarter's rent shall be so payable.

Compensation.

(2) The warden shall also assess compensation to be paid by the holder of the authority.

(3)

(3) The first payment of the rent and the payment of compensation shall be made within fourteen days of the issue of the authority, and before entry upon the land in pursuance of the authority.

Effect of non-payment of rent or compensation.

(4) If entry is made before such payment, or if any rent afterwards due, or any compensation afterwards assessed and ordered to be paid, is left unpaid for one month, the warden may cancel the authority.

Duration and extension of authority. 60 Vic. No. 40, s. 2 (*b*).

52. (1) An authority to enter may be granted for any period not exceeding twelve months, but the period of any authority may, while it is in force, be from time to time extended by the warden on such terms as he may think fit for any further period, if it appears to him that further time is requisite to enable the holder to complete the prospecting of the area defined therein; but so that the period for which the authority was granted, together with the periods of all extensions, do not exceed twenty-four months.

Duration to be stated.

(2) Such authority and every extension as aforesaid shall be issued in duplicate, and shall state the time during which it is to continue.

Service of duplicate. 57 Vic. No. 32, s. 8.

(3) The holder of such authority shall, within the period and as directed by the warden, serve the duplicate thereof, and of every extension granted by the warden, upon the owner or occupier, or upon one of the owners if more than one, of the land defined therein.

Extent of area. 60 Vic. No. 40, s. 2 (*a*).

53. (1) Every such authority shall contain a definition of the area and boundaries of the land in respect of which it is granted.

(2) The said area may be such as appears to the warden suitable, having regard to the class of deposit to be searched for, and shall be defined by him as prescribed, but, except as hereinafter provided, shall not exceed the maximum area in this Part prescribed for a lease to mine that class of deposit:

Extended area

Provided that the Minister on the recommendation of the prospecting board may direct the warden to grant, and he shall thereupon grant, an authority to enter an area exceeding the area prescribed aforesaid, if it is proved at the inquiry held by the warden that the difficulties and cost of conducting prospecting operations render it necessary that authority to enter a greater area be granted.

When prospecting lawful. *Ibid.* s. 2 (*d*).

54. (1) Upon lawful entry as aforesaid, the holder of an authority to enter may construct such works, and conduct such operations on or under the said lands as may be required for prospecting the same.

Effect of breach of conditions. *Ibid.* s. 2 (*e*).

(2) If such holder

(a) does not commence such prospecting operations within fourteen days from the date of such authority; or

(b) after commencing such operations suspends the same without the written permission of the warden; or

(c)

(c) commences such operations before making the payments aforesaid; or

(d) fails to observe any of the stipulations or conditions imposed by the warden under this Act;

the warden may cancel such person's authority to enter.

(3) The warden may also at the request of the holder cancel his authority to enter.

Labour required for prospecting. 60 Vic. No. 40, s. 2 (*h*).

(4) The holder of the authority may employ as many men as he may think fit in such prospecting operations, but he shall not, unless with the consent of the warden, employ less than the minimum number prescribed. If he makes default the warden may cancel the authority.

Residences. *Ibid.* s. 2 (*j*).

55. The holder of an authority to enter may, upon obtaining the permission of the warden, erect temporary residences upon the area defined therein for the use of the persons employed in the prospecting operations, but so that the area to be occupied in connection with such residences shall be in such positions as the warden may consider proper.

Holder continuing in occupation after cancellation of authority, *Ibid.* s. 2 (*e*).

56. If the holder of an authority to enter, after being served with notice of the cancellation under this Act of such authority, continues in occupation of any area therein defined, or any part thereof, he shall be deemed a trespasser.

Division 3.—Leases.

Mining leases.

Power to define boundaries. cf. 57 Vic. No. 32, ss. 9, 28. 60 Vic. No. 40, s. 2 (*f*).

57. (1) Any holder of an authority to enter who desires to obtain a lease of the land defined in such authority, or any part thereof, and—

(a) has served the duplicate of such authority upon the owner or occupier of the said land; and

(b) has paid rent and compensation as hereinbefore prescribed,

How application is to be made. cf. 57 Vic. No. 32, s. 13.

may, either personally or by agent, in the prescribed manner, define upon the said land the boundaries of the portion desired to be leased, and may apply to the Minister for a lease thereof. Such application shall be for a lease to mine for gold or any minerals, and must be made during the currency of the authority.

Power to modify application or direct inquiry. *Ibid.* s. 22.

(2) The Minister may modify any such application, or may direct a warden to hold an inquiry on oath in open court with reference to any matter affecting the same or the authority to enter.

Failure to make prescribed payments. *Ibid.* s. 18.

(3) If the applicant fails to make any payment prescribed in respect of his application, the Minister may after the prescribed time declare such application to be void, and all or any part of the moneys paid by the applicant to be forfeited to the Crown; and thereupon the said moneys or such part thereof shall be paid into the Treasury and carried to the Consolidated Revenue Fund.

(4)

(4) If the application is one which can be granted under this Part, the Minister, on receipt of such application, accompanied by the prescribed sum by way of rent, may cause a notice of intention to grant a lease to be advertised in the Gazette, and in a newspaper circulating in the locality in which the land is situated. If the use of the whole or any part of the surface of such land is required the notice shall so state, and if a part only is required the notice shall define such part. Notice of intention to grant lease. cf. 57 Vic. No. 32, s. 13.

(5) The applicant having made all the prescribed payments may carry on mining operations on the land applied for until the application has been granted or refused; but except as hereinafter provided no further assessment of compensation shall be necessary. Mining pending application. 60 Vic. No. 40, s. 2 (*i*).

(6) Unless the lease applied for will cover the whole of a measured portion, the land shall be surveyed by a mining surveyor before the issue of the lease. Where survey necessary. *Ibid.* s. 27.

58. (1) Leases under this Part shall be granted by the Governor in the name and on behalf of His Majesty. It shall not be obligatory on the Governor to grant any such lease, notwithstanding that the applicant may have complied with the provisions of this Act and the regulations; but if an application for such lease is refused, the applicant shall be informed of the reasons for such refusal. Power to refuse, &c. *Ibid.* s. 22.

(2) A lease may, at the request in writing of the applicant, be granted to any person named by him. Lease to nominee.

(3) A lease may be granted notwithstanding that the person applying for the same has not complied in every respect with the regulations.

59. Every lease under this Part shall— Particulars to be stated in lease. 57 Vic. No. 32, s. 11.

(a) state whether it is to have effect on and below the surface of the land leased or on a limited portion of the surface and below the whole area, or below the surface only.

(b) state for what mineral (if any) the lessee may mine, and that the lessee shall not mine for any other mineral without the authority of the Minister.

(c) contain such labour conditions as may be determined by the Minister in accordance with the regulations. Labour conditions. 60 Vic. No. 40, s. 6.

Leases for mining purposes.

60. (1) Subject to the assessment by the warden of compensation, the Governor may grant to the holder of any lease under this Act, or to any person carrying on mining operations who has made application to the Minister in that behalf in the prescribed manner, a lease— Lease for race, tramway, &c. 57 Vic. No. 32, ss. 37, 38.

(a) of the surface and to a limited depth below the surface of any private land irrespective of any reservation of minerals

to

to the Crown, for the purpose only of cutting mining-races thereon, and conveying water or detritus through or over the same to or from any mine of such holder or person; or

(b) of any area of private land 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.

Interim permit to enter.

(2) A permit may be granted by the warden in the prescribed manner, entitling any such holder or person to enter upon any such land for the purpose of marking out the portion to be included in his said application.

Lease may be subject to special provisions. 57 Vic. No. 32, ss. 37, 38.

(3) A lease granted under this section shall be subject to the regulations and to such conditions as the Governor may think fit to impose, and shall be subject to a rent payable to the owner of the land so leased, to be assessed by the warden at the same time as the assessment of compensation.

Saving.

(4) This section shall not apply to land the subject of any registered lease or agreement under this Part by the owner of private land with the holder of a miner's right to mine on the land.

Leases of surface.

Lessee may apply for lease of additional surface. *Ibid.* s. 20.

61. During the progress of mining operations any lessee having a lease under this Part empowering him to mine below the surface of any land may, subject to the regulations, apply to the Minister for a lease of any portion of the surface thereof, for the purposes of mining or any purpose in connection therewith. Such application shall be dealt with as provided in respect of other applications for leases under this Part.

Term, rent, and area of lease.

Term of lease. *Ibid.* s. 26.

62. (1) The term for which a lease may be granted under this Part shall not exceed twenty years; but, subject to such conditions as the Governor may approve, any such lease may be renewed for a further period not exceeding twenty years.

Labour conditions. 60 Vic. No. 40, s. 6.

(2) The Governor may fix the labour and other conditions, reservations, and exceptions, to be contained in the said lease.

Extent of lease. cf. 57 Vic. No. 32, s. 26.

63. The area of a lease under this Part to mine for gold shall not exceed twenty-five acres, and to mine for any mineral shall not exceed eighty acres, and for any other purpose shall be of such area as may be prescribed:

Larger area may be granted under certain circumstances. 60 Vic. No. 40, s. 8.

Provided that upon the recommendation of the Minister, the Governor may grant a lease exceeding the area above prescribed; but the Minister shall not make such recommendation unless the prospecting board certifies that, by reason of the difficulties and cost attending the construction of mine works upon or of mining such land, it is necessary that such greater area, to be specified by the board, should be included in the lease

64.

Rents payable. 57 Vic. No. 32, s. 26.

64. (1) The yearly rental reserved to the owner of the land in respect of any such lease 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 payable half-yearly in advance, and shall be payable only in respect of the portion of the surface leased.

Compensation.

(2) The warden shall assess compensation to be paid under this Act in addition to the rental, consideration being given to the compensation already paid in respect of the authority to enter.

Saving of agreements. *Ibid.* s. 17.

(3) Provided that nothing in this section shall prevent the owner or occupier, making an agreement with the lessee as to the amount of rent and compensation.

Rights and duties of lessees.

Powers as to surface. *Ibid.* s. 11.

65. (1) Every lease granted under this Part, so far as it extends to the surface of any land, and does not expressly provide to the contrary, shall confer the right of—

(a) cutting and constructing thereon races, drains, dams, reservoirs, or tramways, and of erecting thereon buildings and machinery in connection with the mining or other special purposes authorised by such lease but not otherwise;

(b) fencing the land, and erecting temporary residences thereon for the use of persons employed in connection with mining operations thereon; and

(c) generally doing such acts or things in respect thereof as are necessary for efficiently mining the land.

Powers to mine under the surface. *Ibid.*

(2) Every such lease, so far as it is expressed to have effect below but not on the surface of any land, and does not expressly provide to the contrary, shall confer the right of doing all such acts or things below the surface as are necessary for efficiently mining the said land, but not in such a way as to injure the surface or anything thereon.

Lessee not to use water artificially conserved, nor depasture sheep, nor keep dog, nor remove rock, &c. *Ibid.*

66. No such lease shall give the lessee the right—

(a) to use water artificially conserved by the owner or occupier of such land; or

(b) to fell trees, strip bark, or cut timber on such land, except with the approval of the warden, and subject to payment to the owner of compensation to be assessed as prescribed; or,

(c) unless fenced, to depasture horses thereon, or to keep or permit to be kept on such land any dog, unless chained up or kept under proper control; or,

(d) except in connection with such mining or other operations aforesaid, to remove earth or rock therefrom, without the consent of the owner and occupier.

67.

Lessee not to impound nor molest sheep, &c., unless leasehold fenced securely.
57 Vic. No. 32, s. 14.

67. (1) No such lease shall, unless the said land has been securely fenced, and kept securely fenced at the expense of the lessee, give to the said lessee the right—

(a) to impound any sheep, cattle, horses, or other animals belonging to or in the custody or control of the owner or occupier of the said land; or

(b) to disturb or molest them in any way whatsoever, or prevent them from depasturing on the said land; or

(c) to sue in trespass or otherwise in respect thereof.

Lessee shall fence shafts, &c., when required.
Ibid. s. 20.

(2) Every lessee under this Part whose lease extends to the surface of any land shall, if required in writing so to do by the owner or occupier, cause without delay a secure fence to be erected and kept in good repair around any shafts, machinery, or other works in connection with the mining under such lease not already so protected.

Division 4.—Mining by owner.

Prospecting by owner or occupier.
Ibid., s. 25.

68. (1) If the owner, or the occupier with the consent of the owner, of any private land not applied for or occupied for mining operations under this Part desires to conduct mining operations by way of prospecting on such land, or to obtain a lease of such land under this Part, he may make application in that behalf in the prescribed manner, and thereupon an authority to enter or lease may be granted to him. Such authority or lease shall confer the same rights respectively as an authority to enter or a lease under this Part would confer in the case of other applicants.

Owner not to have preferential right.

(2) An owner or occupier applying as aforesaid shall have no preferential rights over other applicants, and shall be subject to payment of royalty and all other provisions of this Part binding upon other applicants and holders of authorities to enter or leases thereunder as the case may be, with the exception of assessment and payment of rent and compensation, and of those provisions which relate to such notices, and other matters as the owner or occupier would in that character have been entitled to in the case of an application made by some other person.

(3) Any owner or, with the consent of the owner, any occupier of any such land desiring to mine thereon for coal or shale may make application in that behalf in the prescribed manner, and thereupon a lease may be granted to him. The area of any such lease shall not exceed six hundred and forty acres.

Lease by owner to holder of a miner's right.
Ibid. s. 33.
60 Vic. No. 40, s. 11.

69. (1) The owner of any private land not applied for or occupied under this Part may, with the concurrence of the Minister, enter into a lease or agreement in writing with any holder of a miner's right giving such holder power to enter such land and take possession thereof and mine thereon for gold or any mineral.

(2)

(2) The area comprised in any such lease or agreement, and the term thereof, shall not exceed the extent and term, and shall be subject to the payment of the royalty to the Crown (after deduction of any sum paid by way of rent) and performance of the labour conditions prescribed in this Part in respect of a lease thereunder. Area and term

(3) Such lease or agreement may be transferred with the concurrence of the Minister.

(4) No such lease or agreement and no such transfer shall have any force or validity unless and until it is registered as prescribed. Within twenty-eight days from the date of the Minister's concurrence therewith, on registration of a lease or agreement, a fee shall be paid for survey of the land.

(5) No such lease or agreement shall contain any provision or stipulation for the payment to the owner of any sum by way of royalty upon the gold or minerals won from the land comprised therein. Land subject of lease, &c., not open to occupation. Act No. 10, 1902, s. 3.

(6) The land, from the date of the receipt by the Minister of such lease or agreement, or the draft thereof submitted for his concurrence, shall, until and unless such concurrence is refused, be exempt from entry or occupation under this Part by any person other than the parties to such lease or agreement.

70. (1) The owner of any private land may, without any lease or authority to enter, mine or enter into an agreement with any other person to mine therein for any mineral not reserved to the Crown, notwithstanding that any gold or mineral reserved to the Crown is associated with the mineral so mined for, provided that the value of such gold or mineral so associated does not exceed fifty per centum of the value of the mineral mined for: Provided that such agreement shall not have any force or validity unless it is registered as prescribed, within twenty-eight days from the date of such agreement: Provided also, that all land included under any such agreement shall be marked out in the manner prescribed. Owner may mine or agree with any person to mine for any mineral. 60 Vic. No. 40, s. 9.

(2) No authority to enter or lease shall be granted in respect of any land upon which such mining operations have been commenced, but this prohibition shall extend only to any lode bona fide worked as aforesaid, and to land covering the same to the width of two hundred and twenty yards along the course of such lode. Land protected along lode from authority to enter.

(3) A royalty of one per centum on the value of all gold or silver reserved to the Crown obtained from the land comprised in any such agreement shall be payable to the Crown by the person obtaining the same, at the times and in the manner prescribed. Royalty.

Division 5.—Resumption.

Coal and shale lands.

71. (1) Any Crown land which, since the thirtieth day of September, one thousand eight hundred and eighty-nine, has been or shall hereafter be sold conditionally or by auction or in virtue of improvements Authority to mine on purchased or leased land. 53 Vic. No. 20, s. 2.

improvements or otherwise, and of which the grant contains, or will when issued contain, a reservation of all minerals, and any Crown land which has been leased conditionally under the Crown Lands Acts, shall be subject to the following conditions, namely :—Any person specially authorised in the prescribed manner by the Minister shall, on depositing a sum of money as prescribed to cover the cost of repairing any damage done to the surface of the land, be at liberty to dig and search for coal and shale within such land, and should it be found to contain any such mineral, the Governor may cancel wholly or in part the sale or lease of such land, and upon the notification thereof the proprietor shall be entitled to compensation for the value of the land and the improvements thereon or of his interest therein, as hereinafter provided in the case of land resumed, but exclusive of the value of all minerals contained therein, and such land shall thereupon become Crown land within the meaning of this Act, and shall be reserved from sale or lease until such reservation is revoked by the Governor. The person so specially authorised by the Minister to dig and search for coal and shale, upon satisfying the Minister that he has complied with all the conditions of such authority, shall, on the appearance of such notification, be deemed to be the first applicant for a lease of such land or a portion thereof, and the date of such application shall be reckoned from the day of publication of such notification, but in other respects as to labour conditions and other matters, such application shall be dealt with subject to the provisions of this Act relating to mining leases on Crown land.

(2) No such authority as aforesaid shall be granted in respect of any portion of such land so long as it is the subject of any other holding under this Act. Nor shall any other title to mine be acquired under this Act in respect of any portion of such land so long as it is subject to such an authority as aforesaid.

Resumption of private land.

Upon discovery of gold Governor may resume land.
57 Vic. No. 32, s. 40.
60 Vic. No. 40, s. 3.

72. Upon the discovery in any private land of gold in such quantity as the Minister considers payable, the Governor may resume for mining so much of such land as he may consider necessary. But no such resumption shall be made of land occupied for the time being under any lease or agreement under this Part unless with the consent of the lessee or the parties to the agreement :

Provided that such lease or agreement was entered into at least fourteen days before notification of such resumption.

Resumption to be notified.
60 Vic. No. 40, s. 3.

73. Every such resumption shall be notified in the Gazette, and in some newspaper published or circulating in the district in which such land is situated, and shall take effect at the date specified for that purpose in the said notification, and such land shall thereupon vest

vest in His Majesty and become Crown land within the meaning of this Act, and shall be reserved from sale and from lease for other than mining until such reservation is revoked by the Governor.

Copies of all such notifications, together with the reasons for the resumption therein notified, shall be laid upon the tables of both Houses of Parliament forthwith if Parliament is then sitting, and if not then within fourteen days after the commencement of the next session thereof.

Discoverer to have preferential right. 57 Vic. No. 32, ss. 40, 42. 60 Vic. No. 40, s. 3.

74. (1) If such discovery as aforesaid has been made by the holder of an authority to enter he shall be deemed to be the first applicant for a claim or for a gold-mining lease under Part II or Part III of this Act, and the date of publication in the Gazette of the said notification of resumption shall be reckoned as the date of possession by such holder for the purpose of his application for such claim or lease.

As to lease of resumed land. *Ibid.*

(2) Except in the case of a lease granted to the person who has made such discovery as aforesaid, all land resumed under this Part shall be exempt from leasing, except such as may be deemed by the Minister specially suitable to be leased by reason of its great depth or wetness, or on account of the costly appliances required for its development, or where the Minister is of opinion that it is desirable for any other reason that the same shall be open to lease.

Former owner to have preferent right to purchase or lease. 57 Vic. No. 32, s. 40.

75. If such reservation as aforesaid is revoked, the land shall become Crown lands within the meaning and for the purposes of the Crown Lands Acts, upon notification to that effect, and the former owner of such land, or any person claiming through or under him, shall be entitled to purchase or lease such land at a price or rental to be determined by the Secretary for Lands after appraisement by the local land board, subject to appeal to the Land Appeal Court, and failing such purchase or lease the land shall be dealt with under the Crown Lands Acts.

Lands held without reservation of minerals.

Re-umption of land held without reservation of minerals.

76. (1) The Governor may resume for mining any land alienated or in process of alienation from the Crown without any reservation of minerals, or so much of such land as he may consider desirable in the public interest.

(2) Every such resumption shall be effected in the manner prescribed in section seventy-two.

(3) The Governor may grant mining leases of any land so resumed, and such leases shall be subject to the provisions of Part III of this Act, relating to mining leases on Crown lands, save only that the Governor may fix the rent and royalty payable and impose such special conditions as he may think fit.

Compensation.

Compensation.

Compensation for resumption.
57 Vic. No. 32, s. 40.
60 Vic. No. 40, s. 4.

77. When any land is resumed under this Division the Minister may direct the warden or other person to assess the market value of such land (exclusive of any increase in the value of such land by reason of the discovery of gold therein) and the improvements thereon, reasonable allowance being made for any damage that may be caused by severance; and if there is any person other than the owner having interest in such land, the value of such interest shall also be assessed; and such assessed value shall be paid to the persons entitled thereto respectively.

Claim to payment of compensation.

78. Every person claiming payment for land resumed under this Part shall, within sixty days of the date of the determination of the value of the land and the improvements thereon, lodge with the Minister a notice in the prescribed form setting forth the nature of his estate or interest in the land and an abstract of his title.

Payment of compensation.

79. The Minister shall, within three months after being satisfied as to the report of the Crown Solicitor that the valid title is in the claimant, pay to such claimant the value so determined: Provided that if the land be under mortgage, the amount due thereunder shall be paid to the mortgagee.

Costs.

80. All reasonable costs of proceedings for resumption under this Part shall, subject to taxation by the Prothonotary of the Supreme Court, be paid by the Crown, except that the costs of an appeal shall be paid by the unsuccessful party to the appeal.

Interest.

81. The value so determined shall bear interest at the rate of four per centum per annum from the date when the land vested in the Crown until the receipt of notification in writing from the Minister that he is prepared to pay the value, but for no longer period.

Division 6.—General Provisions.

Royalty.

Amount.

82. (1) A royalty shall be paid of one per centum of the value of all gold and minerals obtained from any land under an authority to enter or a lease under this Part.

Royalty to be according to metallic contents.

Where the product of any mine is ore, concentrates, matte, or other substance containing gold or minerals, the royalty shall be paid according to the estimated value of the gold or mineral.

(2) A royalty shall be paid of sixpence per ton on all shale or large coal, and threepence per ton on all small coal obtained from any land held under lease by the owner or occupier of such land.

(3) Such royalty shall be payable to the Crown, at the times, and in the manner prescribed, and may be recovered from the holder of such authority or the lessee as a Crown debt.

(4)

(4) The holder of the authority or the lessee may deduct from the total sum payable by way of royalty in any one year a sum equal to the amount paid by him as rent for that year. Rent may be deducted from royalty.

Right of way.

83. Every authority to enter and every lease under this Part shall confer full right of ingress, egress, and regress for the purpose of the exercise of the rights thereby conferred, by a right-of-way to be marked in the prescribed manner from the land defined in the authority or lease to the nearest practicable point of a public road. The cost of marking such right-of-way shall be borne by the holder of the authority or the lessee, who shall place substantial sheep-proof gates at all fences intersected by such right-of-way, or rabbit-proof gates in any case where such fences are rabbit-netted; but the right to cross any tenement leasehold or other holding under this Act for the purpose of obtaining access to the nearest public road shall not be exercised except under the authority of the warden, nor shall the said right be exercised over any garden, yard, orchard, or pleasure ground. Right of ingress, egress, and regress. 57 Vic. No. 32, s. 11. Marking of roadway. Gates in fence intersected by roadway.

PART V.

Dredging leases.

Preliminary.

84. In this Part, and in any regulations relating to matters thereunder, unless the context or subject-matter otherwise indicates,— Interpretation. Act No. 44, 1899, s 2.

"Crown land" means land vested in His Majesty except land held under tenure from the Crown for other than pastoral purposes.

"Lake" includes a lagoon, swamp, or other collection of still water, whether permanent or temporary, not contained in an artificial work.

"Occupier" includes any lessee from the Crown under any tenure under the Crown Lands Acts, or any tenant of land alienated from the Crown, or any person in charge of alienated lands for the owner thereof.

"Owner" includes the owner of the freehold or conditional purchaser of any land, or holder of a homestead selection, conditional lease, or conditional purchase lease, or any trustee in whom any land is vested.

"River" includes any stream of water, whether perennial or intermittent, flowing in a natural channel.

"River-bed" means soil or detritus lying between the solid rocks forming the banks of a river, to be defined by the mining surveyor when making the survey.

Not to apply to lands enclosed and under cultivation except in certain cases.
Act No. 44, 1899, s. 5.

85. Nothing in this Part, except the provisions as to roads of access and sites, shall, unless with the consent of the owner, apply to any lands not Crown lands which are found by the warden to have been at the time of the application for the authority to enter enclosed and under actual cultivation.

Grant of leases.

Governor may grant leases for purposes of mining by dredging, &c., and of what lands.
Ibid. s. 3.

86. (1) Subject to this Act, the Governor may grant for the purpose of mining for gold or any other mineral, by dredging, pumping, sluicing, or other method, and of erecting the buildings and machinery required in connection with such mining leases of any land (not being land held under or by virtue of any Act relating to mining)—

(a) forming the bed of any river or lake; or

(b) under any tidal water; or

(c) under the ocean contiguous to the coast line; or

(d) contiguous to any such place; or

(e) such as may be suitable for such mining.

Area that may be demised.

(2) The area that may be demised by any such lease shall not exceed one hundred acres. The number of men to be employed shall be in the proportion of not less than seven men to one hundred acres, and the amount to be expended in the purchase and erection of machinery and appliances for the purpose of working the area, shall be not less than ten pounds per acre:

Provided that the Minister may increase such labour or expenditure, or both, if it be shown that the circumstances warrant such increase.

Duration of lease and renewals.

(3) Such leases shall not be granted for a longer term than twenty years, but may be renewed for any term not exceeding twenty years, subject to the prescribed conditions.

Marking of land.

Land to be applied for to be entered and marked out.
Ibid. s. 4.

87. (1) Any person desiring to apply for a lease under this Part shall mark out in the manner prescribed the area intended to be included in the application; but where all or any of such area is not Crown land, he must, before so marking out the area, obtain, as prescribed, from the warden of the mining district in which the land is situated an authority under this Part to enter the area or the part thereof which is not Crown land.

Deposit.

(2) Such authority shall be granted by the warden on payment of the deposit prescribed.

On

On the order of the Minister the amount of such deposit, less such sum (if any) as the Minister directs to be retained to cover the expenses incurred by the Crown in relation to the application, shall be refunded to the applicant on the execution of the lease by the lessee, or if the Minister is satisfied that the application was bona fide, on the refusal of the application.

Entry in pursuance of authority. Act No. 44, 1893, s. 4 (3).

88. (1) Such authority shall entitle the holder thereof to enter, personally or by an agent duly authorised in writing, accompanied, if desired, by not more than three other persons, upon the land therein mentioned, for the purpose aforesaid, during a period named therein, which shall not exceed fourteen days, with right of ingress, egress, and regress to and from the nearest practicable point of a public road, without incurring liability for trespass in respect thereof, but shall not entitle him to commence any mining operations.

Authority to be exhibited.

(2) Such authority shall be exhibited on demand to the owner or occupier of the land therein mentioned.

When area may be marked out.

(3) Such area shall be marked out during the currency of the authority.

Warden not to issue any other authority in respect of same land.

(4) During the currency of any such authority, unless and until an area has been marked out thereunder as aforesaid, the warden shall not issue any other authority to enter upon the same land.

Owner, &c., obstructing holder of authority.

(5) Any owner, occupier, or other person who obstructs any holder of any such authority, or his agent, or the person accompanying such holder or agent, in the performance of any act, or interferes with, removes, destroys, or defaces any mark made or any notice posted in pursuance of such authority, shall be liable for the first offence to a penalty not exceeding ten pounds, and for the second or any subsequent offence to a penalty not exceeding fifty pounds.

Interim possession.

Person marking out area to be deemed in possession. *Ibid.*, s. 6.

89. The person who has marked any area of land under this Part shall, to the extent of the area applied for as against all persons, be deemed to be in possession thereof until the application has been finally disposed of:

Provided that the owner or occupier of any such land shall, during such period, be entitled to the continued use and enjoyment thereof for all purposes not inconsistent with such application.

Application for leases.

Applications for leases to be made to warden and forwarded to the Minister. *Ibid.* s. 7.

90. (1) Applications for leases under this Part shall be made within the time and in the manner prescribed to the warden of the mining district in which the land is situate. (2)

(2) Such applications shall be forwarded by the warden to the Minister for consideration, with a recommendation as to whether the application should be granted, wholly or in part, or subject to any and what conditions, stipulations, or restrictions, or should be refused.

Minister may refuse to entertain application, or may direct inquiry.

Act No. 44, 1899, s. 8.

(3) The Minister may refuse to entertain any such application, or may direct the warden to hold an inquiry in the manner prescribed.

Inquiries.

Warden to inquire and make orders as to roads of access, sites for machinery, rent, and compensation.

Ibid. s. 10.

91. (1) At such inquiry the warden shall determine—

(a) what roads of access and what sites for machinery, workshops, storage of fuel or other material outside the area applied for are necessary for carrying on the mining operations intended;

(b) what sum, by way of rent for the use of any land which is not Crown land and which is to be included in the lease or comprised in roads of access and sites as aforesaid, shall be paid by the lessee to the occupier or owner of the same;

(c) what sum, by way of compensation for damage likely to be caused to the area applied for or to land adjoining such area by acts done in or incidental to carrying on the mining operations intended, shall be assessed;

(d) as to any objection or other matter affecting the application;

and shall issue orders in accordance with such determinations:

Proviso that parties may agree as to rent and compensation.

Provided that if the applicant for the lease produces to the warden a document duly signed by himself and by the parties who would be entitled to any such rent, and witnessed, certifying that they have agreed as to the amount of such rent, such amount shall be adopted by the warden without any further inquiry in respect thereof. But no such agreement shall contain any provision or stipulation for the payment of any sum by way of royalty upon the gold or minerals won from the land applied for.

Inquiry in open Court.

(2) The warden shall hold such inquiry in open Court, and shall have the powers of a Wardens' Court.

Further inquiry.

Ibid. s. 14.

92. The Minister may at any time authorise and direct a warden to hold any further or other inquiry in open Court with reference to any matter concerning an application for a lease under this Part. Notice of such inquiry shall be given to the parties concerned.

At such inquiry the evidence shall be taken on oath.

Evidence and orders to be sent to the Minister.

Ibid. s. 15.

93. A warden holding an inquiry as aforesaid shall forward to the Minister the evidence taken by him, and a report of his orders thereon.

Minister may refuse application or grant lease.

Ibid. s. 16.

94. (1) The Minister, on receipt of such evidence and report as aforesaid, may determine that the application shall be refused, or that a lease of the area included in the application, or of any greater or less area, may be granted to the applicant, and may determine whether any and what special conditions shall be inserted in the lease.

(2)

(2) Notice of such determination shall be published in the Gazette. Notice in Gazette.

(3) Where the Minister has determined that a lease may be granted, the applicant shall, within the time and in the manner prescribed, give notice to the Minister whether he will accept a lease on the terms mentioned in such notice in the Gazette or not, otherwise the application shall lapse. Applicant to notify whether he accepts or not.

Road of access or site.

95. (1) The warden may order that any road of access or site as aforesaid which he finds to be necessary shall be marked out on the land by a person appointed by him in that behalf, and such person shall not incur liability for trespass committed by him in pursuance of such order. Warden may order such road or site to be marked out. Act No. 44, 1899, s. 11.

Such road shall be marked out in the manner prescribed from the nearest practicable point of a public road.

(2) The order of a warden declaring that a road of access along the line determined by him is necessary shall entitle the lessee to use such road with horses, cattle, and vehicles.

96. If after the issue of any lease it is found that a road of access, or a site as aforesaid other than that mentioned in the original order of the warden, is necessary, the warden may, in the manner prescribed, and subject to such rent as he may by an order which shall be final and not subject to any appeal determine, and to such terms and conditions as he may deem proper, mark or cause to be marked out on the land such other or additional road or site ; but such road or site shall not be used until the amount of the first year's rent thereof determined by the warden has been paid and any conditions imposed by him have been fulfilled. Further or other roads of access and sites may be ordered by warden. *Ibid.* s. 20

Rent and royalty.

97. (1) The amount of the first year's rent of land which is not Crown land, as determined by the warden shall be paid by the applicant to the warden or warden's clerk within the time prescribed. First payment to be made into warden's court. *Ibid.* s. 12.

(2) Such amount shall be paid out to the parties entitled thereto under the order of the warden on the execution of the lease by the lessee, or refunded to the applicant if the application is refused. Payment to be refunded or paid out.

(3) Any subsequent years' rent shall be paid direct by the lessee under this Part to the owner and occupier of the land in such proportions as may be agreed, or as the warden on failure to agree may determine.

98. (1) The rent to be paid to the Crown in respect of Crown land shall be two shillings and sixpence per acre. And such rent shall be payable at the times and places and in the manner prescribed : Provided that all such rents shall be payable yearly in advance, and the first annual payment shall be made on making the application for such lease. Rent Act No. 102, 1902, s. 2.

(2)

Royalty.
Act No. 102, 1902, s. 3.

(2) A royalty of one per centum of the value of all gold and minerals won from any land leased under this Part shall be payable to the Crown at the times and in the manner prescribed: Provided that if the royalty payable in respect of any lease during any one year exceeds the rent paid for such year, the amount paid as rent as aforesaid may be deducted from the sum payable as royalty; but if such royalty in any one year amounts to less than the rent paid for such year, the lessee shall not for such year be required to pay royalty.

Grant of lease.

No obligation to grant lease.
Act No. 44, 1899, s. 17.

99. (1) The Governor may, where the applicant has given notice of acceptance as aforesaid, grant a lease on the said terms to the applicant or to any person named by the applicant.

Lease may be granted though regulations not complied with.

(2) Nothing in this Part shall render 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 Part and of the regulations thereunder.

(3) A lease may be granted under this Part by the Governor, notwithstanding that the person applying for the same may not in every respect have complied with the regulations.

Right to water.

Owner to have access to water.

100. No lease under this Part granted shall prevent the owner or occupier of any freehold or conditionally purchased land included within such lease from having free and uninterrupted access to the water for stock watering and similar purposes.

Penalty.

Applicant not to mine till he has executed lease.
Ibid. s. 19.

101. Any applicant for a lease under this Part who commences mining operations in or on the area included in the application, whether covered with water or not, before such lease has been executed by him, shall, unless he proves that he has before commencing such operations obtained the consent of the owner or occupier, be liable to a penalty not exceeding ten pounds.

Authority to holder of miner's right.

Special condition enabling warden to grant authority to holder of miner's right to mine.

102. (1) If so specified in any lease under this Part, the warden may grant authority in writing to any holder of a miner's right to enter upon any Crown land comprised in such lease, and to mine thereon, subject to such conditions as he may think fit to impose and as may be prescribed.

Mining by hand appliances.

(2) Every such authority shall empower the holder to mine upon the said land with such hand appliances as may be prescribed, and at such distance from the mining operations carried on by the lessee, not being less than two hundred yards, as the warden may consider advisable.

(3)

(3) If the holder of the authority fails to observe any of the conditions aforesaid, or impedes or otherwise hinders the carrying on of dredging operations by the lessee, such authority may be cancelled by the warden. If such holder mines or continues to mine upon the said land after being notified in writing of the cancellation of the authority, he shall be deemed a trespasser.

Washing dirt, &c., on lease.

103. If so specified in any lease under this Part, such lease shall be subject to a condition that any holder of a miner's right may enter upon any Crown land comprised in such lease for the purpose of washing dirt at the place most convenient to him and may for that purpose cut races, run sludge into a stream, or obtain water therefrom, provided that in so doing the mining operations carried on by the lessee will not, in the opinion of the warden, be interfered with or prejudicially affected.

PART VI.

TENEMENTS AND LEASES GENERALLY.

Leases for railways and tramways for mining purposes.

104. Nothing in this Act shall confer the right to grant a lease for mining purposes permitting the construction of a railway or tramway over or under Crown or private lands, or over or under any street, road, or highway for a greater distance than is reasonably necessary to connect the same with the nearest point on any railway or tramway vested in the Chief Commissioner for Railways and Tramways, or any railway or tramway constructed under any special Act of the State which would afford by such connection the necessary facilities for transit to and from any mine: Provided that this section shall not affect the right to grant a lease for a railway or tramway direct from any mine to any waterway.

Governor's powers over Crown lands.

Suspension of pastoral lease.
37 Vic. No. 13, s. 13.

105. (1) The Governor may suspend the operation of any Crown lease or license for pastoral purposes of Crown land so far as may be necessary for—

(a) the accommodation of the horses, cattle, and sheep required for the subsistence and convenience of any persons holding tenements, leases, or other holdings under this Act;
(b) the supply of water to such persons; and
(c) otherwise for the carrying on of mining operations by such persons.

(2)

(2) The Governor shall return or remit to the lessee or licensee such portion of the rent of such land as may be reasonable and just, and shall pay compensation for any improvements upon such land, to be assessed, unless otherwise agreed upon, by the warden of the district in which such land is situated.

(3) Upon any such suspension as aforesaid, the Crown, by its officers and servants, may enter the land, and do all such acts as may be deemed necessary for the proper regulation of the water supply.

Exemption of Crown lands from alienation.

106. The Governor, on the recommendation of the Minister, and with the concurrence of the Secretary for Lands, may, by notification, exempt from alienation and from all classes or any specified class of tenure under the Crown Lands Acts any Crown lands required for mining or mining purposes, and may reserve the same for either or both of such purposes, and may in like manner revoke or alter any such exemption or reservation. He may also in like manner alter the boundaries of or revoke any reserve for mining or mining purposes heretofore made under the authority of any Act.

The power conferred by this section shall only be exercised in relation to reserves for mining or mining purposes, and is in substitution for similar powers conferred by the Crown Lands Acts.

Applicant to execute lease.

Applicant or legal representative to execute lease.

cf. *Ibid.* s. 57.

107. (1) When any application for a lease is granted, it shall be the duty of the applicant, or the person named by him, or his legal representatives on death or bankruptcy, to execute such lease when called upon, and the execution of a lease by such legal representatives shall be as binding upon all persons as if the lease had been duly executed by the applicant or the person aforesaid.

Consequences of refusal to execute lease.

(2) If the applicant or person, or his legal representatives as aforesaid, neglect or refuse to execute such lease or to pay the prescribed deed-fee in respect of the same within the prescribed period, after being notified in writing, as prescribed, that the said lease is ready for execution, the said lease may be voided by the Governor, and thereupon all moneys deposited with the application shall be absolutely forfeited to His Majesty and paid into the Consolidated Revenue Fund. Such voidance shall take effect from the time of publication thereof in the Gazette.

Issue of lease not executed by all the applicants.

(3) Where the application is made by two or more persons, and one or more of such persons fails or fail to execute the lease within the period prescribed as aforesaid, the Minister may, if he thinks fit, cause the lease to be issued to such of the applicants as have executed the same; and in that case such lease shall be valid and effectual in favour of such applicants.

(4)

(4) A lease shall take effect only upon execution thereof by the Governor. 57 Vic. No. 32, s. 11.

Form and conditions of leases.

108. (1) Every lease under this Act shall, according to the nature thereof, contain the covenants, conditions, reservations, and exemptions contained in the respective forms prescribed in the regulations, or as near thereto as circumstances will permit, having regard to the special requirements herein provided. Covenants, conditions, &c. 37 Vic. No. 13, s. 51.

(2) Every such lease shall be dated the day of the execution thereof by the Governor. Date of lease. *Ibid.*

Registration.

109. (1) Every lease under this Act shall be registered with the registrar, Department of Mines, Sydney, who shall forward a copy thereof to the warden of the district in which the land comprised in such lease is situated, and thereafter every transfer, sub-lease, or change of ownership of, and every tribute agreement affecting the land comprised in such lease or any portion thereof shall be registered with the registrar aforesaid. Lease to be registered. 57 Vic. No. 32, s. 27.

(2) Any person claiming interest in any such lease may, prior to the registration of any transfer or sub-lease thereof, lodge with the Minister a caveat in the prescribed form and accompanied by the prescribed fee against such registration. On receipt of such caveat, the Minister shall stay registration for fourteen days, unless the caveat is sooner withdrawn, but shall then register the said transfer or sublease unless the person objecting has obtained and served upon him an order of some competent court forbidding such registration. Caveat.

Works in connection with mining.

110. (1) The warden may, subject to the regulations, grant permission in writing to the holder of a claim or of a lease under this Act, upon written application for that purpose, to lay or construct a line of pipes, sluice-box, or a culvert under or along any public road, street, or highway, or across any Crown lands or lands reserved or dedicated to any public purpose, for the purpose of conveying any water, tailings, sludge, waste-water, or earth in connection with any mine. Warden may allow pipe-line, &c., to be constructed on public road, &c. 37 Vic. No. 13, s. 29.

(2) Before granting such permission the warden shall cause the said road, street, or highway to be inspected by some duly authorised officer. Inspection of road. *Ibid.*

(3) Any works authorised by such permission shall be so constructed as not substantially to injure such road, street, or highway, Construction of works.

or

or obstruct the traffic thereon; and if after construction it appears to the warden that they do in fact cause such injury or obstruction, he may cancel such permission and order the person who obtained such permission, or the owner or occupier for the time being, to remove any such works or obstruction within seven days.

Penalty for disobedience of order.
37 Vic. No. 13, s. 29.

(4) If any such order is disobeyed, the line of pipes, sluice-box, or culvert in question shall be deemed a nuisance remediable in like manner as any other obstruction or nuisance upon a highway, and every person so disobeying shall be liable to a penalty not exceeding twenty pounds per day during such disobedience.

Authority to construct tunnels, &c., on holding.
cf. *Ibid.* s. 30.

111. (1) The warden may, subject to the regulations, authorise any holder of a claim or lease under this Act, or any Act hereby repealed, to enter any Crown or private land held under any lease, claim, or other holding under any such Act for the purpose of constructing tunnels, roads, races, shafts, or channels, or of erecting standards carrying wires for the conveyance of electricity to or from any mine held or owned by such holder or lessee: Provided that the works to be constructed shall be carried out in such a manner as shall cause as little injury or inconvenience as possible to the holder of such land.

Compensation.

(2) The warden shall assess the compensation to be paid for any damage caused or likely to be caused by the construction of such works.

Cancellation.

(3) If the person to whom such authority is granted fails to observe the conditions under which such authority is granted, the warden may at once cancel such authority. If such person continues in occupation of or enters such land after being notified in writing of such cancellation, he shall be deemed a trespasser.

Assignment.

(4) The rights and duties under any authority issued under this section may be assigned and transferred with the claim or lease in connection with which it was issued.

Easement over Crown lands continues notwithstanding alienation.
Ibid. s. 31.

112. When at the time of any sale or alienation of Crown lands, any race or drain, dam, or reservoir constructed for mining purposes flows through, or over, or is constructed upon any portion thereof, although no reservation or exception is contained in the Crown grant, no person, unless specially authorised thereto by the Minister, shall obstruct or interfere therewith or prevent access thereto.

Suspension of labour conditions.

Registered owners may apply.
Ibid. ss. 32, 55.

113. (1) The registered owners, or a majority of the registered owners, of any claim or lease, held under this Act or any Act hereby repealed, may apply to the warden for authority to suspend mining operations for any period not exceeding the limits hereinafter set forth on the occasion of each such suspension.

(2)

(2) Every such application shall contain the grounds thereof, and a copy thereof shall be posted on the claim or on the land leased, and also outside the warden's office or the mining registrar's office nearest to the land in respect of which suspension is applied for, and shall be served upon the owners of or posted on adjoining claims or leases. Any person may, before the hearing of such application, in the prescribed manner lodge an objection to the granting of the suspension applied for, and shall be entitled to be heard in support of such objection. Grounds of application to be posted.

(3) The warden may grant such authority for any period not exceeding six months on being satisfied by evidence on oath in open court— Proceedings thereon. 37 Vic. No. 13, ss. 32, 55.

(a) that the claim or lease is unworkable by reason of accident to machinery, subsidence, scarcity of water, sudden excess of water, or any other cause whatsoever; or

(b) that the owners of such claim or lease are unable, by reason of sickness, accident, unavoidable absence, or other sufficient cause, to work the same; or

(c) that substantial expenditure has been incurred in mining operations on the claim or lease, and that the owner or lessee is temporarily unable to continue such operations, and requires reasonable time within which to make necessary arrangements.

(4) The warden may—

(a) upon being further satisfied by evidence on oath in open court that the claim or lease cannot be profitably worked under then existing circumstances owing to the low price of the product thereof or other adverse conditions, grant such authority for any period not exceeding six months in respect of any claim; or

(b) recommend to the Minister the granting of, and the Minister may grant, such authority for any such period in respect of any lease, in which case the authority shall be published in the Gazette and registered by the registrar, Department of Mines, Sydney.

(5) All applications for suspension of labour conditions shall be made and dealt with as prescribed. Regulations to be observed. *Ibid.*

(6) The warden or the Minister (as the case may be) may, when granting suspension as aforesaid, impose such conditions as he may think fit for the protection from injury of adjoining mines by water or otherwise by reason of such suspension being granted. Conditions may be imposed.

114. (1) If any holder of a lease under this Act, or any Act hereby repealed, employs on the land demised labour in excess of that required by the provisions of his lease, he shall, upon application to the warden and upon satisfying him that after the commencement of this Act and during Exemption from labour conditions.

during any expired period of his lease, not being less than six months, the excess labour so employed has been equal to the labour prescribed in his lease for six months, be entitled in respect of such excess labour to exemption from the employment of labour for one month: Provided that such exemption shall not be for any longer cumulative term than six months at any one time.

Inquiry by warden and certificate.

(2) Upon receipt of any such application, the warden shall hold an inquiry in open court, of which notice shall be given as prescribed; and, upon being satisfied that the lessee is entitled to such exemption, he shall issue a certificate in the form prescribed, and such certificate shall be registered in the Department of Mines, Sydney.

Conditions of certificate.

(3) Such exemption shall be subject to the condition that the lessee undertakes to observe and carry out such directions and orders as the warden may give for the protection of adjoining mines from injury by water or otherwise by reason of the exemption.

Returns of minerals won.

Lessee, &c., to furnish returns.

115. Every holder of a lease, claim, or other title under this Act to mine shall, during the first fourteen days of the month of January in each year, furnish to the Minister a full and proper return, verified by statutory declaration, showing the quantity and value of gold and other minerals, except coal and shale, won during the preceding year ending thirty-first December, and the average number of men employed on such lease, claim, or land held under other title during such year, and on default shall be liable to a penalty not exceeding five pounds where no royalty is payable and not exceeding fifty pounds where royalty is payable.

Every person carrying on metallurgical works for the treatment of gold or any other mineral shall, during the first fourteen days of the month of January in each year, furnish to the Minister a full and proper return, verified by statutory declaration, showing the quantity and value of gold and other minerals treated at such works during the preceding year ending thirty-first December, and on default shall be liable to a penalty not exceeding five pounds.

Manager or secretary to furnish return for company.

If such holder or person is a public company, such return shall be furnished by the manager or person acting in the management, or by the secretary of the company; and the said manager, person, or secretary shall on default be liable to the said penalty.

Additional return by coal-mining lessees.

116. (1) Every holder of a coal-mining lease, or other authority to mine for coal, shall, within fourteen days after the last day of March, June, September, and December in each year, furnish to the Minister a return, verified by statutory declaration, showing the quantity and approximate value of coal won from any mine worked by him under such

such lease or authority during the three months ending on such last day as aforesaid, and on default shall be liable to a penalty not exceeding fifty pounds.

If such holder is a public company the return shall be furnished as in the preceding section mentioned, and the manager or secretary as therein mentioned shall on default be liable to the said penalty.

Minister may require further return or may appoint officer to make inquiries.

(2) If the Minister is not satisfied with the return so furnished, he may require such holder, manager, or secretary to furnish further particulars of the coal won, or may, whether any return has been furnished or not, appoint any officer of his department or other person to make all necessary inquiries in relation to such coal. The officer or person so appointed may make all such inquiries, and may require such holder, or his clerk, or the manager, secretary, or clerk of any such company, to produce for his inspection at the office of such holder or company any books, accounts, documents, writings, papers, or instruments in his possession or under his control that such officer or person may consider necessary to enable him to ascertain the quantity of coal won, and may make copies of any entries or matters contained in such books, accounts, documents, writings, papers, or instruments, and upon completion of such inquiries shall report thereon to the Minister.

Secrecy as to information obtained.

(3) Any such officer or person who reveals any information so obtained by him, except as aforesaid or under the authority of a court of competent jurisdiction, shall be liable to a penalty not exceeding one hundred pounds.

The evidence in respect of such information shall not be admissible in any court except in the case of a prosecution under this Act, or in respect of any proceedings in relation to such inspection and inquiry.

Secrecy as to return and reports.

(4) Every officer in the Public Service and every person appointed as aforesaid shall preserve and aid in preserving secrecy with regard to the contents of any return or report or any copy of books, accounts, documents, writings, papers, or instruments made under this section which have come to his knowledge in his official capacity, and shall not communicate any such matter to any other person unless in the performance of his official duties, or under the authority of a court of competent jurisdiction. If he contravenes or fails to observe the provisions of this subsection, he shall be liable to a penalty not exceeding one hundred pounds.

Penalty on person obstructing officer.

(5) Any person who obstructs an officer or person in the performance of his duties under this section, or without lawful excuse refuses to produce any book, account, document, writing, paper, or instrument in his possession or under his control, or to answer any question asked by such officer in the course of such inquiries, shall be liable to a penalty not exceeding twenty pounds.

Reward

Reward areas.

Reward areas.

117. The Governor may, with respect to any prospector who makes a new discovery of gold or other mineral, make concessions in respect of any claim or lease applied for or held by such person as to area, rent, royalty, labour, and other conditions applicable by this Act or the regulations to such application, claim, or lease.

Amalgamation of leases.

Minister may authorise amalgamation.
37 Vic. No. 13, s. 60.
48 Vic. No. 10, s. 6.
Act No. 44, 1899, s. 24.

118. (1) The Minister may, on application in the prescribed manner by the owners of two or more adjoining gold-mining leases, or of two or more adjoining mineral leases, or of two or more adjoining dredging leases (whether such leases have been granted under the provisions of the same Act or not), and on being satisfied that the lands comprised in such leases can be more effectively worked as one mine, authorise the amalgamation of the said leases upon payment of a fee of twenty shillings for each lease so amalgamated. But where the lands comprised in such leases are divided from each other by a road or stream, mining operations shall not be carried on under such roads or streams until and unless a lease thereof has been granted.

Leases under Parts III and IV.

Leases may be amalgamated as aforesaid although one or more of such leases may be for mining on private lands under Part IV, and the other or others for mining on Crown lands under Part III.

Minister may cancel amalgamation.

(2) The Minister may, after obtaining a report from the warden, cancel any such amalgamation of leases.

Labour on amalgamated leases.
37 Vic. No. 13, s. 60.
48 Vic. No. 10, s. 6.
Act No. 44, 1899, s. 24.

(3) When leases have been amalgamated as aforesaid, the labour required to be performed on or in connection therewith shall be the aggregate of the labour required for the respective leases before amalgamation.

Minister may reduce men and capital on amalgamated leases.

(4) The Minister may, after inquiry and report by the warden, reduce the number of men to be employed and the capital to be expended on any amalgamated leases should it be shown that the circumstances warrant such reduction.

Encroachment.

Encroaching on highways, streets, &c.
57 Vic. No. 32, s. 29.

119. The warden may, subject to the regulations, upon the application of any person having the care and management of any public highway, railway, tramway, street, or road, or any person authorised by him in that behalf, authorise by writing under his hand any mining surveyor to enter and inspect any land or mines comprised in any claim, lease, application for lease, or authority under this Act or any Act hereby repealed, for the purpose of ascertaining whether the persons working such land or mines are encroaching on such

such highway, railway, tramway, street, or road, and whether the mining operations so carried on can be continued without causing injury or damage thereto, or to any house, building, or machinery abutting thereon or adjoining thereto.

Warden may authorise mining surveyor to inspect as to encroachment. 37 Vic. No. 13, s. 86. 57 Vic. No. 32, s. 30.

120. (1) The Minister or the warden may, upon the application of the owner or occupier of any land adjoining any land held as a claim, lease, or under an authority or application for a lease under this Act or any Act hereby repealed, whereon mining is being carried on, or upon the application of any person authorised by such owner or occupier, authorise by writing under his hand any mining surveyor to enter and inspect the land on which mining is being so carried on, for the purpose of ascertaining whether the persons so carrying on mining are encroaching upon any land of such owner or occupier not comprised in such claim, lease, authority, or application for lease.

Geological surveyor or other authorised person may enter and remove sample.

(2) Any geological surveyor or other person authorised by the Minister may enter any mine or works for the purpose of inspecting the same, and removing any sample of ore or deposit. No person shall obstruct or hinder such geological surveyor or other authorised person acting as aforesaid, under a penalty not exceeding fifty pounds.

Mining or geological surveyor may enter and inspect. 57 Vic. No. 32, s. 31.

(3) The mining or geological surveyor authorised as aforesaid, or other authorised person, may enter and inspect and survey the land and mines described in such order. Such surveyor may make such plans and sections of the land entered, and of any drives or other works therein, as are necessary for the purposes aforesaid.

Surveyor to make a declaration. 37 Vic. No. 13, s. 86. 57 Vic. No. 32, s. 32.

121. Every such mining or geological surveyor or other authorised person shall, before entering any land under such authority as aforesaid, make a declaration before the warden (who is hereby authorised to take and forward the same to the Minister) that he will not, except as a witness in a court of justice or to the Minister, without the consent in writing of the occupier or lessee of the land or mines to be entered, divulge or cause to be divulged to any person whomsoever any information which may be obtained upon or by such entry, save only as to whether the persons working such mines are encroaching as in the last preceding section mentioned. Whosoever acts contrary to such declaration shall be liable to a penalty not exceeding fifty pounds.

Sludge abatement provisions.

Sludge Abatement Board.

122. (1) For the purpose of this section, the Governor may appoint a board of three persons, to be called the Sludge Abatement Board, and notification shall be made of such appointment. Any two members of the board shall form a quorum.

Powers of board.

(2) It shall be the duty of the board—

(a) to investigate any complaint made of pollution or injury caused by sluicing, dredging, or other mining operations to any

any river, stream, watercourse, lake, or reservoir (whether or not there is any water therein) not exempted from the operation of this section, or to any agricultural or grazing land adjacent thereto, and to order any person causing or directing such operations to make such provision or take such steps as the board may direct to prevent the continuance of such pollution or injury;

(b) to order any person about to commence or authorise sluicing, dredging, or other mining operations which would, in the opinion of the board, cause injury or pollution to any such river, stream, watercourse, lake, reservoir, or land to make such provision or take such steps as the board may direct to prevent such pollution or injury; and

(c) at the request of the Minister, to report and make such recommendations as the board may think fit in connection with any application for a mining lease of any area upon which it is intended to carry on sluicing, dredging, or other mining operations which may pollute or injure any such river, stream, watercourse, lake, reservoir, or land.

Exemption of certain rivers, &c.

(3) The Governor may from time to time, upon the report of the board, exempt from the operation of this section such rivers, streams, water-courses, lakes, and reservoirs, or such portions thereof as, in his opinion, are, by reason of their polluted condition, useless as a means of providing a water supply for domestic or stock purposes: Provided that the board, before so reporting, shall satisfy itself that such exemption may be granted without causing damage to any agricultural or grazing lands adjacent to any such rivers, streams, water-courses, lakes, or reservoirs, and shall publish in the Gazette notice of every such proposed exemption.

The Governor may at any time revoke, in whole or in part, any such exemption, and shall give notice thereof in the Gazette.

Penalty.

(4) Any person who, by himself or his agent or workman, carries on any mining operations as aforesaid in contravention of any order of the board as aforesaid, or disobeys any order of the board, and thereby directly or indirectly causes the pollution of, or any injury to any such river, stream, water-course, lake, or reservoir, or to any agricultural or grazing land adjacent thereto, shall be guilty of an offence; and, upon the complaint of any person aggrieved thereby, or of an inspector of mines, shall, for every day upon which mining operations have been so carried on, or such order has been disobeyed as aforesaid, be liable to a penalty not exceeding twenty-five pounds.

What constitutes injury or pollution.

(5) For the purposes of this section, water discharged into any such river, stream, water-course, lake, or reservoir, shall be deemed to injure or pollute the same if it contains in solution at the point of discharge any poisonous matter in the total proportion of more

more than seventy-five grains to one gallon; or other noxious matter in such quantity as to be injurious to public health; or if it contains in suspension any earth or mineral, or any earthy or other insoluble mineral substance in the total proportion of more than eight hundred grains to one gallon.

Surrender and cancellation of lease.

Lessee may surrender lease wholly or in part. 37 Vic. No. 13, s. 54, cf 57 Vic. No. 32, s. 35.

123. Every holder of a lease under this Act may at any time with the consent of the Governor surrender his lease wholly or in part. The Governor may, on acceptance of such surrender, grant such holder a new lease of the whole or any part of the land comprised in the surrendered lease, and upon such conditions not inconsistent with this Act and the regulations, as he may deem advisable. But the surrender of a lease shall not entitle the lessee to the refund or remission of any rent already paid or due.

Cancellation of lease 37 Vic. No. 13, s. 56 (11). 57 Vic. No. 32, s. 34.

124. If the holder of a lease under this Act, his executors, administrators, or assigns, at any time during the term of such lease—

(a) fails to fulfil or contravenes the conditions and covenants contained therein; or

(b) fails to use the land bona fide for the purposes for which it has been demised; or

(c) uses it for a purpose other than that for which it has been demised,

the lease may be cancelled by the Governor, and the cancellation shall take effect on the date proclaimed in the Gazette.

Removal of machinery.

Machinery, &c., on forfeited area. 37 Vic. No. 13, s. 56 (10).

125. (1) At any time within six months after the determination of any lease under this Act, or within such further time as the Minister may allow, the former lessee may remove or dispose of all tools and machinery and such improvements as the Minister may sanction, except such as are necessary to keep open any shaft or adit: Provided that this section shall not apply to any lease of private land until and unless all rent due in respect thereof has been paid, and all compensation for damage occasioned to the land demised has been duly assessed and paid.

Machinery, &c., may be sold.

(2) If such tools, machinery, and improvements are not so removed they may be sold by auction by order of the warden at the risk of the former lessee. The net proceeds of such sale shall be paid into the Treasury and held until applied for by such former lessee.

Surveyor may define road.

Minister or warden may authorise surveyor to enter and define road to area or for any other purpose.

126. Any mining surveyor may, in pursuance of an order of the Minister or of a warden, enter any private land for the purpose of defining the road to and the boundaries of the land comprised in any lease or authority to enter, or any application for the same, or for any other purpose authorised by this Act.

Inquiries and inspection.

Inquiry may be directed cf. 37 Vic. No. 13, s. 57. Act No. 44, 1899, s. 14.

127. The Minister may direct a warden to hold an inquiry on oath in open court with reference to any matter affecting any lease or application for a lease under this Act or any Act hereby repealed.

Inspection of mine. 57 Vic. No. 32, s. 31.

128. Any holder of a tenement, lease, or authority to enter under this Act or any Act hereby repealed, or any application for such lease, shall, during ordinary working hours and within a reasonable time, comply with any request of the warden, or of any surveyor or other person acting under the instructions of the warden, or under the authority of this Act or the regulations, to furnish the usual appliances and aid necessary for descending to and ascending from the underground workings of his mine, and for examining the same or doing such things as may be authorised as often as may reasonably be found necessary.

Nature of holding and evidence of title.

Share in claim. 37 Vic. No. 13, s. 18.

129. (1) Every tenement or share or interest in a claim, and any authority, right, title, or interest acquired or created under this Act, or any Act hereby repealed, or the regulations, shall be deemed and taken in law to be personal property, and shall not be of the nature of real estate, and may be disposed of during the lifetime of the holder, and shall on his death descend or devolve on intestacy or by will as personal property, subject to this Act and the regulations.

Certificate to be evidence. *Ibid.*

(2) The production in any court of a certificate of registration under the hand of a mining registrar or warden's clerk shall be evidence that the person named in such certificate was the holder of a miner's right or of a business license, as the case may be, at the date mentioned in such certificate, and that all the requirements of any Act or regulations necessary to vest the title of such interest as aforesaid in such person had been complied with by him up to the date of such registration.

Mining towns.

Area may be resumed for township.

130. If during the term of any lease of Crown land under this Act or any Act hereby repealed any part of such land is required as a site for a town or village or for any public purpose, the Governor may, upon

upon one month's notice to the lessee, cancel the said lease so far as it relates to any right to the surface and the specified depth below the surface of the said part of the land, and thereupon the said part shall, subject to the right of the said lessee to mine thereunder, but without any compensation payable by the Crown, become Crown lands within the meaning of the Crown Lands Acts, and may be dealt with thereunder.

PART VII.

WARDENS' COURTS.

DIVISION 1.—JURISDICTION.

Wardens' courts.

Governor may establish wardens' courts.

131. (1) The Governor may, by proclamation, establish wardens' courts, to be held at such places as he may from time to time appoint. Any wardens' courts established under any Act hereby repealed shall have jurisdiction under this Act as if they had been established hereunder. 37 Vic. No. 13, s. 67.

Court of record.

(2) Every such court shall be a court of record, and shall be held by a warden sitting alone.

(3) Any decision or order of such court shall, subject to this Act, be binding and conclusive on all parties.

Summons, &c., may be issued.

(4) For the purposes of the jurisdiction hereby conferred, a warden or a warden's clerk may issue summonses and subpœnas, or other process, which shall have legal effect and operation throughout the State. *Ibid.* s. 68.

Register to be kept.

132. (1) Every warden shall cause a register to be kept in the form prescribed by the rules of the particulars of all complaints and applications made to him under this Act and any decision or order made thereon, and such particulars relating thereto as may be prescribed as aforesaid. *Ibid.* s. 72.

(2) A copy of an entry in such register of any decision or order of the court shall on demand be given by the warden's clerk to any of the parties interested therein. A document purporting to be any such copy, certified by the warden or warden's clerk as a true copy, shall be admitted in all courts and places whatsoever as conclusive evidence of such decision or order having been given or made.

Jurisdiction

Jurisdiction.

Subjects within jurisdiction of court. 37 Vic. No. 13, s. 69.

133. (1) A warden's court shall have jurisdiction to hear and determine all suits relating to any of the matters following, that is to say:—

(a) The right to the possession or occupation of any Crown land or private land by virtue of a miner's right, a registered share in a claim, a lease, application for a lease, or of a license, or authority.

(b) The right to cut, construct, use, possess, occupy, or hold any interest in any race, drain, dam, or reservoir for mining under any Act or regulation relating to mining.

(c) The right to recover any land, race, drain, dam, reservoir, building, or machinery alleged to have been abandoned or forfeited under any such Act or regulation, and to mesne profits thereof.

(d) The right to the use, enjoyment, or to sell any water under any such Act or regulation, or to the priority of use and enjoyment as against any other claimant of water taken, diverted, or used, or claimed so to be under any Act or regulation.

(e) Any encroachment or trespass upon, or unlawful interference with, or injury to any land, race, drain, dam, or reservoir occupied, held, or used under any Act or regulation relating to mining, or unlawful interference with or injury to any machinery thereon; any diversion or abstraction of water possessed or used under such Act or regulation; the unlawful ouster or exclusion of any person from any share or interest in any such land, race, drain, dam, reservoir, water or machinery, and the damages and compensation for any such encroachment, trespass, ouster, diversion, abstraction, interference, or injury.

(f) Any demand for debt or damages, or both, arising out of or made in respect of any contract or agreement whatsoever, relating to mining for gold or any other mineral, or to any holding or interest authorised by any such Act or regulation as aforesaid.

(g) The right to any gold or other mineral in or to be taken out of any land occupied or held under any such Act or regulation as aforesaid, or in respect of any matter concerning or arising out of any contract relating to such gold or mineral.

(h) Any demand concerning or arising out of any partnership for or in relation to mining for gold or other mineral in any land occupied or held as aforesaid, or any partnership in any such land, or in any race, drain, dam, reservoir, water, machinery, gold, mineral, or metal, or concerning or arising out of any contract for or in connection therewith, or for the dissolution wholly or in part of any such partnership.

(i) Any demand concerning contribution to calls or to the expense of working or using any such land, race, drain, dam, reservoir, or water, or any share or interest therein.

(j) Any demand concerning or arising out of any mortgage or assignment by way of security of or charge upon any such land, race, drain, dam, reservoir, water, machinery, gold, or mineral, or any share or interest therein.

(k) Any demand concerning the cancellation and delivery up of instruments relating to—

(i) mortgages, charges, or encumbrances of or upon any such land, race, drain, dam, reservoir, water, machinery, gold, or minerals as aforesaid, or any share or interest therein;

(ii) any assignment of such mortgages, charges, and encumbrances;

(iii) any contract respecting the working or use for mining purposes or otherwise in relation to mining of any such race, drain, dam, reservoir, water, or machinery; or

(iv) any partnership for mining, or in any such land, race, drain, dam, reservoir, water, machinery, gold, or mineral, or the total or partial dissolution of any such partnership.

(l) Any demand concerning the ascertainment and adjustment of boundaries of land held or occupied under any such Act, or regulation, where such boundaries are in dispute or doubtful; in which case the court shall ascertain and determine such boundaries by such means as may be found convenient, and shall make and give all such orders and directions as may be necessary for the purpose of carrying out the decree or order of such court.

(m) Any demand concerning any Crown land, or share or interest therein, which the complainant claims to be entitled to take possession of and occupy under a business license, and of which the defendant is and claims to be entitled to be in possession; any trespass upon any such land of which the complainant is in, and of which he claims a right to the occupation or possession under such license.

(n) Any money claimed to be due upon any mining partnership account, or in any way accruing to the complainant from any mining partnership adventure or interest.

(o) The recovery of any money which any person is liable to pay under any such Act or regulation, and for which no other mode of recovery is hereby provided.

(p) All questions and disputes which may arise between miners in relation to mining on Crown lands or private lands.

(q) All questions or disputes which may arise as to the working or management of any lease.

Jurisdiction where title is derivative. 37 Vic. No. 13, s. 69.

(2) The jurisdiction hereby conferred shall extend to cases where the right or title of either party is derivative by assignment or otherwise as well as to where the same is original.

Wages to be a first charge.

134. All debts for wages due by any mining company, or any lessee or claim holder, to any employee in respect of services performed in connection with any mining, not exceeding twenty-five pounds, shall have priority over all other claims, and shall be a first charge upon the lease, claim, plant, machinery, and improvements in connection with which such services were performed notwithstanding any lien, mortgage, or charge thereon, and such debts shall be paid in full unless the said property is insufficient to meet them, in which event they shall abate in equal proportions.

Decision in certain cases to be final. *Ibid.*

135. (1) In all suits where the amount claimed or the value of the right or property in dispute does not exceed fifty pounds, the decision of the warden's court shall be final.

Parties may agree that warden's decision shall be final. *Ibid.* s. 107.

(2) If before the hearing of any complaint or other proceedings in a warden's court the parties agree to accept the decision of the said court as final, a memorandum of such agreement shall be entered by the warden in the register kept by him, and in such case the warden's decision shall be final.

Suitor to hold miner's right or lease. cf. *Ibid.* ss. 19, 69.

136. No person shall be entitled to sue in a warden's court in respect of any matter affecting the title to any land, right, easement, or interest held under this Act or any Act hereby repealed unless he is the holder of a miner's right, business license, authority, application for lease, or lease granted under this or any Act hereby repealed, or the holder of a registered share in a claim.

Minors may sue.

137. Minors may sue and be sued in connection with holdings of any nature under this Act, and their holdings shall be liable to be taken in execution and sold under legal process.

Division 2.—Hearing and procedure.

Hearing of complaints.

Complaint may be heard without summons. *Ibid.* s. 71

138. (1) The warden may, if both parties consent thereto, hear and determine any complaint summarily in the presence of them both and without requiring any formal proceedings to be taken in a warden's court, and every such decision shall be final.

Consent in writing.

(2) Such consent shall be in writing signed by the parties, and the warden may take the statements of the parties on oath.

Summons. *Ibid.* s. 70.

(3) Where consent has not been given as aforesaid, proceedings shall be commenced by a summons to be issued by the warden or his clerk to the complainant on his application, on the payment of the fee prescribed by the rules.

Such

Such summons shall state concisely the facts constituting the complaint, and the amount of money (if any) claimed, and shall state a day for the appearance of the defendant before the warden's court, and shall be in the form and shall contain the particulars prescribed by the rules.

Service of summons.

(4) A summons shall be served on the defendant, either personally or by leaving the same at his last known place of residence with any person apparently of or above the age of sixteen years: Provided that if it is made to appear that any defendant cannot after diligent inquiry be found, or cannot from any cause after reasonable effort be personally served with the summons, the warden may order that service of the summons in such manner as he may direct by such order shall be deemed good service upon such defendant, and if necessary may postpone the hearing to allow of such substituted service; and service of such summons in the manner directed by such order shall be deemed good service for all purposes.

Warden to hear and determine. 37 Vic. No. 13, s. 70.

139. (1) Upon the day named in the summons, or upon any adjourned day of hearing, the court shall require such proof as it thinks sufficient of the service or substituted service of the summons upon all parties interested who have not appeared, and thereupon in the absence of any of the parties interested who, having been duly served with such summons, do not appear, but in the presence of all other parties interested, or of such of them as appear to the court sufficiently to represent all such parties, the court shall proceed to investigate the matter of such complaint, and to hear and determine the same in a summary way.

Audience.

(2) An agent duly authorised in writing by any party to a proceeding, shall have the right of audience in a warden's court.

Amendment of proceedings. cf. 37 Vic. No. 13, s. 75.

140. (1) The court may adjourn the hearing of any complaint to any other time or place, and make all such amendments in any proceedings as may be necessary for the purpose of determining the real question in controversy between the parties, notwithstanding that the summons does not show the substance of the facts constituting the complaint.

If it appears that any person who ought to have been joined as a defendant has not been joined, the court may on the application of the complainant amend the proceedings by including such person as a defendant and adjourn the hearing to allow of the service of the summons upon him.

Complaint not to be dismissed for informality. cf. *Ibid.*, s. 75.

If it appears that any person who should have been joined as a complainant has not been so joined, the court may, with the consent of such person, and on the application of either party to the proceeding, by amendment include such person as a complainant.

Any such amendment may be made subject to such terms as to costs, adjournment, or otherwise as to the court seems just.

(2)

(2) No complaint shall be dismissed for informality in the summons or any entry thereof, or for any defect or misnomer or inaccurate description of any person or place, or on the ground that the plaintiff appears to be entitled to different relief from that claimed in the summons, or that there is any variance between the summons and the evidence adduced at the hearing on the part of the complainant. Every such case may be dealt with by amendment under the power to amend hereinbefore contained, so that the real question in controversy shall be determined.

In absence of warden, his clerk may adjourn court.

141. If on any day appointed for the holding of a warden's court, or on the day to which any such court has been adjourned, the warden is prevented by any cause from attending such court, the warden's clerk may adjourn the court for such time or until such day as may be necessary.

Payment into court.

Defendant may pay money into court. 37 Vic. No. 13, s. 74.

142. (1) Notwithstanding anything hereinbefore contained, the defendant may, at any time but not less than two days before the hearing, in any case where the claim is for money, pay into the warden's court the amount claimed, or such less amount as he may think a full satisfaction in respect of the matter complained of, together with the complainant's costs up to the time of payment.

Notice of payment. *Ibid.* s. 74.

(2) The warden's clerk shall give the prescribed notice of such payment to the complainant, and shall also, on demand, pay the amount so received to the complainant or his attorney.

Proceedings thereupon. *Ibid.* s. 74.

143. If the full amount claimed, together with costs as aforesaid, has been so paid into court, or if the complainant has accepted such less sum as aforesaid, no proceeding shall thereafter be brought in any court in respect of the said claim. But if a less amount than that claimed, with costs as aforesaid, has been so paid in, and the complainant elects to proceed, and not accept the same, then in the event of his not recovering any further sum in respect of such claim, the warden may order him to pay the defendant's costs incurred subsequently to such payment in.

Division 3.—Orders.

Payment by instalments.

Instalments may be ordered.

144. When any order for the payment of money is made, the warden's court may order the amount to be paid at such times and by such instalments as the court may deem fit.

Complaints for injury to property, &c.

Court may determine boundaries. *Ibid.* s. 80.

145. (1) On the hearing of any complaint before a warden's court for the recovery of possession of, or for any encroachment or trespass upon, or for any unlawful interference with or injury to, any land,

land, water-race, drain, dam, reservoir, machinery, or water, or any share or interest therein, the court may if it thinks fit determine the boundaries of any such land, or the quantity of water to be taken by either of the parties.

Mesne profits, or damages may be awarded. 37 Vic. No. 13, s. 80.

(2) If in any such proceedings the decision is in the complainant's favour, the court shall determine whether any and what sum in the nature of mesne profits or damages shall be paid to him by the defendant.

The court may also in such case order, if necessary, that—

(a) possession of anything sued for be delivered to the complainant;

(b) the complainant be put into possession of any such land, race, drain, dam, reservoir, or machinery, or any share thereof, and any defendant and his servants, and any buildings, fixtures, implements, goods, and chattels, be removed therefrom;

(c) any defendant be restrained from using any such water as aforesaid.

Relief may be granted to defendant. *Ibid.* s. 82.

(3) If in any such proceedings the court finds that the complainant himself has wrongfully encroached, or trespassed, or interfered with any land, race, drain, dam, reservoir, machinery, or water, in respect of which such proceedings were brought, the court may grant the same relief to the defendant against the complainant as it is hereinbefore empowered to grant to a successful complainant.

Proceedings for diversion of water. *Ibid.* s. 81.

(4) In any proceedings before a warden's court in respect of the right to divert any water, or to remove any water-race, drain, dam, reservoir, or machinery, if the decision is in the complainant's favour the court shall declare him at liberty to divert such water, or remove such race, drain, dam, reservoir, or machinery, and may make an order restraining any defendant from interfering with or preventing such diversion or removal.

Defendants in illegal occupation. *Ibid.* s. 40.

(5) Persons in illegal occupation of lands, or in whose names the same may be registered, may be proceeded against by a holder of a miner's right, and the court may order their ejectment and removal in terms of subsection two of this section: Provided the complainant has applied for the ground either as a claim or a lease.

Deposit pending decision.

Warden may order deposit of gold, &c. *Ibid.* s. 89.

146. (1) Upon application to the warden's court by any party to any proceedings upon summons therein, such court may order any other party thereto to deposit, in order to abide its decision, any earth, gold, minerals, money, or chattels, the right to which will in the opinion of the court be put in issue in the course of such proceedings, and which may then be, or which at any time before the final termination of such proceedings may come into the possession, power, or control of such party. Such order shall specify the thing to be so deposited, and shall

shall direct such deposit to be made within a time or times mentioned with some person or at some place specified either in the name of the warden or of some other person mentioned in such order.

Notice.
37 Vic. No. 13, s. 89.

(2) Unless such order is claimed in the summons it shall only be made after twelve hours' notice served by the applicant upon the parties interested in opposing the same, or such of them as appear to the warden sufficiently to represent such parties.

Penalty.

(3) Any person against whom such order has been made who neglects or refuses to obey such order shall be liable to a penalty not exceeding fifty pounds.

Injunction.

Warden may grant injunction.
cf. *Ibid.* ss. 58, 87.

147. (1) Upon application to the warden's court by any person claiming to be legally or equitably interested in any land, lease, claim, race, drain, dam, reservoir, water, machinery, or easement, such court may in its discretion and upon such terms as to costs or otherwise as it may consider just, grant an injunction restraining any person named therein from encroaching upon, occupying, using, or working any such property, or from seeking for, washing out, extracting, or removing any earth, gold, or other minerals taken therefrom, or from selling or disposing or otherwise interfering therewith, or from doing any act whereby the right, title, or interest of the applicant in or to the same might be affected.

Duration of injunction.
cf. *Ibid.* ss. 58, 87.

(2) Every such injunction shall be in force for the period named therein, unless the same is sooner discharged by the court making the same or on appeal.

Application for injunction.
cf. *Ibid.* s. 87.

(3) An injunction as aforesaid may be applied for either upon summons claiming the same, with or without other relief, or upon notice served as in the case of a summons upon the persons and within the period prescribed by the rules. The same rules of procedure shall be observed at the hearing of every such application as are herein prescribed in the case of the hearing of an ordinary summons.

Ex parte injunction in case of urgency.
Ibid. s. 88.

(4) The warden may also grant an injunction as aforesaid to last for not more than one month inclusive of the day of making the same, unless sooner discharged, without such summons or notice, if the applicant satisfies the court that the case is one of extraordinary urgency. No subsequent injunction or continuance of the injunction so granted shall be made under this subsection, but application for a further injunction may be made under the provisions of subsection three, either before or after the expiration of the period of the injunction.

After injunction granted, warden may order working upon terms.
Ibid. s. 91.

(5) When any injunction has been granted by a warden's court or on appeal therefrom under this Act, the warden, upon the application of any holder of a registered claim adjacent to the property under such injunction who shows to the satisfaction of such warden that

that the claim of such holder will sustain damage or be materially depreciated in value by reason of the non-working of the said property under injunction, may order, upon such terms as he thinks fit, such working of the said property as in his opinion will be sufficient to prevent such damage or depreciation, and the said warden shall make such order as to the cost of such working as he may think just.

(6) Any person disobeying an injunction granted by the warden shall be liable to a penalty not exceeding one hundred pounds for every day of such disobedience. Penalty.

Delivery of specific chattels.

148. (1) Where any money or any gold or mineral is claimed in a warden's court, such court may order the payment or delivery of any such money, gold, or mineral which it may find to be due or deliverable by either of the parties to the other of them in respect of the subject matter of the said proceedings. Court may order delivery of gold, &c. 37 Vic. No. 13, s. 83.

(2) In cases where any such claim as aforesaid arises out of any mining partnership, adventure, or interest, the court may take the account of such partnership, adventure, or interest so far as may be necessary to ascertain what moneys, gold, or minerals (if any) are so due from one party to the other, and make such order in the premises as may be just. Accounts. *Ibid.*

Costs.

149. The court may allow costs to the successful party in all suits, inquiries, and proceedings, and may allow the costs of any adjournment of any suit, inquiry, or proceeding. Costs may be allowed.

DIVISION 4.—EXECUTION.

Form and service of orders.

150. (1) Every order made by the warden under this Act may be in the form prescribed by the rules. Form. *Ibid.* s. 90.

(2) Every such order shall, unless the warden otherwise directs, be served by delivering a copy to the person to be bound thereby, and at the same time showing the original order if such person requires to see the same: Provided that if the warden sees fit so to direct, it shall be sufficient service of any such order to publish a copy of such order in such newspaper, and to affix a copy thereof in such conspicuous place at or near the property in dispute as the warden appoints. Service. *Ibid.*

151. If any money ordered by a warden's court to be paid in respect of debt, damages, costs, or otherwise is not paid forthwith, the warden, on the application of the person entitled to receive such Writ of execution cf. *Ibid.* s 84.

such payment, or his attorney, or duly authorised agent, shall grant a writ of execution under his hand in the form prescribed by the rules as nearly as practicable. But the warden may withhold the issuing of such writ for a period not exceeding seven days from the date of such order if he considers it just or reasonable so to do.

Writ to be obeyed. cf. 37 Vic. No. 13, s. 84.

152. (1) Any bailiff of a warden's court or district court to whom such writ has been delivered for execution, and all constables and peace officers within their several jurisdictions shall do and perform all things in respect of such writ which they are required respectively to do and perform in respect of a writ of execution issued out of a district court in case of the non-payment of money under a judgment of such court.

Bailiff may seize property. *Ibid.*

(2) Every bailiff as aforesaid may by virtue of such writ seize and take such property of the party against whom such writ is directed as could be seized and taken by virtue of a writ issuing out of a district court, and shall have the same powers and duties in respect of the seizure, sale, and disposal of such property, and all matters connected therewith, as are by law conferred and imposed on the bailiff of a district court upon a writ of fieri facias issued by the registrar thereof.

Court may order gold &c., to be delivered. *Ibid.* s. 85.

153. (1) Where a warden's court orders the payment of money in respect of any debt, damages, costs, or otherwise, the court may at the time of such order being made further order, if it thinks fit, that any gold or mineral in the possession, and being the property of the party directed to make such payment shall (to the extent in value of such payment as estimated by the court) be delivered up to the party entitled to such payment in satisfaction or part satisfaction thereof, and may forthwith cause such gold or mineral to the extent aforesaid to be seized and delivered accordingly.

Execution for balance only. *Ibid.*

(2) When any such order as aforesaid has been made, the writ of execution shall only be granted in respect of any balance of such payment as aforesaid remaining due after deducting the value of any gold or mineral so delivered to the party entitled to such payment.

Mode of enforcing orders where not specially provided for.

Warden may authorise person or officer to perform any prescribed act. *Ibid.* s. 92.

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

DIVISION 5.—ASSESSMENT OF COMPENSATION.

How compensation assessed.
57 Vic. No. 32, s. 17.
60 Vic. No. 40, s. 2 (*d*).

155. (1) Where compensation is by this Act directed to be assessed by the warden in respect of land entered or occupied, or proposed to be entered or occupied, under a miner's right, authority, lease, or application for lease, or in respect of any land adjoining thereto, such assessment—

(a) shall be made in the manner prescribed, and after notice to the persons who appear to him to be interested in the assessment; Act No. 44, 1899, s. 10.

(b) shall be of the loss caused and likely to be caused by damage to the surface of the land, and to any crops, buildings, and improvements thereon by works carried on in pursuance of such right, authority, lease, or application;

(c) shall not exceed in amount the market value for other than mining purposes of the land and the improvements thereon;

(d) shall, subject to the appeal to arbitration hereinafter provided, be final.

(2) The amount so assessed shall be paid by the holder of such right, authority, or lease, or by such applicant, into the warden's court, and shall, from time to time, on damage being caused as aforesaid, be paid out of court on the application of any person having interest in the land.

(3) Provided that, on production of a document in writing signed by the holder or applicant aforesaid, and by the person having interest in such land, agreeing to dispense with such assessment and payment, the warden shall, in terms of such document, dispense with the making of such assessment absolutely or on conditions so as to carry out the terms of such agreement.

(4) If after the expiration of six months, and before the expiration of twelve months, from the determination of such lease or authority, or from the refusal of the application for the lease, the whole or any part of an amount so paid into court has not been paid out under the above provisions of this section, and has not been ordered to be so paid out, any person who has paid such amount into court may apply to the warden for the payment out to him of such amount or part, and the warden may order such payment to be made.

After the expiration of such twelve months, the warden may cause such amount or any part thereof to be paid into the Treasury and carried to the Consolidated Revenue Fund.

Procedure in court on making assessment.

156. In making any such assessment, the warden—

(a) may make such assessment at any time and place fixed by him;

(b) may make such assessment in the absence of any persons interested who appear to the warden to have been duly notified;

(c)

(c) may adjourn the hearing to any time and place, subject to such terms as to costs or otherwise as he thinks fit;

(d) shall have the powers of a warden's court.

Additional assessment. 57 Vic. No. 32, s. 20. Act No. 44, 1899, s. 21.

157. If after such assessment has been made it is proved to the warden that the amount so paid into court in respect of certain land has been duly paid out, and that since such payment out further loss has been caused by damage as aforesaid to such land, or to other land, the warden may as aforesaid assess such loss and order the same to be paid by the holder or applicant aforesaid to any person having interest in the land so damaged. If such payment is not so made, the claim, authority, or lease may be cancelled.

Appeal to arbitration. cf. 57 Vic. No. 32, s. 20.

158. Any person dissatisfied with any assessment made by the warden under the provisions of this Act (other than assessments in respect of land resumed) where the amount so assessed exceeds five pounds, may, in the prescribed manner, give notice that he requires the assessment to be determined by arbitration under this Act.

Such assessment shall thereupon be made and determined by arbitrators appointed as prescribed. The arbitration shall be in the nature of an appeal from the assessment of the warden, and the powers of the arbitrators and proceedings before them shall be as prescribed. The determination of the arbitrators shall be final and shall be given effect to by the parties and by the warden:

Provided that the appellant shall deposit with the warden five pounds to answer any costs which the arbitrators may order him to pay.

Appeal against assessment.

159. (1) The Minister, or any person claiming payment for land resumed under this Act, if dissatisfied with the amount of the value assessed in respect of any such resumed land, may give notice of appeal against such assessment in the manner prescribed.

(2) Such appeal may be made to a court consisting of a judge of the Supreme Court appointed in that behalf by the Governor and two assessors, one to be appointed by the Minister and one to be appointed by the owner of the land resumed; but if the Minister or such owner fails to appoint an assessor, the judge shall appoint an assessor on his behalf.

Each assessor shall be paid by the person by or on behalf of whom he has been appointed.

(3) The decision of the judge and one of the assessors shall be final:

Provided that if the Minister and the said owner agree in writing that the appeal shall be heard and determined by the judge without assessors, the appeal shall be so heard and determined and the decision of the judge shall be final.

Rules and orders of appeal, by whom made.

160. (1) A judge of the Supreme Court may give such directions and make such orders as may be thought necessary to enable the appeal to be heard and determined.

(2) The judges of the Supreme Court, or any three of them, may make rules as to the procedure in, and relating to, such appeals.

PART VIII.

Appeals.

Division 1.—To District Court.

Right to appeal from warden's court. 37 Vic. No. 13, s. 106.

161. If any party to a complaint or proceeding in a warden's court is dissatisfied with the decision of the said court where such decision is not in or by this Act declared to be final, such party may appeal from the same to the District Court sitting as a court of appeal in its mining jurisdiction at that sitting of such court which next after the expiration of fifteen days from the day of the making of such decision is held at or nearest to the place at which such decision was made.

The hearing of the appeal *Ibid.*

162. (1) The person so appealing shall, within seven days from the day of the making of such decision, deposit with the registrar of the District Court at the place where such sitting is to be held the sum of ten pounds, or such less sum as the warden may order, to abide the costs of such appeal, and give security to the satisfaction of the warden for the due performance of any order which the District Court hearing such appeal may think fit to make, and shall lodge notice in writing of his appeal, stating the grounds thereof. Thereupon such registrar shall issue out of such court a summons, in the form and containing the particulars prescribed by the rules.

(2) Any person so lodging notice of appeal against any such decision shall be taken to have abandoned his right of appeal under Division two of this Part.

Such appeal to a District Court shall be heard before the said court, which shall proceed to make an order reversing or varying such decision or dismissing such appeal or such other order as to the said court may appear just; and in and by such order the said court may make such order with respect to the costs of the appeal, and of the proceeding appealed from, as it may think fit.

(3) Provided that no such appeal shall be so heard unless the said summons has been served seven days before the same is returnable upon all the parties interested in supporting such decision, or upon such of them as appear to the judge sufficiently to represent all the parties interested,

interested, or, in case no such party can be found, upon the warden who made the decision, nor unless at the hearing of such appeal a copy of the minute of such decision, certified under the hand of a warden or warden's clerk, is produced to such court.

Appeal how to be heard.
37 Vic. No. 13, s. 109.

163. Every such appeal shall be in the nature of a rehearing of the whole matter, and shall be heard and determined by the said judge sitting as aforesaid, and no ground of appeal except those stated in the notice of appeal shall be entered upon unless the judge allows, either before or at the hearing, other grounds to be added upon such terms as to adjournment, costs, or otherwise as he may think fit.

Injunction, &c., and stay of proceedings may be had.
Ibid. s. 111.

164. Whenever any such appeal has been brought or be about to be brought, the warden, from the decision of whose court the appeal is or is about to be brought, may on the applicaton of any of the parties interested in such appeal, make such order for an injunction or receiver or payment of money into the hands of the warden, to abide the event of the appeal, or for stay of proceedings or otherwise, and upon such terms as he may think proper; but unless such order, or an order to the same effect, is so made, no appeal shall operate as a stay of proceedings. The said warden may at any time discharge any such order made by him.

No costs on appeal under twenty pounds unless under special circumstances.
Ibid. s. 108.

165. If, upon the hearing of such appeal, the subject matter of the dispute appears to the court before which the appeal is heard not to exceed in value twenty pounds, the appellant shall not, although he succeeds, be entitled to receive any costs of such appeal from the opposite party, unless the judge of such court is of opinion that the special circumstances of the case entitle the appellant to costs.

Mode of enforcing decision after appeal.
Ibid. s. 112.

166. (1) If an appeal against the decision of any warden's court is dismissed, or if on appeal such decision is varied, such decision, or such decision as so varied (as the case may be), shall be deemed to be the decision of the warden's court and may be enforced as if it had been the original decision of such court.

(2) Provided that if a District Court on any such appeal orders that possession of any land, race, drain, dam, reservoir, or water, or of any gold or minerals, or of any share or interest therein, be delivered or restored to any party to the appeal, then it shall be lawful for any warden, and he is hereby required, to cause possession thereof to be delivered or restored to such party, and if necessary for that purpose to cause to be removed from any such land, race, drain dam, reservoir, or water any other person, his servants, goods, and chattels; and all members of the police force and other peace officers shall assist him in doing so.

(3) Provided also that if—

(a) any decision of a warden's court, when so affirmed or varied, contains an award of debt, damages, and costs, or either of them, and the same has not been previously paid or satisfied; or

(b)

(b) any decision of a district court reversing the decision of the warden's court contains an award of debt, damages, and costs, or either of them, or an order for payment or repayment of money, and the same is not forthwith, or within the time limited for such payment in the adjudication on appeal, paid or satisfied; or

(c) if such District Court orders that any money received by any respondent under the decision appealed against be paid into court, and the same is not forthwith, or within the time limited as aforesaid, paid into court; or

(d) if such court decrees costs against any party to such appeal, and the same is not paid within the time so limited,

the registrar of such court (upon the application of the person entitled to receive the same, and without any summons or notice to the person required to pay the same) may forthwith issue execution for the amount thereof in the same manner as upon any judgment or order of the said court for payment of money.

Appeal to Supreme Court.
37 Vic. No. 13, s. 115.

167. (1) If the appellant or respondent in any appeal to a mining appeal court, in which the amount of the original claim or the value of the property involved exceeded fifty pounds, is dissatisfied with the determination or direction of the said court in point of law or upon the admission or rejection of any evidence, or if the appellant or respondent is dissatisfied with the determination and direction of the said court on any grounds, and the amount claimed or involved by the decision of such court is not less than five hundred pounds, such appellant or respondent may appeal from the said determination or direction to the Supreme Court:

Provided that the party so appealing shall, within such time and in such manner as may be prescribed by the rules, give notice of such appeal to the other party, or his attorney, and also give security (to be approved of by the registrar of the said mining appeal court) for costs of the appeal and the amount of the judgment, or in lieu of giving such security, deposit in the hands of such registrar the amount of the judgment, together with thirty pounds in addition to such amount, to answer the costs of the appeal if such appeal be dismissed.

(2) The Supreme Court may either order a new trial before such mining appeal court on such terms as it thinks fit, or may order judgment to be entered for either party as the case may be, and make such order with respect to the costs of the said appeal as such court may think proper. Such orders shall be final, and such appeal shall be in such manner and form, and subject to such regulations in all respects as the judges of the Supreme Court may by general rules in that behalf prescribe.

(3) Such appeal shall be transmitted by the appellant to the prothonotary, and be set down for argument in the Supreme Court in the same manner as special cases in actions at law in that court.

DIVISION 2.—TO SUPREME COURT.

Case stated for opinion of Supreme Court.
Justices Act, 1902, s. 101.

168. (1) If any party to the proceedings in a warden's court is dissatisfied with the determination by the warden therein as being erroneous in point of law, he may, within the prescribed time, apply in writing to the said warden to state and sign a case, setting forth the facts and grounds of such determination for the opinion thereon of the Supreme Court.

(2) The party so applying shall be called the appellant, and the other party to the proceedings shall be called the respondent.

Security to be provided by appellant.
Ibid. s. 102.

169. Before such case is stated and delivered to the appellant, he shall lodge with the warden's clerk the prescribed fees, and the sum of twenty pounds, or such less sum as the warden may order, to abide the costs of the appeal, and shall give and provide security to the satisfaction of the warden for the due performance of any order which the Supreme Court may think fit to make.

Warden may refuse to state case.
Ibid. s. 103.

170. (1) If the warden is of opinion that the application is merely frivolous, he may then, but shall not otherwise, refuse to state a case.

Certificate of such refusal.

(2) Where the warden refuses to state a case he shall, on the request of the appellant, sign and deliver to him a certificate of such refusal.

Supreme Court may direct case to be stated.
Ibid. s. 104.

171. (1) Where the warden refuses to state a case, the appellant may apply to the Supreme Court upon an affidavit of the facts for a rule calling upon the warden and the respondent to show cause why such case should not be stated.

(2) The court may make absolute or discharge such rule with or without costs.

(3) Where such rule is made absolute, the warden, upon being served with a copy thereof, shall state a case accordingly, upon the appellant lodging the fees making the deposit and giving the security aforesaid.

Appellant to give notice.
Ibid. s. 105.

172. The appellant shall, within seven days of receiving the case, serve notice in writing of such appeal, together with a copy of the case as stated and signed, on the respondent, and shall thereafter and within the said time transmit such case to the prothonotary of the Supreme Court.

Powers of Supreme Court.
Ibid. s. 106.

173. (1) The Supreme Court shall hear and determine the questions of law arising on such case; and shall—

(a) reverse, affirm, or amend the determination in respect of which the case was stated; or

(b) remit the matter to the warden with the opinion of the Court thereon; or

(c) make such other order in relation to the matter as seems fit:

Provided

Provided that the court may cause the case to be sent back for amendment, and thereupon it shall be amended accordingly, and the order of the court shall be made after it has been so amended. Case may be sent back for amendment.

(2) The court may make such order as to costs as seems fit, provided that no warden who has stated and delivered a case in pursuance of this Act shall be liable to any costs in respect of such appeal. Costs.

(3) All such orders shall be final and conclusive on all parties. Decision to be final.

174. (1) The authority and jurisdiction hereby vested in the Supreme Court may, subject to any rules and orders of the said court in relation thereto, be exercised by a judge of the said court sitting in chambers as well in vacation as in term. Powers of Court may be exercised by Judge in chambers. Justices Act, 1902, s. 107.

(2) The Supreme Court may make and alter rules and orders to regulate the practice and proceedings in reference to the stating of cases as herein provided. Rules of practice.

175. (1) Any order of a warden affirmed or amended, and any order made by the Supreme Court on the determination of any such case, may be enforced in the same manner as an order of the warden who originally decided the matter. Order enforced as order of warden. *Ibid.* s. 108.

(2) No action or proceeding whatever shall be commenced or had against any warden for enforcing any such order by reason of any defect therein.

176. (1) Any person who appeals under this Division against any determination of a warden from which he might appeal to a District Court, shall be taken to have abandoned such last-mentioned right of appeal. Persons appealing not to be allowed to appeal to District Court,

(2) Nothing herein shall in any way interfere with, curtail or limit the powers of any person to apply for a writ of prohibition against the determination of any warden. but nothing to prevent applications for prohibition.

PART IX.

General provisions.

Conditional purchases conversion.

177. Notwithstanding anything to the contrary contained in the Crown Lands Act of 1884, the Crown Lands Titles and Reservations Validation Act of 1886, the Conversion into Mining Conditional Purchases Validation Act of 1888, and any Regulations made thereunder, the right of any holder of a conditional purchase made under sections thirteen, twenty-one, or twenty-two of the Crown Lands Alienation Conversion into mineral conditional purchase.

Alienation Act of 1861 to convert such purchase into a conditional purchase for mining purposes shall, except as hereinafter provided, absolutely cease and determine, after the thirty-first day of December, one thousand nine hundred and nine, and no application for such conversion shall be entertained unless lodged in the proper office prior to such date :

Provided that if the chief or most profitable mineral contents of any land held under conditional purchase as aforesaid consist of coal or shale (and a certificate under the hand of the Government Geologist shall be accepted by the Minister as conclusive evidence of such contents, but not so as to debar the applicant from tendering any other evidence as to such contents), the right to convert such purchase into a conditional purchase for mining purposes shall subsist until the thirty-first day of December, one thousand nine hundred and thirteen, and application for such conversion may be lodged on or before that date :

Provided further that any right, title, or interest acquired under this Act, or any Act hereby repealed, in respect of any portion of such land shall not be prejudicially affected by any such conversion, whether applied for before or after the commencement of this Act.

Notices.

Service of notices.
57 Vic. No. 32, s. 15.

178. All notices required by this Act to be served upon the owner or occupier of any private land, or land not Crown land, shall, except where otherwise in this Act provided, either be served personally on the owner or occupier or on his local agent, provided the said agent is registered as such as prescribed, or left at the usual place of abode of such owner or occupier.

If in the case of a notice directed to be served on the owner such owner is absent from New South Wales, or he or his agent cannot after diligent inquiry be found, the notice may be left with the occupier, or if there be no such occupier may 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.

Documents and affidavits.

May be in writing print.
37 Vic. No. 13, s. 117.

179. (1) All documents used in any proceedings in any court under this Act or in relation to any such proceedings may be in writing or print or partly in writing and partly in print.

Affidavits may be sworn before Judge, &c.
Ibid. s. 118.

(2) Any affidavit to be used in any warden's or mining appeal court, or before a warden, may be sworn before any judge of the Supreme Court or any commissioner for that Court for taking affidavits, or before the judge of any District Court or any warden or justice.

Contempt

Contempt of court.

180. If any person wilfully insults any warden sitting in the discharge of any duties imposed by this Act, or wilfully interrupts the proceedings of any warden's court, or being summoned or examined as a witness in any suit or proceeding in any such court refuses to be sworn or to answer any lawful question, or is guilty of wilful prevarication, the warden, if he thinks fit, may commit any such offender to prison for any time not exceeding forty-eight hours, or impose on any such offender a fine not exceeding five pounds for every such offence, and in default of immediate payment thereof, to commit the offender as aforesaid for any time not exceeding forty-eight hours unless the fine is sooner paid.

In either of the cases aforesaid a warrant in the form prescribed by the rules may be issued by such warden, or such court, and shall be good and valid in law without any other order, summons, or adjudication whatsoever, and the bailiff and gaoler to whom the same is addressed shall obey the same.

Contempt and penalties therefor. 37 Vic. No. 13, s. 119.

Interpleader.

181. (1) If any claim is made to or in respect of any goods or chattels taken in execution under any process issued out of any mining appeal court or by a warden, or in respect of the proceeds or value thereof, by any person not being the party against whom such process has issued, the registrar of such court or such warden may, upon application of the officer charged with the execution of such process, as well before as after any action brought against such officer, issue a summons calling before the said court or such warden, as well the party issuing such process as the party making such claim.

Proceedings to be taken. *Ibid.* s. 120.

(2) Upon the issue of such summons any action which may have been brought in the Supreme Court or in any District Court in respect of such claim shall be stayed, and the court in which such action has been brought, or any judge thereof, on proof of the issue of such summons, and that the goods and chattels were so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action after the service upon him of the said summons.

Action taken to be stayed. *Ibid.*

(3) Upon the return of the said summons, the mining appeal court or the warden issuing the process, as the case may be, shall adjudicate upon the said claim and make such order between the parties in respect thereof, and of the costs of the proceedings, as to it or him may seem fit, and such order may be enforced in like manner as any order made in any suit or proceedings before such court or such warden, as the case may be. Such adjudication and order shall be final.

Procedure upon return of summons. *Ibid.*

Recovery

Recovery of fees, &c.

Recovery of fees, &c. 37 Vic. No. 13, s. 116.

182. All fees, charges, and sums of money payable under this Act or the regulations may, where no other mode of recovery is provided, be recovered in a court of petty sessions or District Court.

No certiorari.

Certiorari prohibited. *Ibid.* s. 122.

183. No proceedings under this Act shall be removed or removable by certiorari or otherwise into the Supreme Court.

PART X.

Regulations and rules.

Purposes for which regulations may be made. cf. *Ibid.* ss. 59, 64, 66.

184. The Governor may make regulations carrying into effect the provisions of this Act, and particularly—

(i) prescribing the modes, times, and places of and for the issue of miners' rights and business licenses and defining the various classes of tenements which may be held under miner's right;

(ii) prescribing the area and form of land which may be occupied under a miner's right or business license and the dimensions and form of the land to be demised by any lease; the manner in which applicants for the same shall mark out the land applied for; the requirements to be complied with by such persons; the manner of dealing with cases when two or more applications are made for the same tenement or for a lease of the same land or the right to divert, or collect, or use water for mining for gold or other minerals;

(iii) determining the dimensions, boundaries, form, and position of any claim, or class of claims, and the subsequent adjustment of the same where necessary, when such determination shall take effect, and the number, extent, and classes of claims which any one person, or any two or more persons in conjunction, may take possession of under miners' rights;

(iv) regulating the cutting, construction, use, and maintenance of races, dams, and reservoirs upon Crown lands in cases where leases have not been granted by the Governor;

(v) prescribing the manner in which and with what incident rights and obligations, any tenement, or any water taken or diverted by virtue of a miner's right, shall be taken possession of, held, occupied, used, worked, or assigned;

(vi) determining the order of priority among the holders of miners' rights entitled to the use of any water, how such priority is to be regulated, and under what conditions and circumstances;

(vii)

(vii) prescribing the mode of registration of any tenement occupied, or easement enjoyed under a miner's right, or any share or interest therein, or encumbrance thereon ;

(viii) providing for the registration of the assignment of any such tenement easement, share, interest, or encumbrance, or of the discharge of any such encumbrance ;

(ix) prescribing the mode of registration of any such share or interest in the case of the death, bankruptcy, or lunacy of the owners thereof, or of the sale of any such share or interest under the decree, judgment or order of any court, or the decision of a warden or mining appeal court ;

(x) prescribing the mode of registration of amalgamated claims and of orders for suspension of work ;

(xi) fixing the fees to be charged on any such registration as aforesaid ;

(xii) prescribing the time and mode of taking possession of forfeited or abandoned tenements, of registering such tenements, and the labour conditions to be performed by the persons taking possession of the same ;

(xiii) enforcing and regulating the drainage of tenements ;

(xiv) regulating the mode in which the rights and privileges of the owners of tenements, and easements under a miner's right, may be exercised or enjoyed, and limiting, qualifying, or restricting the exercise and enjoyment of such rights and privileges, and generally for the protection of such owners in the exercise and enjoyment of the rights, privileges, and interests conferred by this Act ;

(xv) prescribing the circumstances and conditions under which any tenement, or any share, right, or interest therein may be deemed to be or be declared abandoned, and the penalty, including forfeiture, for failure to comply with the conditions to be performed by the holder of any tenement ;

(xvi) for the prevention of nuisances in and about residences or places of business held under a miner's right or business license, and for cleansing and keeping clean the same ;

(xvii) prescribing how land applied for shall be described in the application ;

(xviii) prescribing the forms of applications, notices, and other documents to be used, the fees to be paid in respect of any application and for survey ;

(xix) prescribing the forms of leases and authorities to be granted under this Act, and the covenants, conditions, reservations, and provisions to be inserted therein, and the mode of registering the same ; the conditions upon which they may be issued and the privileges to be enjoyed under them ; the fees to be paid on issue of leases and upon registration thereof ;

(xx) prescribing the time within which a lessee shall execute the lease;

(xxi) prescribing the conditions upon which the amalgamation of adjoining leases may be authorised;

(xxii) prescribing the conditions under which suspension of any condition imposed for the expenditure of money may be granted;

48 Vic. No 10, s. 4 (xxiii) for converting any authority issued under any Act repealed by this Act into a lease or leases, and for enforcing the covenants and conditions thereof;

(xxiv) for converting any lease granted under any Act repealed by this Act into a lease under this Act;

(xxv) for prescribing what shall entitle a prospector to concessions as a reward, claim, or lease, and the terms and conditions upon which any such reward, claim, or lease may be granted;

(xxvi) for preventing the accumulation of and for the removal to some convenient place of sludge, tailings, and other refuse matter, oozing or flowing from or connected with any Crown land or private land held or occupied under this Act, and worked by means of puddling, quartz-crushing, or other machines, and of waste water, and for the making of such channels as may be necessary for any of the purposes aforesaid, and for otherwise regulating such oozing, flowing, and running to waste;

(xxvii) for the protection from injury, destruction, and unlawful removal of such machines as last aforesaid, and of pegs, posts, fences and notices, and of any plant or appliances used for or in connection with mining under any claim or lease, and for the protection from obstruction of channels, drains, creeks, and rivers used for mining purposes under such claim or lease;

(xxviii) for the construction and keeping in repair of suitable bridges or other crossings over races, channels, or drains, used for mining purposes, and for making proper approaches to such bridges or crossings, and for determining the width of such bridges, crossings, and approaches;

(xxix) for making and keeping in repair, and for regulating the width and formation of private ways and passages over claims or races, or any Crown lands or private lands used for mining purposes, or for or in connection with mining, and for regulating and imposing conditions on the right to change the direction of any such way or passage, and for the protection of the same from injury or obstruction.

(xxx) for securing the baling of water from mines so as to prevent injury from such water to any mining workings;

(xxxi) for preventing the defiling or wasting of water used under this Act for domestic purposes, and for determining whether any and what water-hole, spring, or other depository of water shall be reserved for the domestic use of the holders of miner's rights, business licenses, or leases or authorities under this Act, and the mode of such reservation;

(xxxii) prescribing the procedure to be followed in any inquiry by a warden under this Act;

(xxxiii) regulating the working of machinery on dredges, and making provision for the safety of life and property in connection with dredging operations;

(xxxiv) for enforcing any regulation made under this Act by penalties not exceeding fifty pounds in any case; and

(xxxv) generally for carrying into effect the provisions of this Act.

Until such regulations have been made, the regulations in force at the commencement of this Act for the said purposes shall continue in force and shall apply to any claim, lease, or holding under this Act.

Power to make rules of practice.
37 Vic. No. 13, s. 113.

185. The District Court Judges, or any three of them, may, subject to this Act, make such general rules as they may think fit—

(a) regulating the practice and procedure of mining appeal courts and warden's courts under this Act;

(b) for the execution of the process of such courts, and in relation to any of the provisions of this Act which relate to such courts;

(c) the fees to be allowed to barristers and attorneys practising in the said courts;

(d) the expenses to be paid to witnesses in the said courts;

(e) prescribing the forms for matters or proceedings in the said courts;

(f) for keeping all books, entries, and accounts to be kept by the registrar or clerk of any such court.

All such rules shall, from and after the expiration of the time fixed therein for the commencement thereof, and after the same have been published in the Gazette, be of the same force and effect as if the same had been herein enacted; and in any case not expressly provided for herein or by the said rules, the general rules in force for the time being, made under the District Courts Act, 1901, may be adopted and applied so far as practicable by wardens and District Court judges exercising jurisdiction under this Act.

Rules and regulations to be laid before Parliament.
Ibid. s. 114.

186. All regulations and all general rules made under this Act shall be laid before both Houses of Parliament within fourteen days after the publication of the same in the Gazette if Parliament is then sitting, and if not, then within fourteen days after the commencement of the next session of Parliament.

PART XI.

Penalties.

187. Any person who—

Unauthorised mining, &c. 37 Vic. No. 13, s. 123.

(a) mines or employs any other person to mine in, or cuts or constructs any race, drain, dam, or reservoir through or upon, or cuts or removes any live or dead timber, or any earth from any Crown lands without lawful authority shall be liable for each such offence to a penalty not exceeding ten pounds.

Unauthorised occupation of Crown land. *Ibid.* s. 124.

188. Any person who on any Crown land—

(a) mines for gold or any other mineral; or
(b) occupies such land for mining purposes; or
(c) employs any person for any of the above purposes; or
(d) occupies such land for the purposes of any business or for residence,—

shall, unless he proves that he was authorised by or under this or any other Act to so mine on or occupy such land, or where he so employs any person that the said person was so authorised, be liable to a penalty not exceeding ten pounds.

Breach of regulation. *Ibid.* s. 126.

189. Any person who infringes any regulation for the infringement whereof no penalty is prescribed by the regulations, shall be liable for each such offence to a penalty not exceeding ten pounds.

Witness neglecting to appear. *Ibid.* s. 130.

190. Any person duly served with any summons issued out of a mining appeal court or any warden's court, or by a warden under this Act, requiring such person to appear as a witness in such court, or on any proceeding for inquiry before such warden, and to whom at the same time payment or tender of his expenses has been made according to the scale to be fixed by the rules, and who refuses or neglects without sufficient cause to appear according to the tenor of such summons, shall be liable to a penalty not exceeding ten pounds, but no conviction for such penalty shall exempt such person from any action for disobeying such summons.

Disobedience of order.

191. Any person against whom any order, not being an order for the payment of money, has been made by any mining appeal court or warden's court, who refuses or neglects to obey the same, shall, where no penalty is herein specified, for such refusal or neglect, be liable to a penalty not exceeding fifty pounds.

Assault on warden and other offences. *Ibid.* s. 129.

192. Any person who—

(a) assaults, obstructs, or resists any warden or any person duly authorised by any mining appeal court or warden in lawfully entering upon any claim or land, or in performing any other act authorised hereby, or any bailiff or other officer, or any clerk or assistant of such bailiff or officer, or any inspector or other person, in the performance of his duty, or in the exercise of his powers under this Act; or

(b)

(b) after being removed by any warden under the provisions of this Act from any claim or other place, forcibly or clandestinely retakes or retains, or endeavours to retake or retain, possession thereof, or of any portion thereof, or of any share therein; or

(c) after any decision of a mining appeal court, or any decision of a warden's court not reversed on appeal, that any person is entitled to use for mining purposes, or to divert any water, resists such person or his agents in such use or diversion; or

(d) upon or in consequence of the decision of any such court against him, assaults or threatens to assault any person in whose favour such decision has been made

shall be liable to a penalty not exceeding fifty pounds.

Wrongful exaction of moneys. 37 Vic. No. 13, s. 128.

193. Any person who wilfully and corruptly exacts, takes, or accepts any fee, sum, or reward whatsoever, other than and except such fees or sums as are lawfully appointed or allowed for or on account of anything done under the authority of this Act or the regulations, shall be liable to a penalty not exceeding fifty pounds.

Forgery of documents. *Ibid.* s. 125.

194. Any person who forges any miner's right, or any lease, license, or any authority issued or purporting to be issued under this Act, or fraudulently uses, utters, or exhibits any such forged miner's right, lease, license, or authority, knowing the same to be forged, shall be guilty of a misdemeanour, and shall on conviction thereof be sentenced to imprisonment either with or without hard labour at the discretion of the court for any period not exceeding twelve months.

Wrongful obstruction on private lands 57 Vic. No. 32, s. 10.

195. Any owner or occupier of any private land as defined in Part IV, or of any land which is not Crown land as defined in Part V of this Act, or any other person who—

(a) obstructs any holder of a lease, or authority to enter, granted under the provisions of the said Parts respectively in doing any act which he is by this Act authorised to do, on, in, or under such land; or

(b) interferes with, removes, destroys, or defaces any boundary mark authorised by this Act to be placed on any land,

shall be liable for a first offence to a penalty not exceeding ten pounds, and for a second or any subsequent offence to a penalty not exceeding fifty pounds.

Wrongful mining on private lands.

196. Any person who without lawful authority commences to mine on, in, or under any private land as defined in Part IV of this Act, shall be liable to a penalty not exceeding ten pounds, and any gold, minerals, or metals obtained by such unauthorised mining may be forfeited by the court before which he is convicted of such offence.

False quantity or value.

197. Any person who knowingly inserts any false quantity or value in any return directed by this Act to be made or furnished shall be liable to a penalty not exceeding fifty pounds.

Recovery before any warden. 37 Vic. No. 13, s. 116.

198. (1) All penalties imposed under this Act or the regulations may be recovered in a summary way before any warden who is also a justice, in accordance with the provisions of the Acts in force for the time being regulating proceedings on summary convictions before justices.

Civil remedy remains though penalty recovered. *Ibid.* s. 21.

(2) Notwithstanding the recovery of any penalty under this Act, any person may enforce any civil remedy which he may have by reason of the act or default in respect of which the penalty may have been recovered.

SCHEDULES.

SCHEDULE ONE.

Year and Number.	Title or Short Title.	Extent of repeal.
37 Vic. No. 13 ...	Mining Act, 1874	The unrepealed portion.
43 Vic. No. 28 ...	An Act to amend the Act 37 Victoria No. 13...	The whole.
46 Vic. No. 7 ...	An Act to further amend the Act 37 Victoria No. 13.	The whole.
48 Vic. No. 10 ...	Mining Act Further Amendment Act of 1884...	The whole.
48 Vic. No. 17 ...	Mining Lease Validating Act of 1884	The whole.
53 Vic. No. 20 ...	Mining Act of 1889	The whole.
57 Vic. No. 32 ..	Mining on Private Lands Act of 1894	The whole.
60 Vic. No. 7 ...	Mining Act Amendment Act of 1896	The whole.
60 Vic. No. 40 ...	Mining Laws Amendment Act of 1896 ...	The whole.
No. 44, 1899 ...	Gold and Mineral Dredging Act, 1899... ..	The whole.
No. 102, 1902 ...	Gold and Mineral Dredging (Amending) Act, 1902.	The whole.
No. 10, 1902 ...	Mining Laws Amendment Act, 1901	The whole.
No. 101, 1902 ...	Mining on Private Lands (Amendment) Act, 1902.	The whole.

SCHEDULE TWO.

NEW SOUTH WALES.

No.

[*Insert here sum paid for the miner's right.*]

Mining district and division or place in which issued.

(*Date*)

MINER'S RIGHT.

Issued to , of , under the provisions of the Mining Act, 1906, to be in force until

SCHEDULE

SCHEDULE THREE. Sec. 10.

NEW SOUTH WALES.

No.

[*Insert sum paid for the business license.*]

District and division or place in which issued.

(*Date.*)

[*Insert here whether for six or twelve months.*]

BUSINESS LICENSE.

Occupation
Residence
Issued to , of , under the provisions of the Mining Act of 1906, to be in force until the day of

By Authority : WILLIAM APPLEGATE GULLICK, Government Printer, Sydney, 1907.
[2*s.* 6*d.*]

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, 11 *December,* 1906.

RICHD. A. ARNOLD,
Clerk of the Legislative Assembly.

New South Wales.

ANNO SEXTO

EDWARDI VII REGIS.

* *

Act No. 49, 1906.

An Act to consolidate and amend the law relating to mining; to give further facilities for the development of mining; to amend the Crown Lands Act of 1884 and Acts amending the same; and for other purposes. [Assented to, 28th December, 1906.]

BE it enacted by the King'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:—

PART I.

PRELIMINARY.

Short title.

1. This Act shall come into operation on a date to be fixed by proclamation by the Governor, and may be cited as the "Mining Act, 1906," and is divided into Parts, as follows:— Short title and division of Act.

PART I.—PRELIMINARY—*ss.* 1-8.

PART

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

W. H. WOOD,
Chairman of Committees of the Legislative Assembly.

PART II.—Miner's rights and business licenses—*ss.* 9–22.

1. *Issue and transfer—ss.* 9–13.
2. *Occupation—ss.* 14–18.
3. *Registration—s.* 19.
4. *Miscellaneous provisions—ss.* 20–22.

PART III.—Leases of Crown lands—*ss.* 23–44.

1. *What leases may be granted—ss.* 23, 24.
2. *Applications—ss.* 25–34.
3. *Conditions—ss.* 35–39.
4. *Special leases—s.* 40.
5. *Minerals not included in lease—ss.* 41–43.
6. *Ownership of tailings and ore—s.* 44.

PART IV.—Mining on private lands—*ss.* 45–83.

1. *Preliminary—ss.* 45–48.
2. *Authority to enter—ss.* 49–56.
3. *Leases—ss.* 57–67.
4. *Mining by owner—ss.* 68–70.
5. *Resumption—ss.* 71–81.
6. *General provisions—ss.* 82, 83.

PART V.—Dredging leases—*ss.* 84–103.

PART VI.—Tenements and leases generally—*ss.* 104–130.

PART VII.—Wardens' courts—*ss.* 131–160.

1. *Jurisdiction—ss.* 131–137.
2. *Hearing and procedure—ss.* 138–143.
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PART VIII.—Appeals—*ss.* 161–176.

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PART IX.—General provisions—*ss.* 177–183.

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Repeal.

Repeal.

2. (1) The Acts mentioned in the First Schedule are to the extent therein expressed repealed.

Persons appointed under repealed Acts.

(2) Persons appointed under any Act hereby repealed, and holding office at the commencement of this Act, shall be deemed to have been appointed hereunder.

(3)

(3) Rules, regulations, proclamations, and notifications made under any Act hereby repealed, and being in force at the commencement of this Act, shall be deemed to have been made hereunder, and any references therein to any enactments hereby repealed shall be construed as references to the corresponding provisions of this Act. Rules, &c., under repealed Acts.

(4) Applications pending at the commencement of this Act shall, except as hereinafter provided, be dealt with in accordance with the provisions of the Acts hereby repealed and the regulations thereunder. Applications pending.

(5) Miner's rights, mineral licenses, business licenses, leases, and authorities issued under any Act hereby repealed and in force at the commencement of this Act shall, except as hereinafter in this Act provided, continue in force for the respective periods named therein and confer the same rights and privileges, and entail the same obligations and penalties, as if this Act had not passed; and every right, title, and interest acquired under and by virtue thereof shall remain and continue valid subject to the limitations contained therein: Provided that with respect to any gold-mining lease of Crown lands so issued and in force the annual rent per acre shall be five shillings, and the term for which such lease was granted is extended a further period of five years. Miners' rights, leases, &c.

(6) Every gold-field, mining district, and division existing at the commencement of this Act shall continue as then constituted, until dealt with by proclamation under this Act. Existing gold-fields, &c.

Interpretation.

3. In this Act, unless the context or subject-matter otherwise indicates,— Interpretation.
37 Vic. No. 13 s. 2.
43 Vic. No. 28, s. 1.
48 Vic. No. 10, s. 5.
57 Vic. No. 32, s. 2.

"Adjoining" as applicable to claims or leases means that the lands comprised in such claims or leases have a common boundary, or are only separated by a road or stream.

"Business" means profession, trade, calling, or occupation, except mining.

"Claim" means a portion of Crown land lawfully taken possession of for the purpose of mining, or any number of such portions lawfully amalgamated by the holders. But does not include land comprised in a mining lease or lease for mining purposes.

"Crown lands," except for the purpose of Part V, means lands vested in His Majesty, and includes—

(a) lands under lease from the Crown except as hereinafter provided;

(b) lands reserved, dedicated, appropriated, or resumed for public purposes, whether vested in His Majesty or in any person as constructing authority or trustee for public purposes;

(c) lands under any navigable waters, or under any harbour, estuary, bay, river, or creek vested in His Majesty, whether navigable or not; and

(d) lands which the Governor may declare by proclamation to be Crown lands; but

but does not include—

(e) lands alienated or in process of alienation from the Crown, or lawfully contracted to be granted by the Crown; or

(f) lands subject to a conditional lease, conditional purchase lease, or lease under this Act;

(g) conditional purchases or homestead selections.

"Crown Lands Acts" means Crown Lands Act of 1884, the Western Lands Act of 1901, and the Acts amending the same.

"Earth" means rock, stone, quartz, clay, sand, soil, or mineral.

"Gold" means gold, or earth containing gold, or having gold mixed in the substance thereof, or set apart for the purpose of extracting gold therefrom.

"Gold-field" means lands heretofore or hereafter proclaimed a gold-field.

"Justice" means justice of the peace, and includes a stipendiary or police magistrate.

"Mine" includes any place, pit, shaft, drive, level, or other excavation, drift, gutter, lead, vein, lode, or reef, whereon, wherein, or whereby any operation for or in connection with mining purposes is carried on.

"Mineral field" means lands constituted a mineral field under this Act.

"Minerals" means silver, copper, tin, iron, antimony, cinnabar, galena, nickel, cobalt, platinum, bismuth, manganese, marble, kaolin, mineral pigments, mercury, lead, wolfram, coal, shale, scheelite, chromite, opal, turquoise, diamond, ruby, sapphire, emerald, zircon, apatite and other phosphates, serpentine, molybdenite, alunite and alum, barytes, asbestos, gypsum, mineral oils, monazite, and any other substance which may from time to time be declared a "mineral" within the meaning of this Act by proclamation of the Governor published in the Gazette.

"Mining Appeal Court" means District Court sitting as a court of appeal under this Act.

"Mining purpose" includes cutting and constructing any tunnel, water-race, drain, dam or reservoir, or constructing any railway or tramway, or laying any pipes for the purpose of mining, erecting buildings and machinery to be used for any process whatsoever in connection with the extracting of gold or minerals, pumping or raising water to or from land mined or worked or intended to be worked for the extraction of gold or minerals therefrom, treatment of tailings on abandoned land, and any other work which the Governor may by proclamation declare to be a mining purpose.

"Mining surveyor" means licensed surveyor specially appointed to carry out surveys under this Act. "Minister"

"Minister" means Secretary for Mines.
"Notification" means notification in the Gazette.
"Prescribed" means prescribed by this Act or the regulations.
"Proclamation" means proclamation in the Gazette.
"Prospecting board" means Board appointed to administer the Prospecting Vote.
"Race" includes any artificial channel, flume, aqueduct, tunnel, culvert, or pipe for the conveyance of water or detritus.
"River" includes a frontage creek, or any stream of water, whether perennial or intermittent, flowing in a natural channel not included in a deed of grant or embraced in an area in process of alienation.
"Schedule" means schedule to this Act.
"Small coal" means coal which will pass through a screen the bars of which are not more than three-quarters of an inch apart.
"Tenement" means land lawfully occupied under a miner's right or business license.
"The regulations" means the regulations made under this Act or any Act hereby repealed.
"The State" means the State of New South Wales.
"The warden" includes any warden appointed under this Act.
"To mine" means to disturb, remove, cart, carry, wash, sift, smelt, refine, crush, or otherwise deal with any earth by any mode or method for the purpose of obtaining gold or minerals therefrom.
"To prospect" means to search for gold or any mineral.
"Town or village" means city, town, or village, or site for a city, town, or village, and suburban lands to be attached thereto, declared, proclaimed, reserved, or set apart under the Crown Lands Acts; and includes any township site for a mining settlement which the Minister may notify in the Gazette.

Department of Mines, school, and museum of mines.

4. (1) The Governor may establish and maintain in connection with the Department of Mines, schools of mines and museums for the purpose of providing instruction by means of classes, lectures, or otherwise in geology, mineralogy, and chemistry, in their scientific and practical application to mining pursuits, and may also establish and maintain offices for the assaying of mineral ores. He may appoint such professors and readers in any of the said sciences, and such assayers, curators, keepers, and servants as may, in his opinion, be requisite to give effect to the provisions of this section.

Schools of mines and museums may be established. 37 Vic. No. 13, s. 8.

(2) Such schools, museums, and offices, and the staffs thereof, shall be under the control and management of the Minister.

Control and management.

Control by University

(3) Provided that if the Governor thinks it desirable that any school or museum should be managed in connection with the University of Sydney, and so proclaims, the same shall, so long as such connection continues, be under the control and management of the Senate of the University, and such Senate shall in that case appoint such professors and readers and other persons as aforesaid as may be required.

School, &c., already established.

(4) This section shall apply to the school of mines, museum, and assay offices established at the commencement of this Act, as if they had been established under this section.

Gold and mineral fields, mining districts, and divisions.

Gold-fields may be proclaimed.
37 Vic. No. 13, s. 10.

5. (1) The Governor, by proclamation, on the recommendation of the Minister, may constitute any lands as a gold-field or mineral field, and may fix and alter the name and boundaries thereof.

Mining districts.
Ibid. s. 9.

(2) In like manner, mining districts and divisions of mining districts may be constituted, and their names and boundaries fixed and altered.

Cancellation.
Ibid. ss. 9, 10.

(3) The proclamation of any gold-field, mineral field, mining district, or division, whether made under the Mining Act, 1874, or this Act, may be varied or cancelled in like manner by a subsequent proclamation.

Officers.

Governor may appoint officers.
Ibid. s. 12.

6. (1) The Governor may appoint so many wardens, registrars, mining surveyors, mining engineers, mining appraisers, clerks, bailiffs, assistants, and other officers as he may think necessary for the administration of this Act.

Powers and duties.

(2) The persons so appointed shall have the powers and perform the duties prescribed by the regulations in addition to any powers and duties specified in this Act.

Warden.

(3) Every warden so appointed shall be a warden for the whole State.

Minister or officer not to be interested in any mining venture.
Ibid.

7. The Minister shall not, nor shall any warden, registrar, surveyor, engineer, or other officer charged with any judicial or official duties under this Act during his tenure of office, hold either directly or indirectly any beneficial interest in any mining tenement or lease or other mining venture in the State, and if, while holding such interest, he acts in his office he shall be guilty of a misdemeanour.

Royal prerogative.

Saving of Royal prerogative.
Ibid. s. 5.

8. Nothing in this Act, except so far as is herein expressly enacted, shall abridge or control the prerogative rights and powers of His Majesty in respect to gold mines and silver mines.

PART

PART II.

MINERS' RIGHTS AND BUSINESS LICENSES.

DIVISION 1.—ISSUE AND TRANSFER.

Issue of miner's rights.

9. A miner's right shall be issued on the application of any person.

37 Vic. No. 13, s. 14. cf. 60 Vic. No. 7, s. 2.

Any such right shall be in the form of Schedule Two and shall be in force for any term not less than six months and not exceeding twenty years from the date of issue.

There shall, on the issue of any such right, be paid a fee calculated at the rate of five shillings for every year or two shillings and sixpence for every half-year of the term of the right.

Issue of business licenses.

10. A business license shall be issued to any person applying for the same.

37 Vic. No. 13, s. 21.

Duration.

Ibid.

Such license shall be in the form of the Schedule three, and shall be in force for any term not less than six months and not exceeding twenty years from the date of issue.

There shall, on the issue of any such license, be paid a fee calculated at the rate of one pound for every year or ten shillings for every half-year of the term of the license.

Renewal of miner's rights and business licenses.

Ibid. s. 24.

11. (1) The holder of any miner's right or business license shall be entitled on application and payment of the prescribed fee to a new miner's right or business license, dating from the expiration of the previous right or license.

(2) The application may be made—

(a) within one month before the date of such expiration, in which case the fee payable shall be the same as in the case of the issue of a miner's right or business license in the first instance; or

(b) within seven days after the date of such expiration on production of the expired miner's right or business license and on payment of the fee aforesaid; or

(c) after seven days and within one month after the date of such expiration on production of the expired right or license, but in that case a sum equal to fifty per centum of the amount of the fee aforesaid shall be added thereto.

Transfer.

12. A miner's right or business license may be transferred by endorsement thereon under the hand of the transferror and by registration in the prescribed manner.

Duplicate rights and licenses.

13. On proof to the satisfaction of the warden that any miner's right or business license has been accidentally lost or destroyed, a duplicate right or license may be issued on payment of a fee of one shilling.

Division 2.—Occupation.

Exempted Crown lands.

Certain exemptions.
37 Vic. No. 13, s. 34.
43 Vic. No. 28, s. 1.
48 Vic. No. 10, s. 5.
57 Vic. No 32, s. 5.

14. (1) The following classes of Crown lands are (save where otherwise in this Act provided) exempted from occupation under any miner's right or business license, namely,—

(a) lands reserved, dedicated, appropriated, or resumed for public purposes (except land reserved for a temporary common or for mining purposes), whether vested in His Majesty or in any person as constructing authority or trustee for public purposes.

(b) lands held from the Crown under residential lease, settlement lease, or special lease for other than pastoral or grazing purposes;

(c) lands held under lease for water supply in virtue of any special Act or otherwise; and

(d) lands granted or vested in trust by the Crown for purposes of a racecourse, cricket-ground, recreation reserve, park, or permanent common, or for any other public purpose;

(e) lands the subject of a pending application for a lease under this Act:

Provided that where any such lease or grant contains a reservation of all or any rights or right conferred by any Act relating to mining, the land comprised in such lease or grant shall to the extent so reserved be open to occupation as aforesaid.

Crown lands used as orchard, &c.
37 Vic. No. 13, s. 25.

(2) Crown lands lawfully and bona fide used as a yard, garden, cultivated field, or orchard, or upon which any house, outhouse, shed, or other building, actually used and occupied, or any artificial dam or reservoir, is lawfully standing are exempted from occupation, as aforesaid, except upon payment of compensation to be assessed by the warden.

Warden to fix distance.
cf. 57 Vic. No. 32, s. 6.

The warden shall fix at what depth from the surface the workings on such land shall be carried on, and on failure to observe his order the person in occupation of the land shall be deemed to be a trespasser.

37 Vic. No. 13, s. 26.

(3) The Governor, by notification, on the recommendation of the Minister, may exempt from occupation as aforesaid any Crown lands, and may revoke or amend any such notification.

Rights conferred by a miner's right.

Rights of occupation in respect of Crown lands.
Ibid. s. 15.
60 Vic. No. 7, s. 3.

15. (1) Except as against His Majesty a holder of a miner's right, or any number of persons being each the holder of a miner's right, may, subject to the regulations and to the exemptions in this Part—

(a) take possession of and exclusively occupy as a claim any Crown land for mining purposes, and mine therein; (b)

(b) have and possess any gold or other minerals found in such land whilst so occupied;

(c) erect any building, structure, or machinery upon land so occupied, and remove the same at any time during such occupation;

(d) exercise any rights of the nature of easements in connection with land so occupied;

(e) occupy Crown lands, and construct and use thereon races, dams, reservoirs, roads and tramways for mining purposes;

(f) take or divert water from any lake, pool, spring, or stream, situate in or flowing through Crown lands not exempted from occupation under a miner's right or business license, and use such water for mining or domestic purposes;

(g) procure and remove for mining, smelting, building, or other purposes for his or their personal use only, any bark, or live or dead timber, or any stone or gravel from any Crown lands not

(i) exempted from occupation under a miner's right or business license; or

(ii) within the operation of any proclamation or notification prohibiting the cutting or removal of such timber, bark, stone, or gravel:

Provided that this right to procure and remove bark or timber may be exercised only by persons (not being corporations) actually holding miners' rights;

(h) while following the occupation of a miner or prospector, graze upon Crown lands not exempted as aforesaid such horses or other animals as may be necessary for his or their subsistence and for the carrying on of prospecting or mining:

(2) Provided that for the purposes of taking possession of more than one tenement of any specific class, the person so taking possession must hold an additional miner's right for each additional tenement after the first of the same class. The different classes may be prescribed by the regulations.

Residence area.

cf. 37 Vic. No. 13, s. 15.

16. (1) Except as against His Majesty, a holder of a miner's right may, subject to the exemptions in this Part, take possession of and occupy Crown lands (hereinafter referred to as a "residence area") for the purpose of residing thereon.

(2) The area to be so occupied by any one such holder shall not exceed one quarter of an acre within the boundaries of a town or village, or two acres outside such boundaries: Provided that the occupation shall extend only to the surface and the prescribed depth below the surface, and that no area greater than one quarter of an acre shall be so occupied unless with the approval of the warden.

(3) Every such area shall be taken possession of in the prescribed manner. No person shall hold more than one such area at the same time.

(4)

(4) The proviso to section forty-six of the Crown Lands Act of 1884 is amended by substituting the words, "the areas to be sold shall not exceed one quarter of an acre within the boundaries of a town or village, as defined in the Mining Act, 1906, or two acres outside such boundaries," for the words "the areas to be sold shall not exceed one quarter of an acre for town lands, and one acre for suburban or other lands."

Authority to prospect.

17. (1) A holder of a miner's right may apply to the Minister for an authority to prospect on any Crown lands, whether exempted from occupation under this Part or not, and the Minister may, on the recommendation of the warden or the prospecting board, grant such authority. The area to be held under such authority, the term, rent, and the conditions as to labour and other matters shall be fixed by the Minister. Failure to comply with any conditions so fixed shall render the authority liable to be cancelled by the Minister.

(2) Such authority shall entitle the holder to take possession of the area on payment in advance of the rent fixed as aforesaid, and survey fee if necessary, and to carry on prospecting operations during the term of such authority.

Report of discovery.

(3) On discovery of gold or other minerals, the holder of the authority shall report, within fourteen days from the date of such discovery, to the warden of the district, who shall thereupon report to the Minister on the nature of the discovery. The Minister may thereupon call upon the holder of the authority to apply for a lease of the land or such part thereof as he may deem advisable or to continue prospecting operations.

Rights conferred by business license.

Holder may occupy land and erect buildings.
37 Vic. No. 13, s. 22.

18. A holder of a business license may, except as against His Majesty, and subject to the regulations—

(a) for the purpose of carrying on any business, except mining, occupy the prescribed area of Crown land within a goldfield or mineral field (hereinafter referred to as a "business area") not exceeding a quarter of an acre within the boundaries of a town or village, or one acre outside such boundaries: Provided that such occupation shall extend only to the surface and to the prescribed depth below the surface;

(b) have and possess the land so occupied;

(c) for the purpose aforesaid erect any building or structure upon the land so occupied, and remove the same at any time within one month or within such further time, not exceeding three months, as the warden may order and direct, after ceasing to occupy such land.

Only one area to be occupied in same town or village.

But no such holder may occupy at the same time more than one such area or carry on mining operations upon or in any such area.

DIVISION 3.—REGISTRATION.

Holder to register. 37 Vic. No. 13, s. 16

19. (1) Where any person takes possession under this Part of a tenement (other than a prospecting area or a block claim, or a residence area not exceeding one quarter of an acre outside the boundaries of any town or village or such other tenement as may be prescribed), he shall, within twenty-eight days thereafter register the same in the prescribed manner in the office of the mining registrar of the division wherein the same is situated.

Transmission.

(2) Where any interest in a tenement required to be registered is transferred to, vests in (absolutely or as security only), or devolves upon any person, such person shall within twenty-eight days thereafter register the same in the prescribed manner in the office aforesaid.

Right to be produced, *Ibid.* s. 16.

(3) On every registration of a tenement the person requiring registration shall produce his miner's right or business license to the registering officer.

Neglect to register. *Ibid.* s. 124.

(4) Any person neglecting to register a claim or a share in a claim within the period aforesaid shall, if he works or mines in such claim, incur the penalty hereinafter in this Act prescribed for unauthorised mining on Crown lands.

Proviso.

(5) Provided that if it is shown to the satisfaction of the warden that the person whose duty is to register was or would be prevented by sickness or any other like disability from effecting such registration, the warden may extend the said period to a further period not exceeding twenty-eight days from the expiration of the first-mentioned period.

DIVISION 4.—MISCELLANEOUS PROVISIONS.

Division of interest in claim. *Ibid.* s. 17.

20. (1) The owner of any registered claim may, subject to the regulations, divide his interest therein into shares and allot any of such shares to any person.

Amalgamation. *Ibid.* s. 17.

(2) The owners of any two or more adjoining claims may, with the consent of the warden, and subject to such conditions as he may impose, and in the prescribed manner, amalgamate the same before or after registration. The amalgamated claim so formed shall be registered, and may be divided into shares or dealt with as an ordinary claim.

Assignment. *Ibid.* s. 15.

(3) The owner of any registered claim or share in a claim may, subject to the regulations, assign, encumber, or create any interest in the same.

Rights held on behalf of owners. cf. *Ibid.* ss. 17, 20.

21. The holding of miners' rights in respect of a claim shall be deemed a holding on behalf of the owners of the claim or of any shares in the same or of any interests therein, and it shall not be necessary for separate miners' rights to be held by the owners of such shares or interests.

22.

Default to contribute.
cf. 37 Vic. No. 13, s. 70.

22. If the owner of a share in a registered claim fails to represent his share by labour or to contribute his proportion of the working expenses, the warden on the application of one or more of the remaining shareholders may declare such share to be abandoned, and may order the remaining shareholders to be put in possession of such share; and such declaration and order shall be carried out.

PART III.

Leases of Crown lands.

Division 1.—What leases may be granted.

Governor may grant leases.
37 Vic. No. 13, s. 28.

23. (1) The Governor, in the name and on behalf of His Majesty, may lease Crown lands and any street, road, or highway, as follows:—

(a) He may grant mining leases, of the surface and the subjacent soil, or of the soil below a certain depth from the surface only, which may be—

Ibid. s. 33.

(i) gold-mining leases, authorising mining on the land for gold and for purposes connected with gold-mining;

Ibid. s 56.

(ii) mineral leases, authorising mining on the land for the minerals therein specified, and for purposes connected with such mining,

Act No. 10, 1902, s 4.

(b) He may grant leases (to be called leases for mining purposes) of the surface only, and to a limited depth below the surface. Such leases authorise the use of the land for mining purposes, but do not authorise mining on the land or the removal of any gold or minerals won therefrom.

(2) Provided that—

37 Vic. No. 13, s. 34 (2).

(a) A claim lawfully occupied under a miner's right shall not be leased unless the holder of the right consents to the leasing, in which case the claim shall be deemed to be abandoned, and the title thereto shall be absolutely extinguished, whether the application for the lease is granted or refused.

(b) Crown land occupied as a business or residence area, or for a dam, reservoir, race, or for machinery, shall only be leased from such depth below the surface as the Minister deems sufficient to secure the surface and any buildings, works, and improvements thereon from damage occasioned by mining operations.

(c)

(c) The surface of Crown land held under lease from the Crown for purposes other than pastoral purposes shall only be leased subject to the payment of compensation, to be assessed by the warden. 37 Vic. No. 13, s. 34 (1).

(d) Auriferous alluvial Crown land shall not be leased unless in the opinion of the Minister— *Ibid.* s. 34 (3).

(i) the land has been worked and abandoned; or

(ii) the land is suitable to be leased by reason of the difficulties and cost attending the construction of mine works upon or of mining such land;

(iii) the land may be leased for mining purposes only.

(e) The Governor, by notification, on the recommendation of the Minister, may exempt any Crown lands from the leasing provisions of this Act, and may revoke or amend any such notification.

Conversion of applications.

24. (1) An application for a lease under any Act hereby repealed may, at the request of the applicant, be converted into an application for a lease under this Act.

(2) An authority to mine granted under section twenty-eight of the Mining Act, 1874, may, on application of the holder thereof, be converted into a gold-mining lease or a mineral lease as the case may be under this Act, subject to such conditions as the Governor thinks fit.

(3) A registered claim under the said Acts or this Act may, on the application of the owner thereof, be converted into a gold-mining lease or mineral lease as the case may be under this Act. *Ibid.* s. 38.

Division 2.—Applications.

Form of application.

Applications to be subject to conditions.

25. Applications for leases shall be made in the prescribed form and manner, and shall be subject to the prescribed conditions as to marking out the land applied for, taking possession thereof, and otherwise, and shall be accompanied by payment of one year's rent in advance, at the rate prescribed. *Ibid.* s. 56 (3). 46 Vic. No. 7, s. 1.

Priority of application.

First applicant to have priority.

26. (1) If more than one application is made for a lease of the same land, the application of the person who has first taken possession shall be first considered and dealt with, and so on, according to priority of possession. 37 Vic. No. 13, ss. 49, 53 (4).

For

Possession.

For the purposes of this subsection, "possession" means the act of erecting a datum post, provided that the mode of taking possession prescribed by the regulations is forthwith complied with:

Provided that if, upon inquiry being held as provided in section thirty-four, the warden is of opinion that possession has been taken simultaneously by two or more applicants for the same area, the question of priority may be decided by ballot.

Other applications.

(2) If any application for a lease is refused or abandoned, any other application for a lease of the same land may be considered and dealt with, regard being had, where necessary, to the rule of priority aforesaid.

Grant or refusal of application.

Irregular application may be granted. 48 Vic. No. 17, s. 1.

27. (1) Leases under this Part shall be granted by the Governor in the name and on behalf of His Majesty. The Governor may in his discretion grant a lease, notwithstanding that the applicant has not in every respect complied with the regulations, or notwithstanding that the description of the land in such application does not strictly correspond with the land as marked out by the applicant.

Lease granted with modifications. 37 Vic. No. 13, s. 47.

(2) The Governor may, subject to the provisions of this Act, grant an application for a lease in such modified or amended form as he may think fit.

Refusal to take effect on publication.

(3) The Governor may refuse any application for a lease, and such refusal shall take effect from the time of publication of such refusal in the Gazette.

Occupation by and rights of applicant.

Applicant may mine upon land. *Ibid.* ss. 39, 56 (3).

28. When any application for a mining lease has been duly made, the applicant may, by virtue of his application, until such lease is granted or refused—

(a) occupy the land applied for, and mine upon and in the same: Provided that nothing herein shall affect the right, title, or interest of any other person in or to the said land, or in or to any gold or mineral obtained or that may be obtained therefrom;

Applicant may sue for trespass. *Ibid.*, s. 40.

(b) proceed in the warden's court for trespass against any person entering upon, occupying, or interfering with such land, not having a lawful title thereto originating prior to such application.

Rights of applicant.

(c) proceed in the warden's court against any person claiming to have an interest in such land under a miner's right or mineral or business license, for the purpose of having such claim declared invalid.

Injunction. cf. *Ibid.* s. 58.

(d) apply to the warden for an injunction under this Act against any person claiming to be legally or equitably interested in the land.

29.

29. (1) In any such proceedings for trespass the complainant may claim damages for such trespass, and for the recovery of any gold or mineral taken by the defendant from such land, or the value thereof. But he shall not be entitled to succeed unless he proves to the satisfaction of the court that he has complied with the regulations relating to the lodging of the application and payment of rent, so far as such regulations were at the time of the trespass capable of being complied with.

May claim damages. 37 Vic. No. 13, s. 40.

Proof of compliance with regulations. *Ibid.*

(2) If the warden decides in favour of the complainant he shall, unless the application for the lease has been already determined, order the defendant to lodge with the warden, any sum awarded as damages, and any gold or mineral he may adjudge the complainant entitled to, or the value thereof.

Warden may order money, gold, &c., to be lodged. *Ibid*

(3) If such application is granted, the warden shall order the said sum and the said gold or mineral, or the value thereof, to be delivered or paid to the complainant; but if such application is refused, he shall order delivery or payment to the person entitled thereto.

Payment out of money, &c., lodged. *Ibid.* s. 40.

Pendency of application.

30. (1) An application for any lease under this Part shall be pending from the taking possession of the land for that purpose in the prescribed manner, or from the lodging of the application for conversion into a lease by any person entitled to apply for such conversion.

When application pending. 46 Vic. No. 7, s. 1.

(2) During the pendency of any such application, the land shall be exempt from sale or lease by the Crown, or from occupation as a tenement.

Land exempt from sale or lease or occupation.

(3) Any such application shall subsist for the benefit of the applicant or, in the event of his death or bankruptcy, of his legal representatives, who shall be deemed to hold the land under promise of a lease until default occurs in making or prosecuting the application, or the Governor refuses the same or voids the lease before issue, and notice thereof is published in the Gazette.

Application for benefit of applicant and his representatives.

Survey of land.

31. If at the time of lodging an application for a lease, the land applied for has not been surveyed by a mining surveyor, or the marks of a previous survey have been removed or obliterated, the applicant shall deliver to the warden a written application for a survey of such land, accompanied by the prescribed survey fee.

Application for survey. 37 Vic. No. 13, s. 41.

Objections.

32. (1) Any person may object to the issue of any lease by lodging with the warden and serving upon the applicant within the prescribed time, a written notice of his objection. Such

Lodging and service of objections. *Ibid.* s. 42.

Such notice may be served by post by registered letter addressed to the last known address of the applicant, or if the applicant's address cannot be ascertained by posting the same on the datum post on the land applied to be leased.

Deposit of security. 37 Vic. No. 13, s. 43.

(2) The person so objecting shall, at the time of lodging notice of his objection, deposit with the warden or the warden's clerk the prescribed sum as security for any costs which may be awarded against him by the warden in any inquiry in relation to such objection.

If no objection lodged. *Ibid.* s. 44.

33. (1) Where no notice of objection has been so lodged, the warden shall forward the application, together with a report thereon, to the Minister.

If objection lodged. *Ibid.* ss. 44, 57.

(2) When notice of objection has been so lodged, the warden shall appoint a place and time for the hearing of the application and objection, and shall give not less than three clear days' notice thereof to the applicant and the objector respectively. Where an objection has been lodged by several persons jointly, notice to one of them shall be sufficient.

Warden to inquire. *Ibid.*

34. (1) On the day so appointed, the warden shall inquire into the truth of the particulars stated by the applicant and objector respectively, and may, if necessary, adjourn the inquiry for any time not exceeding one month, or to any other place, on such conditions as to costs as he may think fit. Notice of such adjournment shall be given to the applicant and to each objector.

Inquiry may be adjourned. *Ibid.* s. 45.

Report to be transmitted. *Ibid.* s. 47.

(2) At the conclusion of such inquiry the warden shall announce in open court the purport of his report to the Minister, and shall thereafter transmit to the Minister the application, objections, and evidence, the report, plan, and map, if any, of the mining surveyor, and his report as aforesaid, recommending the granting or refusal of the lease applied for.

Copy of report. *Ibid.* s. 48.

(3) Any person shall, upon application and payment of the prescribed fee, be furnished with a copy of the mining surveyor's report and plan of any land so applied for, and of any evidence taken as aforesaid, and of the warden's recommendation.

Further inquiry.

(4) The Minister may at any time, whether any notice of objection has been lodged or not, authorise and direct the warden to hold an inquiry or a further inquiry with reference to any matter concerning such application, and thereupon the warden shall appoint the time and place and give the notices and proceed with such inquiry and transmit the evidence and documents relating thereto, and his report, in the manner hereinbefore provided.

Inquiry to be in open court. *Ibid.* s. 44.

(5) Every inquiry under this section shall be conducted in open court, and the warden shall have the powers of a wardens' court. On the application of either party to the dispute, the warden may conduct the inquiry at the place in dispute.

Division 3—Conditions.

Area and dimensions of leases.

Areas of leases.

35. (1) Subject to this section the Minister shall fix the respective areas of leases under this Part.

Area of gold-mining lease. 37 Vic. No. 13, s. 36.

(2) The area of a gold-mining lease shall not exceed twenty-five acres, and the land leased shall be of the form and dimensions prescribed.

Dimensions and form.

Area of mineral leases. *Ibid.* s. 56 (1).

(3) The area of a mineral lease shall not exceed six hundred and forty acres for coal or shale, nor eighty acres for other minerals, excepting opal.

(4) The area of a lease for mining for opal shall not exceed ten acres: Provided that no such lease shall be granted unless the prospecting board certifies that the land is suitable to be leased by reason of the difficulties and cost attending the construction of mine works upon or of mining such land.

Leases for mining purposes.

(5) The area and dimensions of leases for mining purposes only shall be such as the Minister may, subject to the regulations, determine.

Special leases.

(6) This section shall not apply to special leases granted under the provisions hereinafter in this Act contained.

Rent, royalty, and labour conditions.

Gold leases. Rent. *Ibid.* ss. 37, 56. cf. 48 Vic. No. 10, s. 4.

36. (1) The annual rent for a gold-mining lease granted under this Part shall be five shillings per acre or portion of an acre, and for a lease so granted to mine for any mineral other than coal or shale five shillings per acre or portion of an acre.

Coal leases. Rent and royalty.

(2) The annual rent for a lease so granted to mine for coal or shale shall be one shilling per acre or portion of an acre, and a royalty shall be paid of sixpence per ton on all shale or large coal and threepence per ton on all small coal won from the land demised.

For mining purposes. Rent. Act No. 10, 1902, s. 4.

(3) The rent, terms, and conditions of leases so granted for mining purposes only, shall, subject to this Act, be fixed by the Minister.

Rent payable in advance.

(4) All such rent shall be payable annually in advance at the times and in the manner prescribed, the first payment in all cases being made at the time of making application for the lease.

Royalty, how payable. 48 Vic. No. 10, s. 4.

(5) The royalty shall be payable at the times and in the manner prescribed: Provided that if the royalty payable in respect of any lease during any one year exceeds the rent paid for such year, the amount paid as rent may be deducted from the amount of the royalty; but if the royalty in any one year amounts to less than the rent paid for such year the lessee shall not for such year be required to pay royalty: Provided also that the Minister may at his discretion remit the amount of royalty payable on coal used for raising steam for motive power at a colliery.

(6)

(6) Rent and royalty shall be payable by the lessee to the Crown, and may be recovered as a Crown debt.

Labour conditions.

37. Every mining lease shall contain such labour conditions as the Minister may, subject to the regulations, determine.

Duration and renewal of leases.

Term of lease.
cf. 37 Vic. No. 13, ss. 36, 54, 56 (2), (9).

38. (1) A lease granted under this Part may be for any term not exceeding twenty years.

Renewal.
cf. *Ibid.* ss. 36, 54, 56 (2), (9).

(2) Any such lease may, with the consent of the Governor, be renewed for a further term not exceeding twenty years: Provided that application for such renewal shall be made during the last five years of the term of the lease.

Terms of renewal.

(3) Such renewal shall be at the rent and royalty, and subject to such other covenants and conditions as are prescribed by the Acts and regulations in force at the time of such renewal, and to such further covenants and conditions as the Governor may think fit to impose.

Leases under repealed Acts.
Ibid. s. 56 (2), (9).

39. A lease of Crown lands granted under any Act hereby repealed may be renewed for the term, on the conditions, with the covenants, and under the circumstances stated and prescribed in and by such Act or any Act amending the same hereby repealed and the regulations thereunder, save as regards payment of any fine upon such renewal: Provided that with respect to a gold-mining lease so granted the annual rent on renewal shall be five shillings per acre, and the term of the renewed lease may be for five years in excess of the term prescribed by the said Acts for such leases when renewed thereunder.

DIVISION 4.—SPECIAL LEASES.

Governor may grant special leases.
cf. *Ibid.* s. 53.
48 Vic. No. 10, s. 7.

40. (1) The Governor may, upon the recommendation of the Minister, grant a special mining lease of Crown land for mining other than coal or shale mining if the Minister is satisfied that by reason of the difficulties and cost attending the construction of mine works upon or of mining such land it is necessary that such lease be granted.

Inquiry and report.

(2) The Minister may, on application being made for such lease, direct the prospecting board or the warden to inquire and report—

(a) whether by reason of the difficulties and cost attending the construction of mine works upon and of mining such land, it is necessary that an area in excess of the limit prescribed should be leased; and

(b) upon the rent and royalty to be paid; and

(c) upon such other matters as the Minister may direct.

Conditions of leases.

(3) The Governor may fix the form of and area to be comprised in any such lease, the rent and royalty to be paid, and the labour and other conditions, reservations, and exceptions to be contained in the same, but in all other respects such special lease and the application for the same shall be subject to the provisions of this Act in respect of ordinary leases under this Part.

DIVISION 5.—MINERALS NOT INCLUDED IN LEASE.

Mining for other minerals under mineral lease. 37 Vic. No. 13, s. 61.

41. (1) The Minister may, upon application in writing by the holder of any mineral lease under this Part or under any Act hereby repealed, grant authority upon such terms as he may think fit permitting such holder to mine on the land comprised in his lease for any mineral other than that in respect of which such lease has been granted, and may vary or revoke any such authority.

Forfeiture for unauthorised mining.

(2) If the holder of any mineral lease mines for any mineral other than that in respect of which his lease or any such authority as aforesaid was granted, his lease shall be liable to forfeiture.

Mining for gold under mineral lease. *Ibid.* s. 62.

42. (1) Where gold is associated or combined with any mineral in any land comprised in any such mineral lease, and

(a) the holder of such lease desires to mine for such gold, or

(b) the nature of the mining operations under his lease is such as to lead to the removal of such gold,

the Minister may, if the value of the gold in the ore does not exceed fifty per centum of the value of the ore, upon application in writing by such holder, grant authority, upon such terms as he thinks fit, permitting such holder to mine for gold on the said land.

But if the value of the gold exceeds fifty per centum of the value of the ore, the lessee must apply for and obtain a gold-mining lease; and in that case a gold-mining lease may be granted for the area so held under the mineral lease, although the area exceeds twenty-five acres, and the dimensions are not in accordance with those prescribed. Application for such gold-mining lease shall be made in manner prescribed.

Forfeiture for unauthorised mining.

(2) If any such gold is so mined for or removed by such holder without obtaining such authority or lease, the mineral lease aforesaid shall be liable to forfeiture.

Mining for other minerals under gold-mining lease.

43. (1) The Minister may, upon application in writing by the holder of any gold-mining lease under this Part or under any Act hereby repealed, grant authority upon such terms as he may think fit permitting such holder to mine on the land comprised in such lease for any mineral other than gold.

Forfeiture for unauthorised mining.

(2) If any such mineral is so mined for or removed by him without obtaining such authority the lease shall be liable to forfeiture.

DIVISION 6.—OWNERSHIP OF TAILINGS AND ORE.

Tailings on abandoned Crown land. cf. *Ibid.* s. 56 (10).

44. (1) Any lessee under this Part, whose occupancy is by any means determined, may, within thirty days after such determination, apply to the Minister for leave to enter the land and treat or remove any tailings, ore, or stone left thereon by him. The Minister may grant such leave upon payment of a sum to be fixed by him, and may fix a time within which such treatment or removal is to be completed.

Any

Any application for a lease of any land upon which such tailings, ore, or stone have been so left, and any occupation of such land under a miner's right, shall be subject to the right of the Minister to grant such leave, and to the right of the person to whom such leave is granted, to act in accordance therewith; and any lease granted may contain a reservation of such tailings, ore, or stone, and of the right of any person to whom leave may be or has been granted to treat or remove the same.

Form.

(2) The form and mode of application for, and the conditions of such leave, shall be as prescribed.

Forfeiture of tailings, &c.

(3) If such leave is not applied for within the said thirty days, or such treatment or removal is not completed within the time fixed, such tailings, ore, or stone shall become the absolute property of the Crown, and shall form part of the land.

PART IV.

Mining on private lands.

Division 1.—Preliminary.

Interpretation.

Interpretation.
57 Vic. No. 32, s. 2.

45. In this Part and in any regulations relating to matters thereunder, unless the context or subject-matter otherwise indicates,—

"Authority to enter" means authority to enter upon private lands granted under this Part.

"Lease" means lease under this Part.

"Occupier" means person in occupation of any private land, whether under any special Act or otherwise, or a tenant.

"Owner" includes trustee, guardian in infancy, committee or guardian in lunacy, mortgagee in possession, and conditional lessee.

"Private lands" means lands other than Crown lands but does not include any lands situate within the boundaries of a town or village unless the Governor by proclamation (which he is hereby authorised to make, alter and revoke) declares that they are private lands for the purposes of this Part.

In this Part the word "minerals" shall not include coal or shale, nor shall coal or shale be included within the substances which may be declared minerals by proclamation of the Governor.

Lands open to mining under this Part.

For gold and other metals.
Ibid. s. 3.
Act No. 101, 1902, s. 3.

46. (1) All private lands shall be open to mining under this Part for gold and for any ore of which gold is the chief or most profitable metallic product, and for silver when such mineral is reserved to the Crown.

(2)

(2) If the Crown grant of any private land contains, or if not yet issued will when issued contain, a reservation to the Crown of all minerals, the said land shall also be open to mining under this Part for all minerals. For other minerals.

(3) Provided that, except as hereinafter in this Act provided, no application for an authority to enter shall be granted under this Part in respect of any land in or upon which any person other than the applicant is at the time of the making of the application entitled under this Part to search or prospect for gold or any mineral or in or upon which any person other than the applicant is lawfully carrying on mining operations, whether under this Act or the Acts hereby repealed. Exempted land.

For the purposes of this proviso, a person shall, as to an area not exceeding eighty acres, be deemed to be lawfully carrying on mining operations in respect of any substance notwithstanding that such substance was not a mineral at the time when such mining operations were authorised if such substance has subsequently come within the definition of a mineral under this Act or any Act hereby repealed.

47. No authority to enter and no lease under this Part shall, except with the consent of the owner, extend to— Not to extend to within certain distance of garden, or improved land without consent. 57 Vic. No. 32, s. 11.

(a) within fifty yards on the surface of any land bona fide in use as a garden or orchard; or

(b) within two hundred yards on the surface of the principal residence of the owner or occupier; or

(c) any land whereon is any substantial building, bridge, dam, reservoir, well, or other valuable improvement other than an improvement effected for mining purposes and not bona fide used for any other purpose. The Minister shall determine whether any such improvement is substantial or valuable, and may define an area adjoining such improvement within which no mining operations shall be carried on.

48. No authority to enter and no lease under this Part shall, except with the consent of the owner and occupier, extend to the surface of any land enclosed and under cultivation when the application for the authority was made; and without such consent no operations under such authority shall be conducted, and no such lease shall be granted below the surface of any such land, except with the authority of the Minister, and at such depth as the Minister may, after full inquiry, deem to be sufficient to prevent damage to the surface: Provided that Not to extend to surface of cultivated land without consent. *Ibid.* s. 12. 60 Vic. No. 40, s. 5.

(a) a lease under this Part may be granted of such portion of the surface of such land as the Minister may deem necessary for giving access to the gold or minerals therein; but before any such lease is granted the warden shall assess the amount to be paid as compensation for any loss of or damage to any crop or improvements on such land; and

(b) the Minister may decide, in case of dispute, whether any land is or is not under cultivation.

DIVISION 2.—AUTHORITY TO ENTER.

Interim permit.

Interim permit to enter.

49. (1) The warden may at the request of any applicant for an authority to enter grant an interim permit in the prescribed form authorising such applicant to enter the land the subject of the application for the purpose of defining the boundaries of the area applied for.

(2) Such interim permit shall be for any period not exceeding fourteen days, and shall not entitle the holder thereof to and he shall not carry on any prospecting operations on the said land.

(3) If such holder carries on such operations in contravention of this section, he shall be liable to a penalty not exceeding ten pounds.

Application for and grant of authority.

Warden may grant authority.
cf. 57 Vic. No. 32, s. 8.

50. (1) The warden, on application made as prescribed, may, subject to any stipulations or conditions which he may think necessary to impose, grant to any holder of a miner's right one or more authority or authorities in the prescribed form to enter, subject to the provisions of this Act, on any private lands.

Discretion to refuse.
cf. *Ibid.* s. 8.

(2) The warden may, whether any inquiry has been held as hereinafter in this Act provided or not, refuse any application for authority to enter—

(a) if the land is the subject of an application or holding under this Part or under any Act hereby repealed, or is exempted from lease under this Part; or

(b) if, after the prescribed notice to measure the land to be included in the authority has been given by the warden to the applicant, such applicant fails to attend for the purpose of pointing out the location of the area applied for.

Time to be stated.
57 Vic. No. 32, s. 8.
Deposit to be lodged.

(3) The time during which such authority is required shall be stated in such application, and the applicant shall lodge therewith a deposit of five shillings, to be applied towards payment of the rent or compensation for damage. If any such application is withdrawn or abandoned, before the rent and compensation have been paid in full, the deposit may, if the warden so orders, be forfeited to the Crown.

Rent to be fixed.
cf. *Ibid.* ss. 16, 17, 41.
60 Vic. No. 40, s. 2 (*b*).

51. (1) Before issuing such authority in respect of any land the warden shall hold an inquiry, of which due notice shall be given to the owner and occupier, if any, or their respective local agents (if registered as such as prescribed), and fix the annual rent per acre of the land. Such rent shall be paid by the applicant to the owner of the land quarterly in advance from the date of the authority. If the authority is to continue for less than three months one quarter's rent shall be so payable.

Compensation.

(2) The warden shall also assess compensation to be paid by the holder of the authority.

(3)

(3) The first payment of the rent and the payment of compensation shall be made within fourteen days of the issue of the authority, and before entry upon the land in pursuance of the authority.

Effect of non-payment of rent or compensation.

(4) If entry is made before such payment, or if any rent afterwards due, or any compensation afterwards assessed and ordered to be paid, is left unpaid for one month, the warden may cancel the authority.

Duration and extension of authority. 60 Vic. No. 40, s. 2 (*b*).

52. (1) An authority to enter may be granted for any period not exceeding twelve months, but the period of any authority may, while it is in force, be from time to time extended by the warden on such terms as he may think fit for any further period, if it appears to him that further time is requisite to enable the holder to complete the prospecting of the area defined therein; but so that the period for which the authority was granted, together with the periods of all extensions, do not exceed twenty-four months.

Duration to be stated.

(2) Such authority and every extension as aforesaid shall be issued in duplicate, and shall state the time during which it is to continue.

Service of duplicate. 57 Vic. No. 32, s. 8.

(3) The holder of such authority shall, within the period and as directed by the warden, serve the duplicate thereof, and of every extension granted by the warden, upon the owner or occupier, or upon one of the owners if more than one, of the land defined therein.

Extent of area. 60 Vic. No. 40, s. 2 (*a*).

53. (1) Every such authority shall contain a definition of the area and boundaries of the land in respect of which it is granted.

(2) The said area may be such as appears to the warden suitable, having regard to the class of deposit to be searched for, and shall be defined by him as prescribed, but, except as hereinafter provided, shall not exceed the maximum area in this Part prescribed for a lease to mine that class of deposit:

Extended area

Provided that the Minister on the recommendation of the prospecting board may direct the warden to grant, and he shall thereupon grant, an authority to enter an area exceeding the area prescribed aforesaid, if it is proved at the inquiry held by the warden that the difficulties and cost of conducting prospecting operations render it necessary that authority to enter a greater area be granted.

When prospecting lawful. *Ibid.* s. 2 (*d*).

54. (1) Upon lawful entry as aforesaid, the holder of an authority to enter may construct such works, and conduct such operations on or under the said lands as may be required for prospecting the same.

Effect of breach of conditions. *Ibid.* s. 2 (*e*).

(2) If such holder

(a) does not commence such prospecting operations within fourteen days from the date of such authority; or

(b) after commencing such operations suspends the same without the written permission of the warden; or

(c)

(c) commences such operations before making the payments aforesaid; or

(d) fails to observe any of the stipulations or conditions imposed by the warden under this Act;

the warden may cancel such person's authority to enter.

(3) The warden may also at the request of the holder cancel his authority to enter.

Labour required for prospecting.
60 Vic. No. 40, s. 2 (*h*).

(4) The holder of the authority may employ as many men as he may think fit in such prospecting operations, but he shall not, unless with the consent of the warden, employ less than the minimum number prescribed. If he makes default the warden may cancel the authority.

Residences.
Ibid. s. 2 (*j*).

55. The holder of an authority to enter may, upon obtaining the permission of the warden, erect temporary residences upon the area defined therein for the use of the persons employed in the prospecting operations, but so that the area to be occupied in connection with such residences shall be in such positions as the warden may consider proper.

Holder continuing in occupation after cancellation of authority,
Ibid. s. 2 (*e*).

56. If the holder of an authority to enter, after being served with notice of the cancellation under this Act of such authority, continues in occupation of any area therein defined, or any part thereof, he shall be deemed a trespasser.

Division 3.—Leases.

Mining leases.

Power to define boundaries.
cf. 57 Vic. No. 32, ss. 9, 28.
60 Vic. No. 40, s. 2 (*f*).

57. (1) Any holder of an authority to enter who desires to obtain a lease of the land defined in such authority, or any part thereof, and—

(a) has served the duplicate of such authority upon the owner or occupier of the said land; and

How application is to be made.
cf. 57 Vic. No. 32, s. 13.

(b) has paid rent and compensation as hereinbefore prescribed,

may, either personally or by agent, in the prescribed manner, define upon the said land the boundaries of the portion desired to be leased, and may apply to the Minister for a lease thereof. Such application shall be for a lease to mine for gold or any minerals, and must be made during the currency of the authority.

Power to modify application or direct inquiry.
Ibid. s. 22.

(2) The Minister may modify any such application, or may direct a warden to hold an inquiry on oath in open court with reference to any matter affecting the same or the authority to enter.

Failure to make prescribed payments.
Ibid. s. 18.

(3) If the applicant fails to make any payment prescribed in respect of his application, the Minister may after the prescribed time declare such application to be void, and all or any part of the moneys paid by the applicant to be forfeited to the Crown; and thereupon the said moneys or such part thereof shall be paid into the Treasury and carried to the Consolidated Revenue Fund.

(4)

(4) If the application is one which can be granted under this Part, the Minister, on receipt of such application, accompanied by the prescribed sum by way of rent, may cause a notice of intention to grant a lease to be advertised in the Gazette, and in a newspaper circulating in the locality in which the land is situated. If the use of the whole or any part of the surface of such land is required the notice shall so state, and if a part only is required the notice shall define such part. Notice of intention to grant lease. cf. 57 Vic. No. 32, s. 13.

(5) The applicant having made all the prescribed payments may carry on mining operations on the land applied for until the application has been granted or refused; but except as hereinafter provided no further assessment of compensation shall be necessary. Mining pending application. 60 Vic. No. 40, s. 2 (*i*).

(6) Unless the lease applied for will cover the whole of a measured portion, the land shall be surveyed by a mining surveyor before the issue of the lease. Where survey necessary. *Ibid.* s. 27.

58. (1) Leases under this Part shall be granted by the Governor in the name and on behalf of His Majesty. It shall not be obligatory on the Governor to grant any such lease, notwithstanding that the applicant may have complied with the provisions of this Act and the regulations; but if an application for such lease is refused, the applicant shall be informed of the reasons for such refusal. Power to refuse, &c. *Ibid.* s. 22.

(2) A lease may, at the request in writing of the applicant, be granted to any person named by him. Lease to nominee.

(3) A lease may be granted notwithstanding that the person applying for the same has not complied in every respect with the regulations.

59. Every lease under this Part shall— Particulars to be stated in lease. 57 Vic. No. 32, s. 11.

(a) state whether it is to have effect on and below the surface of the land leased or on a limited portion of the surface and below the whole area, or below the surface only.

(b) state for what mineral (if any) the lessee may mine, and that the lessee shall not mine for any other mineral without the authority of the Minister.

(c) contain such labour conditions as may be determined by the Minister in accordance with the regulations. Labour conditions. 60 Vic. No. 40, s. 6.

Leases for mining purposes.

60. (1) Subject to the assessment by the warden of compensation, the Governor may grant to the holder of any lease under this Act, or to any person carrying on mining operations who has made application to the Minister in that behalf in the prescribed manner, a lease— Lease for race, tramway, &c. 57 Vic. No. 32, s. 37, 38.

(a) of the surface and to a limited depth below the surface of any private land irrespective of any reservation of minerals

to

to the Crown, for the purpose only of cutting mining-races thereon, and conveying water or detritus through or over the same to or from any mine of such holder or person; or

(b) of any area of private land 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.

Interim permit to enter.

(2) A permit may be granted by the warden in the prescribed manner, entitling any such holder or person to enter upon any such land for the purpose of marking out the portion to be included in his said application.

Lease may be subject to special provisions.
57 Vic. No. 32, ss. 37, 38.

(3) A lease granted under this section shall be subject to the regulations and to such conditions as the Governor may think fit to impose, and shall be subject to a rent payable to the owner of the land so leased, to be assessed by the warden at the same time as the assessment of compensation.

Saving.

(4) This section shall not apply to land the subject of any registered lease or agreement under this Part by the owner of private land with the holder of a miner's right to mine on the land.

Leases of surface.

Lessee may apply for lease of additional surface.
Ibid. s. 20.

61. During the progress of mining operations any lessee having a lease under this Part empowering him to mine below the surface of any land may, subject to the regulations, apply to the Minister for a lease of any portion of the surface thereof, for the purposes of mining or any purpose in connection therewith. Such application shall be dealt with as provided in respect of other applications for leases under this Part.

Term, rent, and area of lease.

Term of lease.
Ibid. s. 26.

62. (1) The term for which a lease may be granted under this Part shall not exceed twenty years; but, subject to such conditions as the Governor may approve, any such lease may be renewed for a further period not exceeding twenty years.

Labour conditions.
60 Vic. No. 40, s. 6.

(2) The Governor may fix the labour and other conditions, reservations, and exceptions, to be contained in the said lease.

Extent of lease.
cf. 57 Vic. No. 32, s. 26.

63. The area of a lease under this Part to mine for gold shall not exceed twenty-five acres, and to mine for any mineral shall not exceed eighty acres, and for any other purpose shall be of such area as may be prescribed:

Larger area may be granted under certain circumstances.
60 Vic. No. 40, s. 8.

Provided that upon the recommendation of the Minister, the Governor may grant a lease exceeding the area above prescribed; but the Minister shall not make such recommendation unless the prospecting board certifies that, by reason of the difficulties and cost attending the construction of mine works upon or of mining such land, it is necessary that such greater area, to be specified by the board, should be included in the lease

64.

64. (1) The yearly rental reserved to the owner of the land in respect of any such lease 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 payable half-yearly in advance, and shall be payable only in respect of the portion of the surface leased. Rents payable. 57 Vic. No. 32, s. 26.

(2) The warden shall assess compensation to be paid under this Act in addition to the rental, consideration being given to the compensation already paid in respect of the authority to enter. Compensation.

(3) Provided that nothing in this section shall prevent the owner or occupier, making an agreement with the lessee as to the amount of rent and compensation. Saving of agreements. *Ibid.* s. 17.

Rights and duties of lessees.

65. (1) Every lease granted under this Part, so far as it extends to the surface of any land, and does not expressly provide to the contrary, shall confer the right of— Powers as to surface. *Ibid.* s. 11.

(a) cutting and constructing thereon races, drains, dams, reservoirs, or tramways, and of erecting thereon buildings and machinery in connection with the mining or other special purposes authorised by such lease but not otherwise;

(b) fencing the land, and erecting temporary residences thereon for the use of persons employed in connection with mining operations thereon; and

(c) generally doing such acts or things in respect thereof as are necessary for efficiently mining the land.

(2) Every such lease, so far as it is expressed to have effect below but not on the surface of any land, and does not expressly provide to the contrary, shall confer the right of doing all such acts or things below the surface as are necessary for efficiently mining the said land, but not in such a way as to injure the surface or anything thereon. Powers to mine under the surface. *Ibid.*

66. No such lease shall give the lessee the right— Lessee not to use water artificially conserved, nor depasture sheep, nor keep dog, nor remove rock, &c. *Ibid.*

(a) to use water artificially conserved by the owner or occupier of such land; or

(b) to fell trees, strip bark, or cut timber on such land, except with the approval of the warden, and subject to payment to the owner of compensation to be assessed as prescribed; or,

(c) unless fenced, to depasture horses thereon, or to keep or permit to be kept on such land any dog, unless chained up or kept under proper control; or,

(d) except in connection with such mining or other operations aforesaid, to remove earth or rock therefrom, without the consent of the owner and occupier.

67.

Lessee not to impound nor molest sheep, &c., unless leasehold fenced securely.
57 Vic. No. 32, s. 14.

67. (1) No such lease shall, unless the said land has been securely fenced, and kept securely fenced at the expense of the lessee, give to the said lessee the right—

(a) to impound any sheep, cattle, horses, or other animals belonging to or in the custody or control of the owner or occupier of the said land; or

(b) to disturb or molest them in any way whatsoever, or prevent them from depasturing on the said land; or

(c) to sue in trespass or otherwise in respect thereof.

Lessee shall fence shafts, &c., when required.
Ibid. s. 20.

(2) Every lessee under this Part whose lease extends to the surface of any land shall, if required in writing so to do by the owner or occupier, cause without delay a secure fence to be erected and kept in good repair around any shafts, machinery, or other works in connection with the mining under such lease not already so protected.

Division 4.—Mining by owner.

Prospecting by owner or occupier.
Ibid. s. 25.

68. (1) If the owner, or the occupier with the consent of the owner, of any private land not applied for or occupied for mining operations under this Part desires to conduct mining operations by way of prospecting on such land, or to obtain a lease of such land under this Part, he may make application in that behalf in the prescribed manner, and thereupon an authority to enter or lease may be granted to him. Such authority or lease shall confer the same rights respectively as an authority to enter or a lease under this Part would confer in the case of other applicants.

Owner not to have preferential right.

(2) An owner or occupier applying as aforesaid shall have no preferential rights over other applicants, and shall be subject to payment of royalty and all other provisions of this Part binding upon other applicants and holders of authorities to enter or leases thereunder as the case may be, with the exception of assessment and payment of rent and compensation, and of those provisions which relate to such notices, and other matters as the owner or occupier would in that character have been entitled to in the case of an application made by some other person.

(3) Any owner or, with the consent of the owner, any occupier of any such land desiring to mine thereon for coal or shale may make application in that behalf in the prescribed manner, and thereupon a lease may be granted to him. The area of any such lease shall not exceed six hundred and forty acres.

Lease by owner to holder of a miner's right.
Ibid. s. 33.
60 Vic. No. 40, s. 11.

69. (1) The owner of any private land not applied for or occupied under this Part may, with the concurrence of the Minister, enter into a lease or agreement in writing with any holder of a miner's right giving such holder power to enter such land and take possession thereof and mine thereon for gold or any mineral.

(2)

(2) The area comprised in any such lease or agreement, and the term thereof, shall not exceed the extent and term, and shall be subject to the payment of the royalty to the Crown (after deduction of any sum paid by way of rent) and performance of the labour conditions prescribed in this Part in respect of a lease thereunder. Area and term.

(3) Such lease or agreement may be transferred with the concurrence of the Minister.

(4) No such lease or agreement and no such transfer shall have any force or validity unless and until it is registered as prescribed. Within twenty-eight days from the date of the Minister's concurrence therewith, on registration of a lease or agreement, a fee shall be paid for survey of the land.

(5) No such lease or agreement shall contain any provision or stipulation for the payment to the owner of any sum by way of royalty upon the gold or minerals won from the land comprised therein. Land subject of lease, &c., not open to occupation. Act No. 10, 1902, s. 3.

(6) The land, from the date of the receipt by the Minister of such lease or agreement, or the draft thereof submitted for his concurrence, shall, until and unless such concurrence is refused, be exempt from entry or occupation under this Part by any person other than the parties to such lease or agreement.

70. (1) The owner of any private land may, without any lease or authority to enter, mine or enter into an agreement with any other person to mine therein for any mineral not reserved to the Crown, notwithstanding that any gold or mineral reserved to the Crown is associated with the mineral so mined for, provided that the value of such gold or mineral so associated does not exceed fifty per centum of the value of the mineral mined for: Provided that such agreement shall not have any force or validity unless it is registered as prescribed, within twenty-eight days from the date of such agreement: Provided also, that all land included under any such agreement shall be marked out in the manner prescribed. Owner may mine or agree with any person to mine for any mineral. 60 Vic. No. 40, s. 9.

(2) No authority to enter or lease shall be granted in respect of any land upon which such mining operations have been commenced, but this prohibition shall extend only to any lode bona fide worked as aforesaid, and to land covering the same to the width of two hundred and twenty yards along the course of such lode. Land protected along lode from authority to enter.

(3) A royalty of one per centum on the value of all gold or silver reserved to the Crown obtained from the land comprised in any such agreement shall be payable to the Crown by the person obtaining the same, at the times and in the manner prescribed. Royalty.

Division 5.—Resumption.

Coal and shale lands.

71. (1) Any Crown land which, since the thirtieth day of September, one thousand eight hundred and eighty-nine, has been or shall hereafter be sold conditionally or by auction or in virtue of improvements Authority to mine on purchased or leased land. 53 Vic. No. 20, s. 2.

improvements or otherwise, and of which the grant contains, or will when issued contain, a reservation of all minerals, and any Crown land which has been leased conditionally under the Crown Lands Acts, shall be subject to the following conditions, namely :—Any person specially authorised in the prescribed manner by the Minister shall, on depositing a sum of money as prescribed to cover the cost of repairing any damage done to the surface of the land, be at liberty to dig and search for coal and shale within such land, and should it be found to contain any such mineral, the Governor may cancel wholly or in part the sale or lease of such land, and upon the notification thereof the proprietor shall be entitled to compensation for the value of the land and the improvements thereon or of his interest therein, as hereinafter provided in the case of land resumed, but exclusive of the value of all minerals contained therein, and such land shall thereupon become Crown land within the meaning of this Act, and shall be reserved from sale or lease until such reservation is revoked by the Governor. The person so specially authorised by the Minister to dig and search for coal and shale, upon satisfying the Minister that he has complied with all the conditions of such authority, shall, on the appearance of such notification, be deemed to be the first applicant for a lease of such land or a portion thereof, and the date of such application shall be reckoned from the day of publication of such notification, but in other respects as to labour conditions and other matters, such application shall be dealt with subject to the provisions of this Act relating to mining leases on Crown land.

(2) No such authority as aforesaid shall be granted in respect of any portion of such land so long as it is the subject of any other holding under this Act. Nor shall any other title to mine be acquired under this Act in respect of any portion of such land so long as it is subject to such an authority as aforesaid.

Resumption of private land.

Upon discovery of gold Governor may resume land.
57 Vic. No. 32, s. 40.
60 Vic. No. 40, s. 3.

72. Upon the discovery in any private land of gold in such quantity as the Minister considers payable, the Governor may resume for mining so much of such land as he may consider necessary. But no such resumption shall be made of land occupied for the time being under any lease or agreement under this Part unless with the consent of the lessee or the parties to the agreement :

Provided that such lease or agreement was entered into at least fourteen days before notification of such resumption.

Resumption to be notified.
60 Vic. No. 40, s. 3.

73. Every such resumption shall be notified in the Gazette, and in some newspaper published or circulating in the district in which such land is situated, and shall take effect at the date specified for that purpose in the said notification, and such land shall thereupon vest

vest in His Majesty and become Crown land within the meaning of this Act, and shall be reserved from sale and from lease for other than mining until such reservation is revoked by the Governor.

Copies of all such notifications, together with the reasons for the resumption therein notified, shall be laid upon the tables of both Houses of Parliament forthwith if Parliament is then sitting, and if not then within fourteen days after the commencement of the next session thereof.

Discoverer to have preferential right. 57 Vic. No. 32, ss. 40, 42. 60 Vic. No. 40, s. 3.

74. (1) If such discovery as aforesaid has been made by the holder of an authority to enter he shall be deemed to be the first applicant for a claim or for a gold-mining lease under Part II or Part III of this Act, and the date of publication in the Gazette of the said notification of resumption shall be reckoned as the date of possession by such holder for the purpose of his application for such claim or lease.

As to lease of resumed land. *Ibid.*

(2) Except in the case of a lease granted to the person who has made such discovery as aforesaid, all land resumed under this Part shall be exempt from leasing, except such as may be deemed by the Minister specially suitable to be leased by reason of its great depth or wetness, or on account of the costly appliances required for its development, or where the Minister is of opinion that it is desirable for any other reason that the same shall be open to lease.

Former owner to have preferent right to purchase or lease. 57 Vic. No. 32, s. 40.

75. If such reservation as aforesaid is revoked, the land shall become Crown lands within the meaning and for the purposes of the Crown Lands Acts, upon notification to that effect, and the former owner of such land, or any person claiming through or under him, shall be entitled to purchase or lease such land at a price or rental to be determined by the Secretary for Lands after appraisement by the local land board, subject to appeal to the Land Appeal Court, and failing such purchase or lease the land shall be dealt with under the Crown Lands Acts.

Lands held without reservation of minerals.

Resumption of land held without reservation of minerals.

76. (1) The Governor may resume for mining any land alienated or in process of alienation from the Crown without any reservation of minerals, or so much of such land as he may consider desirable in the public interest.

(2) Every such resumption shall be effected in the manner prescribed in section seventy-two.

(3) The Governor may grant mining leases of any land so resumed, and such leases shall be subject to the provisions of Part III of this Act, relating to mining leases on Crown lands, save only that the Governor may fix the rent and royalty payable and impose such special conditions as he may think fit.

Compensation.

Compensation.

Compensation for resumption. 57 Vic. No. 32, s. 40. 60 Vic. No. 40, s. 4.

77. When any land is resumed under this Division the Minister may direct the warden or other person to assess the market value of such land (exclusive of any increase in the value of such land by reason of the discovery of gold therein) and the improvements thereon, reasonable allowance being made for any damage that may be caused by severance; and if there is any person other than the owner having interest in such land, the value of such interest shall also be assessed; and such assessed value shall be paid to the persons entitled thereto respectively.

Claim to payment of compensation.

78. Every person claiming payment for land resumed under this Part shall, within sixty days of the date of the determination of the value of the land and the improvements thereon, lodge with the Minister a notice in the prescribed form setting forth the nature of his estate or interest in the land and an abstract of his title.

Payment of compensation.

79. The Minister shall, within three months after being satisfied as to the report of the Crown Solicitor that the valid title is in the claimant, pay to such claimant the value so determined: Provided that if the land be under mortgage, the amount due thereunder shall be paid to the mortgagee.

Costs.

80. All reasonable costs of proceedings for resumption under this Part shall, subject to taxation by the Prothonotary of the Supreme Court, be paid by the Crown, except that the costs of an appeal shall be paid by the unsuccessful party to the appeal.

Interest.

81. The value so determined shall bear interest at the rate of four per centum per annum from the date when the land vested in the Crown until the receipt of notification in writing from the Minister that he is prepared to pay the value, but for no longer period.

Division 6.—General Provisions.

Royalty.

Amount.

82. (1) A royalty shall be paid of one per centum of the value of all gold and minerals obtained from any land under an authority to enter or a lease under this Part.

Royalty to be according to metallic contents.

Where the product of any mine is ore, concentrates, matte, or other substance containing gold or minerals, the royalty shall be paid according to the estimated value of the gold or mineral.

(2) A royalty shall be paid of sixpence per ton on all shale or large coal, and threepence per ton on all small coal obtained from any land held under lease by the owner or occupier of such land.

(3) Such royalty shall be payable to the Crown, at the times, and in the manner prescribed, and may be recovered from the holder of such authority or the lessee as a Crown debt. (4)

(4) The holder of the authority or the lessee may deduct from the total sum payable by way of royalty in any one year a sum equal to the amount paid by him as rent for that year. Rent may be deducted from royalty.

Right of way.

83. Every authority to enter and every lease under this Part shall confer full right of ingress, egress, and regress for the purpose of the exercise of the rights thereby conferred, by a right-of-way to be marked in the prescribed manner from the land defined in the authority or lease to the nearest practicable point of a public road. The cost of marking such right-of-way shall be borne by the holder of the authority or the lessee, who shall place substantial sheep-proof gates at all fences intersected by such right-of-way, or rabbit-proof gates in any case where such fences are rabbit-netted; but the right to cross any tenement leasehold or other holding under this Act for the purpose of obtaining access to the nearest public road shall not be exercised except under the authority of the warden, nor shall the said right be exercised over any garden, yard, orchard, or pleasure ground. Right of ingress, egress, and regress. 57 Vic. No. 32, s 11. Marking of roadway. Gates in fence intersected by roadway.

PART V.

Dredging leases.

Preliminary.

84. In this Part, and in any regulations relating to matters thereunder, unless the context or subject-matter otherwise indicates,— Interpretation. Act No. 44, 1899, s 2.

"Crown land" means land vested in His Majesty except land held under tenure from the Crown for other than pastoral purposes.

"Lake" includes a lagoon, swamp, or other collection of still water, whether permanent or temporary, not contained in an artificial work.

"Occupier" includes any lessee from the Crown under any tenure under the Crown Lands Acts, or any tenant of land alienated from the Crown, or any person in charge of alienated lands for the owner thereof.

"Owner" includes the owner of the freehold or conditional purchaser of any land, or holder of a homestead selection, conditional lease, or conditional purchase lease, or any trustee in whom any land is vested.

"River" includes any stream of water, whether perennial or intermittent, flowing in a natural channel.

"River-bed" means soil or detritus lying between the solid rocks forming the banks of a river, to be defined by the mining surveyor when making the survey.

Not to apply to lands enclosed and under cultivation except in certain cases.
Act No. 44, 1899, s. 5.

85. Nothing in this Part, except the provisions as to roads of access and sites, shall, unless with the consent of the owner, apply to any lands not Crown lands which are found by the warden to have been at the time of the application for the authority to enter enclosed and under actual cultivation.

Grant of leases.

Governor may grant leases for purposes of mining by dredging, &c., and of what lands.
Ibid. s. 3.

86. (1) Subject to this Act, the Governor may grant for the purpose of mining for gold or any other mineral, by dredging, pumping, sluicing, or other method, and of erecting the buildings and machinery required in connection with such mining leases of any land (not being land held under or by virtue of any Act relating to mining)—

(a) forming the bed of any river or lake; or

(b) under any tidal water; or

(c) under the ocean contiguous to the coast line; or

(d) contiguous to any such place; or

(e) such as may be suitable for such mining.

Area that may be demised.

(2) The area that may be demised by any such lease shall not exceed one hundred acres. The number of men to be employed shall be in the proportion of not less than seven men to one hundred acres, and the amount to be expended in the purchase and erection of machinery and appliances for the purpose of working the area, shall be not less than ten pounds per acre:

Provided that the Minister may increase such labour or expenditure, or both, if it be shown that the circumstances warrant such increase.

Duration of lease and renewals.

(3) Such leases shall not be granted for a longer term than twenty years, but may be renewed for any term not exceeding twenty years, subject to the prescribed conditions.

Marking of land.

Land to be applied for to be entered and marked out.
Ibid. s. 4.

87. (1) Any person desiring to apply for a lease under this Part shall mark out in the manner prescribed the area intended to be included in the application; but where all or any of such area is not Crown land, he must, before so marking out the area, obtain, as prescribed, from the warden of the mining district in which the land is situated an authority under this Part to enter the area or the part thereof which is not Crown land.

Deposit.

(2) Such authority shall be granted by the warden on payment of the deposit prescribed.

On

On the order of the Minister the amount of such deposit, less such sum (if any) as the Minister directs to be retained to cover the expenses incurred by the Crown in relation to the application, shall be refunded to the applicant on the execution of the lease by the lessee, or if the Minister is satisfied that the application was bona fide, on the refusal of the application.

Entry in pursuance of authority. Act No. 44, 1899, s. 4 (3).

88. (1) Such authority shall entitle the holder thereof to enter, personally or by an agent duly authorised in writing, accompanied, if desired, by not more than three other persons, upon the land therein mentioned, for the purpose aforesaid, during a period named therein, which shall not exceed fourteen days, with right of ingress, egress, and regress to and from the nearest practicable point of a public road, without incurring liability for trespass in respect thereof, but shall not entitle him to commence any mining operations.

Authority to be exhibited.

(2) Such authority shall be exhibited on demand to the owner or occupier of the land therein mentioned.

When area may be marked out.

(3) Such area shall be marked out during the currency of the authority.

Warden not to issue any other authority in respect of same land.

(4) During the currency of any such authority, unless and until an area has been marked out thereunder as aforesaid, the warden shall not issue any other authority to enter upon the same land.

Owner, &c., obstructing holder of authority.

(5) Any owner, occupier, or other person who obstructs any holder of any such authority, or his agent, or the person accompanying such holder or agent, in the performance of any act, or interferes with, removes, destroys, or defaces any mark made or any notice posted in pursuance of such authority, shall be liable for the first offence to a penalty not exceeding ten pounds, and for the second or any subsequent offence to a penalty not exceeding fifty pounds.

Interim possession.

Person marking out area to be deemed in possession. *Ibid.*, s. 6.

89. The person who has marked any area of land under this Part shall, to the extent of the area applied for as against all persons, be deemed to be in possession thereof until the application has been finally disposed of:

Provided that the owner or occupier of any such land shall, during such period, be entitled to the continued use and enjoyment thereof for all purposes not inconsistent with such application.

Application for leases.

Applications for leases to be made to warden and forwarded to the Minister. *Ibid.* s. 7.

90. (1) Applications for leases under this Part shall be made within the time and in the manner prescribed to the warden of the mining district in which the land is situate. (2)

(2) Such applications shall be forwarded by the warden to the Minister for consideration, with a recommendation as to whether the application should be granted, wholly or in part, or subject to any and what conditions, stipulations, or restrictions, or should be refused.

Minister may refuse to entertain application, or may direct inquiry.
Act No. 44, 1899, s. 8.

(3) The Minister may refuse to entertain any such application, or may direct the warden to hold an inquiry in the manner prescribed.

Inquiries.

Warden to inquire and make orders as to roads of access, sites for machinery, rent, and compensation.
Ibid. s. 10.

91. (1) At such inquiry the warden shall determine—

(a) what roads of access and what sites for machinery, workshops, storage of fuel or other material outside the area applied for are necessary for carrying on the mining operations intended;

(b) what sum, by way of rent for the use of any land which is not Crown land and which is to be included in the lease or comprised in roads of access and sites as aforesaid, shall be paid by the lessee to the occupier or owner of the same;

(c) what sum, by way of compensation for damage likely to be caused to the area applied for or to land adjoining such area by acts done in or incidental to carrying on the mining operations intended, shall be assessed;

(d) as to any objection or other matter affecting the application;

and shall issue orders in accordance with such determinations:

Proviso that parties may agree as to rent and compensation.

Provided that if the applicant for the lease produces to the warden a document duly signed by himself and by the parties who would be entitled to any such rent, and witnessed, certifying that they have agreed as to the amount of such rent, such amount shall be adopted by the warden without any further inquiry in respect thereof. But no such agreement shall contain any provision or stipulation for the payment of any sum by way of royalty upon the gold or minerals won from the land applied for.

Inquiry in open Court.

(2) The warden shall hold such inquiry in open Court, and shall have the powers of a Wardens' Court.

Further inquiry.
Ibid. s. 14.

92. The Minister may at any time authorise and direct a warden to hold any further or other inquiry in open Court with reference to any matter concerning an application for a lease under this Part. Notice of such inquiry shall be given to the parties concerned.

At such inquiry the evidence shall be taken on oath.

Evidence and orders to be sent to the Minister.
Ibid. s. 15.

93. A warden holding an inquiry as aforesaid shall forward to the Minister the evidence taken by him, and a report of his orders thereon.

Minister may refuse application or grant lease.
Ibid. s. 16.

94. (1) The Minister, on receipt of such evidence and report as aforesaid, may determine that the application shall be refused, or that a lease of the area included in the application, or of any greater or less area, may be granted to the applicant, and may determine whether any and what special conditions shall be inserted in the lease.

(2)

(2) Notice of such determination shall be published in the Gazette. Notice in Gazette.

(3) Where the Minister has determined that a lease may be granted, the applicant shall, within the time and in the manner prescribed, give notice to the Minister whether he will accept a lease on the terms mentioned in such notice in the Gazette or not, otherwise the application shall lapse. Applicant to notify whether he accepts or not.

Road of access or site.

95. (1) The warden may order that any road of access or site as aforesaid which he finds to be necessary shall be marked out on the land by a person appointed by him in that behalf, and such person shall not incur liability for trespass committed by him in pursuance of such order. Warden may order such road or site to be marked out. Act No. 44, 1899, s. 11.

Such road shall be marked out in the manner prescribed from the nearest practicable point of a public road.

(2) The order of a warden declaring that a road of access along the line determined by him is necessary shall entitle the lessee to use such road with horses, cattle, and vehicles.

96. If after the issue of any lease it is found that a road of access, or a site as aforesaid other than that mentioned in the original order of the warden, is necessary, the warden may, in the manner prescribed, and subject to such rent as he may by an order which shall be final and not subject to any appeal determine, and to such terms and conditions as he may deem proper, mark or cause to be marked out on the land such other or additional road or site ; but such road or site shall not be used until the amount of the first year's rent thereof determined by the warden has been paid and any conditions imposed by him have been fulfilled. Further or other roads of access and sites may be ordered by warden. *Ibid.* s. 20

Rent and royalty.

97. (1) The amount of the first year's rent of land which is not Crown land, as determined by the warden shall be paid by the applicant to the warden or warden's clerk within the time prescribed. First payment to be made into warden's court. *Ibid.* s. 12.

(2) Such amount shall be paid out to the parties entitled thereto under the order of the warden on the execution of the lease by the lessee, or refunded to the applicant if the application is refused. Payment to be refunded or paid out.

(3) Any subsequent years' rent shall be paid direct by the lessee under this Part to the owner and occupier of the land in such proportions as may be agreed, or as the warden on failure to agree may determine.

98. (1) The rent to be paid to the Crown in respect of Crown land shall be two shillings and sixpence per acre. And such rent shall be payable at the times and places and in the manner prescribed: Provided that all such rents shall be payable yearly in advance, and the first annual payment shall be made on making the application for such lease. Rent. Act No. 102, 1902, s. 2.

(2)

Royalty.
Act No. 102, 1902, s. 3.

(2) A royalty of one per centum of the value of all gold and minerals won from any land leased under this Part shall be payable to the Crown at the times and in the manner prescribed: Provided that if the royalty payable in respect of any lease during any one year exceeds the rent paid for such year, the amount paid as rent as aforesaid may be deducted from the sum payable as royalty; but if such royalty in any one year amounts to less than the rent paid for such year, the lessee shall not for such year be required to pay royalty.

Grant of lease.

No obligation to grant lease.
Act No. 44, 1899, s. 17.

99. (1) The Governor may, where the applicant has given notice of acceptance as aforesaid, grant a lease on the said terms to the applicant or to any person named by the applicant.

Lease may be granted though regulations not complied with.

(2) Nothing in this Part shall render 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 Part and of the regulations thereunder.

(3) A lease may be granted under this Part by the Governor, notwithstanding that the person applying for the same may not in every respect have complied with the regulations.

Right to water.

Owner to have access to water.

100. No lease under this Part granted shall prevent the owner or occupier of any freehold or conditionally purchased land included within such lease from having free and uninterrupted access to the water for stock watering and similar purposes.

Penalty.

Applicant not to mine till he has executed lease.
Ibid. s. 19.

101. Any applicant for a lease under this Part who commences mining operations in or on the area included in the application, whether covered with water or not, before such lease has been executed by him, shall, unless he proves that he has before commencing such operations obtained the consent of the owner or occupier, be liable to a penalty not exceeding ten pounds.

Authority to holder of miner's right.

Special condition enabling warden to grant authority to holder of miner's right to mine.

102. (1) If so specified in any lease under this Part, the warden may grant authority in writing to any holder of a miner's right to enter upon any Crown land comprised in such lease, and to mine thereon, subject to such conditions as he may think fit to impose and as may be prescribed.

Mining by hand appliances

(2) Every such authority shall empower the holder to mine upon the said land with such hand appliances as may be prescribed, and at such distance from the mining operations carried on by the lessee, not being less than two hundred yards, as the warden may consider advisable.

(3)

(3) If the holder of the authority fails to observe any of the conditions aforesaid, or impedes or otherwise hinders the carrying on of dredging operations by the lessee, such authority may be cancelled by the warden. If such holder mines or continues to mine upon the said land after being notified in writing of the cancellation of the authority, he shall be deemed a trespasser.

Washing dirt, &c., on lease.

103. If so specified in any lease under this Part, such lease shall be subject to a condition that any holder of a miner's right may enter upon any Crown land comprised in such lease for the purpose of washing dirt at the place most convenient to him and may for that purpose cut races, run sludge into a stream, or obtain water therefrom, provided that in so doing the mining operations carried on by the lessee will not, in the opinion of the warden, be interfered with or prejudicially affected.

PART VI.

TENEMENTS AND LEASES GENERALLY.

Leases for railways and tramways for mining purposes.

104. Nothing in this Act shall confer the right to grant a lease for mining purposes permitting the construction of a railway or tramway over or under Crown or private lands, or over or under any street, road, or highway for a greater distance than is reasonably necessary to connect the same with the nearest point on any railway or tramway vested in the Chief Commissioner for Railways and Tramways, or any railway or tramway constructed under any special Act of the State which would afford by such connection the necessary facilities for transit to and from any mine : Provided that this section shall not affect the right to grant a lease for a railway or tramway direct from any mine to any waterway.

Governor's powers over Crown lands.

Suspension of pastoral lease. 37 Vic. No. 13, s. 13.

105. (1) The Governor may suspend the operation of any Crown lease or license for pastoral purposes of Crown land so far as may be necessary for—

(a) the accommodation of the horses, cattle, and sheep required for the subsistence and convenience of any persons holding tenements, leases, or other holdings under this Act;

(b) the supply of water to such persons ; and

(c) otherwise for the carrying on of mining operations by such persons.

(2)

(2) The Governor shall return or remit to the lessee or licensee such portion of the rent of such land as may be reasonable and just, and shall pay compensation for any improvements upon such land, to be assessed, unless otherwise agreed upon, by the warden of the district in which such land is situated.

(3) Upon any such suspension as aforesaid, the Crown, by its officers and servants, may enter the land, and do all such acts as may be deemed necessary for the proper regulation of the water supply.

Exemption of Crown lands from alienation.

106. The Governor, on the recommendation of the Minister, and with the concurrence of the Secretary for Lands, may, by notification, exempt from alienation and from all classes or any specified class of tenure under the Crown Lands Acts any Crown lands required for mining or mining purposes, and may reserve the same for either or both of such purposes, and may in like manner revoke or alter any such exemption or reservation. He may also in like manner alter the boundaries of or revoke any reserve for mining or mining purposes heretofore made under the authority of any Act.

The power conferred by this section shall only be exercised in relation to reserves for mining or mining purposes, and is in substitution for similar powers conferred by the Crown Lands Acts.

Applicant to execute lease.

Applicant or legal representative to execute lease.

cf. *Ibid.* s. 57.

107. (1) When any application for a lease is granted, it shall be the duty of the applicant, or the person named by him, or his legal representatives on death or bankruptcy, to execute such lease when called upon, and the execution of a lease by such legal representatives shall be as binding upon all persons as if the lease had been duly executed by the applicant or the person aforesaid.

Consequences of refusal to execute lease.

(2) If the applicant or person, or his legal representatives as aforesaid, neglect or refuse to execute such lease or to pay the prescribed deed-fee in respect of the same within the prescribed period, after being notified in writing, as prescribed, that the said lease is ready for execution, the said lease may be voided by the Governor, and thereupon all moneys deposited with the application shall be absolutely forfeited to His Majesty and paid into the Consolidated Revenue Fund. Such voidance shall take effect from the time of publication thereof in the Gazette.

Issue of lease not executed by all the applicants.

(3) Where the application is made by two or more persons, and one or more of such persons fails or fail to execute the lease within the period prescribed as aforesaid, the Minister may, if he thinks fit, cause the lease to be issued to such of the applicants as have executed the same; and in that case such lease shall be valid and effectual in favour of such applicants.

(4)

(4) A lease shall take effect only upon execution thereof by the Governor. 57 Vic. No. 32, s. 11.

Form and conditions of leases.

108. (1) Every lease under this Act shall, according to the nature thereof, contain the covenants, conditions, reservations, and exemptions contained in the respective forms prescribed in the regulations, or as near thereto as circumstances will permit, having regard to the special requirements herein provided. Covenants, conditions, &c. 37 Vic. No. 13, s. 51.

(2) Every such lease shall be dated the day of the execution thereof by the Governor. Date of lease. *Ibid.*

Registration.

109. (1) Every lease under this Act shall be registered with the registrar, Department of Mines, Sydney, who shall forward a copy thereof to the warden of the district in which the land comprised in such lease is situated, and thereafter every transfer, sub-lease, or change of ownership of, and every tribute agreement affecting the land comprised in such lease or any portion thereof shall be registered with the registrar aforesaid. Lease to be registered. 57 Vic. No. 32, s 27.

(2) Any person claiming interest in any such lease may, prior to the registration of any transfer or sub-lease thereof, lodge with the Minister a caveat in the prescribed form and accompanied by the prescribed fee against such registration. On receipt of such caveat, the Minister shall stay registration for fourteen days, unless the caveat is sooner withdrawn, but shall then register the said transfer or sublease unless the person objecting has obtained and served upon him an order of some competent court forbidding such registration. Caveat.

Works in connection with mining.

110. (1) The warden may, subject to the regulations, grant permission in writing to the holder of a claim or of a lease under this Act, upon written application for that purpose, to lay or construct a line of pipes, sluice-box, or a culvert under or along any public road, street, or highway, or across any Crown lands or lands reserved or dedicated to any public purpose, for the purpose of conveying any water, tailings, sludge, waste-water, or earth in connection with any mine. Warden may allow pipe-line, &c., to be constructed on public road, &c. 37 Vic. No. 13, s. 29.

(2) Before granting such permission the warden shall cause the said road, street, or highway to be inspected by some duly authorised officer. Inspection of road. *Ibid.*

(3) Any works authorised by such permission shall be so constructed as not substantially to injure such road, street, or highway, Construction of works.

or

or obstruct the traffic thereon; and if after construction it appears to the warden that they do in fact cause such injury or obstruction, he may cancel such permission and order the person who obtained such permission, or the owner or occupier for the time being, to remove any such works or obstruction within seven days.

Penalty for disobedience of order.
37 Vic. No. 13, s. 29.

(4) If any such order is disobeyed, the line of pipes, sluice-box, or culvert in question shall be deemed a nuisance remediable in like manner as any other obstruction or nuisance upon a highway, and every person so disobeying shall be liable to a penalty not exceeding twenty pounds per day during such disobedience.

Authority to construct tunnels, &c., on holding.
cf. *Ibid.* s. 30.

111. (1) The warden may, subject to the regulations, authorise any holder of a claim or lease under this Act, or any Act hereby repealed, to enter any Crown or private land held under any lease, claim, or other holding under any such Act for the purpose of constructing tunnels, roads, races, shafts, or channels, or of erecting standards carrying wires for the conveyance of electricity to or from any mine held or owned by such holder or lessee: Provided that the works to be constructed shall be carried out in such a manner as shall cause as little injury or inconvenience as possible to the holder of such land.

Compensation.

(2) The warden shall assess the compensation to be paid for any damage caused or likely to be caused by the construction of such works.

Cancellation.

(3) If the person to whom such authority is granted fails to observe the conditions under which such authority is granted, the warden may at once cancel such authority. If such person continues in occupation of or enters such land after being notified in writing of such cancellation, he shall be deemed a trespasser.

Assignment.

(4) The rights and duties under any authority issued under this section may be assigned and transferred with the claim or lease in connection with which it was issued.

Easement over Crown lands continues notwithstanding alienation.
Ibid. s. 31.

112. When at the time of any sale or alienation of Crown lands, any race or drain, dam, or reservoir constructed for mining purposes flows through, or over, or is constructed upon any portion thereof, although no reservation or exception is contained in the Crown grant, no person, unless specially authorised thereto by the Minister, shall obstruct or interfere therewith or prevent access thereto.

Suspension of labour conditions.

Registered owners may apply.
Ibid. ss. 32, 55.

113. (1) The registered owners, or a majority of the registered owners, of any claim or lease, held under this Act or any Act hereby repealed, may apply to the warden for authority to suspend mining operations for any period not exceeding the limits hereinafter set forth on the occasion of each such suspension.

(2)

(2) Every such application shall contain the grounds thereof, and a copy thereof shall be posted on the claim or on the land leased, and also outside the warden's office or the mining registrar's office nearest to the land in respect of which suspension is applied for, and shall be served upon the owners of or posted on adjoining claims or leases. Any person may, before the hearing of such application, in the prescribed manner lodge an objection to the granting of the suspension applied for, and shall be entitled to be heard in support of such objection. Grounds of application to be posted.

(3) The warden may grant such authority for any period not exceeding six months on being satisfied by evidence on oath in open court— Proceedings thereon. 37 Vic. No. 13, ss. 32, 55.

(a) that the claim or lease is unworkable by reason of accident to machinery, subsidence, scarcity of water, sudden excess of water, or any other cause whatsoever; or

(b) that the owners of such claim or lease are unable, by reason of sickness, accident, unavoidable absence, or other sufficient cause, to work the same; or

(c) that substantial expenditure has been incurred in mining operations on the claim or lease, and that the owner or lessee is temporarily unable to continue such operations, and requires reasonable time within which to make necessary arrangements.

(4) The warden may—

(a) upon being further satisfied by evidence on oath in open court that the claim or lease cannot be profitably worked under then existing circumstances owing to the low price of the product thereof or other adverse conditions, grant such authority for any period not exceeding six months in respect of any claim; or

(b) recommend to the Minister the granting of, and the Minister may grant, such authority for any such period in respect of any lease, in which case the authority shall be published in the Gazette and registered by the registrar, Department of Mines, Sydney.

(5) All applications for suspension of labour conditions shall be made and dealt with as prescribed. Regulations to be observed. *Ibid.*

(6) The warden or the Minister (as the case may be) may, when granting suspension as aforesaid, impose such conditions as he may think fit for the protection from injury of adjoining mines by water or otherwise by reason of such suspension being granted. Conditions may be imposed.

114. (1) If any holder of a lease under this Act, or any Act hereby repealed, employs on the land demised labour in excess of that required by the provisions of his lease, he shall, upon application to the warden and upon satisfying him that after the commencement of this Act and during Exemption from labour conditions.

during any expired period of his lease, not being less than six months, the excess labour so employed has been equal to the labour prescribed in his lease for six months, be entitled in respect of such excess labour to exemption from the employment of labour for one month: Provided that such exemption shall not be for any longer cumulative term than six months at any one time.

Inquiry by warden and certificate.

(2) Upon receipt of any such application, the warden shall hold an inquiry in open court, of which notice shall be given as prescribed; and, upon being satisfied that the lessee is entitled to such exemption, he shall issue a certificate in the form prescribed, and such certificate shall be registered in the Department of Mines, Sydney.

Conditions of certificate.

(3) Such exemption shall be subject to the condition that the lessee undertakes to observe and carry out such directions and orders as the warden may give for the protection of adjoining mines from injury by water or otherwise by reason of the exemption.

Returns of minerals won.

Lessee, &c., to furnish returns.

115. Every holder of a lease, claim, or other title under this Act to mine shall, during the first fourteen days of the month of January in each year, furnish to the Minister a full and proper return, verified by statutory declaration, showing the quantity and value of gold and other minerals, except coal and shale, won during the preceding year ending thirty-first December, and the average number of men employed on such lease, claim, or land held under other title during such year, and on default shall be liable to a penalty not exceeding five pounds where no royalty is payable and not exceeding fifty pounds where royalty is payable

Every person carrying on metallurgical works for the treatment of gold or any other mineral shall, during the first fourteen days of the month of January in each year, furnish to the Minister a full and proper return, verified by statutory declaration, showing the quantity and value of gold and other minerals treated at such works during the preceding year ending thirty-first December, and on default shall be liable to a penalty not exceeding five pounds.

Manager or secretary to furnish return for company.

If such holder or person is a public company, such return shall be furnished by the manager or person acting in the management, or by the secretary of the company; and the said manager, person, or secretary shall on default be liable to the said penalty.

Additional return by coal-mining lessees.

116. (1) Every holder of a coal-mining lease, or other authority to mine for coal, shall, within fourteen days after the last day of March, June, September, and December in each year, furnish to the Minister a return, verified by statutory declaration, showing the quantity and approximate value of coal won from any mine worked by him under such

such lease or authority during the three months ending on such last day as aforesaid, and on default shall be liable to a penalty not exceeding fifty pounds.

If such holder is a public company the return shall be furnished as in the preceding section mentioned, and the manager or secretary as therein mentioned shall on default be liable to the said penalty.

Minister may require further return or may appoint officer to make inquiries.

(2) If the Minister is not satisfied with the return so furnished, he may require such holder, manager, or secretary to furnish further particulars of the coal won, or may, whether any return has been furnished or not, appoint any officer of his department or other person to make all necessary inquiries in relation to such coal. The officer or person so appointed may make all such inquiries, and may require such holder, or his clerk, or the manager, secretary, or clerk of any such company, to produce for his inspection at the office of such holder or company any books, accounts, documents, writings, papers, or instruments in his possession or under his control that such officer or person may consider necessary to enable him to ascertain the quantity of coal won, and may make copies of any entries or matters contained in such books, accounts, documents, writings, papers, or instruments, and upon completion of such inquiries shall report thereon to the Minister.

Secrecy as to information obtained.

(3) Any such officer or person who reveals any information so obtained by him, except as aforesaid or under the authority of a court of competent jurisdiction, shall be liable to a penalty not exceeding one hundred pounds.

The evidence in respect of such information shall not be admissible in any court except in the case of a prosecution under this Act, or in respect of any proceedings in relation to such inspection and inquiry.

Secrecy as to return and reports.

(4) Every officer in the Public Service and every person appointed as aforesaid shall preserve and aid in preserving secrecy with regard to the contents of any return or report or any copy of books, accounts, documents, writings, papers, or instruments made under this section which have come to his knowledge in his official capacity, and shall not communicate any such matter to any other person unless in the performance of his official duties, or under the authority of a court of competent jurisdiction. If he contravenes or fails to observe the provisions of this subsection, he shall be liable to a penalty not exceeding one hundred pounds.

Penalty on person obstructing officer.

(5) Any person who obstructs an officer or person in the performance of his duties under this section, or without lawful excuse refuses to produce any book, account, document, writing, paper, or instrument in his possession or under his control, or to answer any question asked by such officer in the course of such inquiries, shall be liable to a penalty not exceeding twenty pounds.

Reward

Reward areas.

Reward areas.

117. The Governor may, with respect to any prospector who makes a new discovery of gold or other mineral, make concessions in respect of any claim or lease applied for or held by such person as to area, rent, royalty, labour, and other conditions applicable by this Act or the regulations to such application, claim, or lease.

Amalgamation of leases.

Minister may authorise amalgamation.
37 Vic. No. 13, s. 60.
48 Vic. No. 10, s. 6.
Act No. 44, 1899, s. 24.

118. (1) The Minister may, on application in the prescribed manner by the owners of two or more adjoining gold-mining leases, or of two or more adjoining mineral leases, or of two or more adjoining dredging leases (whether such leases have been granted under the provisions of the same Act or not), and on being satisfied that the lands comprised in such leases can be more effectively worked as one mine, authorise the amalgamation of the said leases upon payment of a fee of twenty shillings for each lease so amalgamated. But where the lands comprised in such leases are divided from each other by a road or stream, mining operations shall not be carried on under such roads or streams until and unless a lease thereof has been granted.

Leases under Parts III and IV.

Leases may be amalgamated as aforesaid although one or more of such leases may be for mining on private lands under Part IV, and the other or others for mining on Crown lands under Part III.

Minister may cancel amalgamation.

(2) The Minister may, after obtaining a report from the warden, cancel any such amalgamation of leases.

Labour on amalgamated leases.
37 Vic. No. 13, s. 60.
48 Vic. No. 10, s. 6.
Act No. 44, 1899, s. 24.

(3) When leases have been amalgamated as aforesaid, the labour required to be performed on or in connection therewith shall be the aggregate of the labour required for the respective leases before amalgamation.

Minister may reduce men and capital on amalgamated leases.

(4) The Minister may, after inquiry and report by the warden, reduce the number of men to be employed and the capital to be expended on any amalgamated leases should it be shown that the circumstances warrant such reduction.

Encroachment.

Encroaching on highways, streets, &c.
57 Vic. No. 32, s. 29.

119. The warden may, subject to the regulations, upon the application of any person having the care and management of any public highway, railway, tramway, street, or road, or any person authorised by him in that behalf, authorise by writing under his hand any mining surveyor to enter and inspect any land or mines comprised in any claim, lease, application for lease, or authority under this Act or any Act hereby repealed, for the purpose of ascertaining whether the persons working such land or mines are encroaching on such

such highway, railway, tramway, street, or road, and whether the mining operations so carried on can be continued without causing injury or damage thereto, or to any house, building, or machinery abutting thereon or adjoining thereto.

Warden may authorise mining surveyor to inspect as to encroachment. 37 Vic. No. 13, s. 86. 57 Vic. No. 32, s. 30.

120. (1) The Minister or the warden may, upon the application of the owner or occupier of any land adjoining any land held as a claim, lease, or under an authority or application for a lease under this Act or any Act hereby repealed, whereon mining is being carried on, or upon the application of any person authorised by such owner or occupier, authorise by writing under his hand any mining surveyor to enter and inspect the land on which mining is being so carried on, for the purpose of ascertaining whether the persons so carrying on mining are encroaching upon any land of such owner or occupier not comprised in such claim, lease, authority, or application for lease.

Geological surveyor or other authorised person may enter and remove sample.

(2) Any geological surveyor or other person authorised by the Minister may enter any mine or works for the purpose of inspecting the same, and removing any sample of ore or deposit. No person shall obstruct or hinder such geological surveyor or other authorised person acting as aforesaid, under a penalty not exceeding fifty pounds.

Mining or geological surveyor may enter and inspect. 57 Vic. No. 32, s. 31.

(3) The mining or geological surveyor authorised as aforesaid, or other authorised person, may enter and inspect and survey the land and mines described in such order. Such surveyor may make such plans and sections of the land entered, and of any drives or other works therein, as are necessary for the purposes aforesaid.

Surveyor to make a declaration. 37 Vic. No. 13, s. 86. 57 Vic. No. 32, s. 32.

121. Every such mining or geological surveyor or other authorised person shall, before entering any land under such authority as aforesaid, make a declaration before the warden (who is hereby authorised to take and forward the same to the Minister) that he will not, except as a witness in a court of justice or to the Minister, without the consent in writing of the occupier or lessee of the land or mines to be entered, divulge or cause to be divulged to any person whomsoever any information which may be obtained upon or by such entry, save only as to whether the persons working such mines are encroaching as in the last preceding section mentioned. Whosoever acts contrary to such declaration shall be liable to a penalty not exceeding fifty pounds.

Sludge abatement provisions.

Sludge Abatement Board.

122. (1) For the purpose of this section, the Governor may appoint a board of three persons, to be called the Sludge Abatement Board, and notification shall be made of such appointment. Any two members of the board shall form a quorum.

Powers of board.

(2) It shall be the duty of the board—

(a) to investigate any complaint made of pollution or injury caused by sluicing, dredging, or other mining operations to any

any river, stream, watercourse, lake, or reservoir (whether or not there is any water therein) not exempted from the operation of this section, or to any agricultural or grazing land adjacent thereto, and to order any person causing or directing such operations to make such provision or take such steps as the board may direct to prevent the continuance of such pollution or injury;

(b) to order any person about to commence or authorise sluicing, dredging, or other mining operations which would, in the opinion of the board, cause injury or pollution to any such river, stream, watercourse, lake, reservoir, or land to make such provision or take such steps as the board may direct to prevent such pollution or injury; and

(c) at the request of the Minister, to report and make such recommendations as the board may think fit in connection with any application for a mining lease of any area upon which it is intended to carry on sluicing, dredging, or other mining operations which may pollute or injure any such river, stream, watercourse, lake, reservoir, or land.

Exemption of certain rivers, &c.

(3) The Governor may from time to time, upon the report of the board, exempt from the operation of this section such rivers, streams, water-courses, lakes, and reservoirs, or such portions thereof as, in his opinion, are, by reason of their polluted condition, useless as a means of providing a water supply for domestic or stock purposes: Provided that the board, before so reporting, shall satisfy itself that such exemption may be granted without causing damage to any agricultural or grazing lands adjacent to any such rivers, streams, water-courses, lakes, or reservoirs, and shall publish in the Gazette notice of every such proposed exemption.

The Governor may at any time revoke, in whole or in part, any such exemption, and shall give notice thereof in the Gazette.

Penalty.

(4) Any person who, by himself or his agent or workman, carries on any mining operations as aforesaid in contravention of any order of the board as aforesaid, or disobeys any order of the board, and thereby directly or indirectly causes the pollution of, or any injury to any such river, stream, water-course, lake, or reservoir, or to any agricultural or grazing land adjacent thereto, shall be guilty of an offence; and, upon the complaint of any person aggrieved thereby, or of an inspector of mines, shall, for every day upon which mining operations have been so carried on, or such order has been disobeyed as aforesaid, be liable to a penalty not exceeding twenty-five pounds.

What constitutes injury or pollution.

(5) For the purposes of this section, water discharged into any such river, stream, water-course, lake, or reservoir, shall be deemed to injure or pollute the same if it contains in solution at the point of discharge any poisonous matter in the total proportion of

more

more than seventy-five grains to one gallon; or other noxious matter in such quantity as to be injurious to public health; or if it contains in suspension any earth or mineral, or any earthy or other insoluble mineral substance in the total proportion of more than eight hundred grains to one gallon.

Surrender and cancellation of lease.

Lessee may surrender lease wholly or in part. 37 Vic. No. 13, s. 54. cf 57 Vic. No. 32, s. 35.

123. Every holder of a lease under this Act may at any time with the consent of the Governor surrender his lease wholly or in part. The Governor may, on acceptance of such surrender, grant such holder a new lease of the whole or any part of the land comprised in the surrendered lease, and upon such conditions not inconsistent with this Act and the regulations, as he may deem advisable. But the surrender of a lease shall not entitle the lessee to the refund or remission of any rent already paid or due.

Cancellation of lease 37 Vic. No. 13, s. 56 (11). 57 Vic. No. 32, s. 34.

124. If the holder of a lease under this Act, his executors, administrators, or assigns, at any time during the term of such lease—

(a) fails to fulfil or contravenes the conditions and covenants contained therein; or

(b) fails to use the land bona fide for the purposes for which it has been demised; or

(c) uses it for a purpose other than that for which it has been demised,

the lease may be cancelled by the Governor, and the cancellation shall take effect on the date proclaimed in the Gazette.

Removal of machinery.

Machinery, &c., on forfeited area. 37 Vic. No. 13, s. 56 (10).

125. (1) At any time within six months after the determination of any lease under this Act, or within such further time as the Minister may allow, the former lessee may remove or dispose of all tools and machinery and such improvements as the Minister may sanction, except such as are necessary to keep open any shaft or adit: Provided that this section shall not apply to any lease of private land until and unless all rent due in respect thereof has been paid, and all compensation for damage occasioned to the land demised has been duly assessed and paid.

Machinery, &c., may be sold.

(2) If such tools, machinery, and improvements are not so removed they may be sold by auction by order of the warden at the risk of the former lessee. The net proceeds of such sale shall be paid into the Treasury and held until applied for by such former lessee.

Surveyor

Surveyor may define road.

Minister or warden may authorise surveyor to enter and define road to area or for any other purpose.

126. Any mining surveyor may, in pursuance of an order of the Minister or of a warden, enter any private land for the purpose of defining the road to and the boundaries of the land comprised in any lease or authority to enter, or any application for the same, or for any other purpose authorised by this Act.

Inquiries and inspection.

Inquiry may be directed cf. 37 Vic. No. 13, s. 57. Act No. 44, 1899, s. 14.

127. The Minister may direct a warden to hold an inquiry on oath in open court with reference to any matter affecting any lease or application for a lease under this Act or any Act hereby repealed.

Inspection of mine. 57 Vic. No. 32, s. 31.

128. Any holder of a tenement, lease, or authority to enter under this Act or any Act hereby repealed, or any application for such lease, shall, during ordinary working hours and within a reasonable time, comply with any request of the warden, or of any surveyor or other person acting under the instructions of the warden, or under the authority of this Act or the regulations, to furnish the usual appliances and aid necessary for descending to and ascending from the underground workings of his mine, and for examining the same or doing such things as may be authorised as often as may reasonably be found necessary.

Nature of holding and evidence of title.

Share in claim. 37 Vic. No. 13, s. 18.

129. (1) Every tenement or share or interest in a claim, and any authority, right, title, or interest acquired or created under this Act, or any Act hereby repealed, or the regulations, shall be deemed and taken in law to be personal property, and shall not be of the nature of real estate, and may be disposed of during the lifetime of the holder, and shall on his death descend or devolve on intestacy or by will as personal property, subject to this Act and the regulations.

Certificate to be evidence. *Ibid.*

(2) The production in any court of a certificate of registration under the hand of a mining registrar or warden's clerk shall be evidence that the person named in such certificate was the holder of a miner's right or of a business license, as the case may be, at the date mentioned in such certificate, and that all the requirements of any Act or regulations necessary to vest the title of such interest as aforesaid in such person had been complied with by him up to the date of such registration.

Mining towns.

Area may be resumed for township.

130. If during the term of any lease of Crown land under this Act or any Act hereby repealed any part of such land is required as a site for a town or village or for any public purpose, the Governor may, upon

upon one month's notice to the lessee, cancel the said lease so far as it relates to any right to the surface and the specified depth below the surface of the said part of the land, and thereupon the said part shall, subject to the right of the said lessee to mine thereunder, but without any compensation payable by the Crown, become Crown lands within the meaning of the Crown Lands Acts, and may be dealt with thereunder.

PART VII.

WARDENS' COURTS.

DIVISION 1.—JURISDICTION.

Wardens' courts.

Governor may establish wardens' courts.

131. (1) The Governor may, by proclamation, establish wardens' courts, to be held at such places as he may from time to time appoint. Any wardens' courts established under any Act hereby repealed shall have jurisdiction under this Act as if they had been established hereunder. 37 Vic. No. 13, s. 67.

Court of record.

(2) Every such court shall be a court of record, and shall be held by a warden sitting alone.

(3) Any decision or order of such court shall, subject to this Act, be binding and conclusive on all parties.

Summons, &c., may be issued.

(4) For the purposes of the jurisdiction hereby conferred, a warden or a warden's clerk may issue summonses and subpœnas, or other process, which shall have legal effect and operation throughout the State. *Ibid.* s. 68.

Register to be kept.

132. (1) Every warden shall cause a register to be kept in the form prescribed by the rules of the particulars of all complaints and applications made to him under this Act and any decision or order made thereon, and such particulars relating thereto as may be prescribed as aforesaid. *Ibid.* s. 72.

(2) A copy of an entry in such register of any decision or order of the court shall on demand be given by the warden's clerk to any of the parties interested therein. A document purporting to be any such copy, certified by the warden or warden's clerk as a true copy, shall be admitted in all courts and places whatsoever as conclusive evidence of such decision or order having been given or made.

Jurisdiction

Jurisdiction.

Subjects within jurisdiction of court. 37 Vic. No. 13, s. 69.

133. (1) A warden's court shall have jurisdiction to hear and determine all suits relating to any of the matters following, that is to say:—

(a) The right to the possession or occupation of any Crown land or private land by virtue of a miner's right, a registered share in a claim, a lease, application for a lease, or of a license, or authority.

(b) The right to cut, construct, use, possess, occupy, or hold any interest in any race, drain, dam, or reservoir for mining under any Act or regulation relating to mining.

(c) The right to recover any land, race, drain, dam, reservoir, building, or machinery alleged to have been abandoned or forfeited under any such Act or regulation, and to mesne profits thereof.

(d) The right to the use, enjoyment, or to sell any water under any such Act or regulation, or to the priority of use and enjoyment as against any other claimant of water taken, diverted, or used, or claimed so to be under any Act or regulation.

(e) Any encroachment or trespass upon, or unlawful interference with, or injury to any land, race, drain, dam, or reservoir occupied, held, or used under any Act or regulation relating to mining, or unlawful interference with or injury to any machinery thereon; any diversion or abstraction of water possessed or used under such Act or regulation; the unlawful ouster or exclusion of any person from any share or interest in any such land, race, drain, dam, reservoir, water or machinery, and the damages and compensation for any such encroachment, trespass, ouster, diversion, abstraction, interference, or injury.

(f) Any demand for debt or damages, or both, arising out of or made in respect of any contract or agreement whatsoever, relating to mining for gold or any other mineral, or to any holding or interest authorised by any such Act or regulation as aforesaid.

(g) The right to any gold or other mineral in or to be taken out of any land occupied or held under any such Act or regulation as aforesaid, or in respect of any matter concerning or arising out of any contract relating to such gold or mineral.

(h) Any demand concerning or arising out of any partnership for or in relation to mining for gold or other mineral in any land occupied or held as aforesaid, or any partnership in any such land, or in any race, drain, dam, reservoir, water, machinery, gold, mineral, or metal, or concerning or arising out of any contract for or in connection therewith, or for the dissolution wholly or in part of any such partnership.

(i) Any demand concerning contribution to calls or to the expense of working or using any such land, race, drain, dam, reservoir, or water, or any share or interest therein.

(j) Any demand concerning or arising out of any mortgage or assignment by way of security of or charge upon any such land, race, drain, dam, reservoir, water, machinery, gold, or mineral, or any share or interest therein.

(k) Any demand concerning the cancellation and delivery up of instruments relating to—

(i) mortgages, charges, or encumbrances of or upon any such land, race, drain, dam, reservoir, water, machinery, gold, or minerals as aforesaid, or any share or interest therein;

(ii) any assignment of such mortgages, charges, and encumbrances;

(iii) any contract respecting the working or use for mining purposes or otherwise in relation to mining of any such race, drain, dam, reservoir, water, or machinery; or

(iv) any partnership for mining, or in any such land, race, drain, dam, reservoir, water, machinery, gold, or mineral, or the total or partial dissolution of any such partnership.

(l) Any demand concerning the ascertainment and adjustment of boundaries of land held or occupied under any such Act, or regulation, where such boundaries are in dispute or doubtful; in which case the court shall ascertain and determine such boundaries by such means as may be found convenient, and shall make and give all such orders and directions as may be necessary for the purpose of carrying out the decree or order of such court.

(m) Any demand concerning any Crown land, or share or interest therein, which the complainant claims to be entitled to take possession of and occupy under a business license, and of which the defendant is and claims to be entitled to be in possession; any trespass upon any such land of which the complainant is in, and of which he claims a right to the occupation or possession under such license.

(n) Any money claimed to be due upon any mining partnership account, or in any way accruing to the complainant from any mining partnership adventure or interest.

(o) The recovery of any money which any person is liable to pay under any such Act or regulation, and for which no other mode of recovery is hereby provided.

(p) All questions and disputes which may arise between miners in relation to mining on Crown lands or private lands.

(q) All questions or disputes which may arise as to the working or management of any lease.

Jurisdiction where title is derivative. 37 Vic. No. 13, s. 69.

(2) The jurisdiction hereby conferred shall extend to cases where the right or title of either party is derivative by assignment or otherwise as well as to where the same is original.

Wages to be a first charge.

134. All debts for wages due by any mining company, or any lessee or claim holder, to any employee in respect of services performed in connection with any mining, not exceeding twenty-five pounds, shall have priority over all other claims, and shall be a first charge upon the lease, claim, plant, machinery, and improvements in connection with which such services were performed notwithstanding any lien, mortgage, or charge thereon, and such debts shall be paid in full unless the said property is insufficient to meet them, in which event they shall abate in equal proportions.

Decision in certain cases to be final. *Ibid.*

135. (1) In all suits where the amount claimed or the value of the right or property in dispute does not exceed fifty pounds, the decision of the warden's court shall be final.

Parties may agree that warden's decision shall be final. *Ibid.* s. 107.

(2) If before the hearing of any complaint or other proceedings in a warden's court the parties agree to accept the decision of the said court as final, a memorandum of such agreement shall be entered by the warden in the register kept by him, and in such case the warden's decision shall be final.

Suitor to hold miner's right or lease cf. *Ibid.* ss. 19, 60.

136. No person shall be entitled to sue in a warden's court in respect of any matter affecting the title to any land, right, easement, or interest held under this Act or any Act hereby repealed unless he is the holder of a miner's right, business license, authority, application for lease, or lease granted under this or any Act hereby repealed, or the holder of a registered share in a claim.

Minors may sue.

137. Minors may sue and be sued in connection with holdings of any nature under this Act, and their holdings shall be liable to be taken in execution and sold under legal process.

Division 2.—Hearing and procedure.

Hearing of complaints.

Complaint may be heard without summons. *Ibid.* s. 71.

138. (1) The warden may, if both parties consent thereto, hear and determine any complaint summarily in the presence of them both and without requiring any formal proceedings to be taken in a warden's court, and every such decision shall be final.

Consent in writing.

(2) Such consent shall be in writing signed by the parties, and the warden may take the statements of the parties on oath.

Summons. *Ibid.* s. 70.

(3) Where consent has not been given as aforesaid, proceedings shall be commenced by a summons to be issued by the warden or his clerk to the complainant on his application, on the payment of the fee prescribed by the rules.

Such

Such summons shall state concisely the facts constituting the complaint, and the amount of money (if any) claimed, and shall state a day for the appearance of the defendant before the warden's court, and shall be in the form and shall contain the particulars prescribed by the rules.

(4) A summons shall be served on the defendant, either personally or by leaving the same at his last known place of residence with any person apparently of or above the age of sixteen years: Provided that if it is made to appear that any defendant cannot after diligent inquiry be found, or cannot from any cause after reasonable effort be personally served with the summons, the warden may order that service of the summons in such manner as he may direct by such order shall be deemed good service upon such defendant, and if necessary may postpone the hearing to allow of such substituted service; and service of such summons in the manner directed by such order shall be deemed good service for all purposes. Service of summons.

139. (1) Upon the day named in the summons, or upon any adjourned day of hearing, the court shall require such proof as it thinks sufficient of the service or substituted service of the summons upon all parties interested who have not appeared, and thereupon in the absence of any of the parties interested who, having been duly served with such summons, do not appear, but in the presence of all other parties interested, or of such of them as appear to the court sufficiently to represent all such parties, the court shall proceed to investigate the matter of such complaint, and to hear and determine the same in a summary way. Warden to hear and determine. 37 Vic. No. 13, s. 70.

(2) An agent duly authorised in writing by any party to a proceeding, shall have the right of audience in a warden's court. Audience.

140. (1) The court may adjourn the hearing of any complaint to any other time or place, and make all such amendments in any proceedings as may be necessary for the purpose of determining the real question in controversy between the parties, notwithstanding that the summons does not show the substance of the facts constituting the complaint. Amendment of proceedings. cf. 37 Vic. No. 13, s. 75.

If it appears that any person who ought to have been joined as a defendant has not been joined, the court may on the application of the complainant amend the proceedings by including such person as a defendant and adjourn the hearing to allow of the service of the summons upon him.

If it appears that any person who should have been joined as a complainant has not been so joined, the court may, with the consent of such person, and on the application of either party to the proceeding, by amendment include such person as a complainant. Complaint not to be dismissed for informality. cf. *Ibid.*, s. 75.

Any such amendment may be made subject to such terms as to costs, adjournment, or otherwise as to the court seems just.

(2)

(2) No complaint shall be dismissed for informality in the summons or any entry thereof, or for any defect or misnomer or inaccurate description of any person or place, or on the ground that the plaintiff appears to be entitled to different relief from that claimed in the summons, or that there is any variance between the summons and the evidence adduced at the hearing on the part of the complainant. Every such case may be dealt with by amendment under the power to amend hereinbefore contained, so that the real question in controversy shall be determined.

In absence of warden, his clerk may adjourn court.

141. If on any day appointed for the holding of a warden's court, or on the day to which any such court has been adjourned, the warden is prevented by any cause from attending such court, the warden's clerk may adjourn the court for such time or until such day as may be necessary.

Payment into court.

Defendant may pay money into court. 37 Vic. No. 13, s. 74.

142. (1) Notwithstanding anything hereinbefore contained, the defendant may, at any time but not less than two days before the hearing, in any case where the claim is for money, pay into the warden's court the amount claimed, or such less amount as he may think a full satisfaction in respect of the matter complained of, together with the complainant's costs up to the time of payment.

Notice of payment. *Ibid.* s. 74.

(2) The warden's clerk shall give the prescribed notice of such payment to the complainant, and shall also, on demand, pay the amount so received to the complainant or his attorney.

Proceedings thereupon. *Ibid.* s. 74.

143. If the full amount claimed, together with costs as aforesaid, has been so paid into court, or if the complainant has accepted such less sum as aforesaid, no proceeding shall thereafter be brought in any court in respect of the said claim. But if a less amount than that claimed, with costs as aforesaid, has been so paid in, and the complainant elects to proceed, and not accept the same, then in the event of his not recovering any further sum in respect of such claim, the warden may order him to pay the defendant's costs incurred subsequently to such payment in.

Division 3.—Orders.

Payment by instalments.

Instalments may be ordered.

144. When any order for the payment of money is made, the warden's court may order the amount to be paid at such times and by such instalments as the court may deem fit.

Complaints for injury to property, &c.

Court may determine boundaries. *Ibid.* s. 80.

145. (1) On the hearing of any complaint before a warden's court for the recovery of possession of, or for any encroachment or trespass upon, or for any unlawful interference with or injury to, any land,

land, water-race, drain, dam, reservoir, machinery, or water, or any share or interest therein, the court may if it thinks fit determine the boundaries of any such land, or the quantity of water to be taken by either of the parties.

Mesne profits, or damages may be awarded. 37 Vic. No. 13, s. 80.

(2) If in any such proceedings the decision is in the complainant's favour, the court shall determine whether any and what sum in the nature of mesne profits or damages shall be paid to him by the defendant.

The court may also in such case order, if necessary, that—

(a) possession of anything sued for be delivered to the complainant;

(b) the complainant be put into possession of any such land, race, drain, dam, reservoir, or machinery, or any share thereof, and any defendant and his servants, and any buildings, fixtures, implements, goods, and chattels, be removed therefrom;

(c) any defendant be restrained from using any such water as aforesaid.

Relief may be granted to defendant. *Ibid.* s. 82.

(3) If in any such proceedings the court finds that the complainant himself has wrongfully encroached, or trespassed, or interfered with any land, race, drain, dam, reservoir, machinery, or water, in respect of which such proceedings were brought, the court may grant the same relief to the defendant against the complainant as it is hereinbefore empowered to grant to a successful complainant.

Proceedings for diversion of water. *Ibid.* s. 81.

(4) In any proceedings before a warden's court in respect of the right to divert any water, or to remove any water-race, drain, dam, reservoir, or machinery, if the decision is in the complainant's favour the court shall declare him at liberty to divert such water, or remove such race, drain, dam, reservoir, or machinery, and may make an order restraining any defendant from interfering with or preventing such diversion or removal.

Defendants in illegal occupation. *Ibid.* s. 40.

(5) Persons in illegal occupation of lands, or in whose names the same may be registered, may be proceeded against by a holder of a miner's right, and the court may order their ejectment and removal in terms of subsection two of this section: Provided the complainant has applied for the ground either as a claim or a lease.

Deposit pending decision.

Warden may order deposit of gold, &c. *Ibid.* s 89.

146. (1) Upon application to the warden's court by any party to any proceedings upon summons therein, such court may order any other party thereto to deposit, in order to abide its decision, any earth, gold, minerals, money, or chattels, the right to which will in the opinion of the court be put in issue in the course of such proceedings, and which may then be, or which at any time before the final termination of such proceedings may come into the possession, power, or control of such party. Such order shall specify the thing to be so deposited, and shall

shall direct such deposit to be made within a time or times mentioned with some person or at some place specified either in the name of the warden or of some other person mentioned in such order.

Notice.
37 Vic. No. 13, s. 89.

(2) Unless such order is claimed in the summons it shall only be made after twelve hours' notice served by the applicant upon the parties interested in opposing the same, or such of them as appear to the warden sufficiently to represent such parties.

Penalty.

(3) Any person against whom such order has been made who neglects or refuses to obey such order shall be liable to a penalty not exceeding fifty pounds.

Injunction.

Warden may grant injunction.
cf. *Ibid.* ss. 58, 87.

147. (1) Upon application to the warden's court by any person claiming to be legally or equitably interested in any land, lease, claim, race, drain, dam, reservoir, water, machinery, or easement, such court may in its discretion and upon such terms as to costs or otherwise as it may consider just, grant an injunction restraining any person named therein from encroaching upon, occupying, using, or working any such property, or from seeking for, washing out, extracting, or removing any earth, gold, or other minerals taken therefrom, or from selling or disposing or otherwise interfering therewith, or from doing any act whereby the right, title, or interest of the applicant in or to the same might be affected.

Duration of injunction.
cf. *Ibid.* ss. 58, 87.

(2) Every such injunction shall be in force for the period named therein, unless the same is sooner discharged by the court making the same or on appeal.

Application for injunction.
cf. *Ibid.* s. 87.

(3) An injunction as aforesaid may be applied for either upon summons claiming the same, with or without other relief, or upon notice served as in the case of a summons upon the persons and within the period prescribed by the rules. The same rules of procedure shall be observed at the hearing of every such application as are herein prescribed in the case of the hearing of an ordinary summons.

Ex parte injunction in case of urgency.
Ibid. s. 88.

(4) The warden may also grant an injunction as aforesaid to last for not more than one month inclusive of the day of making the same, unless sooner discharged, without such summons or notice, if the applicant satisfies the court that the case is one of extraordinary urgency. No subsequent injunction or continuance of the injunction so granted shall be made under this subsection, but application for a further injunction may be made under the provisions of subsection three, either before or after the expiration of the period of the injunction.

After injunction granted, warden may order working upon terms.
Ibid. s. 91.

(5) When any injunction has been granted by a warden's court or on appeal therefrom under this Act, the warden, upon the application of any holder of a registered claim adjacent to the property under such injunction who shows to the satisfaction of such warden that

that the claim of such holder will sustain damage or be materially depreciated in value by reason of the non-working of the said property under injunction, may order, upon such terms as he thinks fit, such working of the said property as in his opinion will be sufficient to prevent such damage or depreciation, and the said warden shall make such order as to the cost of such working as he may think just.

(6) Any person disobeying an injunction granted by the warden shall be liable to a penalty not exceeding one hundred pounds for every day of such disobedience. Penalty.

Delivery of specific chattels.

148. (1) Where any money or any gold or mineral is claimed in a warden's court, such court may order the payment or delivery of any such money, gold, or mineral which it may find to be due or deliverable by either of the parties to the other of them in respect of the subject matter of the said proceedings. Court may order delivery of gold, &c. 37 Vic. No. 13, s. 83.

(2) In cases where any such claim as aforesaid arises out of any mining partnership, adventure, or interest, the court may take the account of such partnership, adventure, or interest so far as may be necessary to ascertain what moneys, gold, or minerals (if any) are so due from one party to the other, and make such order in the premises as may be just. Accounts. *Ibid.*

Costs.

149. The court may allow costs to the successful party in all suits, inquiries, and proceedings, and may allow the costs of any adjournment of any suit, inquiry, or proceeding. Costs may be allowed.

DIVISION 4.—EXECUTION.

Form and service of orders.

150. (1) Every order made by the warden under this Act may be in the form prescribed by the rules. Form. *Ibid.* s. 90.

(2) Every such order shall, unless the warden otherwise directs, be served by delivering a copy to the person to be bound thereby, and at the same time showing the original order if such person requires to see the same: Provided that if the warden sees fit so to direct, it shall be sufficient service of any such order to publish a copy of such order in such newspaper, and to affix a copy thereof in such conspicuous place at or near the property in dispute as the warden appoints. Service. *Ibid.*

151. If any money ordered by a warden's court to be paid in respect of debt, damages, costs, or otherwise is not paid forthwith, the warden, on the application of the person entitled to receive such Writ of execution cf. *Ibid.* s. 84.

such payment, or his attorney, or duly authorised agent, shall grant a writ of execution under his hand in the form prescribed by the rules as nearly as practicable. But the warden may withhold the issuing of such writ for a period not exceeding seven days from the date of such order if he considers it just or reasonable so to do.

Writ to be obeyed. cf. 37 Vic. No. 13, s. 84.

152. (1) Any bailiff of a warden's court or district court to whom such writ has been delivered for execution, and all constables and peace officers within their several jurisdictions shall do and perform all things in respect of such writ which they are required respectively to do and perform in respect of a writ of execution issued out of a district court in case of the non-payment of money under a judgment of such court.

Bailiff may seize property. *Ibid.*

(2) Every bailiff as aforesaid may by virtue of such writ seize and take such property of the party against whom such writ is directed as could be seized and taken by virtue of a writ issuing out of a district court, and shall have the same powers and duties in respect of the seizure, sale, and disposal of such property, and all matters connected therewith, as are by law conferred and imposed on the bailiff of a district court upon a writ of fieri facias issued by the registrar thereof.

Court may order gold &c., to be delivered. *Ibid.* s. 85.

153. (1) Where a warden's court orders the payment of money in respect of any debt, damages, costs, or otherwise, the court may at the time of such order being made further order, if it thinks fit, that any gold or mineral in the possession, and being the property of the party directed to make such payment shall (to the extent in value of such payment as estimated by the court) be delivered up to the party entitled to such payment in satisfaction or part satisfaction thereof, and may forthwith cause such gold or mineral to the extent aforesaid to be seized and delivered accordingly.

Execution for balance only. *Ibid.*

(2) When any such order as aforesaid has been made, the writ of execution shall only be granted in respect of any balance of such payment as aforesaid remaining due after deducting the value of any gold or mineral so delivered to the party entitled to such payment.

Mode of enforcing orders where not specially provided for.

Warden may authorise person or officer to perform any prescribed act. *Ibid.* s. 92.

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

DIVISION 5.—ASSESSMENT OF COMPENSATION.

155. (1) Where compensation is by this Act directed to be assessed by the warden in respect of land entered or occupied, or proposed to be entered or occupied, under a miner's right, authority, lease, or application for lease, or in respect of any land adjoining thereto, such assessment— How compensation assessed. 57 Vic. No. 32, s. 17. 60 Vic. No. 40, s. 2 (*d*).

(a) shall be made in the manner prescribed, and after notice to the persons who appear to him to be interested in the assessment; Act No. 44, 1899, s. 10.

(b) shall be of the loss caused and likely to be caused by damage to the surface of the land, and to any crops, buildings, and improvements thereon by works carried on in pursuance of such right, authority, lease, or application;

(c) shall not exceed in amount the market value for other than mining purposes of the land and the improvements thereon;

(d) shall, subject to the appeal to arbitration hereinafter provided, be final.

(2) The amount so assessed shall be paid by the holder of such right, authority, or lease, or by such applicant, into the warden's court, and shall, from time to time, on damage being caused as aforesaid, be paid out of court on the application of any person having interest in the land.

(3) Provided that, on production of a document in writing signed by the holder or applicant aforesaid, and by the person having interest in such land, agreeing to dispense with such assessment and payment, the warden shall, in terms of such document, dispense with the making of such assessment absolutely or on conditions so as to carry out the terms of such agreement.

(4) If after the expiration of six months, and before the expiration of twelve months, from the determination of such lease or authority, or from the refusal of the application for the lease, the whole or any part of an amount so paid into court has not been paid out under the above provisions of this section, and has not been ordered to be so paid out, any person who has paid such amount into court may apply to the warden for the payment out to him of such amount or part, and the warden may order such payment to be made.

After the expiration of such twelve months, the warden may cause such amount or any part thereof to be paid into the Treasury and carried to the Consolidated Revenue Fund.

156. In making any such assessment, the warden— Procedure in court on making assessment.

(a) may make such assessment at any time and place fixed by him;

(b) may make such assessment in the absence of any persons interested who appear to the warden to have been duly notified;

(c)

(c) may adjourn the hearing to any time and place, subject to such terms as to costs or otherwise as he thinks fit;

(d) shall have the powers of a warden's court.

Additional assessment. 57 Vic. No. 32, s. 20. Act No. 44, 1899, s. 21.

157. If after such assessment has been made it is proved to the warden that the amount so paid into court in respect of certain land has been duly paid out, and that since such payment out further loss has been caused by damage as aforesaid to such land, or to other land, the warden may as aforesaid assess such loss and order the same to be paid by the holder or applicant aforesaid to any person having interest in the land so damaged. If such payment is not so made, the claim, authority, or lease may be cancelled.

Appeal to arbitration. cf. 57 Vic. No. 32, s. 20.

158. Any person dissatisfied with any assessment made by the warden under the provisions of this Act (other than assessments in respect of land resumed) where the amount so assessed exceeds five pounds, may, in the prescribed manner, give notice that he requires the assessment to be determined by arbitration under this Act.

Such assessment shall thereupon be made and determined by arbitrators appointed as prescribed. The arbitration shall be in the nature of an appeal from the assessment of the warden, and the powers of the arbitrators and proceedings before them shall be as prescribed. The determination of the arbitrators shall be final and shall be given effect to by the parties and by the warden:

Provided that the appellant shall deposit with the warden five pounds to answer any costs which the arbitrators may order him to pay.

Appeal against assessment.

159. (1) The Minister, or any person claiming payment for land resumed under this Act, if dissatisfied with the amount of the value assessed in respect of any such resumed land, may give notice of appeal against such assessment in the manner prescribed.

(2) Such appeal may be made to a court consisting of a judge of the Supreme Court appointed in that behalf by the Governor and two assessors, one to be appointed by the Minister and one to be appointed by the owner of the land resumed; but if the Minister or such owner fails to appoint an assessor, the judge shall appoint an assessor on his behalf.

Each assessor shall be paid by the person by or on behalf of whom he has been appointed.

(3) The decision of the judge and one of the assessors shall be final:

Provided that if the Minister and the said owner agree in writing that the appeal shall be heard and determined by the judge without assessors, the appeal shall be so heard and determined and the decision of the judge shall be final.

160.

160. (1) A judge of the Supreme Court may give such directions and make such orders as may be thought necessary to enable the appeal to be heard and determined. Rules and orders of appeal, by whom made.

(2) The judges of the Supreme Court, or any three of them, may make rules as to the procedure in, and relating to, such appeals.

PART VIII.

Appeals.

Division 1.—To District Court.

161. If any party to a complaint or proceeding in a warden's court is dissatisfied with the decision of the said court where such decision is not in or by this Act declared to be final, such party may appeal from the same to the District Court sitting as a court of appeal in its mining jurisdiction at that sitting of such court which next after the expiration of fifteen days from the day of the making of such decision is held at or nearest to the place at which such decision was made. Right to appeal from warden's court. 37 Vic. No. 13, s. 106.

162. (1) The person so appealing shall, within seven days from the day of the making of such decision, deposit with the registrar of the District Court at the place where such sitting is to be held the sum of ten pounds, or such less sum as the warden may order, to abide the costs of such appeal, and give security to the satisfaction of the warden for the due performance of any order which the District Court hearing such appeal may think fit to make, and shall lodge notice in writing of his appeal, stating the grounds thereof. Thereupon such registrar shall issue out of such court a summons, in the form and containing the particulars prescribed by the rules. The hearing of the appeal *Ibid.*

(2) Any person so lodging notice of appeal against any such decision shall be taken to have abandoned his right of appeal under Division two of this Part.

Such appeal to a District Court shall be heard before the said court, which shall proceed to make an order reversing or varying such decision or dismissing such appeal or such other order as to the said court may appear just; and in and by such order the said court may make such order with respect to the costs of the appeal, and of the proceeding appealed from, as it may think fit.

(3) Provided that no such appeal shall be so heard unless the said summons has been served seven days before the same is returnable upon all the parties interested in supporting such decision, or upon such of them as appear to the judge sufficiently to represent all the parties interested,

interested, or, in case no such party can be found, upon the warden who made the decision, nor unless at the hearing of such appeal a copy of the minute of such decision, certified under the hand of a warden or warden's clerk, is produced to such court.

Appeal how to be heard.
37 Vic. No. 13, s. 109.

163. Every such appeal shall be in the nature of a rehearing of the whole matter, and shall be heard and determined by the said judge sitting as aforesaid, and no ground of appeal except those stated in the notice of appeal shall be entered upon unless the judge allows, either before or at the hearing, other grounds to be added upon such terms as to adjournment, costs, or otherwise as he may think fit.

Injunction, &c., and stay of proceedings may be had.
Ibid. s. 111.

164. Whenever any such appeal has been brought or be about to be brought, the warden, from the decision of whose court the appeal is or is about to be brought, may on the applicaton of any of the parties interested in such appeal, make such order for an injunction or receiver or payment of money into the hands of the warden, to abide the event of the appeal, or for stay of proceedings or otherwise, and upon such terms as he may think proper; but unless such order, or an order to the same effect, is so made, no appeal shall operate as a stay of proceedings. The said warden may at any time discharge any such order made by him.

No costs on appeal under twenty pounds unless under special circumstances.
Ibid. s. 108.

165. If, upon the hearing of such appeal, the subject matter of the dispute appears to the court before which the appeal is heard not to exceed in value twenty pounds, the appellant shall not, although he succeeds, be entitled to receive any costs of such appeal from the opposite party, unless the judge of such court is of opinion that the special circumstances of the case entitle the appellant to costs.

Mode of enforcing decision after appeal
Ibid. s. 112.

166. (1) If an appeal against the decision of any warden's court is dismissed, or if on appeal such decision is varied, such decision, or such decision as so varied (as the case may be), shall be deemed to be the decision of the warden's court and may be enforced as if it had been the original decision of such court.

(2) Provided that if a District Court on any such appeal orders that possession of any land, race, drain, dam, reservoir, or water, or of any gold or minerals, or of any share or interest therein, be delivered or restored to any party to the appeal, then it shall be lawful for any warden, and he is hereby required, to cause possession thereof to be delivered or restored to such party, and if necessary for that purpose to cause to be removed from any such land, race, drain dam, reservoir, or water any other person, his servants, goods, and chattels; and all members of the police force and other peace officers shall assist him in doing so.

(3) Provided also that if—

(a) any decision of a warden's court, when so affirmed or varied, contains an award of debt, damages, and costs, or either of them, and the same has not been previously paid or satisfied; or

(b)

(b) any decision of a district court reversing the decision of the warden's court contains an award of debt, damages, and costs, or either of them, or an order for payment or repayment of money, and the same is not forthwith, or within the time limited for such payment in the adjudication on appeal, paid or satisfied; or

(c) if such District Court orders that any money received by any respondent under the decision appealed against be paid into court, and the same is not forthwith, or within the time limited as aforesaid, paid into court; or

(d) if such court decrees costs against any party to such appeal, and the same is not paid within the time so limited,

the registrar of such court (upon the application of the person entitled to receive the same, and without any summons or notice to the person required to pay the same) may forthwith issue execution for the amount thereof in the same manner as upon any judgment or order of the said court for payment of money.

Appeal to Supreme Court.
37 Vic. No. 13, s. 115.

167. (1) If the appellant or respondent in any appeal to a mining appeal court, in which the amount of the original claim or the value of the property involved exceeded fifty pounds, is dissatisfied with the determination or direction of the said court in point of law or upon the admission or rejection of any evidence, or if the appellant or respondent is dissatisfied with the determination and direction of the said court on any grounds, and the amount claimed or involved by the decision of such court is not less than five hundred pounds, such appellant or respondent may appeal from the said determination or direction to the Supreme Court:

Provided that the party so appealing shall, within such time and in such manner as may be prescribed by the rules, give notice of such appeal to the other party, or his attorney, and also give security (to be approved of by the registrar of the said mining appeal court) for costs of the appeal and the amount of the judgment, or in lieu of giving such security, deposit in the hands of such registrar the amount of the judgment, together with thirty pounds in addition to such amount, to answer the costs of the appeal if such appeal be dismissed.

(2) The Supreme Court may either order a new trial before such mining appeal court on such terms as it thinks fit, or may order judgment to be entered for either party as the case may be, and make such order with respect to the costs of the said appeal as such court may think proper. Such orders shall be final, and such appeal shall be in such manner and form, and subject to such regulations in all respects as the judges of the Supreme Court may by general rules in that behalf prescribe.

(3) Such appeal shall be transmitted by the appellant to the prothonotary, and be set down for argument in the Supreme Court in the same manner as special cases in actions at law in that court.

DIVISION 2.—TO SUPREME COURT.

Case stated for opinion of Supreme Court.
Justices Act, 1902, s. 101.

168. (1) If any party to the proceedings in a warden's court is dissatisfied with the determination by the warden therein as being erroneous in point of law, he may, within the prescribed time, apply in writing to the said warden to state and sign a case, setting forth the facts and grounds of such determination for the opinion thereon of the Supreme Court.

(2) The party so applying shall be called the appellant, and the other party to the proceedings shall be called the respondent.

Security to be provided by appellant.
Ibid. s. 102.

169. Before such case is stated and delivered to the appellant, he shall lodge with the warden's clerk the prescribed fees, and the sum of twenty pounds, or such less sum as the warden may order, to abide the costs of the appeal, and shall give and provide security to the satisfaction of the warden for the due performance of any order which the Supreme Court may think fit to make.

Warden may refuse to state case.
Ibid. s. 103.

170. (1) If the warden is of opinion that the application is merely frivolous, he may then, but shall not otherwise, refuse to state a case.

Certificate of such refusal.

(2) Where the warden refuses to state a case he shall, on the request of the appellant, sign and deliver to him a certificate of such refusal.

Supreme Court may direct case to be stated.
Ibid. s. 104.

171. (1) Where the warden refuses to state a case, the appellant may apply to the Supreme Court upon an affidavit of the facts for a rule calling upon the warden and the respondent to show cause why such case should not be stated.

(2) The court may make absolute or discharge such rule with or without costs.

(3) Where such rule is made absolute, the warden, upon being served with a copy thereof, shall state a case accordingly, upon the appellant lodging the fees making the deposit and giving the security aforesaid.

Appellant to give notice.
Ibid. s. 105.

172. The appellant shall, within seven days of receiving the case, serve notice in writing of such appeal, together with a copy of the case as stated and signed, on the respondent, and shall thereafter and within the said time transmit such case to the prothonotary of the Supreme Court.

Powers of Supreme Court.
Ibid. s. 106.

173. (1) The Supreme Court shall hear and determine the questions of law arising on such case; and shall—

(a) reverse, affirm, or amend the determination in respect of which the case was stated; or

(b) remit the matter to the warden with the opinion of the Court thereon; or

(c) make such other order in relation to the matter as seems fit:

Provided

Provided that the court may cause the case to be sent back for amendment, and thereupon it shall be amended accordingly, and the order of the court shall be made after it has been so amended. Case may be sent back for amendment.

(2) The court may make such order as to costs as seems fit, provided that no warden who has stated and delivered a case in pursuance of this Act shall be liable to any costs in respect of such appeal. Costs.

(3) All such orders shall be final and conclusive on all parties. Decision to be final.

174. (1) The authority and jurisdiction hereby vested in the Supreme Court may, subject to any rules and orders of the said court in relation thereto, be exercised by a judge of the said court sitting in chambers as well in vacation as in term. Powers of Court may be exercised by Judge in chambers. Justices Act, 1902, s. 107.

(2) The Supreme Court may make and alter rules and orders to regulate the practice and proceedings in reference to the stating of cases as herein provided. Rules of practice.

175. (1) Any order of a warden affirmed or amended, and any order made by the Supreme Court on the determination of any such case, may be enforced in the same manner as an order of the warden who originally decided the matter. Order enforced as order of warden. *Ibid.* s. 108.

(2) No action or proceeding whatever shall be commenced or had against any warden for enforcing any such order by reason of any defect therein.

176. (1) Any person who appeals under this Division against any determination of a warden from which he might appeal to a District Court, shall be taken to have abandoned such last-mentioned right of appeal. Persons appealing not to be allowed to appeal to District Court,

(2) Nothing herein shall in any way interfere with, curtail or limit the powers of any person to apply for a writ of prohibition against the determination of any warden. but nothing to prevent applications for prohibition.

PART IX.

General provisions.

Conditional purchases conversion.

177. Notwithstanding anything to the contrary contained in the Crown Lands Act of 1884, the Crown Lands Titles and Reservations Validation Act of 1886, the Conversion into Mining Conditional Purchases Validation Act of 1888, and any Regulations made thereunder, the right of any holder of a conditional purchase made under sections thirteen, twenty-one, or twenty-two of the Crown Lands Alienation Conversion into mineral conditional purchase.

Alienation Act of 1861 to convert such purchase into a conditional purchase for mining purposes shall, except as hereinafter provided, absolutely cease and determine, after the thirty-first day of December, one thousand nine hundred and nine, and no application for such conversion shall be entertained unless lodged in the proper office prior to such date :

Provided that if the chief or most profitable mineral contents of any land held under conditional purchase as aforesaid consist of coal or shale (and a certificate under the hand of the Government Geologist shall be accepted by the Minister as conclusive evidence of such contents, but not so as to debar the applicant from tendering any other evidence as to such contents), the right to convert such purchase into a conditional purchase for mining purposes shall subsist until the thirty-first day of December, one thousand nine hundred and thirteen, and application for such conversion may be lodged on or before that date :

Provided further that any right, title, or interest acquired under this Act, or any Act hereby repealed, in respect of any portion of such land shall not be prejudicially affected by any such conversion, whether applied for before or after the commencement of this Act.

Notices.

Service of notices.
57 Vic. No. 32, s. 15.

178. All notices required by this Act to be served upon the owner or occupier of any private land, or land not Crown land, shall, except where otherwise in this Act provided, either be served personally on the owner or occupier or on his local agent, provided the said agent is registered as such as prescribed, or left at the usual place of abode of such owner or occupier.

If in the case of a notice directed to be served on the owner such owner is absent from New South Wales, or he or his agent cannot after diligent inquiry be found, the notice may be left with the occupier, or if there be no such occupier may 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.

Documents and affidavits.

May be in writing print.
37 Vic. No. 13, s. 117.

179. (1) All documents used in any proceedings in any court under this Act or in relation to any such proceedings may be in writing or print or partly in writing and partly in print.

Affidavits may be sworn before Judge, &c.
Ibid. s. 118.

(2) Any affidavit to be used in any warden's or mining appeal court, or before a warden, may be sworn before any judge of the Supreme Court or any commissioner for that Court for taking affidavits, or before the judge of any District Court or any warden or justice.

Contempt

Contempt of court.

Contempt and penalties therefor. 37 Vic. No. 13, s. 119.

180. If any person wilfully insults any warden sitting in the discharge of any duties imposed by this Act, or wilfully interrupts the proceedings of any warden's court, or being summoned or examined as a witness in any suit or proceeding in any such court refuses to be sworn or to answer any lawful question, or is guilty of wilful prevarication, the warden, if he thinks fit, may commit any such offender to prison for any time not exceeding forty-eight hours, or impose on any such offender a fine not exceeding five pounds for every such offence, and in default of immediate payment thereof, to commit the offender as aforesaid for any time not exceeding forty-eight hours unless the fine is sooner paid.

In either of the cases aforesaid a warrant in the form prescribed by the rules may be issued by such warden, or such court, and shall be good and valid in law without any other order, summons, or adjudication whatsoever, and the bailiff and gaoler to whom the same is addressed shall obey the same.

Interpleader.

Proceedings to be taken. *Ibid.* s. 120.

181. (1) If any claim is made to or in respect of any goods or chattels taken in execution under any process issued out of any mining appeal court or by a warden, or in respect of the proceeds or value thereof, by any person not being the party against whom such process has issued, the registrar of such court or such warden may, upon application of the officer charged with the execution of such process, as well before as after any action brought against such officer, issue a summons calling before the said court or such warden, as well the party issuing such process as the party making such claim.

Action taken to be stayed. *Ibid.*

(2) Upon the issue of such summons any action which may have been brought in the Supreme Court or in any District Court in respect of such claim shall be stayed, and the court in which such action has been brought, or any judge thereof, on proof of the issue of such summons, and that the goods and chattels were so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action after the service upon him of the said summons.

Procedure upon return of summons. *Ibid.*

(3) Upon the return of the said summons, the mining appeal court or the warden issuing the process, as the case may be, shall adjudicate upon the said claim and make such order between the parties in respect thereof, and of the costs of the proceedings, as to it or him may seem fit, and such order may be enforced in like manner as any order made in any suit or proceedings before such court or such warden, as the case may be. Such adjudication and order shall be final.

Recovery

Recovery of fees, &c.

Recovery of fees, &c. 37 Vic. No. 13, s. 116.

182. All fees, charges, and sums of money payable under this Act or the regulations may, where no other mode of recovery is provided, be recovered in a court of petty sessions or District Court.

No certiorari.

Certiorari prohibited. *Ibid.* s. 122.

183. No proceedings under this Act shall be removed or removable by certiorari or otherwise into the Supreme Court.

PART X.

Regulations and rules.

Purposes for which regulations may be made. cf. *Ibid.* ss. 59, 64, 66.

184. The Governor may make regulations carrying into effect the provisions of this Act, and particularly—

(i) prescribing the modes, times, and places of and for the issue of miners' rights and business licenses and defining the various classes of tenements which may be held under miner's right;

(ii) prescribing the area and form of land which may be occupied under a miner's right or business license and the dimensions and form of the land to be demised by any lease; the manner in which applicants for the same shall mark out the land applied for; the requirements to be complied with by such persons; the manner of dealing with cases when two or more applications are made for the same tenement or for a lease of the same land or the right to divert, or collect, or use water for mining for gold or other minerals;

(iii) determining the dimensions, boundaries, form, and position of any claim, or class of claims, and the subsequent adjustment of the same where necessary, when such determination shall take effect, and the number, extent, and classes of claims which any one person, or any two or more persons in conjunction, may take possession of under miners' rights;

(iv) regulating the cutting, construction, use, and maintenance of races, dams, and reservoirs upon Crown lands in cases where leases have not been granted by the Governor;

(v) prescribing the manner in which and with what incident rights and obligations, any tenement, or any water taken or diverted by virtue of a miner's right, shall be taken possession of, held, occupied, used, worked, or assigned;

(vi) determining the order of priority among the holders of miners' rights entitled to the use of any water, how such priority is to be regulated, and under what conditions and circumstances;

(vii)

(vii) prescribing the mode of registration of any tenement occupied, or easement enjoyed under a miner's right, or any share or interest therein, or encumbrance thereon ;

(viii) providing for the registration of the assignment of any such tenement easement, share, interest, or encumbrance, or of the discharge of any such encumbrance ;

(ix) prescribing the mode of registration of any such share or interest in the case of the death, bankruptcy, or lunacy of the owners thereof, or of the sale of any such share or interest under the decree, judgment or order of any court, or the decision of a warden or mining appeal court ;

(x) prescribing the mode of registration of amalgamated claims and of orders for suspension of work ;

(xi) fixing the fees to be charged on any such registration as aforesaid ;

(xii) prescribing the time and mode of taking possession of forfeited or abandoned tenements, of registering such tenements, and the labour conditions to be performed by the persons taking possession of the same ;

(xiii) enforcing and regulating the drainage of tenements ;

(xiv) regulating the mode in which the rights and privileges of the owners of tenements, and easements under a miner's right, may be exercised or enjoyed, and limiting, qualifying, or restricting the exercise and enjoyment of such rights and privileges, and generally for the protection of such owners in the exercise and enjoyment of the rights, privileges, and interests conferred by this Act ;

(xv) prescribing the circumstances and conditions under which any tenement, or any share, right, or interest therein may be deemed to be or be declared abandoned, and the penalty, including forfeiture, for failure to comply with the conditions to be performed by the holder of any tenement ;

(xvi) for the prevention of nuisances in and about residences or places of business held under a miner's right or business license, and for cleansing and keeping clean the same ;

(xvii) prescribing how land applied for shall be described in the application ;

(xviii) prescribing the forms of applications, notices, and other documents to be used, the fees to be paid in respect of any application and for survey ;

(xix) prescribing the forms of leases and authorities to be granted under this Act, and the covenants, conditions, reservations, and provisions to be inserted therein, and the mode of registering the same ; the conditions upon which they may be issued and the privileges to be enjoyed under them ; the fees to be paid on issue of leases and upon registration thereof ;

(xx) prescribing the time within which a lessee shall execute the lease;

(xxi) prescribing the conditions upon which the amalgamation of adjoining leases may be authorised;

(xxii) prescribing the conditions under which suspension of any condition imposed for the expenditure of money may be granted;

48 Vic. No. 10, s. 4. (xxiii) for converting any authority issued under any Act repealed by this Act into a lease or leases, and for enforcing the covenants and conditions thereof;

(xxiv) for converting any lease granted under any Act repealed by this Act into a lease under this Act;

(xxv) for prescribing what shall entitle a prospector to concessions as a reward, claim, or lease, and the terms and conditions upon which any such reward, claim, or lease may be granted;

(xxvi) for preventing the accumulation of and for the removal to some convenient place of sludge, tailings, and other refuse matter, oozing or flowing from or connected with any Crown land or private land held or occupied under this Act, and worked by means of puddling, quartz-crushing, or other machines, and of waste water, and for the making of such channels as may be necessary for any of the purposes aforesaid, and for otherwise regulating such oozing, flowing, and running to waste;

(xxvii) for the protection from injury, destruction, and unlawful removal of such machines as last aforesaid, and of pegs, posts, fences and notices, and of any plant or appliances used for or in connection with mining under any claim or lease, and for the protection from obstruction of channels, drains, creeks, and rivers used for mining purposes under such claim or lease;

(xxviii) for the construction and keeping in repair of suitable bridges or other crossings over races, channels, or drains, used for mining purposes, and for making proper approaches to such bridges or crossings, and for determining the width of such bridges, crossings, and approaches;

(xxix) for making and keeping in repair, and for regulating the width and formation of private ways and passages over claims or races, or any Crown lands or private lands used for mining purposes, or for or in connection with mining, and for regulating and imposing conditions on the right to change the direction of any such way or passage, and for the protection of the same from injury or obstruction.

(xxx) for securing the baling of water from mines so as to prevent injury from such water to any mining workings;

(xxxi) for preventing the defiling or wasting of water used under this Act for domestic purposes, and for determining whether any and what water-hole, spring, or other depository of water shall be reserved for the domestic use of the holders of miner's rights, business licenses, or leases or authorities under this Act, and the mode of such reservation;

(xxxii) prescribing the procedure to be followed in any inquiry by a warden under this Act;

(xxxiii) regulating the working of machinery on dredges, and making provision for the safety of life and property in connection with dredging operations;

(xxxiv) for enforcing any regulation made under this Act by penalties not exceeding fifty pounds in any case; and

(xxxv) generally for carrying into effect the provisions of this Act.

Until such regulations have been made, the regulations in force at the commencement of this Act for the said purposes shall continue in force and shall apply to any claim, lease, or holding under this Act.

Power to make rules of practice.
37 Vic. No. 13, s. 113.

185. The District Court Judges, or any three of them, may, subject to this Act, make such general rules as they may think fit—

(a) regulating the practice and procedure of mining appeal courts and warden's courts under this Act;

(b) for the execution of the process of such courts, and in relation to any of the provisions of this Act which relate to such courts;

(c) the fees to be allowed to barristers and attorneys practising in the said courts;

(d) the expenses to be paid to witnesses in the said courts;

(e) prescribing the forms for matters or proceedings in the said courts;

(f) for keeping all books, entries, and accounts to be kept by the registrar or clerk of any such court.

All such rules shall, from and after the expiration of the time fixed therein for the commencement thereof, and after the same have been published in the Gazette, be of the same force and effect as if the same had been herein enacted; and in any case not expressly provided for herein or by the said rules, the general rules in force for the time being, made under the District Courts Act, 1901, may be adopted and applied so far as practicable by wardens and District Court judges exercising jurisdiction under this Act.

Rules and regulations to be laid before Parliament.
Ibid. s. 114.

186. All regulations and all general rules made under this Act shall be laid before both Houses of Parliament within fourteen days after the publication of the same in the Gazette if Parliament is then sitting, and if not, then within fourteen days after the commencement of the next session of Parliament.

PART

PART XI.

PENALTIES.

187. Any person who—

Unauthorised mining, &c. 37 Vic. No. 13, s. 123.

(a) mines or employs any other person to mine in, or cuts or constructs any race, drain, dam, or reservoir through or upon, or cuts or removes any live or dead timber, or any earth from any Crown lands without lawful authority shall be liable for each such offence to a penalty not exceeding ten pounds.

Unauthorised occupation of Crown land. *Ibid.* s. 124.

188. Any person who on any Crown land—

(a) mines for gold or any other mineral; or

(b) occupies such land for mining purposes; or

(c) employs any person for any of the above purposes; or

(d) occupies such land for the purposes of any business or for residence,—

shall, unless he proves that he was authorised by or under this or any other Act to so mine on or occupy such land, or where he so employs any person that the said person was so authorised, be liable to a penalty not exceeding ten pounds.

Breach of regulation. *Ibid.* s. 126.

189. Any person who infringes any regulation for the infringement whereof no penalty is prescribed by the regulations, shall be liable for each such offence to a penalty not exceeding ten pounds.

Witness neglecting to appear. *Ibid.* s. 130.

190. Any person duly served with any summons issued out of a mining appeal court or any warden's court, or by a warden under this Act, requiring such person to appear as a witness in such court, or on any proceeding for inquiry before such warden, and to whom at the same time payment or tender of his expenses has been made according to the scale to be fixed by the rules, and who refuses or neglects without sufficient cause to appear according to the tenor of such summons, shall be liable to a penalty not exceeding ten pounds, but no conviction for such penalty shall exempt such person from any action for disobeying such summons.

Disobedience of order.

191. Any person against whom any order, not being an order for the payment of money, has been made by any mining appeal court or warden's court, who refuses or neglects to obey the same, shall, where no penalty is herein specified, for such refusal or neglect, be liable to a penalty not exceeding fifty pounds.

Assault on warden and other offences. *Ibid.* s. 129.

192. Any person who—

(a) assaults, obstructs, or resists any warden or any person duly authorised by any mining appeal court or warden in lawfully entering upon any claim or land, or in performing any other act authorised hereby, or any bailiff or other officer, or any clerk or assistant of such bailiff or officer, or any inspector or other person, in the performance of his duty, or in the exercise of his powers under this Act; or

(b)

(b) after being removed by any warden under the provisions of this Act from any claim or other place, forcibly or clandestinely retakes or retains, or endeavours to retake or retain, possession thereof, or of any portion thereof, or of any share therein; or

(c) after any decision of a mining appeal court, or any decision of a warden's court not reversed on appeal, that any person is entitled to use for mining purposes, or to divert any water, resists such person or his agents in such use or diversion; or

(d) upon or in consequence of the decision of any such court against him, assaults or threatens to assault any person in whose favour such decision has been made

shall be liable to a penalty not exceeding fifty pounds.

Wrongful exaction of moneys.
37 Vic. No. 13, s. 123.

193. Any person who wilfully and corruptly exacts, takes, or accepts any fee, sum, or reward whatsoever, other than and except such fees or sums as are lawfully appointed or allowed for or on account of anything done under the authority of this Act or the regulations, shall be liable to a penalty not exceeding fifty pounds.

Forgery of documents.
Ibid. s. 125.

194. Any person who forges any miner's right, or any lease, license, or any authority issued or purporting to be issued under this Act, or fraudulently uses, utters, or exhibits any such forged miner's right, lease, license, or authority, knowing the same to be forged, shall be guilty of a misdemeanour, and shall on conviction thereof be sentenced to imprisonment either with or without hard labour at the discretion of the court for any period not exceeding twelve months.

Wrongful obstruction on private lands
57 Vic. No. 32, s. 10.

195. Any owner or occupier of any private land as defined in Part IV, or of any land which is not Crown land as defined in Part V of this Act, or any other person who—

(a) obstructs any holder of a lease, or authority to enter, granted under the provisions of the said Parts respectively in doing any act which he is by this Act authorised to do, on, in, or under such land; or

(b) interferes with, removes, destroys, or defaces any boundary mark authorised by this Act to be placed on any land,

shall be liable for a first offence to a penalty not exceeding ten pounds, and for a second or any subsequent offence to a penalty not exceeding fifty pounds.

Wrongful mining on private lands.

196. Any person who without lawful authority commences to mine on, in, or under any private land as defined in Part IV of this Act, shall be liable to a penalty not exceeding ten pounds, and any gold, minerals, or metals obtained by such unauthorised mining may be forfeited by the court before which he is convicted of such offence.

False quantity or value.

197. Any person who knowingly inserts any false quantity or value in any return directed by this Act to be made or furnished shall be liable to a penalty not exceeding fifty pounds.

198.

Recovery before any warden.
37 Vic. No. 13, s. 116.

198. (1) All penalties imposed under this Act or the regulations may be recovered in a summary way before any warden who is also a justice, in accordance with the provisions of the Acts in force for the time being regulating proceedings on summary convictions before justices.

Civil remedy remains though penalty recovered.
Ibid. s. 121.

(2) Notwithstanding the recovery of any penalty under this Act, any person may enforce any civil remedy which he may have by reason of the act or default in respect of which the penalty may have been recovered.

SCHEDULES.

SCHEDULE ONE.

Year and Number.	Title or Short Title.	Extent of repeal.
37 Vic. No. 13 ...	Mining Act, 1874	The unrepealed portion.
43 Vic. No. 28 ...	An Act to amend the Act 37 Victoria No. 13...	The whole.
46 Vic. No. 7 ...	An Act to further amend the Act 37 Victoria No. 13.	The whole.
48 Vic. No. 10 ...	Mining Act Further Amendment Act of 1884...	The whole.
48 Vic. No. 17 ...	Mining Lease Validating Act of 1884	The whole.
53 Vic. No. 20 ...	Mining Act of 1889	The whole.
57 Vic. No. 32 ...	Mining on Private Lands Act of 1894	The whole.
60 Vic. No. 7 ...	Mining Act Amendment Act of 1896	The whole.
60 Vic. No. 40 ...	Mining Laws Amendment Act of 1896 ...	The whole.
No. 44, 1899 ...	Gold and Mineral Dredging Act, 1899... ...	The whole.
No. 102, 1902 ...	Gold and Mineral Dredging (Amending) Act, 1902.	The whole.
No. 10, 1902 ...	Mining Laws Amendment Act, 1901	The whole.
No. 101, 1902 ...	Mining on Private Lands (Amendment) Act, 1902.	The whole.

Sec. 9.

SCHEDULE TWO.

NEW SOUTH WALES.

No.

[*Insert here sum paid for the miner's right.*]

Mining district and division or place in which issued.

(*Date*)

MINER'S RIGHT.

Issued to , of , under the provisions of the Mining Act, 1906, to be in force until

SCHEDULE

SCHEDULE THREE. Sec. 10.

NEW SOUTH WALES.

No.

[*Insert sum paid for the business license.*]

District and division or place in which issued.

(*Date.*)

[*Insert here whether for six or twelve months.*]

BUSINESS LICENSE.

Occupation
Residence
Issued to , of , under the provisions of the Mining Act of 1906, to be in force until the day of

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

HARRY H. RAWSON,
Governor.

State Government House,
Sydney, 28th December, 1906.

MINING BILL.

SCHEDULE showing the Legislative Assembly's Disagreements from and Amendments upon the Legislative Council's Amendments, referred to in Message of 7th November, 1906.

RICHD. A. ARNOLD,

Clerk of the Legislative Assembly.

Page 17, clause 35, lines 11 and 12. *Omit* "**be such as the Minister may in each case determine**" *insert* "not exceed ten acres"

Page 20, clause 45, line 35. *After* "coal" *insert* "or"

Page 20, clause 45, line 35. *Omit* "**or mineral oil**"

Page 21, clause 47, line 20. *Reinsert* "fifty" *omit* "**one hundred**"

Page 27, clause 64, lines 2 to 4. *Reinsert* "assessed by the warden. Such rental shall be based upon the surface value of the land for other than mining purposes" *omit* "**twenty shillings per acre, commencing from the date of the notification in the Gazette of the approval of the lease by the Governor, and payable half-yearly in advance**"

Pages 67 and 68. *Reinsert* clause 173, but *insert* after the word "shall" (page 68, line 1), the words "except as hereinafter provided" and *omit* the words "from and after the commencement of this Act"; *after* "determine" (page 68, line 2) *insert* the words "after the thirty-first day of December, one thousand nine hundred and seven"; *omit* the word "commencement" (page 68, line 4), and *insert* the word "date"; and at end of clause *add* the following provisos:—

"Provided that if the chief or most profitable mineral contents of any land held under conditional purchase as aforesaid consist of coal or shale (and a certificate under the hand of the Government Geologist shall be accepted as conclusive evidence of such contents, but not so as to debar the applicant from tendering any other evidence as to such contents), the right to convert such purchase into a conditional purchase for mining purposes shall subsist until the thirty-first day of December, one thousand nine hundred and nine, and application for such conversion may be lodged on or before that date:

"Provided further that any right, title, or interest acquired under this Act, or any Act hereby repealed, in respect of any portion of such land shall not be prejudicially affected by any such conversion, whether applied for before or after the commencement of this Act."

NOTE.—These references are to the Council's reprint of the Assembly Bill.

SCHEDULE of the Amendments referred to in Message of 7th November, 1906.

Page 3, clause 2. At end of subclause (5) *add* "**Provided that with respect to any gold-mining lease "of Crown lands so issued and in force the annual rent per acre shall be five shillings, "and the term for which such lease was granted is extended a further period of five "years.**"

Page 13, clause 24. *Omit* subclauses (1) and (2).

Page 16, clause 34. At end of subclause (5) *add* "**On the application of either party to the dispute "the warden may conduct the inquiry at the place in dispute**"

Page 17, clause 35. *After* subclause (3) *insert* new subclause (4).

Page 18, clause 39, line 17. *After* "lease" *insert* "**of Crown lands**"

Page 18, clause 39, lines 22 and 23. *Omit* "Provided that the rent for a gold-mining lease so renewed shall "be five shillings per acre" *insert* "**Provided that with respect to a gold-mining lease so "granted the annual rent on renewal shall be five shillings per acre, and the term "of the renewed lease may be for five years in excess of the term prescribed by the "said Acts for such leases when renewed thereunder**"

Page 20, clause 45. At end of clause *add* "**In this Part the word 'minerals' shall not include coal "or shale, nor shall coal, shale, or mineral oil be included within the substances which "may be declared minerals by proclamation of the Governor**"

Page 21, clause 47, line 20, *Omit* "fifty" *insert* "**one hundred**"

Page 22, clause 49, line 11. *After* "exceeding" *insert* "**ten**"

Page 26, clause 63, lines 35 and 36. *Omit* "except coal and shale"

Page 26, clause 63, lines 36 and 37. *Omit* "and to mine for coal or shale shall not exceed six hundred "and forty acres"

Page 27, clause 64, lines 2 to 4. *Omit* "assessed by the warden. Such rental shall be based upon the "surface value of the land for other than mining purposes" *insert* "**twenty shillings per acre "commencing from the date of the notification in the Gazette of the approval of the "lease by the Governor, and payable half-yearly in advance**"

Page 27, clause 64, line 8. *Omit* "also"

Page 28, clause 68. *After* subclause 2 *add* new subclause (3).

Page 29. *After* line 41 *insert* short heading and new clause 71.

Page 31, clause ~~73.~~ 74, line 18. *Omit* "section" *insert* "**Part**"

Page 31, clause ~~74.~~ 75, line 23. *After* "reservation" *insert* "**as aforesaid**"

Page 32, clause ~~79.~~ 80, lines 23 and 24. *Omit* "to arbitrators shall be in the discretion of the arbitrators" *insert* "**shall be paid by the unsuccessful party to the appeal**"

Page 32, clause ~~80.~~ 81, line 28. *After* "Crown" *insert* "**until the receipt of notification in writing "from the Minister that he is prepared to pay the value**"

Page 32, clause ~~80.~~ 81, lines 29 and 30. *Omit* "than twelve months from such date"

Page 32, clause ~~81.~~ 82, line 34. *Omit* "except coal and shale"

Page 32, clause ~~81.~~ 82, line 41. *Omit* "under any such authority or lease" *insert* "**held under lease by "the owner or occupier of such land**"

Page 33, clause ~~82.~~ 83, line 15. *After* "right-of-way" *insert* "**or rabbit-proof gates in any case where "such fences are rabbit-netted**"

Page 33, clause ~~83.~~ 84, line 35. *After* "includes" *insert* "**the owner of the freehold or**"

Page 34, clause ~~85.~~ 86. *Omit* subclause (4).

Page 39. *After* line 16 *insert* new clause 104.

Page 40. *Omit* clause 103 *insert* new clause 106.

Page 42, line 39. *Before* "Labour" *insert* "**Suspension of**"

Page 49, clause ~~122.~~ 125. At end of subclause (1) *add* "**Provided that this section shall not apply to "any lease of private land until and unless all rent due in respect thereof has been paid, "and all compensation for damage occasioned to the land demised has been duly "assessed and paid.**"

Page 50, clause ~~126.~~ 129. *Omit* subclause (2).

Page 51, clause ~~127.~~ 130, line 4. *After* "village" *insert* "**or for any public purpose**"

Page 54, clause ~~131.~~ 134, line 8. *Omit* "all property of the company, lessee, or holder" *insert* "**the lease, "claim, plant, machinery, and improvements in connection with which such services "were performed**"

Page 54, clause ~~133.~~ 136. At end of clause *add* "**or the holder of a registered share in a claim**"

Page 62, clause ~~155.~~ 158, line 12. *Omit* "the amount so assessed" *insert* "**any assessment made**"

Page 62, clause ~~155.~~ 158, line 13. *After* "warden" *insert* "**under the provisions of this Act (other "than assessments in respect of land resumed)**"

Page 62, clause ~~156.~~ 159, line 29. *Omit* "by a warden"

Page 62, clause ~~156.~~ 159, lines 30 to 32. *Omit* "by the Closer Settlement Act, 1901, and the provisions "of that Act shall mutatis mutandis apply to any such appeal under this Act"

Page 62, clause ~~156.~~ 159, At end of clause *add* new subclauses (2) and (3).

Page 63, *After* clause ~~156.~~ 159 *insert* new clause 160.

Page 64, clause ~~162.~~ 166, line 38. *After* "race" *insert* "**drain**"

Pages 67 and 68. *Omit* clause 173.

Page 69, clause ~~180.~~ 183, line 39. *After* "licenses" *insert* "**and**"

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, 9 October, 1906.

RICHD. A. ARNOLD,
Clerk of the Legislative Assembly.

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

Legislative Council Chamber,
Sydney, 7th November, 1906.

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.

ANNO SEXTO

EDWARDI VII REGIS.

* * * \

Mining.

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Repeal.

2. (1) The Acts mentioned in the First Schedule are to the extent therein expressed repealed. **Repeal.**

(2) Persons appointed under any Act hereby repealed, and holding office at the commencement of this Act, shall be deemed to have been appointed hereunder. **Persons appointed under repealed Acts.**

(3)

(3) Rules, regulations, proclamations, and notifications made under any Act hereby repealed, and being in force at the commencement of this Act, shall be deemed to have been made hereunder, and any references therein to any enactments hereby repealed shall be construed as references to the corresponding provisions of this Act. Rules, &c., under repealed Acts.

(4) Applications pending at the commencement of this Act shall, except as hereinafter provided, be dealt with in accordance with the provisions of the Acts hereby repealed and the regulations thereunder. Applications pending.

(5) Miner's rights, mineral licenses, business licenses, leases, and authorities issued under any Act hereby repealed and in force at the commencement of this Act shall, except as hereinafter in this Act provided, continue in force for the respective periods named therein and confer the same rights and privileges, and entail the same obligations and penalties, as if this Act had not passed; and every right, title, and interest acquired under and by virtue thereof shall remain and continue valid subject to the limitations contained therein: **Provided that with respect to any gold-mining lease of Crown lands so issued and in force the annual rent per acre shall be five shillings, and the term for which such lease was granted is extended a further period of five years.** Miners' rights, leases, &c.

(6) Every gold-field, mining district, and division existing at the commencement of this Act shall continue as then constituted, until dealt with by proclamation under this Act. Existing gold-fields, &c.

Interpretation.

3. In this Act, unless the context or subject-matter otherwise indicates,— Interpretation.

37 Vic. No. 13 s. 2.
43 Vic. No. 28, s. 1.
48 Vic. No. 10, s. 5.
57 Vic. No. 32, s. 2.

"Adjoining" as applicable to claims or leases means that the lands comprised in such claims or leases have a common boundary, or are only separated by a road or stream.

"Business" means profession, trade, calling, or occupation, except mining.

"Claim" means a portion of Crown land lawfully taken possession of for the purpose of mining, or any number of such portions lawfully amalgamated by the holders. But does not include land comprised in a mining lease or lease for mining purposes.

"Crown lands," except for the purpose of Part V, means lands vested in His Majesty, and includes—

(a) lands under lease from the Crown except as hereinafter provided;

(b) lands reserved, dedicated, appropriated, or resumed for public purposes, whether vested in His Majesty or in any person as constructing authority or trustee for public purposes;

(c) lands under any navigable waters, or under any harbour, estuary, bay, river, or creek vested in His Majesty, whether navigable or not; and

(d) lands which the Governor may declare by proclamation to be Crown lands;

but

but does not include—

(e) lands alienated or in process of alienation from the Crown, or lawfully contracted to be granted by the Crown; or

(f) lands subject to a conditional lease, conditional purchase lease, or lease under this Act;

(g) conditional purchases or homestead selections.

"Crown Lands Acts" means Crown Lands Act of 1884, the Western Lands Act of 1901, and the Acts amending the same.

"Earth" means rock, stone, quartz, clay, sand, soil, or mineral.

"Gold" means gold, or earth containing gold, or having gold mixed in the substance thereof, or set apart for the purpose of extracting gold therefrom.

"Gold-field" means lands heretofore or hereafter proclaimed a gold-field.

"Justice" means justice of the peace, and includes a stipendiary or police magistrate.

"Mine" includes any place, pit, shaft, drive, level, or other excavation, drift, gutter, lead, vein, lode, or reef, whereon, wherein, or whereby any operation for or in connection with mining purposes is carried on.

"Mineral field" means lands constituted a mineral field under this Act.

"Minerals" means silver, copper, tin, iron, antimony, cinnabar, galena, nickel, cobalt, platinum, bismuth, manganese, marble, kaolin, mineral pigments, mercury, lead, wolfram, coal, shale, scheelite, chromite, opal, turquoise, diamond, ruby, sapphire, emerald, zircon, apatite and other phosphates, serpentine, molybdenite, alunite and alum, barytes, asbestos, gypsum, mineral oils, monazite, and any other substance which may from time to time be declared a "mineral" within the meaning of this Act by proclamation of the Governor published in the Gazette.

"Mining Appeal Court" means District Court sitting as a court of appeal under this Act.

"Mining purpose" includes cutting and constructing any tunnel, water-race, drain, dam or reservoir, or constructing any railway or tramway, or laying any pipes for the purpose of mining, erecting buildings and machinery to be used for any process whatsoever in connection with the extracting of gold or minerals, pumping or raising water to or from land mined or worked or intended to be worked for the extraction of gold or minerals therefrom, treatment of tailings on abandoned land, and any other work which the Governor may by proclamation declare to be a mining purpose.

"Mining surveyor" means licensed surveyor specially appointed to carry out surveys under this Act. "Minister"

"Minister" means Secretary for Mines.
"Notification" means notification in the Gazette.
"Prescribed" means prescribed by this Act or the regulations.
"Proclamation" means proclamation in the Gazette.
"Prospecting board" means Board appointed to administer the Prospecting Vote.
"Race" includes any artificial channel, flume, aqueduct, tunnel, culvert, or pipe for the conveyance of water or detritus.
"River" includes a frontage creek, or any stream of water, whether perennial or intermittent, flowing in a natural channel not included in a deed of grant or embraced in an area in process of alienation.
"Schedule" means schedule to this Act.
"Small coal" means coal which will pass through a screen the bars of which are not more than three-quarters of an inch apart.
"Tenement" means land lawfully occupied under a miner's right or business license.
"The regulations" means the regulations made under this Act or any Act hereby repealed.
"The State" means the State of New South Wales.
"The warden" includes any warden appointed under this Act.
"To mine" means to disturb, remove, cart, carry, wash, sift, smelt, refine, crush, or otherwise deal with any earth by any mode or method for the purpose of obtaining gold or minerals therefrom.
"To prospect" means to search for gold or any mineral.
"Town or village" means city, town, or village, or site for a city, town, or village, and suburban lands to be attached thereto, declared, proclaimed, reserved, or set apart under the Crown Lands Acts; and includes any township site for a mining settlement which the Minister may notify in the Gazette.

Department of Mines, school, and museum of mines.

Schools of mines and museums may be established. 37 Vic. No. 13, s. 8.

4. (1) The Governor may establish and maintain in connection with the Department of Mines, schools of mines and museums for the purpose of providing instruction by means of classes, lectures, or otherwise in geology, mineralogy, and chemistry, in their scientific and practical application to mining pursuits, and may also establish and maintain offices for the assaying of mineral ores. He may appoint such professors and readers in any of the said sciences, and such assayers, curators, keepers, and servants as may, in his opinion, be requisite to give effect to the provisions of this section.

Control and management.

(2) Such schools, museums, and offices, and the staffs thereof, shall be under the control and management of the Minister.

(3)

(3) Provided that if the Governor thinks it desirable that any school or museum should be managed in connection with the University of Sydney, and so proclaims, the same shall, so long as such connection continues, be under the control and management of the Senate of the University, and such Senate shall in that case appoint such professors and readers and other persons as aforesaid as may be required. Control by University.

(4) This section shall apply to the school of mines, museum, and assay offices established at the commencement of this Act, as if they had been established under this section. School, &c., already established.

Gold and mineral fields, mining districts, and divisions.

5. (1) The Governor, by proclamation, on the recommendation of the Minister, may constitute any lands as a gold-field or mineral field, and may fix and alter the name and boundaries thereof. Gold-fields may be proclaimed. 37 Vic. No. 13, s. 10.

(2) In like manner, mining districts and divisions of mining districts may be constituted, and their names and boundaries fixed and altered. Mining districts. *Ibid.* s. 9.

(3) The proclamation of any gold-field, mineral field, mining district, or division, whether made under the Mining Act, 1874, or this Act, may be varied or cancelled in like manner by a subsequent proclamation. Cancellation. *Ibid.* ss. 9, 10.

Officers.

6. (1) The Governor may appoint so many wardens, registrars, mining surveyors, mining engineers, mining appraisers, clerks, bailiffs, assistants, and other officers as he may think necessary for the administration of this Act. Governor may appoint officers. *Ibid.* s. 12.

(2) The persons so appointed shall have the powers and perform the duties prescribed by the regulations in addition to any powers and duties specified in this Act. Powers and duties.

(3) Every warden so appointed shall be a warden for the whole State. Warden.

7. The Minister shall not, nor shall any warden, registrar, surveyor, engineer, or other officer charged with any judicial or official duties under this Act during his tenure of office, hold either directly or indirectly any beneficial interest in any mining tenement or lease or other mining venture in the State, and if, while holding such interest, he acts in his office he shall be guilty of a misdemeanour. Minister or officer not to be interested in any mining venture. *Ibid.*

Royal prerogative.

8. Nothing in this Act, except so far as is herein expressly enacted, shall abridge or control the prerogative rights and powers of His Majesty in respect to gold mines and silver mines. Saving of Royal prerogative. *Ibid.* s. 5.

PART

PART II.

MINERS' RIGHTS AND BUSINESS LICENSES.

DIVISION 1.—ISSUE AND TRANSFER.

Issue of miner's rights.

9. A miner's right shall be issued on the application of any person.

37 Vic. No. 13, s. 14. cf. 60 Vic. No. 7, s. 2.

Any such right shall be in the form of Schedule Two and shall be in force for any term not less than six months and not exceeding twenty years from the date of issue.

There shall, on the issue of any such right, be paid a fee calculated at the rate of five shillings for every year or two shillings and sixpence for every half-year of the term of the right.

Issue of business licenses.

10. A business license shall be issued to any person applying for the same.

37 Vic. No. 13, s. 21.

Duration.

Ibid.

Such license shall be in the form of the Schedule three, and shall be in force for any term not less than six months and not exceeding twenty years from the date of issue.

There shall, on the issue of any such license, be paid a fee calculated at the rate of one pound for every year or ten shillings for every half-year of the term of the license.

Renewal of miner's rights and business licenses.

Ibid. s. 24.

11. (1) The holder of any miner's right or business license shall be entitled on application and payment of the prescribed fee to a new miner's right or business license, dating from the expiration of the previous right or license.

(2) The application may be made—

(a) within one month before the date of such expiration, in which case the fee payable shall be the same as in the case of the issue of a miner's right or business license in the first instance; or

(b) within seven days after the date of such expiration on production of the expired miner's right or business license and on payment of the fee aforesaid; or

(c) after seven days and within one month after the date of such expiration on production of the expired right or license, but in that case a sum equal to fifty per centum of the amount of the fee aforesaid shall be added thereto.

Transfer.

12. A miner's right or business license may be transferred by endorsement thereon under the hand of the transferror and by registration in the prescribed manner.

Duplicate rights and licenses.

13. On proof to the satisfaction of the warden that any miner's right or business license has been accidentally lost or destroyed, a duplicate right or license may be issued on payment of a fee of one shilling.

DIVISION

DIVISION 2.—OCCUPATION.

Exempted Crown lands.

14. (1) The following classes of Crown lands are (save where otherwise in this Act provided) exempted from occupation under any miner's right or business license, namely,— Certain exemptions. 37 Vic. No. 13, s. 34. 43 Vic. No. 28, s. 1. 48 Vic. No. 10, s. 5. 57 Vic. No. 32, s. 5.

(a) lands reserved, dedicated, appropriated, or resumed for public purposes (except land reserved for a temporary common or for mining purposes), whether vested in His Majesty or in any person as constructing authority or trustee for public purposes.

(b) lands held from the Crown under residential lease, settlement lease, or special lease for other than pastoral or grazing purposes;

(c) lands held under lease for water supply in virtue of any special Act or otherwise; and

(d) lands granted or vested in trust by the Crown for purposes of a racecourse, cricket-ground, recreation reserve, park, or permanent common, or for any other public purpose;

(e) lands the subject of a pending application for a lease under this Act:

Provided that where any such lease or grant contains a reservation of all or any rights or right conferred by any Act relating to mining, the land comprised in such lease or grant shall to the extent so reserved be open to occupation as aforesaid.

(2) Crown lands lawfully and bona fide used as a yard, garden, cultivated field, or orchard, or upon which any house, outhouse, shed, or other building, actually used and occupied, or any artificial dam or reservoir, is lawfully standing are exempted from occupation, as aforesaid, except upon payment of compensation to be assessed by the warden. Crown lands used as orchard, &c. 37 Vic. No. 13, s. 25.

The warden shall fix at what depth from the surface the workings on such land shall be carried on, and on failure to observe his order the person in occupation of the land shall be deemed to be a trespasser. Warden to fix distance. cf. 57 Vic. No. 32, s. 6.

(3) The Governor, by notification, on the recommendation of the Minister, may exempt from occupation as aforesaid any Crown lands, and may revoke or amend any such notification. 37 Vic. No. 13, s. 26.

Rights conferred by a miner's right.

15. (1) Except as against His Majesty a holder of a miner's right, or any number of persons being each the holder of a miner's right, may, subject to the regulations and to the exemptions in this Part— Rights of occupation in respect of Crown lands. *Ibid.* s. 15. 60 Vic. No. 7, s. 3.

(a) take possession of and exclusively occupy as a claim any Crown land for mining purposes, and mine therein; (b)

(b) have and possess any gold or other minerals found in such land whilst so occupied;

(c) erect any building, structure, or machinery upon land so occupied, and remove the same at any time during such occupation;

(d) exercise any rights of the nature of easements in connection with land so occupied;

(e) occupy Crown lands, and construct and use thereon races, dams, reservoirs, roads and tramways for mining purposes;

(f) take or divert water from any lake, pool, spring, or stream, situate in or flowing through Crown lands not exempted from occupation under a miner's right or business license, and use such water for mining or domestic purposes;

(g) procure and remove for mining, smelting, building, or other purposes for his or their personal use only, any bark, or live or dead timber, or any stone or gravel from any Crown lands not

(i) exempted from occupation under a miner's right or business license; or

(ii) within the operation of any proclamation or notification prohibiting the cutting or removal of such timber, bark, stone, or gravel:

Provided that this right to procure and remove bark or timber may be exercised only by persons (not being corporations) actually holding miners' rights;

(h) while following the occupation of a miner or prospector, graze upon Crown lands not exempted as aforesaid such horses or other animals as may be necessary for his or their subsistence and for the carrying on of prospecting or mining:

(2) Provided that for the purposes of taking possession of more than one tenement of any specific class, the person so taking possession must hold an additional miner's right for each additional tenement after the first of the same class. The different classes may be prescribed by the regulations.

Residence area. cf. 37 Vic. No. 13, s. 15.

16. (1) Except as against His Majesty, a holder of a miner's right may, subject to the exemptions in this Part, take possession of and occupy Crown lands (hereinafter referred to as a "residence area") for the purpose of residing thereon.

(2) The area to be so occupied by any one such holder shall not exceed one quarter of an acre within the boundaries of a town or village, or two acres outside such boundaries: Provided that the occupation shall extend only to the surface and the prescribed depth below the surface, and that no area greater than one quarter of an acre shall be so occupied unless with the approval of the warden.

(3) Every such area shall be taken possession of in the prescribed manner. No person shall hold more than one such area at the same time.

(4)

(4) The proviso to section forty-six of the Crown Lands Act of 1884 is amended by substituting the words, "the areas to be sold shall not exceed one quarter of an acre within the boundaries of a town or village, as defined in the Mining Act, 1906, or two acres outside such boundaries," for the words "the areas to be sold shall not exceed one quarter of an acre for town lands, and one acre for suburban or other lands."

Authority to prospect.

17. (1) A holder of a miner's right may apply to the Minister for an authority to prospect on any Crown lands, whether exempted from occupation under this Part or not, and the Minister may, on the recommendation of the warden or the prospecting board, grant such authority. The area to be held under such authority, the term, rent, and the conditions as to labour and other matters shall be fixed by the Minister. Failure to comply with any conditions so fixed shall render the authority liable to be cancelled by the Minister.

(2) Such authority shall entitle the holder to take possession of the area on payment in advance of the rent fixed as aforesaid, and survey fee if necessary, and to carry on prospecting operations during the term of such authority.

Report of discovery.

(3) On discovery of gold or other minerals, the holder of the authority shall report, within fourteen days from the date of such discovery, to the warden of the district, who shall thereupon report to the Minister on the nature of the discovery. The Minister may thereupon call upon the holder of the authority to apply for a lease of the land or such part thereof as he may deem advisable or to continue prospecting operations.

Rights conferred by business license.

Holder may occupy land and erect buildings.

37 Vic. No. 13, s. 22.

18. A holder of a business license may, except as against His Majesty, and subject to the regulations—

(a) for the purpose of carrying on any business, except mining, occupy the prescribed area of Crown land within a goldfield or mineral field (hereinafter referred to as a "business area") not exceeding a quarter of an acre within the boundaries of a town or village, or one acre outside such boundaries: Provided that such occupation shall extend only to the surface and to the prescribed depth below the surface;

(b) have and possess the land so occupied;

(c) for the purpose aforesaid erect any building or structure upon the land so occupied, and remove the same at any time within one month or within such further time, not exceeding three months, as the warden may order and direct, after ceasing to occupy such land.

Only one area to be occupied in same town or village.

But no such holder may occupy at the same time more than one such area or carry on mining operations upon or in any such area.

DIVISION 3.—REGISTRATION.

Holder to register. 37 Vic. No. 13, s. 16.

19. (1) Where any person takes possession under this Part of a tenement (other than a prospecting area or a block claim, or a residence area not exceeding one quarter of an acre outside the boundaries of any town or village or such other tenement as may be prescribed), he shall, within twenty-eight days thereafter register the same in the prescribed manner in the office of the mining registrar of the division wherein the same is situated.

Transmission.

(2) Where any interest in a tenement required to be registered is transferred to, vests in (absolutely or as security only), or devolves upon any person, such person shall within twenty-eight days thereafter register the same in the prescribed manner in the office aforesaid.

Right to be produced. *Ibid.* s. 16.

(3) On every registration of a tenement the person requiring registration shall produce his miner's right or business license to the registering officer.

Neglect to register. *Ibid.* s. 124.

(4) Any person neglecting to register a claim or a share in a claim within the period aforesaid shall, if he works or mines in such claim, incur the penalty hereinafter in this Act prescribed for unauthorised mining on Crown lands.

Proviso.

(5) Provided that if it is shown to the satisfaction of the warden that the person whose duty is to register was or would be prevented by sickness or any other like disability from effecting such registration, the warden may extend the said period to a further period not exceeding twenty-eight days from the expiration of the first-mentioned period.

DIVISION 4.—MISCELLANEOUS PROVISIONS.

Division of interest in claim. *Ibid.* s. 17.

20. (1) The owner of any registered claim may, subject to the regulations, divide his interest therein into shares and allot any of such shares to any person.

Amalgamation. *Ibid.* s. 17.

(2) The owners of any two or more adjoining claims may, with the consent of the warden, and subject to such conditions as he may impose, and in the prescribed manner, amalgamate the same before or after registration. The amalgamated claim so formed shall be registered, and may be divided into shares or dealt with as an ordinary claim.

Assignment. *Ibid.* s. 15.

(3) The owner of any registered claim or share in a claim may, subject to the regulations, assign, encumber, or create any interest in the same.

Rights held on behalf of owners. cf. *Ibid.* ss. 17, 20.

21. The holding of miners' rights in respect of a claim shall be deemed a holding on behalf of the owners of the claim or of any shares in the same or of any interests therein, and it shall not be necessary for separate miners' rights to be held by the owners of such shares or interests.

22.

22. If the owner of a share in a registered claim fails to represent his share by labour or to contribute his proportion of the working expenses, the warden on the application of one or more of the remaining shareholders may declare such share to be abandoned, and may order the remaining shareholders to be put in possession of such share; and such declaration and order shall be carried out. Default to contribute. cf. 37 Vic. No. 13, s. 70.

PART III.

Leases of Crown lands.

Division 1.—What leases may be granted.

23. (1) The Governor, in the name and on behalf of His Majesty, may lease Crown lands and any street, road, or highway, as follows:— Governor may grant leases. 37 Vic. No. 13, s. 28.

(a) He may grant mining leases, of the surface and the subjacent soil, or of the soil below a certain depth from the surface only, which may be—

(i) gold-mining leases, authorising mining on the land for gold and for purposes connected with gold-mining; *Ibid.* s. 33.

(ii) mineral leases, authorising mining on the land for the minerals therein specified, and for purposes connected with such mining, *Ibid.* s 56.

(b) He may grant leases (to be called leases for mining purposes) of the surface only, and to a limited depth below the surface. Such leases authorise the use of the land for mining purposes, but do not authorise mining on the land or the removal of any gold or minerals won therefrom. Act No. 10, 1902, s. 4.

(2) Provided that—

(a) A claim lawfully occupied under a miner's right shall not be leased unless the holder of the right consents to the leasing, in which case the claim shall be deemed to be abandoned, and the title thereto shall be absolutely extinguished, whether the application for the lease is granted or refused. 37 Vic. No. 13, s. 34 (2).

(b) Crown land occupied as a business or residence area, or for a dam, reservoir, race, or for machinery, shall only be leased from such depth below the surface as the Minister deems sufficient to secure the surface and any buildings, works, and improvements thereon from damage occasioned by mining operations.

(c) The surface of Crown land held under lease from the Crown for purposes other than pastoral purposes shall only be leased subject to the payment of compensation, to be assessed by the warden. *Ibid.* s. 34 (1).

(d)

(d) Auriferous alluvial Crown land shall not be leased unless in the opinion of the Minister— 37 Vic. No. 13, s 34 (3).

(i) the land has been worked and abandoned; or

(ii) the land is suitable to be leased by reason of the difficulties and cost attending the construction of mine works upon or of mining such land;

(iii) the land may be leased for mining purposes only.

(e) The Governor, by notification, on the recommendation of the Minister, may exempt any Crown lands from the leasing provisions of this Act, and may revoke or amend any such notification.

Conversion of existing leases and authorities into leases under this Act.

24. (1) ~~A gold-mining lease issued under the Acts hereby~~ repealed, may, on the application of the holder thereof, be converted into a gold-mining lease under this Act for the remainder of the term of such first-mentioned lease, or for such further period not exceeding five years as the Governor thinks fit.

(2) A mineral lease issued under the said Acts may, on application as aforesaid, be converted into a mineral lease under this Act for the remainder of the term of such first-mentioned lease.

(3 1) An application for a lease under any Act hereby repealed may, at the request of the applicant, be converted into an application for a lease under this Act.

(4 2) An authority to mine granted under section twenty-eight of the Mining Act, 1874, may, on application of the holder thereof, be converted into a gold-mining lease or a mineral lease as the case may be under this Act, subject to such conditions as the Governor thinks fit.

(5 3) A registered claim under the said Acts or this Act may, on the application of the owner thereof, be converted into a gold-mining lease or mineral lease as the case may be under this Act. *Ibid.* s. 38.

Division 2.—Applications.

Form of application.

Applications to be subject to conditions.

25. Applications for leases shall be made in the prescribed form and manner, and shall be subject to the prescribed conditions as to marking out the land applied for, taking possession thereof, and otherwise, and shall be accompanied by payment of one year's rent in advance, at the rate prescribed. *Ibid.* s. 56 (3). 46 Vic. No. 7, s. 1.

Priority of application.

First applicant to have priority.

26. (1) If more than one application is made for a lease of the same land, the application of the person who has first taken possession shall be first considered and dealt with, and so on, according to priority of possession. 37 Vic. No. 13, ss. 49, 56 (4).

For

For the purposes of this subsection, "possession" means the act of erecting a datum post, provided that the mode of taking possession prescribed by the regulations is forthwith complied with : Possession.

Provided that if, upon inquiry being held as provided in section thirty-four, the warden is of opinion that possession has been taken simultaneously by two or more applicants for the same area, the question of priority may be decided by ballot.

(2) If any application for a lease is refused or abandoned, any other application for a lease of the same land may be considered and dealt with, regard being had, where necessary, to the rule of priority aforesaid. Other applications.

Grant or refusal of application.

27. (1) Leases under this Part shall be granted by the Governor in the name and on behalf of His Majesty. The Governor may in his discretion grant a lease, notwithstanding that the applicant has not in every respect complied with the regulations, or notwithstanding that the description of the land in such application does not strictly correspond with the land as marked out by the applicant. Irregular application may be granted. 48 Vic. No. 17, s. 1.

(2) The Governor may, subject to the provisions of this Act, grant an application for a lease in such modified or amended form as he may think fit. Lease granted with modifications. 37 Vic. No. 13, s. 47.

(3) The Governor may refuse any application for a lease, and such refusal shall take effect from the time of publication of such refusal in the Gazette. Refusal to take effect on publication.

Occupation by and rights of applicant.

28. When any application for a mining lease has been duly made, the applicant may, by virtue of his application, until such lease is granted or refused— Applicant may mine upon land. *Ibid.* ss. 39, 56 (3).

(a) occupy the land applied for, and mine upon and in the same : Provided that nothing herein shall affect the right, title, or interest of any other person in or to the said land, or in or to any gold or mineral obtained or that may be obtained therefrom ;

(b) proceed in the warden's court for trespass against any person entering upon, occupying, or interfering with such land, not having a lawful title thereto originating prior to such application. Applicant may sue for trespass. *Ibid.*, s. 40.

(c) proceed in the warden's court against any person claiming to have an interest in such land under a miner's right or mineral or business license, for the purpose of having such claim declared invalid. Rights of applicant.

(d) apply to the warden for an injunction under this Act against any person claiming to be legally or equitably interested in the land. Injunction. cf. *Ibid.* s. 58.

29. (1) In any such proceedings for trespass the complainant may claim damages for such trespass, and for the recovery of any gold or mineral taken by the defendant from such land, or the value thereof. But he shall not be entitled to succeed unless he proves to the satisfaction of the court that he has complied with the regulations relating to the lodging of the application and payment of rent, so far as such regulations were at the time of the trespass capable of being complied with.

May claim damages. 37 Vic. No. 13, s. 40.

Proof of compliance with regulations. *Ibid.*

(2) If the warden decides in favour of the complainant he shall, unless the application for the lease has been already determined, order the defendant to lodge with the warden, any sum awarded as damages, and any gold or mineral he may adjudge the complainant entitled to, or the value thereof.

Warden may order money, gold, &c., to be lodged. *Ibid*

(3) If such application is granted, the warden shall order the said sum and the said gold or mineral, or the value thereof, to be delivered or paid to the complainant; but if such application is refused, he shall order delivery or payment to the person entitled thereto.

Payment out of money, &c., lodged. *Ibid.* s. 40.

Pendency of application.

30. (1) An application for any lease under this Part shall be pending from the taking possession of the land for that purpose in the prescribed manner, or from the lodging of the application for conversion into a lease by any person entitled to apply for such conversion.

When application pending. 46 Vic. No. 7, s. 1.

(2) During the pendency of any such application, the land shall be exempt from sale or lease by the Crown, or from occupation as a tenement.

Land exempt from sale or lease or occupation.

(3) Any such application shall subsist for the benefit of the applicant or, in the event of his death or bankruptcy, of his legal representatives, who shall be deemed to hold the land under promise of a lease until default occurs in making or prosecuting the application, or the Governor refuses the same or voids the lease before issue, and notice thereof is published in the Gazette.

Application for benefit of applicant and his representatives.

Survey of land.

31. If at the time of lodging an application for a lease, the land applied for has not been surveyed by a mining surveyor, or the marks of a previous survey have been removed or obliterated, the applicant shall deliver to the warden a written application for a survey of such land, accompanied by the prescribed survey fee.

Application for survey. 37 Vic. No. 13, s. 41.

Objections.

32. (1) Any person may object to the issue of any lease by lodging with the warden and serving upon the applicant within the prescribed time, a written notice of his objection. Such

Lodging and service of objections. *Ibid.* s. 42.

Such notice may be served by post by registered letter addressed to the last known address of the applicant, or if the applicant's address cannot be ascertained by posting the same on the datum post on the land applied to be leased.

Deposit of security. 37 Vic. No. 13, s. 43.

(2) The person so objecting shall, at the time of lodging notice of his objection, deposit with the warden or the warden's clerk the prescribed sum as security for any costs which may be awarded against him by the warden in any inquiry in relation to such objection.

If no objection lodged. *Ibid.* s. 44.

33. (1) Where no notice of objection has been so lodged, the warden shall forward the application, together with a report thereon, to the Minister.

If objection lodged. *Ibid.* ss. 44, 57.

(2) When notice of objection has been so lodged, the warden shall appoint a place and time for the hearing of the application and objection, and shall give not less than three clear days' notice thereof to the applicant and the objector respectively. Where an objection has been lodged by several persons jointly, notice to one of them shall be sufficient.

Warden to inquire. *Ibid.*

34. (1) On the day so appointed, the warden shall inquire into the truth of the particulars stated by the applicant and objector respectively, and may, if necessary, adjourn the inquiry for any time not exceeding one month, or to any other place, on such conditions as to costs as he may think fit. Notice of such adjournment shall be given to the applicant and to each objector.

Inquiry may be adjourned. *Ibid.* s. 45.

Report to be transmitted. *Ibid.* s. 47.

(2) At the conclusion of such inquiry the warden shall announce in open court the purport of his report to the Minister, and shall thereafter transmit to the Minister the application, objections, and evidence, the report, plan, and map, if any, of the mining surveyor, and his report as aforesaid, recommending the granting or refusal of the lease applied for.

Copy of report. *Ibid.* s. 48.

(3) Any person shall, upon application and payment of the prescribed fee, be furnished with a copy of the mining surveyor's report and plan of any land so applied for, and of any evidence taken as aforesaid, and of the warden's recommendation.

Further inquiry.

(4) The Minister may at any time, whether any notice of objection has been lodged or not, authorise and direct the warden to hold an inquiry or a further inquiry with reference to any matter concerning such application, and thereupon the warden shall appoint the time and place and give the notices and proceed with such inquiry and transmit the evidence and documents relating thereto, and his report, in the manner hereinbefore provided.

Inquiry to be in open court. *Ibid.* s. 44.

(5) Every inquiry under this section shall be conducted in open court, and the warden shall have the powers of a wardens' court. **On the application of either party to the dispute, the warden may conduct the inquiry at the place in dispute.**

DIVISION 3—CONDITIONS.

Area and dimensions of leases.

35. (1) Subject to this section the Minister shall fix the respective areas of leases under this Part. Areas of leases.

(2) The area of a gold-mining lease shall not exceed twenty-five acres, and the land leased shall be of the form and dimensions prescribed. Area of gold-mining lease. 37 Vic. No. 13, s. 36. Dimensions and form.

(3) The area of a mineral lease shall not exceed six hundred and forty acres for coal or shale, nor eighty acres for other minerals, excepting opal. Area of mineral leases. *Ibid.* s. 56 (1).

(4) The area of a lease for mining for opal shall be such as the Minister may in each case determine: Provided that no such lease shall be granted unless the prospecting board certifies that the land is suitable to be leased by reason of the difficulties and cost attending the construction of mine works upon or of mining such land.

(4 **5**) The area and dimensions of leases for mining purposes only shall be such as the Minister may, subject to the regulations, determine. Leases for mining purposes.

(~~5~~ **6**) This section shall not apply to special leases granted under the provisions hereinafter in this Act contained. Special leases.

Rent, royalty, and labour conditions.

36. (1) The annual rent for a gold-mining lease granted under this Part shall be five shillings per acre or portion of an acre, and for a lease so granted to mine for any mineral other than coal or shale five shillings per acre or portion of an acre. Gold leases. Rent. *Ibid.* ss. 37, 56. cf. 48 Vic. No. 10, s. 4.

(2) The annual rent for a lease so granted to mine for coal or shale shall be one shilling per acre or portion of an acre, and a royalty shall be paid of sixpence per ton on all shale or large coal and threepence per ton on all small coal won from the land demised. Coal leases. Rent and royalty.

(3) The rent, terms, and conditions of leases so granted for mining purposes only, shall, subject to this Act, be fixed by the Minister. For mining purposes. Rent. Act No. 10, 1902, s. 4.

(4) All such rent shall be payable annually in advance at the times and in the manner prescribed, the first payment in all cases being made at the time of making application for the lease. Rent payable in advance.

(5) The royalty shall be payable at the times and in the manner prescribed: Provided that if the royalty payable in respect of any lease during any one year exceeds the rent paid for such year, the amount paid as rent may be deducted from the amount of the royalty; but if the royalty in any one year amounts to less than the rent paid for such year the lessee shall not for such year be required to pay royalty: Provided also that the Minister may at his discretion remit the amount of royalty payable on coal used for raising steam for motive power at a colliery. Royalty, how payable. 48 Vic. No. 10, s. 4

(6) Rent and royalty shall be payable by the lessee to the Crown, and may be recovered as a Crown debt.

37. Every mining lease shall contain such labour conditions as the Minister may, subject to the regulations, determine. Labour conditions.

Duration and renewal of leases.

38. (1) A lease granted under this Part may be for any term not exceeding twenty years. Term of lease. cf. 37 Vic. No. 13, ss. 36, 54, 56 (2), (9).

(2) Any such lease may, with the consent of the Governor, be renewed for a further term not exceeding twenty years: Provided that application for such renewal shall be made during the last five years of the term of the lease. Renewal. cf. *Ibid.* ss. 36, 54, 56 (2), (9).

(3) Such renewal shall be at the rent and royalty, and subject to such other covenants and conditions as are prescribed by the Acts and regulations in force at the time of such renewal, and to such further covenants and conditions as the Governor may think fit to impose. Terms of renewal.

39. A lease of Crown lands granted under any Act hereby repealed may be renewed for the term, on the conditions, with the covenants, and under the circumstances stated and prescribed in and by such Act or any Act amending the same hereby repealed and the regulations thereunder, save as regards payment of any fine upon such renewal: ~~Provided that the rent for a gold mining lease so renewed shall be five shillings per acre.~~ **Provided that with respect to a gold-mining lease so granted the annual rent on renewal shall be five shillings per acre, and the term of the renewed lease may be for five years in excess of the term prescribed by the said Acts for such leases when renewed thereunder.** Leases under repealed Acts. *Ibid.* s. 56 (2), (9).

DIVISION 4.—SPECIAL LEASES.

40. (1) The Governor may, upon the recommendation of the Minister, grant a special mining lease of Crown land for mining other than coal or shale mining if the Minister is satisfied that by reason of the difficulties and cost attending the construction of mine works upon or of mining such land it is necessary that such lease be granted. Governor may grant special leases. cf. *Ibid.* s. 53. 48 Vic. No. 10, s. 7.

(2) The Minister may, on application being made for such lease, direct the prospecting board or the warden to inquire and report— Inquiry and report.

(a) whether by reason of the difficulties and cost attending the construction of mine works upon and of mining such land, it is necessary that an area in excess of the limit prescribed should be leased; and

(b) upon the rent and royalty to be paid; and

(c) upon such other matters as the Minister may direct.

(3) The Governor may fix the form of and area to be comprised in any such lease, the rent and royalty to be paid, and the labour and other conditions, reservations, and exceptions to be contained in the same, but in all other respects such special lease and the application for the same shall be subject to the provisions of this Act in respect of ordinary leases under this Part. Conditions of leases.

DIVISION

DIVISION 5.—MINERALS NOT INCLUDED IN LEASE.

Mining for other minerals under mineral lease. 37 Vic. No. 13, s. 61.

41. (1) The Minister may, upon application in writing by the holder of any mineral lease under this Part or under any Act hereby repealed, grant authority upon such terms as he may think fit permitting such holder to mine on the land comprised in his lease for any mineral other than that in respect of which such lease has been granted, and may vary or revoke any such authority.

Forfeiture for unauthorised mining.

(2) If the holder of any mineral lease mines for any mineral other than that in respect of which his lease or any such authority as aforesaid was granted, his lease shall be liable to forfeiture.

Mining for gold under mineral lease. *Ibid.* s. 62.

42. (1) Where gold is associated or combined with any mineral in any land comprised in any such mineral lease, and

(a) the holder of such lease desires to mine for such gold, or

(b) the nature of the mining operations under his lease is such as to lead to the removal of such gold,

the Minister may, if the value of the gold in the ore does not exceed fifty per centum of the value of the ore, upon application in writing by such holder, grant authority, upon such terms as he thinks fit, permitting such holder to mine for gold on the said land.

But if the value of the gold exceeds fifty per centum of the value of the ore, the lessee must apply for and obtain a gold-mining lease; and in that case a gold-mining lease may be granted for the area so held under the mineral lease, although the area exceeds twenty-five acres, and the dimensions are not in accordance with those prescribed. Application for such gold-mining lease shall be made in manner prescribed.

Forfeiture for unauthorised mining.

(2) If any such gold is so mined for or removed by such holder without obtaining such authority or lease, the mineral lease aforesaid shall be liable to forfeiture.

Mining for other minerals under gold-mining lease.

43. (1) The Minister may, upon application in writing by the holder of any gold-mining lease under this Part or under any Act hereby repealed, grant authority upon such terms as he may think fit permitting such holder to mine on the land comprised in such lease for any mineral other than gold.

Forfeiture for unauthorised mining.

(2) If any such mineral is so mined for or removed by him without obtaining such authority the lease shall be liable to forfeiture.

DIVISION 6.—OWNERSHIP OF TAILINGS AND ORE.

Tailings on abandoned Crown land. cf. *Ibid.* s. 56 (10).

44. (1) Any lessee under this Part, whose occupancy is by any means determined, may, within thirty days after such determination, apply to the Minister for leave to enter the land and treat or remove any tailings, ore, or stone left thereon by him. The Minister may grant such leave upon payment of a sum to be fixed by him, and may fix a time within which such treatment or removal is to be completed.

Any

Any application for a lease of any land upon which such tailings, ore, or stone have been so left, and any occupation of such land under a miner's right, shall be subject to the right of the Minister to grant such leave, and to the right of the person to whom such leave is granted, to act in accordance therewith; and any lease granted may contain a reservation of such tailings, ore, or stone, and of the right of any person to whom leave may be or has been granted to treat or remove the same.

Form.

(2) The form and mode of application for, and the conditions of such leave, shall be as prescribed.

Forfeiture of tailings, &c.

(3) If such leave is not applied for within the said thirty days, or such treatment or removal is not completed within the time fixed, such tailings, ore, or stone shall become the absolute property of the Crown, and shall form part of the land.

PART IV.

MINING ON PRIVATE LANDS.

DIVISION 1.—PRELIMINARY.

Interpretation.

Interpretation. 57 Vic. No. 32, s. 2.

45. In this Part and in any regulations relating to matters thereunder, unless the context or subject-matter otherwise indicates,—

"Authority to enter" means authority to enter upon private lands granted under this Part.

"Lease" means lease under this Part.

"Occupier" means person in occupation of any private land, whether under any special Act or otherwise, or a tenant.

"Owner" includes trustee, guardian in infancy, committee or guardian in lunacy, mortgagee in possession, and conditional lessee.

"Private lands" means lands other than Crown lands but does not include any lands situate within the boundaries of a town or village unless the Governor by proclamation (which he is hereby authorised to make, alter and revoke) declares that they are private lands for the purposes of this Part.

In this Part the word "minerals" shall not include coal or shale, nor shall coal, shale, or mineral oil be included within the substances which may be declared minerals by proclamation of the Governor.

Lands open to mining under this Part.

For gold and other metals. *Ibid.* s. 3. Act No. 101, 1902, s. 3.

46. (1) All private lands shall be open to mining under this Part for gold and for any ore of which gold is the chief or most profitable metallic product, and for silver when such mineral is reserved to the Crown.

(2)

(2) If the Crown grant of any private land contains, or if not yet issued will when issued contain, a reservation to the Crown of all minerals, the said land shall also be open to mining under this Part for all minerals. For other minerals.

(3) Provided that, except as hereinafter in this Act provided, no application for an authority to enter shall be granted under this Part in respect of any land in or upon which any person other than the applicant is at the time of the making of the application entitled under this Part to search or prospect for gold or any mineral or in or upon which any person other than the applicant is lawfully carrying on mining operations, whether under this Act or the Acts hereby repealed. Exempted land.

For the purposes of this proviso, a person shall, as to an area not exceeding eighty acres, be deemed to be lawfully carrying on mining operations in respect of any substance notwithstanding that such substance was not a mineral at the time when such mining operations were authorised if such substance has subsequently come within the definition of a mineral under this Act or any Act hereby repealed.

47. No authority to enter and no lease under this Part shall, except with the consent of the owner, extend to— Not to extend to within certain distance of garden, or improved land without consent. 57 Vic. No. 32, s. 11.

(a) within ~~fifty~~ **one hundred** yards on the surface of any land bona fide in use as a garden or orchard; or

(b) within two hundred yards on the surface of the principal residence of the owner or occupier; or

(c) any land whereon is any substantial building, bridge, dam, reservoir, well, or other valuable improvement other than an improvement effected for mining purposes and not bona fide used for any other purpose. The Minister shall determine whether any such improvement is substantial or valuable, and may define an area adjoining such improvement within which no mining operations shall be carried on.

48. No authority to enter and no lease under this Part shall, except with the consent of the owner and occupier, extend to the surface of any land enclosed and under cultivation when the application for the authority was made; and without such consent no operations under such authority shall be conducted, and no such lease shall be granted below the surface of any such land, except with the authority of the Minister, and at such depth as the Minister may, after full inquiry, deem to be sufficient to prevent damage to the surface: Provided that Not to extend to surface of cultivated land without consent. *Ibid.* s. 12. 60 Vic. No. 40, s. 5.

(a) a lease under this Part may be granted of such portion of the surface of such land as the Minister may deem necessary for giving access to the gold or minerals therein; but before any such lease is granted the warden shall assess the amount to be paid as compensation for any loss of or damage to any crop or improvements on such land; and

(b) the Minister may decide, in case of dispute, whether any land is or is not under cultivation.

DIVISION 2.—AUTHORITY TO ENTER.

Interim permit.

Interim permit to enter.

49. (1) The warden may at the request of any applicant for an authority to enter grant an interim permit in the prescribed form authorising such applicant to enter the land the subject of the application for the purpose of defining the boundaries of the area applied for.

(2) Such interim permit shall be for any period not exceeding fourteen days, and shall not entitle the holder thereof to and he shall not carry on any prospecting operations on the said land.

(3) If such holder carries on such operations in contravention of this section, he shall be liable to a penalty not exceeding ten pounds.

Application for and grant of authority.

Warden may grant authority. cf. 57 Vic. No. 32, s. 8.

50. (1) The warden, on application made as prescribed, may, subject to any stipulations or conditions which he may think necessary to impose, grant to any holder of a miner's right one or more authority or authorities in the prescribed form to enter, subject to the provisions of this Act, on any private lands.

Discretion to refuse. cf. *Ibid.* s. 8.

(2) The warden may, whether any inquiry has been held as hereinafter in this Act provided or not, refuse any application for authority to enter—

(a) if the land is the subject of an application or holding under this Part or under any Act hereby repealed, or is exempted from lease under this Part; or

(b) if, after the prescribed notice to measure the land to be included in the authority has been given by the warden to the applicant, such applicant fails to attend for the purpose of pointing out the location of the area applied for.

Time to be stated. 57 Vic. No. 32, s. 8.

Deposit to be lodged.

(3) The time during which such authority is required shall be stated in such application, and the applicant shall lodge therewith a deposit of five shillings, to be applied towards payment of the rent or compensation for damage. If any such application is withdrawn or abandoned, before the rent and compensation have been paid in full, the deposit may, if the warden so orders, be forfeited to the Crown.

Rent to be fixed. cf. *Ibid.* ss. 16, 17, 41. 60 Vic. No. 40, s. 2 (*b*).

51. (1) Before issuing such authority in respect of any land the warden shall hold an inquiry, of which due notice shall be given to the owner and occupier, if any, or their respective local agents (if registered as such as prescribed), and fix the annual rent per acre of the land. Such rent shall be paid by the applicant to the owner of the land quarterly in advance from the date of the authority. If the authority is to continue for less than three months one quarter's rent shall be so payable.

Compensation.

(2) The warden shall also assess compensation to be paid by the holder of the authority.

(3)

(3) The first payment of the rent and the payment of compensation shall be made within fourteen days of the issue of the authority, and before entry upon the land in pursuance of the authority.

Effect of non-payment of rent or compensation.

(4) If entry is made before such payment, or if any rent afterwards due, or any compensation afterwards assessed and ordered to be paid, is left unpaid for one month, the warden may cancel the authority.

Duration and extension of authority. 60 Vic. No. 40, s. 2 (*b*).

52. (1) An authority to enter may be granted for any period not exceeding twelve months, but the period of any authority may, while it is in force, be from time to time extended by the warden on such terms as he may think fit for any further period, if it appears to him that further time is requisite to enable the holder to complete the prospecting of the area defined therein; but so that the period for which the authority was granted, together with the periods of all extensions, do not exceed twenty-four months.

Duration to be stated.

(2) Such authority and every extension as aforesaid shall be issued in duplicate, and shall state the time during which it is to continue.

Service of duplicate. 57 Vic. No. 32, s. 8.

(3) The holder of such authority shall, within the period and as directed by the warden, serve the duplicate thereof, and of every extension granted by the warden, upon the owner or occupier, or upon one of the owners if more than one, of the land defined therein.

Extent of area. 60 Vic. No. 40, s. 2 (*a*).

53. (1) Every such authority shall contain a definition of the area and boundaries of the land in respect of which it is granted.

(2) The said area may be such as appears to the warden suitable, having regard to the class of deposit to be searched for, and shall be defined by him as prescribed, but, except as hereinafter provided, shall not exceed the maximum area in this Part prescribed for a lease to mine that class of deposit:

Extended area.

Provided that the Minister on the recommendation of the prospecting board may direct the warden to grant, and he shall thereupon grant, an authority to enter an area exceeding the area prescribed aforesaid, if it is proved at the inquiry held by the warden that the difficulties and cost of conducting prospecting operations render it necessary that authority to enter a greater area be granted.

When prospecting lawful. *Ibid.* s. 2 (*d*).

54. (1) Upon lawful entry as aforesaid, the holder of an authority to enter may construct such works, and conduct such operations on or under the said lands as may be required for prospecting the same.

Effect of breach of conditions. *Ibid.* s. 2 (*e*).

(2) If such holder

(a) does not commence such prospecting operations within fourteen days from the date of such authority; or

(b) after commencing such operations suspends the same without the written permission of the warden; or

(c)

(c) commences such operations before making the payments aforesaid; or

(d) fails to observe any of the stipulations or conditions imposed by the warden under this Act;

the warden may cancel such person's authority to enter.

(3) The warden may also at the request of the holder cancel his authority to enter.

(4) The holder of the authority may employ as many men as he may think fit in such prospecting operations, but he shall not, unless with the consent of the warden, employ less than the minimum number prescribed. If he makes default the warden may cancel the authority.

Labour required for prospecting. 60 Vic. No. 40, s. 2 (*h*).

55. The holder of an authority to enter may, upon obtaining the permission of the warden, erect temporary residences upon the area defined therein for the use of the persons employed in the prospecting operations, but so that the area to be occupied in connection with such residences shall be in such positions as the warden may consider proper.

Residences. *Ibid.* s. 2 (*j*).

56. If the holder of an authority to enter, after being served with notice of the cancellation under this Act of such authority, continues in occupation of any area therein defined, or any part thereof, he shall be deemed a trespasser.

Holder continuing in occupation after cancellation of authority, *Ibid.* s. 2 (*e*).

Division 3.—Leases.

Mining leases.

57. (1) Any holder of an authority to enter who desires to obtain a lease of the land defined in such authority, or any part thereof, and—

Power to define boundaries. cf. 57 Vic. No. 32, ss. 9, 28.

(a) has served the duplicate of such authority upon the owner or occupier of the said land; and

60 Vic. No. 40, s. 2 (*f*).

(b) has paid rent and compensation as hereinbefore prescribed,

may, either personally or by agent, in the prescribed manner, define upon the said land the boundaries of the portion desired to be leased, and may apply to the Minister for a lease thereof. Such application shall be for a lease to mine for gold or any minerals, and must be made during the currency of the authority.

How application is to be made. cf. 57 Vic. No. 32, s. 13.

(2) The Minister may modify any such application, or may direct a warden to hold an inquiry on oath in open court with reference to any matter affecting the same or the authority to enter.

Power to modify application or direct inquiry. *Ibid.* s. 22.

(3) If the applicant fails to make any payment prescribed in respect of his application, the Minister may after the prescribed time declare such application to be void, and all or any part of the moneys paid by the applicant to be forfeited to the Crown; and thereupon the said moneys or such part thereof shall be paid into the Treasury and carried to the Consolidated Revenue Fund.

Failure to make prescribed payments. *Ibid.* s. 18.

(4)

(4) If the application is one which can be granted under this Part, the Minister, on receipt of such application, accompanied by the prescribed sum by way of rent, may cause a notice of intention to grant a lease to be advertised in the Gazette, and in a newspaper circulating in the locality in which the land is situated. If the use of the whole or any part of the surface of such land is required the notice shall so state, and if a part only is required the notice shall define such part. Notice of intention to grant lease. cf. 57 Vic. No. 32, s. 13.

(5) The applicant having made all the prescribed payments may carry on mining operations on the land applied for until the application has been granted or refused; but except as hereinafter provided no further assessment of compensation shall be necessary. Mining pending application. 60 Vic. No. 40, s. 2 (*i*).

(6) Unless the lease applied for will cover the whole of a measured portion, the land shall be surveyed by a mining surveyor before the issue of the lease. Where survey necessary. *Ibid.* s. 27.

58. (1) Leases under this Part shall be granted by the Governor in the name and on behalf of His Majesty. It shall not be obligatory on the Governor to grant any such lease, notwithstanding that the applicant may have complied with the provisions of this Act and the regulations; but if an application for such lease is refused, the applicant shall be informed of the reasons for such refusal. Power to refuse, &c. *Ibid.* s. 22.

(2) A lease may, at the request in writing of the applicant, be granted to any person named by him. Lease to nominee.

(3) A lease may be granted notwithstanding that the person applying for the same has not complied in every respect with the regulations.

59. Every lease under this Part shall— Particulars to be stated in lease. 57 Vic. No. 32, s. 11.

(a) state whether it is to have effect on and below the surface of the land leased or on a limited portion of the surface and below the whole area, or below the surface only.

(b) state for what mineral (if any) the lessee may mine, and that the lessee shall not mine for any other mineral without the authority of the Minister.

(c) contain such labour conditions as may be determined by the Minister in accordance with the regulations. Labour conditions. 60 Vic. No. 40, s. 6.

Leases for mining purposes.

60. (1) Subject to the assessment by the warden of compensation, the Governor may grant to the holder of any lease under this Act, or to any person carrying on mining operations who has made application to the Minister in that behalf in the prescribed manner, a lease— Lease for race, tramway, &c. 57 Vic. No. 32, ss. 37, 38.

(a) of the surface and to a limited depth below the surface of any private land irrespective of any reservation of minerals to

to the Crown, for the purpose only of cutting mining-races thereon, and conveying water or detritus through or over the same to or from any mine of such holder or person ; or

(b) of any area of private land 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.

(2) A permit may be granted by the warden in the prescribed manner, entitling any such holder or person to enter upon any such land for the purpose of marking out the portion to be included in his said application. Interim permit to enter.

(3) A lease granted under this section shall be subject to the regulations and to such conditions as the Governor may think fit to impose, and shall be subject to a rent payable to the owner of the land so leased, to be assessed by the warden at the same time as the assessment of compensation. Lease may be subject to special provisions. 57 Vic. No. 32, ss. 37, 38.

(4) This section shall not apply to land the subject of any registered lease or agreement under this Part by the owner of private land with the holder of a miner's right to mine on the land. Saving.

Leases of surface.

61. During the progress of mining operations any lessee having a lease under this Part empowering him to mine below the surface of any land may, subject to the regulations, apply to the Minister for a lease of any portion of the surface thereof, for the purposes of mining or any purpose in connection therewith. Such application shall be dealt with as provided in respect of other applications for leases under this Part. Lessee may apply for lease of additional surface. *Ibid.* s. 20.

Term, rent, and area of lease.

62. (1) The term for which a lease may be granted under this Part shall not exceed twenty years ; but, subject to such conditions as the Governor may approve, any such lease may be renewed for a further period not exceeding twenty years. Term of lease. *Ibid.* s. 26.

(2) The Governor may fix the labour and other conditions, reservations, and exceptions, to be contained in the said lease. Labour conditions. 60 Vic. No. 40, s. 6.

63. The area of a lease under this Part to mine for gold shall not exceed twenty-five acres, and to mine for any mineral ~~except coal and shale~~ shall not exceed eighty acres, ~~and to mine for coal or shale shall not exceed six hundred and forty acres~~, and for any other purpose shall be of such area as may be prescribed : Extent of lease. cf. 57 Vic. No. 32, s. 26.

Provided that upon the recommendation of the Minister, the Governor may grant a lease exceeding the area above prescribed ; but the Minister shall not make such recommendation unless the prospecting board certifies that, by reason of the difficulties and cost attending the construction of mine works upon or of mining such land, it is necessary that such greater area, to be specified by the board, should be included in the lease Larger area may be granted under certain circumstances. 60 Vic. No. 40, s. 8.

64.

Mining.

64. (1) The yearly rental reserved to the owner of the land in respect of any such lease shall be ~~assessed by the warden. Such rental shall be based upon the surface value of the land for other than mining purposes,~~ **twenty shillings per acre, commencing from the date of the notification in the Gazette of the approval of the lease by the Governor and payable half-yearly in advance,** and shall be payable only in respect of the portion of the surface leased. Rents payable. ~~60 Vic. No. 40, s. 8.~~ 57 Vic. No. 32, s. 26.

(2) The warden shall ~~also~~ assess compensation to be paid under this Act in addition to the rental, consideration being given to the compensation already paid in respect of the authority to enter. Compensation.

(3) Provided that nothing in this section shall prevent the owner or occupier, making an agreement with the lessee as to the amount of rent and compensation. Saving of agreements. 57 Vic. No. 32, s. 17.

Rights and duties of lessees.

65. (1) Every lease granted under this Part, so far as it extends to the surface of any land, and does not expressly provide to the contrary, shall confer the right of— Powers as to surface. *Ibid.* s. 11.

(a) cutting and constructing thereon races, drains, dams, reservoirs, or tramways, and of erecting thereon buildings and machinery in connection with the mining or other special purposes authorised by such lease but not otherwise;

(b) fencing the land, and erecting temporary residences thereon for the use of persons employed in connection with mining operations thereon; and

(c) generally doing such acts or things in respect thereof as are necessary for efficiently mining the land.

(2) Every such lease, so far as it is expressed to have effect below but not on the surface of any land, and does not expressly provide to the contrary, shall confer the right of doing all such acts or things below the surface as are necessary for efficiently mining the said land, but not in such a way as to injure the surface or anything thereon. Powers to mine under the surface. *Ibid.*

66. No such lease shall give the lessee the right— Lessee not to use water artificially conserved, nor depasture sheep, nor keep dog, nor remove rock, &c. *Ibid.*

(a) to use water artificially conserved by the owner or occupier of such land; or

(b) to fell trees, strip bark, or cut timber on such land, except with the approval of the warden, and subject to payment to the owner of compensation to be assessed as prescribed; or,

(c) unless fenced, to depasture horses thereon, or to keep or permit to be kept on such land any dog, unless chained up or kept under proper control; or,

(d) except in connection with such mining or other operations aforesaid, to remove earth or rock therefrom, without the consent of the owner and occupier.

67.

67. (1) No such lease shall, unless the said land has been securely fenced, and kept securely fenced at the expense of the lessee, give to the said lessee the right—

Lessee not to impound nor molest sheep, &c., unless leasehold fenced securely. 57 Vic. No. 32, s. 14.

(a) to impound any sheep, cattle, horses, or other animals belonging to or in the custody or control of the owner or occupier of the said land; or

(b) to disturb or molest them in any way whatsoever, or prevent them from depasturing on the said land; or

(c) to sue in trespass or otherwise in respect thereof.

(2) Every lessee under this Part whose lease extends to the surface of any land shall, if required in writing so to do by the owner or occupier, cause without delay a secure fence to be erected and kept in good repair around any shafts, machinery, or other works in connection with the mining under such lease not already so protected.

Lessee shall fence shafts, &c., when required. *Ibid.* s. 20.

Division 4.—Mining by owner.

68. (1) If the owner, or the occupier with the consent of the owner, of any private land not applied for or occupied for mining operations under this Part desires to conduct mining operations by way of prospecting on such land, or to obtain a lease of such land under this Part, he may make application in that behalf in the prescribed manner, and thereupon an authority to enter or lease may be granted to him. Such authority or lease shall confer the same rights respectively as an authority to enter or a lease under this Part would confer in the case of other applicants.

Prospecting by owner or occupier. *Ibid.*, s. 25.

(2) An owner or occupier applying as aforesaid shall have no preferential rights over other applicants, and shall be subject to payment of royalty and all other provisions of this Part binding upon other applicants and holders of authorities to enter or leases thereunder as the case may be, with the exception of assessment and payment of rent and compensation, and of those provisions which relate to such notices, and other matters as the owner or occupier would in that character have been entitled to in the case of an application made by some other person.

Owner not to have preferential right.

(3) Any owner or, with the consent of the owner, any occupier of any such land desiring to mine thereon for coal or shale may make application in that behalf in the prescribed manner, and thereupon a lease may be granted to him. The area of any such lease shall not exceed six hundred and forty acres.

69. (1) The owner of any private land not applied for or occupied under this Part may, with the concurrence of the Minister, enter into a lease or agreement in writing with any holder of a miner's right giving such holder power to enter such land and take possession thereof and mine thereon for gold or any mineral.

Lease by owner to holder of a miner's right. *Ibid.* s. 33. 60 Vic. No. 40, s. 11

(2)

(2) The area comprised in any such lease or agreement, and the term thereof, shall not exceed the extent and term, and shall be subject to the payment of the royalty to the Crown (after deduction of any sum paid by way of rent) and performance of the labour conditions prescribed in this Part in respect of a lease thereunder. Area and term.

(3) Such lease or agreement may be transferred with the concurrence of the Minister.

(4) No such lease or agreement and no such transfer shall have any force or validity unless and until it is registered as prescribed. Within twenty-eight days from the date of the Minister's concurrence therewith, on registration of a lease or agreement, a fee shall be paid for survey of the land.

(5) No such lease or agreement shall contain any provision or stipulation for the payment to the owner of any sum by way of royalty upon the gold or minerals won from the land comprised therein. Land subject of lease &c., not open to occupation. Act No. 10, 1902, s. 3.

(6) The land, from the date of the receipt by the Minister of such lease or agreement, or the draft thereof submitted for his concurrence, shall, until and unless such concurrence is refused, be exempt from entry or occupation under this Part by any person other than the parties to such lease or agreement.

70. (1) The owner of any private land may, without any lease or authority to enter, mine or enter into an agreement with any other person to mine therein for any mineral not reserved to the Crown, notwithstanding that any gold or mineral reserved to the Crown is associated with the mineral so mined for, provided that the value of such gold or mineral so associated does not exceed fifty per centum of the value of the mineral mined for: Provided that such agreement shall not have any force or validity unless it is registered as prescribed, within twenty-eight days from the date of such agreement: Provided also, that all land included under any such agreement shall be marked out in the manner prescribed. Owner may mine or agree with any person to mine for any mineral. 60 Vic. No. 40, s. 9.

(2) No authority to enter or lease shall be granted in respect of any land upon which such mining operations have been commenced, but this prohibition shall extend only to any lode bona fide worked as aforesaid, and to land covering the same to the width of two hundred and twenty yards along the course of such lode. Land protected along lode from authority to enter.

(3) A royalty of one per centum on the value of all gold or silver reserved to the Crown obtained from the land comprised in any such agreement shall be payable to the Crown by the person obtaining the same, at the times and in the manner prescribed. Royalty.

Division 5.—Resumption.

Coal and shale lands.

71. (1) **Any Crown land which, since the thirtieth day of September, one thousand eight hundred and eighty-nine, has been or shall hereafter be sold conditionally or by auction or in virtue of improvements** **Authority to mine on purchased or leased land. 53 Vic. No. 20, s. 2.**

improvements or otherwise, and of which the grant contains, or will when issued contain, a reservation of all minerals, and any Crown land which has been leased conditionally under the Crown Lands Acts, shall be subject to the following conditions, namely:—Any person specially authorised in the prescribed manner by the Minister shall, on depositing a sum of money as prescribed to cover the cost of repairing any damage done to the surface of the land, be at liberty to dig and search for coal and shale within such land, and should it be found to contain any such mineral, the Governor may cancel wholly or in part the sale or lease of such land, and upon the notification thereof the proprietor shall be entitled to compensation for the value of the land and the improvements thereon or of his interest therein, as hereinafter provided in the case of land resumed, but exclusive of the value of all minerals contained therein, and such land shall thereupon become Crown land within the meaning of this Act, and shall be reserved from sale or lease until such reservation is revoked by the Governor. The person so specially authorised by the Minister to dig and search for coal and shale, upon satisfying the Minister that he has complied with all the conditions of such authority, shall, on the appearance of such notification, be deemed to be the first applicant for a lease of such land or a portion thereof, and the date of such application shall be reckoned from the day of publication of such notification, but in other respects as to labour conditions and other matters, such application shall be dealt with subject to the provisions of this Act relating to mining leases on Crown land.

(2) No such authority as aforesaid shall be granted in respect of any portion of such land so long as it is the subject of any other holding under this Act. Nor shall any other title to mine be acquired under this Act in respect of any portion of such land so long as it is subject to such an authority as aforesaid.

Resumption of private land.

Upon discovery of gold Governor may resume land.
57 Vic. No. 32, s. 40.
60 Vic. No. 40, s. 3.

~~71.~~ **72.** Upon the discovery in any private land of gold in such quantity as the Minister considers payable, the Governor may resume for mining so much of such land as he may consider necessary. But no such resumption shall be made of land occupied for the time being under any lease or agreement under this Part unless with the consent of the lessee or the parties to the agreement:

Provided that such lease or agreement was entered into at least fourteen days before notification of such resumption.

Resumption to be notified.
60 Vic. No. 40, s. 3.

~~72.~~ **73.** Every such resumption shall be notified in the Gazette, and in some newspaper published or circulating in the district in which such land is situated, and shall take effect at the date specified for that purpose in the said notification, and such land shall thereupon vest

vest in His Majesty and become Crown land within the meaning of this Act, and shall be reserved from sale and from lease for other than mining until such reservation is revoked by the Governor.

Copies of all such notifications, together with the reasons for the resumption therein notified, shall be laid upon the tables of both Houses of Parliament forthwith if Parliament is then sitting, and if not then within fourteen days after the commencement of the next session thereof.

Discoverer to have preferential right. 57 Vic. No. 32, ss. 40, 42. 60 Vic. No. 40, s. 3.

~~73.~~ **74.** (1) If such discovery as aforesaid has been made by the holder of an authority to enter he shall be deemed to be the first applicant for a claim or for a gold-mining lease under Part II or Part III of this Act, and the date of publication in the Gazette of the said notification of resumption shall be reckoned as the date of possession by such holder for the purpose of his application for such claim or lease.

As to lease of resumed land. *Ibid.*

(2) Except in the case of a lease granted to the person who has made such discovery as aforesaid, all land resumed under this ~~section~~ **Part** shall be exempt from leasing, except such as may be deemed by the Minister specially suitable to be leased by reason of its great depth or wetness, or on account of the costly appliances required for its development, or where the Minister is of opinion that it is desirable for any other reason that the same shall be open to lease.

Former owner to have preferent right to purchase or lease. 57 Vic. No. 32, s. 40.

~~74.~~ **75.** If such reservation **as aforesaid** is revoked, the land shall become Crown lands within the meaning and for the purposes of the Crown Lands Acts, upon notification to that effect, and the former owner of such land, or any person claiming through or under him, shall be entitled to purchase or lease such land at a price or rental to be determined by the Secretary for Lands after appraisement by the local land board, subject to appeal to the Land Appeal Court, and failing such purchase or lease the land shall be dealt with under the Crown Lands Acts.

Lands held without reservation of minerals.

Resumption of land held without reservation of minerals.

~~75.~~ **76.** (1) The Governor may resume for mining any land alienated or in process of alienation from the Crown without any reservation of minerals, or so much of such land as he may consider desirable in the public interest.

(2) Every such resumption shall be effected in the manner prescribed in section seventy-two.

(3) The Governor may grant mining leases of any land so resumed, and such leases shall be subject to the provisions of Part III of this Act, relating to mining leases on Crown lands, save only that the Governor may fix the rent and royalty payable and impose such special conditions as he may think fit.

Compensation.

Compensation.

~~76.~~ **77.** When any land is resumed under this Division the Minister may direct the warden or other person to assess the market value of such land (exclusive of any increase in the value of such land by reason of the discovery of gold therein) and the improvements thereon, reasonable allowance being made for any damage that may be caused by severance; and if there is any person other than the owner having interest in such land, the value of such interest shall also be assessed; and such assessed value shall be paid to the persons entitled thereto respectively. Compensation for resumption. 57 Vic. No. 32, s. 40. 60 Vic. No. 40, s. 4.

~~77.~~ **78.** Every person claiming payment for land resumed under this Part shall, within sixty days of the date of the determination of the value of the land and the improvements thereon, lodge with the Minister a notice in the prescribed form setting forth the nature of his estate or interest in the land and an abstract of his title. Claim to payment of compensation.

~~78.~~ **79.** The Minister shall, within three months after being satisfied as to the report of the Crown Solicitor that the valid title is in the claimant, pay to such claimant the value so determined: Provided that if the land be under mortgage, the amount due thereunder shall be paid to the mortgagee. Payment of compensation.

~~79.~~ **80.** All reasonable costs of proceedings for resumption under this Part shall, subject to taxation by the Prothonotary of the Supreme Court, be paid by the Crown, except that the costs of an appeal ~~to arbitrators shall be in the discretion of the arbitrators~~ **shall be paid by the unsuccessful party to the appeal.** Costs.

~~80.~~ **81.** The value so determined shall bear interest at the rate of four per centum per annum from the date when the land vested in the Crown **until the receipt of notification in writing from the Minister that he is prepared to pay the value,** but for no longer period ~~than twelve months from such date.~~ Interest.

Division 6.—General Provisions.

Royalty.

~~81.~~ **82.** (1) A royalty shall be paid of one per centum of the value of all gold and minerals, ~~except coal and shale,~~ obtained from any land under an authority to enter or a lease under this Part. Amount.

Where the product of any mine is ore, concentrates, matte, or other substance containing gold or minerals, the royalty shall be paid according to the estimated value of the gold or mineral. Royalty to be according to metallic contents.

(2) A royalty shall be paid of sixpence per ton on all shale or large coal, and threepence per ton on all small coal obtained from any land ~~under any such authority or lease~~ **held under lease by the owner or occupier of such land.**

(3)

Mining.

(3) Such royalty shall be payable to the Crown, at the times, and in the manner prescribed, and may be recovered from the holder of such authority or the lessee as a Crown debt.

(4) The holder of the authority or the lessee may deduct from the total sum payable by way of royalty in any one year a sum equal to the amount paid by him as rent for that year. Rent may be deducted from royalty.

Right of way.

~~82.~~ **83.** Every authority to enter and every lease under this Part shall confer full right of ingress, egress, and regress for the purpose of the exercise of the rights thereby conferred, by a right-of-way to be marked in the prescribed manner from the land defined in the authority or lease to the nearest practicable point of a public road. The cost of marking such right-of-way shall be borne by the holder of the authority or the lessee, who shall place substantial sheep-proof gates at all fences intersected by such right-of-way, or rabbit-proof gates in any case where such fences are rabbit-netted; but the right to cross any tenement leasehold or other holding under this Act for the purpose of obtaining access to the nearest public road shall not be exercised except under the authority of the warden, nor shall the said right be exercised over any garden, yard, orchard, or pleasure ground. Right of ingress, egress, and regress. 57 Vic. No. 32, s. 11. Marking of roadway. Gates in fence intersected by roadway.

PART V.

Dredging leases.

Preliminary.

~~83.~~ **84.** In this Part, and in any regulations relating to matters thereunder, unless the context or subject-matter otherwise indicates,— Interpretation. Act No. 44, 1899, s 2.

"Crown land" means land vested in His Majesty except land held under tenure from the Crown for other than pastoral purposes.

"Lake" includes a lagoon, swamp, or other collection of still water, whether permanent or temporary, not contained in an artificial work.

"Occupier" includes any lessee from the Crown under any tenure under the Crown Lands Acts, or any tenant of land alienated from the Crown, or any person in charge of alienated lands for the owner thereof.

"Owner" includes the owner of the freehold or conditional purchaser of any land, or holder of a homestead selection, conditional lease, or conditional purchase lease, or any trustee in whom any land is vested.

"River" includes any stream of water, whether perennial or intermittent, flowing in a natural channel.

"River-bed" means soil or detritus lying between the solid rocks forming the banks of a river, to be defined by the mining surveyor when making the survey.

~~84.~~ **85.** Nothing in this Part, except the provisions as to roads of access and sites, shall, unless with the consent of the owner, apply to any lands not Crown lands which are found by the warden to have been at the time of the application for the authority to enter enclosed and under actual cultivation.

Not to apply to lands enclosed and under cultivation except in certain cases. Act No. 44, 1899, s. 5.

Grant of leases.

~~85.~~ **86.** (1) Subject to this Act, the Governor may grant for the purpose of mining for gold or any other mineral, by dredging, pumping, sluicing, or other method, and of erecting the buildings and machinery required in connection with such mining leases of any land (not being land held under or by virtue of any Act relating to mining)—

Governor may grant leases for purposes of mining by dredging, &c., and of what lands. *Ibid.* s. 3.

(a) forming the bed of any river or lake; or

(b) under any tidal water; or

(c) under the ocean contiguous to the coast line; or

(d) contiguous to any such place; or

(e) such as may be suitable for such mining.

(2) The area that may be demised by any such lease shall not exceed one hundred acres. The number of men to be employed shall be in the proportion of not less than seven men to one hundred acres, and the amount to be expended in the purchase and erection of machinery and appliances for the purpose of working the area, shall be not less than ten pounds per acre:

Area that may be demised.

Provided that the Minister may increase such labour or expenditure, or both, if it be shown that the circumstances warrant such increase.

(3) Such leases shall not be granted for a longer term than twenty years, but may be renewed for any term not exceeding twenty years, subject to the prescribed conditions.

Duration of lease and renewals.

(4) The warden may, subject to the regulations, suspend, in whole or in part, the labour conditions of any such lease upon being satisfied by evidence on oath in open court that the circumstances ~~warrant such suspension.~~

~~Suspension.~~

Marking of land.

~~86.~~ **87.** (1) Any person desiring to apply for a lease under this Part shall mark out in the manner prescribed the area intended to be included in the application; but where all or any of such area is not Crown land, he must, before so marking out the area, obtain, as prescribed, from the warden of the mining district in which the land is situated an authority under this Part to enter the area or the part thereof which is not Crown land.

Land to be applied for to be entered and marked out. *Ibid.* s. 4.

(2)

(2) Such authority shall be granted by the warden on payment of the deposit prescribed. Deposit.

On the order of the Minister the amount of such deposit, less such sum (if any) as the Minister directs to be retained to cover the expenses incurred by the Crown in relation to the application, shall be refunded to the applicant on the execution of the lease by the lessee, or if the Minister is satisfied that the application was bona fide, on the refusal of the application.

~~87.~~ **88.** (1) Such authority shall entitle the holder thereof to enter, personally or by an agent duly authorised in writing, accompanied, if desired, by not more than three other persons, upon the land therein mentioned, for the purpose aforesaid, during a period named therein, which shall not exceed fourteen days, with right of ingress, egress, and regress to and from the nearest practicable point of a public road, without incurring liability for trespass in respect thereof, but shall not entitle him to commence any mining operations. Entry in pursuance of authority. Act No. 44, 1899, s. 4 (3).

(2) Such authority shall be exhibited on demand to the owner or occupier of the land therein mentioned. Authority to be exhibited.

(3) Such area shall be marked out during the currency of the authority. When area may be marked out.

(4) During the currency of any such authority, unless and until an area has been marked out thereunder as aforesaid, the warden shall not issue any other authority to enter upon the same land. Warden not to issue any other authority in respect of same land.

(5) Any owner, occupier, or other person who obstructs any holder of any such authority, or his agent, or the person accompanying such holder or agent, in the performance of any act, or interferes with, removes, destroys, or defaces any mark made or any notice posted in pursuance of such authority, shall be liable for the first offence to a penalty not exceeding ten pounds, and for the second or any subsequent offence to a penalty not exceeding fifty pounds. Owner, &c., obstructing holder of authority.

Interim possession.

~~88~~ **89.** The person who has marked any area of land under this Part shall, to the extent of the area applied for as against all persons, be deemed to be in possession thereof until the application has been finally disposed of: Person marking out area to be deemed in possession. Act No. 44, 1899, s. 6.

Provided that the owner or occupier of any such land shall, during such period, be entitled to the continued use and enjoyment thereof for all purposes not inconsistent with such application.

Application for leases.

~~89.~~ **90.** (1) Applications for leases under this Part shall be made within the time and in the manner prescribed to the warden of the mining district in which the land is situate. Applications for leases to be made to warden and forwarded to the Minister.

(2) *Ibid.* s. 7.

(2) Such applications shall be forwarded by the warden to the Minister for consideration, with a recommendation as to whether the application should be granted, wholly or in part, or subject to any and what conditions, stipulations, or restrictions, or should be refused.

(3) The Minister may refuse to entertain any such application, or may direct the warden to hold an inquiry in the manner prescribed. Minister may refuse to entertain application, or may direct inquiry.

Inquiries.

Act No. 44, 1899, s. 8.

~~90.~~ **91.** (1) At such inquiry the warden shall determine— Warden to inquire and make orders as to roads of access, sites for machinery, rent, and compensation.

(a) what roads of access and what sites for machinery, workshops, storage of fuel or other material outside the area applied for are necessary for carrying on the mining operations intended;

(b) what sum, by way of rent for the use of any land which is not Crown land and which is to be included in the lease or comprised in roads of access and sites as aforesaid, shall be paid by the lessee to the occupier or owner of the same; *Ibid.* s. 10.

(c) what sum, by way of compensation for damage likely to be caused to the area applied for or to land adjoining such area by acts done in or incidental to carrying on the mining operations intended, shall be assessed;

(d) as to any objection or other matter affecting the application;

and shall issue orders in accordance with such determinations:

Provided that if the applicant for the lease produces to the warden a document duly signed by himself and by the parties who would be entitled to any such rent, and witnessed, certifying that they have agreed as to the amount of such rent, such amount shall be adopted by the warden without any further inquiry in respect thereof. But no such agreement shall contain any provision or stipulation for the payment of any sum by way of royalty upon the gold or minerals won from the land applied for. Proviso that parties may agree as to rent and compensation.

(2) The warden shall hold such inquiry in open Court, and shall have the powers of a Wardens' Court. Inquiry in open Court.

~~91.~~ **92.** The Minister may at any time authorise and direct a warden to hold any further or other inquiry in open Court with reference to any matter concerning an application for a lease under this Part. Notice of such inquiry shall be given to the parties concerned. Further inquiry. *Ibid.* s. 14.

At such inquiry the evidence shall be taken on oath.

~~92.~~ **93.** A warden holding an inquiry as aforesaid shall forward to the Minister the evidence taken by him, and a report of his orders thereon. Evidence and orders to be sent to the Minister. *Ibid.* s. 15.

~~93.~~ **94.** (1) The Minister, on receipt of such evidence and report as aforesaid, may determine that the application shall be refused, or that a lease of the area included in the application, or of any greater or less area, may be granted to the applicant, and may determine whether any and what special conditions shall be inserted in the lease. Minister may refuse application or grant lease. *Ibid.* s. 16.

(2)

(2) Notice of such determination shall be published in the Gazette. Notice in Gazette.

(3) Where the Minister has determined that a lease may be granted, the applicant shall, within the time and in the manner prescribed, give notice to the Minister whether he will accept a lease on the terms mentioned in such notice in the Gazette or not, otherwise the application shall lapse. Applicant to notify whether he accepts or not.

Road of access or site.

~~94.~~ **95.** (1) The warden may order that any road of access or site as aforesaid which he finds to be necessary shall be marked out on the land by a person appointed by him in that behalf, and such person shall not incur liability for trespass committed by him in pursuance of such order. Warden may order such road or site to be marked out. Act No. 44, 1899, s. 11.

Such road shall be marked out in the manner prescribed from the nearest practicable point of a public road.

(2) The order of a warden declaring that a road of access along the line determined by him is necessary shall entitle the lessee to use such road with horses, cattle, and vehicles.

~~95.~~ **96.** If after the issue of any lease it is found that a road of access, or a site as aforesaid other than that mentioned in the original order of the warden, is necessary, the warden may, in the manner prescribed, and subject to such rent as he may by an order which shall be final and not subject to any appeal determine, and to such terms and conditions as he may deem proper, mark or cause to be marked out on the land such other or additional road or site ; but such road or site shall not be used until the amount of the first year's rent thereof determined by the warden has been paid and any conditions imposed by him have been fulfilled. Further or other roads of access and sites may be ordered by warden. *Ibid.* s. 20.

Rent and royalty.

~~96.~~ **97.** (1) The amount of the first year's rent of land which is not Crown land, as determined by the warden shall be paid by the applicant to the warden or warden's clerk within the time prescribed. First payment to be made into warden's court. *Ibid.* s. 12.

(2) Such amount shall be paid out to the parties entitled thereto under the order of the warden on the execution of the lease by the lessee, or refunded to the applicant if the application is refused. Payment to be refunded or paid out.

(3) Any subsequent years' rent shall be paid direct by the lessee under this Part to the owner and occupier of the land in such proportions as may be agreed, or as the warden on failure to agree may determine.

~~97.~~ **98.** (1) The rent to be paid to the Crown in respect of Crown land shall be two shillings and sixpence per acre. And such rent shall be payable at the times and places and in the manner prescribed: Provided that all such rents shall be payable yearly in advance, and the first annual payment shall be made on making the application for such lease. Rent. Act No. 102, 1902, s. 2.

(2)

Mining.

(2) A royalty of one per centum of the value of all gold and minerals won from any land leased under this Part shall be payable to the Crown at the times and in the manner prescribed: Provided that if the royalty payable in respect of any lease during any one year exceeds the rent paid for such year, the amount paid as rent as aforesaid may be deducted from the sum payable as royalty; but if such royalty in any one year amounts to less than the rent paid for such year, the lessee shall not for such year be required to pay royalty. Royalty. Act No. 102, 1902, s. 3.

Grant of lease.

~~98.~~ **99.** (1) The Governor may, where the applicant has given notice of acceptance as aforesaid, grant a lease on the said terms to the applicant or to any person named by the applicant. No obligation to grant lease. Act No. 44, 1899, s. 17.

(2) Nothing in this Part shall render 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 Part and of the regulations thereunder. Lease may be granted though regulations not complied with.

(3) A lease may be granted under this Part by the Governor, notwithstanding that the person applying for the same may not in every respect have complied with the regulations.

Right to water.

100. No lease under this Part granted shall prevent the owner or occupier of any freehold or conditionally purchased land included within such lease from having free and uninterrupted access to the water for stock watering and similar purposes. Owner to have access to water.

Penalty.

~~99.~~ **101.** Any applicant for a lease under this Part who commences mining operations in or on the area included in the application, whether covered with water or not, before such lease has been executed by him, shall, unless he proves that he has before commencing such operations obtained the consent of the owner or occupier, be liable to a penalty not exceeding ten pounds. Applicant not to mine till he has executed lease. *Ibid.* s. 19.

Authority to holder of miner's right.

~~100.~~ **102.** (1) If so specified in any lease under this Part, the warden may grant authority in writing to any holder of a miner's right to enter upon any Crown land comprised in such lease, and to mine thereon, subject to such conditions as he may think fit to impose and as may be prescribed. Special condition enabling warden to grant authority to holder of miner's right to mine.

(2) Every such authority shall empower the holder to mine upon the said land with such hand appliances as may be prescribed, and at such distance from the mining operations carried on by the lessee, not being less than two hundred yards, as the warden may consider advisable. Mining by hand appliances.

(3)

(3) If the holder of the authority fails to observe any of the conditions aforesaid, or impedes or otherwise hinders the carrying on of dredging operations by the lessee, such authority may be cancelled by the warden. If such holder mines or continues to mine upon the said land after being notified in writing of the cancellation of the authority, he shall be deemed a trespasser.

~~101.~~ **103.** If so specified in any lease under this Part, such lease shall be subject to a condition that any holder of a miner's right may enter upon any Crown land comprised in such lease for the purpose of washing dirt at the place most convenient to him and may for that purpose cut races, run sludge into a stream, or obtain water therefrom, provided that in so doing the mining operations carried on by the lessee will not, in the opinion of the warden, be interfered with or prejudicially affected. Washing dirt, &c., on lease.

PART VI.

TENEMENTS AND LEASES GENERALLY.

104. Nothing in this Act shall confer the right to grant a lease for mining purposes permitting the construction of a railway or tramway over or under Crown or private lands, or over or under any street, road, or highway for a greater distance than is reasonably necessary to connect the same with the nearest point on any railway or tramway vested in the Chief Commissioner for Railways and Tramways, or any railway or tramway constructed under any special Act of the State which would afford by such connection the necessary facilities for transit to and from any mine: Provided that this section shall not affect the right to grant a lease for a railway or tramway direct from any mine to any waterway. **Leases for railways and tramways for mining purposes.**

Governor's powers over Crown lands.

~~102.~~ **105.** (1) The Governor may suspend the operation of any Crown lease or license for pastoral purposes of Crown land so far as may be necessary for— Suspension of pastoral lease. 37 Vic. No. 13, s. 18.

(a) the accommodation of the horses, cattle, and sheep required for the subsistence and convenience of any persons holding tenements, leases, or other holdings under this Act;

(b) the supply of water to such persons; and

(c) otherwise for the carrying on of mining operations by such persons.

(2) The Governor shall return or remit to the lessee or licensee such portion of the rent of such land as may be reasonable and just, and shall pay compensation for any improvements upon such land, to be assessed, unless otherwise agreed upon, by the warden of the district in which such land is situated.

(3)

(3) Upon any such suspension as aforesaid, the Crown, by its officers and servants, may enter the land, and do all such acts as may be deemed necessary for the proper regulation of the water supply.

~~37 Vic. No. 13, s. 26.~~

~~103. The Governor, on the recommendation of the Minister, and with the concurrence of the Secretary for Lands, may by notification exempt any Crown lands from alienation and from all classes or any specified class of tenure under the Crown Lands Acts, and may reserve the same for mining purposes, and may in like manner revoke or alter any such exemption or reservation. He may also in like manner alter the boundaries of or revoke any reserve for mining purposes heretofore made under the authority of any Act.~~

Exemption of Crown lands from alienation.

106. The Governor, on the recommendation of the Minister, and with the concurrence of the Secretary for Lands, may, by notification, exempt from alienation and from all classes or any specified class of tenure under the Crown Lands Acts any Crown lands required for mining or mining purposes, and may reserve the same for either or both of such purposes, and may in like manner revoke or alter any such exemption or reservation. He may also in like manner alter the boundaries of or revoke any reserve for mining or mining purposes heretofore made under the authority of any Act.

The power conferred by this section shall only be exercised in relation to reserves for mining or mining purposes, and is in substitution for similar powers conferred by the Crown Lands Acts.

Applicant to execute lease.

Applicant or legal representative to execute lease.

cf. *Ibid.* s. 57.

~~104.~~ **107.** (1) When any application for a lease is granted, it shall be the duty of the applicant, or the person named by him, or his legal representatives on death or bankruptcy, to execute such lease when called upon, and the execution of a lease by such legal representatives shall be as binding upon all persons as if the lease had been duly executed by the applicant or the person aforesaid.

Consequences of refusal to execute lease.

(2) If the applicant or person, or his legal representatives as aforesaid, neglect or refuse to execute such lease or to pay the prescribed deed-fee in respect of the same within the prescribed period, after being notified in writing, as prescribed, that the said lease is ready for execution, the said lease may be voided by the Governor, and thereupon all moneys deposited with the application shall be absolutely forfeited to His Majesty and paid into the Consolidated Revenue Fund. Such voidance shall take effect from the time of publication thereof in the Gazette.

Issue of lease not executed by all the applicants.

(3) Where the application is made by two or more persons, and one or more of such persons fails or fail to execute the lease within the period prescribed as aforesaid, the Minister may, if he thinks fit,

fit, cause the lease to be issued to such of the applicants as have executed the same; and in that case such lease shall be valid and effectual in favour of such applicants.

(4) A lease shall take effect only upon execution thereof by the Governor. 57 Vic. No. 32, s. 11

Form and conditions of leases.

~~105.~~ **108.** (1) Every lease under this Act shall, according to the nature thereof, contain the covenants, conditions, reservations, and exemptions contained in the respective forms prescribed in the regulations, or as near thereto as circumstances will permit, having regard to the special requirements herein provided. Covenants, conditions, &c. 37 Vic. No. 13, s. 51.

(2) Every such lease shall be dated the day of the execution thereof by the Governor. Date of lease. *Ibid.*

Registration.

~~106.~~ **109.** (1) Every lease under this Act shall be registered with the registrar, Department of Mines, Sydney, who shall forward a copy thereof to the warden of the district in which the land comprised in such lease is situated, and thereafter every transfer, sub-lease, or change of ownership of, and every tribute agreement affecting the land comprised in such lease or any portion thereof shall be registered with the registrar aforesaid. Lease to be registered. 57 Vic. No. 32, s. 27.

(2) Any person claiming interest in any such lease may, prior to the registration of any transfer or sub-lease thereof, lodge with the Minister a caveat in the prescribed form and accompanied by the prescribed fee against such registration. On receipt of such caveat, the Minister shall stay registration for fourteen days, unless the caveat is sooner withdrawn, but shall then register the said transfer or sublease unless the person objecting has obtained and served upon him an order of some competent court forbidding such registration. Caveat.

Works in connection with mining.

~~107.~~ **110.** (1) The warden may, subject to the regulations, grant permission in writing to the holder of a claim or of a lease under this Act, upon written application for that purpose, to lay or construct a line of pipes, sluice-box, or a culvert under or along any public road, street, or highway, or across any Crown lands or lands reserved or dedicated to any public purpose, for the purpose of conveying any water, tailings, sludge, waste-water, or earth in connection with any mine. Warden may allow pipe-line, &c., to be constructed on public road, &c. 37 Vic. No. 13, s. 29.

(2) Before granting such permission the warden shall cause the said road, street, or highway to be inspected by some duly authorised officer. Inspection of road. *Ibid.*

(3) Any works authorised by such permission shall be so constructed as not substantially to injure such road, street, or highway, Construction of works.

or

or obstruct the traffic thereon; and if after construction it appears to the warden that they do in fact cause such injury or obstruction, he may cancel such permission and order the person who obtained such permission, or the owner or occupier for the time being, to remove any such works or obstruction within seven days.

(4) If any such order is disobeyed, the line of pipes, sluice-box, or culvert in question shall be deemed a nuisance remediable in like manner as any other obstruction or nuisance upon a highway, and every person so disobeying shall be liable to a penalty not exceeding twenty pounds per day during such disobedience. Penalty for disobedience of order. 37 Vic. No. 13, s. 29.

~~108.~~ **111.** (1) The warden may, subject to the regulations, authorise any holder of a claim or lease under this Act, or any Act hereby repealed, to enter any Crown or private land held under any lease, claim, or other holding under any such Act for the purpose of constructing tunnels, roads, races, shafts, or channels, or of erecting standards carrying wires for the conveyance of electricity to or from any mine held or owned by such holder or lessee: Provided that the works to be constructed shall be carried out in such a manner as shall cause as little injury or inconvenience as possible to the holder of such land. Authority to construct tunnels, &c., on holding. cf. *Ibid.* s. 30.

(2) The warden shall assess the compensation to be paid for any damage caused or likely to be caused by the construction of such works. Compensation.

(3) If the person to whom such authority is granted fails to observe the conditions under which such authority is granted, the warden may at once cancel such authority. If such person continues in occupation of or enters such land after being notified in writing of such cancellation, he shall be deemed a trespasser. Cancellation.

(4) The rights and duties under any authority issued under this section may be assigned and transferred with the claim or lease in connection with which it was issued. Assignment.

~~109.~~ **112.** When at the time of any sale or alienation of Crown lands, any race or drain, dam, or reservoir constructed for mining purposes flows through, or over, or is constructed upon any portion thereof, although no reservation or exception is contained in the Crown grant, no person, unless specially authorised thereto by the Minister, shall obstruct or interfere therewith or prevent access thereto. Easement over Crown lands continues notwithstanding alienation. *Ibid.* s. 31.

Suspension of *labour conditions.*

~~110.~~ **113.** (1) The registered owners, or a majority of the registered owners, of any claim or lease, held under this Act or any Act hereby repealed, may apply to the warden for authority to suspend mining operations for any period not exceeding the limits hereinafter set forth on the occasion of each such suspension. Registered owners may apply. *Ibid.* ss. 32, 55.

(2)

(2) Every such application shall contain the grounds thereof, and a copy thereof shall be posted on the claim or on the land leased, and also outside the warden's office or the mining registrar's office nearest to the land in respect of which suspension is applied for, and shall be served upon the owners of or posted on adjoining claims or leases. Any person may, before the hearing of such application, in the prescribed manner lodge an objection to the granting of the suspension applied for, and shall be entitled to be heard in support of such objection. Grounds of application to be posted.

(3) The warden may grant such authority for any period not exceeding six months on being satisfied by evidence on oath in open court— Proceedings thereon. 37 Vic. No. 13, ss. 32, 55.

(a) that the claim or lease is unworkable by reason of accident to machinery, subsidence, scarcity of water, sudden excess of water, or any other cause whatsoever; or

(b) that the owners of such claim or lease are unable, by reason of sickness, accident, unavoidable absence, or other sufficient cause, to work the same; or

(c) that substantial expenditure has been incurred in mining operations on the claim or lease, and that the owner or lessee is temporarily unable to continue such operations, and requires reasonable time within which to make necessary arrangements.

(4) The warden may—

(a) upon being further satisfied by evidence on oath in open court that the claim or lease cannot be profitably worked under then existing circumstances owing to the low price of the product thereof or other adverse conditions, grant such authority for any period not exceeding six months in respect of any claim; or

(b) recommend to the Minister the granting of, and the Minister may grant, such authority for any such period in respect of any lease, in which case the authority shall be published in the Gazette and registered by the registrar, Department of Mines Sydney.

(5) All applications for suspension of labour conditions shall be made and dealt with as prescribed. Regulations to be observed. 37 Vic. No. 13, ss. 32, 55.

(6) The warden or the Minister (as the case may be) may, when granting suspension as aforesaid, impose such conditions as he may think fit for the protection from injury of adjoining mines by water or otherwise by reason of such suspension being granted. Conditions may be imposed.

~~111.~~ **114.** (1) If any holder of a lease under this Act, or any Act hereby repealed, employs on the land demised labour in excess of that required by the provisions of his lease, he shall, upon application to the warden and upon satisfying him that after the commencement of this Act and during Exemption from labour conditions.

during any expired period of his lease, not being less than six months, the excess labour so employed has been equal to the labour prescribed in his lease for six months, be entitled in respect of such excess labour to exemption from the employment of labour for one month: Provided that such exemption shall not be for any longer cumulative term than six months at any one time.

(2) Upon receipt of any such application, the warden shall hold an inquiry in open court, of which notice shall be given as prescribed; and, upon being satisfied that the lessee is entitled to such exemption, he shall issue a certificate in the form prescribed, and such certificate shall be registered in the Department of Mines, Sydney. Inquiry by warden and certificate.

(3) Such exemption shall be subject to the condition that the lessee undertakes to observe and carry out such directions and orders as the warden may give for the protection of adjoining mines from injury by water or otherwise by reason of the exemption. Conditions of certificate.

Returns of minerals won.

~~112.~~ **115.** Every holder of a lease, claim, or other title under this Act to mine shall, during the first fourteen days of the month of January in each year, furnish to the Minister a full and proper return, verified by statutory declaration, showing the quantity and value of gold and other minerals, except coal and shale, won during the preceding year ending thirty-first December, and the average number of men employed on such lease, claim, or land held under other title during such year, and on default shall be liable to a penalty not exceeding five pounds where no royalty is payable and not exceeding fifty pounds where royalty is payable. Lessee, &c., to furnish returns.

Every person carrying on metallurgical works for the treatment of gold or any other mineral shall, during the first fourteen days of the month of January in each year, furnish to the Minister a full and proper return, verified by statutory declaration, showing the quantity and value of gold and other minerals treated at such works during the preceding year ending thirty-first December, and on default shall be liable to a penalty not exceeding five pounds.

If such holder or person is a public company, such return shall be furnished by the manager or person acting in the management, or by the secretary of the company; and the said manager, person, or secretary shall on default be liable to the said penalty. Manager or secretary to furnish return for company.

~~113.~~ **116.** (1) Every holder of a coal-mining lease, or other authority to mine for coal, shall, within fourteen days after the last day of March, June, September, and December in each year, furnish to the Minister a return, verified by statutory declaration, showing the quantity and approximate value of coal won from any mine worked by him under such Additional return by coal-mining lessees.

such lease or authority during the three months ending on such last day as aforesaid, and on default shall be liable to a penalty not exceeding fifty pounds.

If such holder is a public company the return shall be furnished as in the preceding section mentioned, and the manager or secretary as therein mentioned shall on default be liable to the said penalty.

Minister may require further return or may appoint officer to make inquiries.

(2) If the Minister is not satisfied with the return so furnished, he may require such holder, manager, or secretary to furnish further particulars of the coal won, or may, whether any return has been furnished or not, appoint any officer of his department or other person to make all necessary inquiries in relation to such coal. The officer or person so appointed may make all such inquiries, and may require such holder, or his clerk, or the manager, secretary, or clerk of any such company, to produce for his inspection at the office of such holder or company any books, accounts, documents, writings, papers, or instruments in his possession or under his control that such officer or person may consider necessary to enable him to ascertain the quantity of coal won, and may make copies of any entries or matters contained in such books, accounts, documents, writings, papers, or instruments, and upon completion of such inquiries shall report thereon to the Minister.

Secrecy as to information obtained.

(3) Any such officer or person who reveals any information so obtained by him, except as aforesaid or under the authority of a court of competent jurisdiction, shall be liable to a penalty not exceeding one hundred pounds.

The evidence in respect of such information shall not be admissible in any court except in the case of a prosecution under this Act, or in respect of any proceedings in relation to such inspection and inquiry.

Secrecy as to return and reports.

(4) Every officer in the Public Service and every person appointed as aforesaid shall preserve and aid in preserving secrecy with regard to the contents of any return or report or any copy of books, accounts, documents, writings, papers, or instruments made under this section which have come to his knowledge in his official capacity, and shall not communicate any such matter to any other person unless in the performance of his official duties, or under the authority of a court of competent jurisdiction. If he contravenes or fails to observe the provisions of this subsection, he shall be liable to a penalty not exceeding one hundred pounds.

Penalty on person obstructing officer.

(5) Any person who obstructs an officer or person in the performance of his duties under this section, or without lawful excuse refuses to produce any book, account, document, writing, paper, or instrument in his possession or under his control, or to answer any question asked by such officer in the course of such inquiries, shall be liable to a penalty not exceeding twenty pounds.

Reward

Reward areas.

~~114.~~ **117.** The Governor may, with respect to any prospector who makes a new discovery of gold or other mineral, make concessions in respect of any claim or lease applied for or held by such person as to area, rent, royalty, labour, and other conditions applicable by this Act or the regulations to such application, claim, or lease. Reward areas.

Amalgamation of leases.

~~115.~~ **118.** (1) The Minister may, on application in the prescribed manner by the owners of two or more adjoining gold-mining leases, or of two or more adjoining mineral leases, or of two or more adjoining dredging leases (whether such leases have been granted under the provisions of the same Act or not), and on being satisfied that the lands comprised in such leases can be more effectively worked as one mine, authorise the amalgamation of the said leases upon payment of a fee of twenty shillings for each lease so amalgamated. But where the lands comprised in such leases are divided from each other by a road or stream, mining operations shall not be carried on under such roads or streams until and unless a lease thereof has been granted. Minister may authorise amalgamation. 37 Vic. No. 13, s. 60. 48 Vic. No. 10, s. 6. Act No. 44, 1899, s. 24.

Leases may be amalgamated as aforesaid although one or more of such leases may be for mining on private lands under Part IV, and the other or others for mining on Crown lands under Part III. Leases under Parts III and IV.

(2) The Minister may, after obtaining a report from the warden, cancel any such amalgamation of leases. Minister may cancel amalgamation.

(3) When leases have been amalgamated as aforesaid, the labour required to be performed on or in connection therewith shall be the aggregate of the labour required for the respective leases before amalgamation. Labour on amalgamated leases. 37 Vic. No. 13, s. 60. 48 Vic. No. 10, s. 6. Act No. 44, 1899, s. 24.

(4) The Minister may, after inquiry and report by the warden, reduce the number of men to be employed and the capital to be expended on any amalgamated leases should it be shown that the circumstances warrant such reduction. Minister may reduce men and capital on amalgamated leases.

Encroachment.

~~116.~~ **119.** The warden may, subject to the regulations, upon the application of any person having the care and management of any public highway, railway, tramway, street, or road, or any person authorised by him in that behalf, authorise by writing under his hand any mining surveyor to enter and inspect any land or mines comprised in any claim, lease, application for lease, or authority under this Act or any Act hereby repealed, for the purpose of ascertaining whether the persons working such land or mines are encroaching on such Encroaching on highways, streets, &c. 57 Vic. No. 32, s. 29.

such highway, railway, tramway, street, or road, and whether the mining operations so carried on can be continued without causing injury or damage thereto, or to any house, building, or machinery abutting thereon or adjoining thereto.

~~117.~~ **120.** (1) The Minister or the warden may, upon the application of the owner or occupier of any land adjoining any land held as a claim, lease, or under an authority or application for a lease under this Act or any Act hereby repealed, whereon mining is being carried on, or upon the application of any person authorised by such owner or occupier, authorise by writing under his hand any mining surveyor to enter and inspect the land on which mining is being so carried on, for the purpose of ascertaining whether the persons so carrying on mining are encroaching upon any land of such owner or occupier not comprised in such claim, lease, authority, or application for lease.

Warden may authorise mining surveyor to inspect as to encroachment. 37 Vic. No. 13, s. 86. 57 Vic. No. 32, s. 30.

(2) Any geological surveyor or other person authorised by the Minister may enter any mine or works for the purpose of inspecting the same, and removing any sample of ore or deposit. No person shall obstruct or hinder such geological surveyor or other authorised person acting as aforesaid, under a penalty not exceeding fifty pounds.

Geological surveyor or other authorised person may enter and remove sample.

(3) The mining or geological surveyor authorised as aforesaid, or other authorised person, may enter and inspect and survey the land and mines described in such order. Such surveyor may make such plans and sections of the land entered, and of any drives or other works therein, as are necessary for the purposes aforesaid.

Mining or geological surveyor may enter and inspect. 57 Vic. No. 32, s. 31.

~~118.~~ **121.** Every such mining or geological surveyor or other authorised person shall, before entering any land under such authority as aforesaid, make a declaration before the warden (who is hereby authorised to take and forward the same to the Minister) that he will not, except as a witness in a court of justice or to the Minister, without the consent in writing of the occupier or lessee of the land or mines to be entered, divulge or cause to be divulged to any person whomsoever any information which may be obtained upon or by such entry, save only as to whether the persons working such mines are encroaching as in the last preceding section mentioned. Whosoever acts contrary to such declaration shall be liable to a penalty not exceeding fifty pounds.

Surveyor to make a declaration. 37 Vic. No. 13, s. 86. 57 Vic. No 32, s. 32.

Sludge abatement provisions.

~~119.~~ **122.** (1) For the purpose of this section, the Governor may appoint a board of three persons, to be called the Sludge Abatement Board, and notification shall be made of such appointment. Any two members of the board shall form a quorum.

Sludge Abatement Board.

(2) It shall be the duty of the board—

Powers of board.

(a) to investigate any complaint made of pollution or injury caused by sluicing, dredging, or other mining operations to any

any river, stream, watercourse, lake, or reservoir (whether or not there is any water therein) not exempted from the operation of this section, or to any agricultural or grazing land adjacent thereto, and to order any person causing or directing such operations to make such provision or take such steps as the board may direct to prevent the continuance of such pollution or injury;

(b) to order any person about to commence or authorise sluicing, dredging, or other mining operations which would, in the opinion of the board, cause injury or pollution to any such river, stream, watercourse, lake, reservoir, or land to make such provision or take such steps as the board may direct to prevent such pollution or injury; and

(c) at the request of the Minister, to report and make such recommendations as the board may think fit in connection with any application for a mining lease of any area upon which it is intended to carry on sluicing, dredging, or other mining operations which may pollute or injure any such river, stream, watercourse, lake, reservoir, or land.

Exemption of certain rivers, &c.

(3) The Governor may from time to time, upon the report of the board, exempt from the operation of this section such rivers, streams, water-courses, lakes, and reservoirs, or such portions thereof as, in his opinion, are, by reason of their polluted condition, useless as a means of providing a water supply for domestic or stock purposes: Provided that the board, before so reporting, shall satisfy itself that such exemption may be granted without causing damage to any agricultural or grazing lands adjacent to any such rivers, streams, water-courses, lakes, or reservoirs, and shall publish in the Gazette notice of every such proposed exemption.

The Governor may at any time revoke, in whole or in part, any such exemption, and shall give notice thereof in the Gazette.

Penalty.

(4) Any person who, by himself or his agent or workman, carries on any mining operations as aforesaid in contravention of any order of the board as aforesaid, or disobeys any order of the board, and thereby directly or indirectly causes the pollution of, or any injury to any such river, stream, water-course, lake, or reservoir, or to any agricultural or grazing land adjacent thereto, shall be guilty of an offence; and, upon the complaint of any person aggrieved thereby, or of an inspector of mines, shall, for every day upon which mining operations have been so carried on, or such order has been disobeyed as aforesaid, be liable to a penalty not exceeding twenty-five pounds.

What constitutes injury or pollution.

(5) For the purposes of this section, water discharged into any such river, stream, water-course, lake, or reservoir, shall be deemed to injure or pollute the same if it contains in solution at the point of discharge any poisonous matter in the total proportion of more

more than seventy-five grains to one gallon; or other noxious matter in such quantity as to be injurious to public health; or if it contains in suspension any earth or mineral, or any earthy or other insoluble mineral substance in the total proportion of more than eight hundred grains to one gallon.

Surrender and cancellation of lease.

~~120.~~ **123.** Every holder of a lease under this Act may at any time with the consent of the Governor surrender his lease wholly or in part. The Governor may, on acceptance of such surrender, grant such holder a new lease of the whole or any part of the land comprised in the surrendered lease, and upon such conditions not inconsistent with this Act and the regulations, as he may deem advisable. But the surrender of a lease shall not entitle the lessee to the refund or remission of any rent already paid or due.

Lessee may surrender lease wholly or in part.
37 Vic. No. 13, s. 54, cf 57 Vic. No. 32, s. 35.

~~121.~~ **124.** If the holder of a lease under this Act, his executors, administrators, or assigns, at any time during the term of such lease—

(a) fails to fulfil or contravenes the conditions and covenants contained therein; or

(b) fails to use the land bona fide for the purposes for which it has been demised; or

(c) uses it for a purpose other than that for which it has been demised,

the lease may be cancelled by the Governor, and the cancellation shall take effect on the date proclaimed in the Gazette.

Cancellation of lease
37 Vic. No. 13, s. 56 (11).
57 Vic. No. 32, s. 34.

Removal of machinery.

~~122.~~ **125.** (1) At any time within six months after the determination of any lease under this Act, or within such further time as the Minister may allow, the former lessee may remove or dispose of all tools and machinery and such improvements as the Minister may sanction, except such as are necessary to keep open any shaft or adit: **Provided that this section shall not apply to any lease of private land until and unless all rent due in respect thereof has been paid, and all compensation for damage occasioned to the land demised has been duly assessed and paid.**

Machinery, &c., on forfeited area.
37 Vic. No. 13, s. 56 (10).

(2) If such tools, machinery, and improvements are not so removed they may be sold by auction by order of the warden at the risk of the former lessee. The net proceeds of such sale shall be paid into the Treasury and held until applied for by such former lessee.

Machinery, &c., may be sold.

Surveyor may define road.

~~123.~~ **126.** Any mining surveyor may, in pursuance of an order of the Minister or of a warden, enter any private land for the purpose of defining the road to and the boundaries of the land comprised in any lease or authority to enter, or any application for the same, or for any other purpose authorised by this Act.

Minister or warden may authorise surveyor to enter and define road to area or for any other purpose.

Inquiries and inspection.

~~124.~~ **127.** The Minister may direct a warden to hold an inquiry on oath in open court with reference to any matter affecting any lease or application for a lease under this Act or any Act hereby repealed.

Inquiry may be directed cf. 37 Vic. No. 13, s. 57. Act No. 44, 1899, s. 14.

~~125.~~ **128.** Any holder of a tenement, lease, or authority to enter under this Act or any Act hereby repealed, or any application for such lease, shall, during ordinary working hours and within a reasonable time, comply with any request of the warden, or of any surveyor or other person acting under the instructions of the warden, or under the authority of this Act or the regulations, to furnish the usual appliances and aid necessary for descending to and ascending from the underground workings of his mine, and for examining the same or doing such things as may be authorised as often as may reasonably be found necessary.

Inspection of mine. 57 Vic. No. 32, s. 31.

Nature of holding and evidence of title.

~~126.~~ **129.** (1) Every tenement or share or interest in a claim, and any authority, right, title, or interest acquired or created under this Act, or any Act hereby repealed, or the regulations, shall be deemed and taken in law to be personal property, and shall not be of the nature of real estate, and may be disposed of during the lifetime of the holder, and shall on his death descend or devolve on intestacy or by will as personal property, subject to this Act and the regulations.

Share in claim. 37 Vic. No. 13, s. 18.

(2) No person shall be entitled to institute proceedings in any court in respect of any such tenement, share, interest, claim, authority, right or title, as aforesaid, or any grievance respecting the same, unless he was the holder of a miner's right or applicant for a lease, or the holder of a business license, or authority according to the nature of such interest at the time when such cause of ~~action arose.~~

Suit to hold miner's right, license, or lease. 37 Vic. No. 13, s. 19.

(~~2~~ **2**) The production in any court of a certificate of registration under the hand of a mining registrar or warden's clerk shall be evidence that the person named in such certificate was the holder of a miner's right or of a business license, as the case may be, at the date mentioned in such certificate, and that all the requirements of any Act or regulations necessary to vest the title of such interest as aforesaid in such person had been complied with by him up to the date of such registration.

Certificate to be evidence. *Ibid.*

Mining towns.

~~127.~~ **130.** If during the term of any lease of Crown land under this Act or any Act hereby repealed any part of such land is required as a site for a town or village **or for any public purpose,** the Governor may, upon one month's notice to the lessee, cancel the said lease so far as it relates to any right to the surface and the specified depth below the surface of the said part of the land, and thereupon the said part shall, subject to the right of the said lessee to mine thereunder, but without any compensation payable by the Crown, become Crown lands within the meaning of the Crown Lands Acts, and may be dealt with thereunder. Area may be resumed for township.

PART VII.

WARDENS' COURTS.

DIVISION 1.—JURISDICTION.

Wardens' courts.

~~128.~~ **131.** (1) The Governor may, by proclamation, establish wardens' courts, to be held at such places as he may from time to time appoint. Any wardens' courts established under any Act hereby repealed shall have jurisdiction under this Act as if they had been established hereunder. Governor may establish wardens' courts. 37 Vic. No. 13, s. 67.

(2) Every such court shall be a court of record, and shall be held by a warden sitting alone. Court of record.

(3) Any decision or order of such court shall, subject to this Act, be binding and conclusive on all parties.

(4) For the purposes of the jurisdiction hereby conferred, a warden or a warden's clerk may issue summonses and subpœnas, or other process, which shall have legal effect and operation throughout the State. Summons, &c., may be issued. *Ibid.* s. 68.

~~129.~~ **132.** (1) Every warden shall cause a register to be kept in the form prescribed by the rules of the particulars of all complaints and applications made to him under this Act and any decision or order made thereon, and such particulars relating thereto as may be prescribed as aforesaid. Register to be kept. *Ibid.* s. 72.

(2) A copy of an entry in such register of any decision or order of the court shall on demand be given by the warden's clerk to any of the parties interested therein. A document purporting to be any such copy, certified by the warden or warden's clerk as a true copy, shall be admitted in all courts and places whatsoever as conclusive evidence of such decision or order having been given or made.

Jurisdiction

Jurisdiction.

~~130.~~ **133.** (1) A warden's court shall have jurisdiction to hear and determine all suits relating to any of the matters following, that is to say:— Subjects within jurisdiction of court. 37 Vic. No. 13, s. 69.

(a) The right to the possession or occupation of any Crown land or private land by virtue of a miner's right, a registered share in a claim, a lease, application for a lease, or of a license, or authority.

(b) The right to cut, construct, use, possess, occupy, or hold any interest in any race, drain, dam, or reservoir for mining under any Act or regulation relating to mining.

(c) The right to recover any land, race, drain, dam, reservoir, building, or machinery alleged to have been abandoned or forfeited under any such Act or regulation, and to mesne profits thereof.

(d) The right to the use, enjoyment, or to sell any water under any such Act or regulation, or to the priority of use and enjoyment as against any other claimant of water taken, diverted, or used, or claimed so to be under any Act or regulation.

(e) Any encroachment or trespass upon, or unlawful interference with, or injury to any land, race, drain, dam, or reservoir occupied, held, or used under any Act or regulation relating to mining, or unlawful interference with or injury to any machinery thereon; any diversion or abstraction of water possessed or used under such Act or regulation; the unlawful ouster or exclusion of any person from any share or interest in any such land, race, drain, dam, reservoir, water or machinery, and the damages and compensation for any such encroachment, trespass, ouster, diversion, abstraction, interference, or injury.

(f) Any demand for debt or damages, or both, arising out of or made in respect of any contract or agreement whatsoever, relating to mining for gold or any other mineral, or to any holding or interest authorised by any such Act or regulation as aforesaid.

(g) The right to any gold or other mineral in or to be taken out of any land occupied or held under any such Act or regulation as aforesaid, or in respect of any matter concerning or arising out of any contract relating to such gold or mineral.

(h) Any demand concerning or arising out of any partnership for or in relation to mining for gold or other mineral in any land occupied or held as aforesaid, or any partnership in any such land, or in any race, drain, dam, reservoir, water, machinery, gold, mineral, or metal, or concerning or arising out of any contract for or in connection therewith, or for the dissolution wholly or in part of any such partnership.

(i) Any demand concerning contribution to calls or to the expense of working or using any such land, race, drain, dam, reservoir, or water, or any share or interest therein.

(j) Any demand concerning or arising out of any mortgage or assignment by way of security of or charge upon any such land, race, drain, dam, reservoir, water, machinery, gold, or mineral, or any share or interest therein.

(k) Any demand concerning the cancellation and delivery up of instruments relating to—

(i) mortgages, charges, or encumbrances of or upon any such land, race, drain, dam, reservoir, water, machinery, gold, or minerals as aforesaid, or any share or interest therein;

(ii) any assignment of such mortgages, charges, and encumbrances;

(iii) any contract respecting the working or use for mining purposes or otherwise in relation to mining of any such race, drain, dam, reservoir, water, or machinery; or

(iv) any partnership for mining, or in any such land, race, drain, dam, reservoir, water, machinery, gold, or mineral, or the total or partial dissolution of any such partnership.

(l) Any demand concerning the ascertainment and adjustment of boundaries of land held or occupied under any such Act, or regulation, where such boundaries are in dispute or doubtful; in which case the court shall ascertain and determine such boundaries by such means as may be found convenient, and shall make and give all such orders and directions as may be necessary for the purpose of carrying out the decree or order of such court.

(m) Any demand concerning any Crown land, or share or interest therein, which the complainant claims to be entitled to take possession of and occupy under a business license, and of which the defendant is and claims to be entitled to be in possession; any trespass upon any such land of which the complainant is in, and of which he claims a right to the occupation or possession under such license.

(n) Any money claimed to be due upon any mining partnership account, or in any way accruing to the complainant from any mining partnership adventure or interest.

(o) The recovery of any money which any person is liable to pay under any such Act or regulation, and for which no other mode of recovery is hereby provided.

(p) All questions and disputes which may arise between miners in relation to mining on Crown lands or private lands.

(q) All questions or disputes which may arise as to the working or management of any lease.

(2) The jurisdiction hereby conferred shall extend to cases where the right or title of either party is derivative by assignment or otherwise as well as to where the same is original. Jurisdiction where title is derivative. 37 Vic. No. 13, s. 69.

~~131.~~ **134.** All debts for wages due by any mining company, or any lessee or claim holder, to any employee in respect of services performed in connection with any mining, not exceeding twenty-five pounds, shall have priority over all other claims, and shall be a first charge upon ~~all property of the company, lessee, or holder~~ **the lease, claim, plant, machinery, and improvements in connection with which such services were performed** notwithstanding any lien, mortgage, or charge thereon, and such debts shall be paid in full unless the said property is insufficient to meet them, in which event they shall abate in equal proportions. Wages to be a first charge.

~~132.~~ **135.** (1) In all suits where the amount claimed or the value of the right or property in dispute does not exceed fifty pounds, the decision of the warden's court shall be final. Decision in certain cases to be final. *Ibid.*

(2) If before the hearing of any complaint or other proceedings in a warden's court the parties agree to accept the decision of the said court as final, a memorandum of such agreement shall be entered by the warden in the register kept by him, and in such case the warden's decision shall be final. Parties may agree that warden's decision shall be final. *Ibid.* s. 107.

~~133.~~ **136.** No person shall be entitled to sue in a warden's court in respect of any matter affecting the title to any land, right, easement, or interest held under this Act or any Act hereby repealed unless he is the holder of a miner's right, business license, authority, application for lease, or lease granted under this or any Act hereby repealed, **or the holder of a registered share in a claim.** Suitor to hold miner's right or lease. cf. *Ibid.* ss. 19, 69.

~~134.~~ **137.** Minors may sue and be sued in connection with holdings of any nature under this Act, and their holdings shall be liable to be taken in execution and sold under legal process. Minors may sue.

Division 2.—Hearing and procedure.

Hearing of complaints.

~~135.~~ **138.** (1) The warden may, if both parties consent thereto, hear and determine any complaint summarily in the presence of them both and without requiring any formal proceedings to be taken in a warden's court, and every such decision shall be final. Complaint may be heard without summons. *Ibid.* s. 71.

(2) Such consent shall be in writing signed by the parties, and the warden may take the statements of the parties on oath. Consent in writing.

(3) Where consent has not been given as aforesaid, proceedings shall be commenced by a summons to be issued by the warden or his clerk to the complainant on his application, on the payment of the fee prescribed by the rules. Summons. *Ibid.* s. 70.

Such

Such summons shall state concisely the facts constituting the complaint, and the amount of money (if any) claimed, and shall state a day for the appearance of the defendant before the warden's court, and shall be in the form and shall contain the particulars prescribed by the rules.

(4) A summons shall be served on the defendant, either personally or by leaving the same at his last known place of residence with any person apparently of or above the age of sixteen years: Provided that if it is made to appear that any defendant cannot after diligent inquiry be found, or cannot from any cause after reasonable effort be personally served with the summons, the warden may order that service of the summons in such manner as he may direct by such order shall be deemed good service upon such defendant, and if necessary may postpone the hearing to allow of such substituted service; and service of such summons in the manner directed by such order shall be deemed good service for all purposes. Service of summons.

~~136.~~ **139.** (1) Upon the day named in the summons, or upon any adjourned day of hearing, the court shall require such proof as it thinks sufficient of the service or substituted service of the summons upon all parties interested who have not appeared, and thereupon in the absence of any of the parties interested who, having been duly served with such summons, do not appear, but in the presence of all other parties interested, or of such of them as appear to the court sufficiently to represent all such parties, the court shall proceed to investigate the matter of such complaint, and to hear and determine the same in a summary way. Warden to hear and determine. 37 Vic. No. 13, s. 70.

(2) An agent duly authorised in writing by any party to a proceeding, shall have the right of audience in a warden's court. Audience.

~~137.~~ **140.** (1) The court may adjourn the hearing of any complaint to any other time or place, and make all such amendments in any proceedings as may be necessary for the purpose of determining the real question in controversy between the parties, notwithstanding that the summons does not show the substance of the facts constituting the complaint. Amendment of proceedings. cf. 37 Vic. No. 13, s. 75.

If it appears that any person who ought to have been joined as a defendant has not been joined, the court may on the application of the complainant amend the proceedings by including such person as a defendant and adjourn the hearing to allow of the service of the summons upon him.

If it appears that any person who should have been joined as a complainant has not been so joined, the court may, with the consent of such person, and on the application of either party to the proceeding, by amendment include such person as a complainant. Complaint not to be dismissed for informality. cf. *Ibid.*, s. 75.

Any such amendment may be made subject to such terms as to costs, adjournment, or otherwise as to the court seems just.

(2)

(2) No complaint shall be dismissed for informality in the summons or any entry thereof, or for any defect or misnomer or inaccurate description of any person or place, or on the ground that the plaintiff appears to be entitled to different relief from that claimed in the summons, or that there is any variance between the summons and the evidence adduced at the hearing on the part of the complainant. Every such case may be dealt with by amendment under the power to amend hereinbefore contained, so that the real question in controversy shall be determined.

In absence of warden, his clerk may adjourn court.

~~138.~~ **141.** If on any day appointed for the holding of a warden's court, or on the day to which any such court has been adjourned, the warden is prevented by any cause from attending such court, the warden's clerk may adjourn the court for such time or until such day as may be necessary.

Payment into court.

Defendant may pay money into court. 37 Vic. No. 13, s. 74.

~~139.~~ **142.** (1) Notwithstanding anything hereinbefore contained, the defendant may, at any time but not less than two days before the hearing, in any case where the claim is for money, pay into the warden's court the amount claimed, or such less amount as he may think a full satisfaction in respect of the matter complained of, together with the complainant's costs up to the time of payment.

Notice of payment. *Ibid.* s. 74.

(2) The warden's clerk shall give the prescribed notice of such payment to the complainant, and shall also, on demand, pay the amount so received to the complainant or his attorney.

Proceedings thereupon. *Ibid.* s. 74.

~~140.~~ **143.** If the full amount claimed, together with costs as aforesaid, has been so paid into court, or if the complainant has accepted such less sum as aforesaid, no proceeding shall thereafter be brought in any court in respect of the said claim. But if a less amount than that claimed, with costs as aforesaid, has been so paid in, and the complainant elects to proceed, and not accept the same, then in the event of his not recovering any further sum in respect of such claim, the warden may order him to pay the defendant's costs incurred subsequently to such payment in.

Division 3.—Orders.

Payment by instalments.

Instalments may be ordered.

~~141.~~ **144.** When any order for the payment of money is made, the warden's court may order the amount to be paid at such times and by such instalments as the court may deem fit.

Complaints for injury to property, &c.

Court may determine boundaries. *Ibid.* s. 80.

~~142.~~ **145.** (1) On the hearing of any complaint before a warden's court for the recovery of possession of, or for any encroachment or trespass upon, or for any unlawful interference with or injury to, any land,

land, water-race, drain, dam, reservoir, machinery, or water, or any share or interest therein, the court may if it thinks fit determine the boundaries of any such land, or the quantity of water to be taken by either of the parties.

(2) If in any such proceedings the decision is in the complainant's favour, the court shall determine whether any and what sum in the nature of mesne profits or damages shall be paid to him by the defendant. Mesne profits, or damages may be awarded. 37 Vic. No. 13, s. 80.

The court may also in such case order, if necessary, that—

(a) possession of anything sued for be delivered to the complainant;

(b) the complainant be put into possession of any such land, race, drain, dam, reservoir, or machinery, or any share thereof, and any defendant and his servants, and any buildings, fixtures, implements, goods, and chattels, be removed therefrom;

(c) any defendant be restrained from using any such water as aforesaid.

(3) If in any such proceedings the court finds that the complainant himself has wrongfully encroached, or trespassed, or interfered with any land, race, drain, dam, reservoir, machinery, or water, in respect of which such proceedings were brought, the court may grant the same relief to the defendant against the complainant as it is hereinbefore empowered to grant to a successful complainant. Relief may be granted to defendant. *Ibid.* s. 82.

(4) In any proceedings before a warden's court in respect of the right to divert any water, or to remove any water-race, drain, dam, reservoir, or machinery, if the decision is in the complainant's favour the court shall declare him at liberty to divert such water, or remove such race, drain, dam, reservoir, or machinery, and may make an order restraining any defendant from interfering with or preventing such diversion or removal. Proceedings for diversion of water. *Ibid.* s. 81.

(5) Persons in illegal occupation of lands, or in whose names the same may be registered, may be proceeded against by a holder of a miner's right, and the court may order their ejectment and removal in terms of subsection two of this section: Provided the complainant has applied for the ground either as a claim or a lease. Defendants in illegal occupation. *Ibid.* s. 40.

Deposit pending decision.

~~143.~~ **146.** (1) Upon application to the warden's court by any party to any proceedings upon summons therein, such court may order any other party thereto to deposit, in order to abide its decision, any earth, gold, minerals, money, or chattels, the right to which will in the opinion of the court be put in issue in the course of such proceedings, and which may then be, or which at any time before the final termination of such proceedings may come into the possession, power, or control of such party. Such order shall specify the thing to be so deposited, and shall Warden may order deposit of gold, &c. *Ibid.* s 89.

shall direct such deposit to be made within a time or times mentioned with some person or at some place specified either in the name of the warden or of some other person mentioned in such order.

Notice.

(2) Unless such order is claimed in the summons it shall only be made after twelve hours' notice served by the applicant upon the parties interested in opposing the same, or such of them as appear to the warden sufficiently to represent such parties.

37 Vic. No. 13, s. 89.

Penalty.

(3) Any person against whom such order has been made who neglects or refuses to obey such order shall be liable to a penalty not exceeding fifty pounds.

Injunction.

Warden may grant injunction.

~~144.~~ **147.** (1) Upon application to the warden's court by any person claiming to be legally or equitably interested in any land, lease, claim, race, drain, dam, reservoir, water, machinery, or easement, such court may in its discretion and upon such terms as to costs or otherwise as it may consider just, grant an injunction restraining any person named therein from encroaching upon, occupying, using, or working any such property, or from seeking for, washing out, extracting, or removing any earth, gold, or other minerals taken therefrom, or from selling or disposing or otherwise interfering therewith, or from doing any act whereby the right, title, or interest of the applicant in or to the same might be affected.

cf. *Ibid.* ss. 58, 87.

Duration of injunction.

(2) Every such injunction shall be in force for the period named therein, unless the same is sooner discharged by the court making the same or on appeal.

cf. *Ibid.* ss. 58, 87.

Application for injunction.

(3) An injunction as aforesaid may be applied for either upon summons claiming the same, with or without other relief, or upon notice served as in the case of a summons upon the persons and within the period prescribed by the rules. The same rules of procedure shall be observed at the hearing of every such application as are herein prescribed in the case of the hearing of an ordinary summons.

cf. *Ibid.* s. 87.

Ex parte injunction in case of urgency.

(4) The warden may also grant an injunction as aforesaid to last for not more than one month inclusive of the day of making the same, unless sooner discharged, without such summons or notice, if the applicant satisfies the court that the case is one of extraordinary urgency. No subsequent injunction or continuance of the injunction so granted shall be made under this subsection, but application for a further injunction may be made under the provisions of subsection three, either before or after the expiration of the period of the injunction.

Ibid. s. 88.

After injunction granted, warden may order working upon terms.

(5) When any injunction has been granted by a warden's court or on appeal therefrom under this Act, the warden, upon the application of any holder of a registered claim adjacent to the property under such injunction who shows to the satisfaction of such warden

Ibid. s. 91.

that

that the claim of such holder will sustain damage or be materially depreciated in value by reason of the non-working of the said property under injunction, may order, upon such terms as he thinks fit, such working of the said property as in his opinion will be sufficient to prevent such damage or depreciation, and the said warden shall make such order as to the cost of such working as he may think just.

(6) Any person disobeying an injunction granted by the warden shall be liable to a penalty not exceeding one hundred pounds for every day of such disobedience. Penalty.

Delivery of specific chattels.

~~145.~~ **148.** (1) Where any money or any gold or mineral is claimed in a warden's court, such court may order the payment or delivery of any such money, gold, or mineral which it may find to be due or deliverable by either of the parties to the other of them in respect of the subject matter of the said proceedings. Court may order delivery of gold, &c. 37 Vic. No. 13, s. 83.

(2) In cases where any such claim as aforesaid arises out of any mining partnership, adventure, or interest, the court may take the account of such partnership, adventure, or interest so far as may be necessary to ascertain what moneys, gold, or minerals (if any) are so due from one party to the other, and make such order in the premises as may be just. Accounts. *Ibid.*

Costs.

~~146.~~ **149.** The court may allow costs to the successful party in all suits, inquiries, and proceedings, and may allow the costs of any adjournment of any suit, inquiry, or proceeding. Costs may be allowed.

Division 4.—Execution.

Form and service of orders.

~~147.~~ **150.** (1) Every order made by the warden under this Act may be in the form prescribed by the rules. Form. *Ibid.* s. 90.

(2) Every such order shall, unless the warden otherwise directs, be served by delivering a copy to the person to be bound thereby, and at the same time showing the original order if such person requires to see the same: Provided that if the warden sees fit so to direct, it shall be sufficient service of any such order to publish a copy of such order in such newspaper, and to affix a copy thereof in such conspicuous place at or near the property in dispute as the warden appoints. Service. *Ibid.*

~~148.~~ **151.** If any money ordered by a warden's court to be paid in respect of debt, damages, costs, or otherwise is not paid forthwith, the warden, on the application of the person entitled to receive such Writ of execution cf. *Ibid.* s. 84.

such payment, or his attorney, or duly authorised agent, shall grant a writ of execution under his hand in the form prescribed by the rules as nearly as practicable. But the warden may withhold the issuing of such writ for a period not exceeding seven days from the date of such order if he considers it just or reasonable so to do.

Writ to be obeyed. cf. 37 Vic. No. 13, s. 84.

~~149.~~ **152.** (1) Any bailiff of a warden's court or district court to whom such writ has been delivered for execution, and all constables and peace officers within their several jurisdictions shall do and perform all things in respect of such writ which they are required respectively to do and perform in respect of a writ of execution issued out of a district court in case of the non-payment of money under a judgment of such court.

Bailiff may seize property. *Ibid.*

(2) Every bailiff as aforesaid may by virtue of such writ seize and take such property of the party against whom such writ is directed as could be seized and taken by virtue of a writ issuing out of a district court, and shall have the same powers and duties in respect of the seizure, sale, and disposal of such property, and all matters connected therewith, as are by law conferred and imposed on the bailiff of a district court upon a writ of fieri facias issued by the registrar thereof.

Court may order gold &c., to be delivered. *Ibid.* s. 85.

~~150.~~ **153.** (1) Where a warden's court orders the payment of money in respect of any debt, damages, costs, or otherwise, the court may at the time of such order being made further order, if it thinks fit, that any gold or mineral in the possession, and being the property of the party directed to make such payment shall (to the extent in value of such payment as estimated by the court) be delivered up to the party entitled to such payment in satisfaction or part satisfaction thereof, and may forthwith cause such gold or mineral to the extent aforesaid to be seized and delivered accordingly.

Execution for balance only. *Ibid.*

(2) When any such order as aforesaid has been made, the writ of execution shall only be granted in respect of any balance of such payment as aforesaid remaining due after deducting the value of any gold or mineral so delivered to the party entitled to such payment.

Mode of enforcing orders where not specially provided for.

Warden may authorise person or officer to perform any prescribed act. *Ibid.* s. 92.

~~151.~~ **154.** Whenever any warden's court or warden is empowered or required by this Act to cause any act to be performed, and the mode of performing such act is not otherwise expressly provided for, it shall be lawful for any person verbally authorised by the warden, and in his presence, or for any member of the police force or peace officer authorised in writing under the hand of such warden, to perform such act, and all such members and officers shall, if thereunto required, aid and assist any warden or person authorised as aforesaid in the performance of his duty under this Act.

DIVISION 5.—ASSESSMENT OF COMPENSATION.

~~152.~~ **155.** (1) Where compensation is by this Act directed to be assessed by the warden in respect of land entered or occupied, or proposed to be entered or occupied, under a miner's right, authority, lease, or application for lease, or in respect of any land adjoining thereto, such assessment— How compensation assessed. 57 Vic. No. 32, s. 17. 60 Vic. No. 40, s. 2 (*d*).

(a) shall be made in the manner prescribed, and after notice to the persons who appear to him to be interested in the assessment; Act No. 41, 1899, s. 10.

(b) shall be of the loss caused and likely to be caused by damage to the surface of the land, and to any crops, buildings, and improvements thereon by works carried on in pursuance of such right, authority, lease, or application;

(c) shall not exceed in amount the market value for other than mining purposes of the land and the improvements thereon;

(d) shall, subject to the appeal to arbitration hereinafter provided, be final.

(2) The amount so assessed shall be paid by the holder of such right, authority, or lease, or by such applicant, into the warden's court, and shall, from time to time, on damage being caused as aforesaid, be paid out of court on the application of any person having interest in the land.

(3) Provided that, on production of a document in writing signed by the holder or applicant aforesaid, and by the person having interest in such land, agreeing to dispense with such assessment and payment, the warden shall, in terms of such document, dispense with the making of such assessment absolutely or on conditions so as to carry out the terms of such agreement.

(4) If after the expiration of six months, and before the expiration of twelve months, from the determination of such lease or authority, or from the refusal of the application for the lease, the whole or any part of an amount so paid into court has not been paid out under the above provisions of this section, and has not been ordered to be so paid out, any person who has paid such amount into court may apply to the warden for the payment out to him of such amount or part, and the warden may order such payment to be made.

After the expiration of such twelve months, the warden may cause such amount or any part thereof to be paid into the Treasury and carried to the Consolidated Revenue Fund.

~~153.~~ **156.** In making any such assessment, the warden— Procedure in court on making assessment.

(a) may make such assessment at any time and place fixed by him;

(b) may make such assessment in the absence of any persons interested who appear to the warden to have been duly notified;

(c)

(c) may adjourn the hearing to any time and place, subject to such terms as to costs or otherwise as he thinks fit;

(d) shall have the powers of a warden's court.

~~154.~~ **157.** If after such assessment has been made it is proved to the warden that the amount so paid into court in respect of certain land has been duly paid out, and that since such payment out further loss has been caused by damage as aforesaid to such land, or to other land, the warden may as aforesaid assess such loss and order the same to be paid by the holder or applicant aforesaid to any person having interest in the land so damaged. If such payment is not so made, the claim, authority, or lease may be cancelled. Additional assessment. 57 Vic. No. 32, s. 20. Act No. 44, 1899, s. 21.

~~155.~~ **158.** Any person dissatisfied with ~~the amount so assessed~~ **any assessment made by the warden under the provisions of this Act (other than assessments in respect of land resumed)** where the amount so assessed exceeds five pounds, may, in the prescribed manner, give notice that he requires the assessment to be determined by arbitration under this Act. Appeal to arbitration. cf. 57 Vic. No. 32, s. 20.

Such assessment shall thereupon be made and determined by arbitrators appointed as prescribed. The arbitration shall be in the nature of an appeal from the assessment of the warden, and the powers of the arbitrators and proceedings before them shall be as prescribed. The determination of the arbitrators shall be final and shall be given effect to by the parties and by the warden:

Provided that the appellant shall deposit with the warden five pounds to answer any costs which the arbitrators may order him to pay.

~~156.~~ **159.** (1) The Minister, or any person claiming payment for land resumed under this Act, if dissatisfied with the amount of the value assessed ~~by a warden~~ in respect of any such resumed land, may give notice of appeal against such assessment in the manner prescribed ~~by the Closer Settlement Act, 1901, and the provisions of that Act shall, mutatis mutandis, apply to any such appeal under this Act.~~ Appeal against assessment.

(2) Such appeal may be made to a court consisting of a judge of the Supreme Court appointed in that behalf by the Governor and two assessors, one to be appointed by the Minister and one to be appointed by the owner of the land resumed; but if the Minister or such owner fails to appoint an assessor, the judge shall appoint an assessor on his behalf.

Each assessor shall be paid by the person by or on behalf of whom he has been appointed.

(3) The decision of the judge and one of the assessors shall be final:

Provided that if the Minister and the said owner agree in writing that the appeal shall be heard and determined by the judge without assessors, the appeal shall be so heard and determined and the decision of the judge shall be final.

160.

160. (1) A judge of the Supreme Court may give such directions and make such orders as may be thought necessary to enable the appeal to be heard and determined.

(2) The judges of the Supreme Court, or any three of them, may make rules as to the procedure in, and relating to, such appeals.

PART VIII.

Appeals.

Division 1.—To District Court.

~~157.~~ **161.** If any party to a complaint or proceeding in a warden's court is dissatisfied with the decision of the said court where such decision is not in or by this Act declared to be final, such party may appeal from the same to the District Court sitting as a court of appeal in its mining jurisdiction at that sitting of such court which next after the expiration of fifteen days from the day of the making of such decision is held at or nearest to the place at which such decision was made.

Right to appeal from warden's court. 37 Vic. No. 13, s. 106.

~~158.~~ **162.** (1) The person so appealing shall, within seven days from the day of the making of such decision, deposit with the registrar of the District Court at the place where such sitting is to be held the sum of ten pounds, or such less sum as the warden may order, to abide the costs of such appeal, and give security to the satisfaction of the warden for the due performance of any order which the District Court hearing such appeal may think fit to make, and shall lodge notice in writing of his appeal, stating the grounds thereof. Thereupon such registrar shall issue out of such court a summons, in the form and containing the particulars prescribed by the rules.

The hearing of the appeal *Ibid.*

(2) Any person so lodging notice of appeal against any such decision shall be taken to have abandoned his right of appeal under Division two of this Part.

Such appeal to a District Court shall be heard before the said court, which shall proceed to make an order reversing or varying such decision or dismissing such appeal or such other order as to the said court may appear just; and in and by such order the said court may make such order with respect to the costs of the appeal, and of the proceeding appealed from, as it may think fit.

(3) Provided that no such appeal shall be so heard unless the said summons has been served seven days before the same is returnable upon all the parties interested in supporting such decision, or upon such of them as appear to the judge sufficiently to represent all the parties interested,

interested, or, in case no such party can be found, upon the warden who made the decision, nor unless at the hearing of such appeal a copy of the minute of such decision, certified under the hand of a warden or warden's clerk, is produced to such court.

~~159.~~ **163.** Every such appeal shall be in the nature of a rehearing of the whole matter, and shall be heard and determined by the said judge sitting as aforesaid, and no ground of appeal except those stated in the notice of appeal shall be entered upon unless the judge allows, either before or at the hearing, other grounds to be added upon such terms as to adjournment, costs, or otherwise as he may think fit. Appeal how to be heard. 37 Vic. No. 13, s. 109.

~~160.~~ **164.** Whenever any such appeal has been brought or be about to be brought, the warden, from the decision of whose court the appeal is or is about to be brought, may on the applicaton of any of the parties interested in such appeal, make such order for an injunction or receiver or payment of money into the hands of the warden, to abide the event of the appeal, or for stay of proceedings or otherwise, and upon such terms as he may think proper; but unless such order, or an order to the same effect, is so made, no appeal shall operate as a stay of proceedings. The said warden may at any time discharge any such order made by him. Injunction, &c., and stay of proceedings may be had. *Ibid.* s. 111.

~~161.~~ **165.** If, upon the hearing of such appeal, the subject matter of the dispute appears to the court before which the appeal is heard not to exceed in value twenty pounds, the appellant shall not, although he succeeds, be entitled to receive any costs of such appeal from the opposite party, unless the judge of such court is of opinion that the special circumstances of the case entitle the appellant to costs. No costs on appeal under twenty pounds unless under special circumstances. *Ibid.* s. 108.

~~162.~~ **166.** (1) If an appeal against the decision of any warden's court is dismissed, or if on appeal such decision is varied, such decision, or such decision as so varied (as the case may be), shall be deemed to be the decision of the warden's court and may be enforced as if it had been the original decision of such court. Mode of enforcing decision after appeal. *Ibid.* s. 112.

(2) Provided that if a District Court on any such appeal orders that possession of any land, race, drain, dam, reservoir, or water, or of any gold or minerals, or of any share or interest therein, be delivered or restored to any party to the appeal, then it shall be lawful for any warden, and he is hereby required, to cause possession thereof to be delivered or restored to such party, and if necessary for that purpose to cause to be removed from any such land, race, **drain,** dam, reservoir, or water any other person, his servants, goods, and chattels; and all members of the police force and other peace officers shall assist him in doing so.

(3) Provided also that if—

(a) any decision of a warden's court, when so affirmed or varied, contains an award of debt, damages, and costs, or either of them, and the same has not been previously paid or satisfied; or

(b)

(b) any decision of a district court reversing the decision of the warden's court contains an award of debt, damages, and costs, or either of them, or an order for payment or repayment of money, and the same is not forthwith, or within the time limited for such payment in the adjudication on appeal, paid or satisfied; or

(c) if such District Court orders that any money received by any respondent under the decision appealed against be paid into court, and the same is not forthwith, or within the time limited as aforesaid, paid into court; or

(d) if such court decrees costs against any party to such appeal, and the same is not paid within the time so limited,

the registrar of such court (upon the application of the person entitled to receive the same, and without any summons or notice to the person required to pay the same) may forthwith issue execution for the amount thereof in the same manner as upon any judgment or order of the said court for payment of money.

~~163~~ **167.** (1) If the appellant or respondent in any appeal to a mining appeal court, in which the amount of the original claim or the value of the property involved exceeded fifty pounds, is dissatisfied with the determination or direction of the said court in point of law or upon the admission or rejection of any evidence, or if the appellant or respondent is dissatisfied with the determination and direction of the said court on any grounds, and the amount claimed or involved by the decision of such court is not less than five hundred pounds, such appellant or respondent may appeal from the said determination or direction to the Supreme Court: Appeal to Supreme Court. 37 Vic. No. 13, s. 115.

Provided that the party so appealing shall, within such time and in such manner as may be prescribed by the rules, give notice of such appeal to the other party, or his attorney, and also give security (to be approved of by the registrar of the said mining appeal court) for costs of the appeal and the amount of the judgment, or in lieu of giving such security, deposit in the hands of such registrar the amount of the judgment, together with thirty pounds in addition to such amount, to answer the costs of the appeal if such appeal be dismissed.

(2) The Supreme Court may either order a new trial before such mining appeal court on such terms as it thinks fit, or may order judgment to be entered for either party as the case may be, and make such order with respect to the costs of the said appeal as such court may think proper. Such orders shall be final, and such appeal shall be in such manner and form, and subject to such regulations in all respects as the judges of the Supreme Court may by general rules in that behalf prescribe.

(3) Such appeal shall be transmitted by the appellant to the prothonotary, and be set down for argument in the Supreme Court in the same manner as special cases in actions at law in that court.

DIVISION 2.—TO SUPREME COURT.

~~164~~ **168.** (1) If any party to the proceedings in a warden's court is dissatisfied with the determination by the warden therein as being erroneous in point of law, he may, within the prescribed time, apply in writing to the said warden to state and sign a case, setting forth the facts and grounds of such determination for the opinion thereon of the Supreme Court. Case stated for opinion of Supreme Court. Justices Act, 1902, s. 101.

(2) The party so applying shall be called the appellant, and the other party to the proceedings shall be called the respondent.

~~165~~ **169.** Before such case is stated and delivered to the appellant, he shall lodge with the warden's clerk the prescribed fees, and the sum of twenty pounds, or such less sum as the warden may order, to abide the costs of the appeal, and shall give and provide security to the satisfaction of the warden for the due performance of any order which the Supreme Court may think fit to make. Security to be provided by appellant. *Ibid.* s. 102.

~~166~~ **170.** (1) If the warden is of opinion that the application is merely frivolous, he may then, but shall not otherwise, refuse to state a case. Warden may refuse to state case. *Ibid.* s. 103.

(2) Where the warden refuses to state a case he shall, on the request of the appellant, sign and deliver to him a certificate of such refusal. Certificate of such refusal.

~~167~~ **171.** (1) Where the warden refuses to state a case, the appellant may apply to the Supreme Court upon an affidavit of the facts for a rule calling upon the warden and the respondent to show cause why such case should not be stated. Supreme Court may direct case to be stated. *Ibid.* s. 104.

(2) The court may make absolute or discharge such rule with or without costs.

(3) Where such rule is made absolute, the warden, upon being served with a copy thereof, shall state a case accordingly, upon the appellant lodging the fees making the deposit and giving the security aforesaid.

~~168~~ **172.** The appellant shall, within seven days of receiving the case, serve notice in writing of such appeal, together with a copy of the case as stated and signed, on the respondent, and shall thereafter and within the said time transmit such case to the prothonotary of the Supreme Court. Appellant to give notice. *Ibid.* s. 105.

~~169~~ **173.** (1) The Supreme Court shall hear and determine the questions of law arising on such case; and shall— Powers of Supreme Court. *Ibid.* s. 106.

(a) reverse, affirm, or amend the determination in respect of which the case was stated; or

(b) remit the matter to the warden with the opinion of the Court thereon; or

(c) make such other order in relation to the matter as seems fit:

Provided

Provided that the court may cause the case to be sent back for amendment, and thereupon it shall be amended accordingly, and the order of the court shall be made after it has been so amended. Case may be sent back for amendment.

(2) The court may make such order as to costs as seems fit, provided that no warden who has stated and delivered a case in pursuance of this Act shall be liable to any costs in respect of such appeal. Costs.

(3) All such orders shall be final and conclusive on all parties. Decision to be final.

~~170.~~ **174.** (1) The authority and jurisdiction hereby vested in the Supreme Court may, subject to any rules and orders of the said court in relation thereto, be exercised by a judge of the said court sitting in chambers as well in vacation as in term. Powers of Court may be exercised by Judge in chambers. Justices Act, 1902, s. 107.

(2) The Supreme Court may make and alter rules and orders to regulate the practice and proceedings in reference to the stating of cases as herein provided. Rules of practice.

~~171.~~ **175.** (1) Any order of a warden affirmed or amended, and any order made by the Supreme Court on the determination of any such case, may be enforced in the same manner as an order of the warden who originally decided the matter. Order enforced as order of warden. *Ibid.* s. 108.

(2) No action or proceeding whatever shall be commenced or had against any warden for enforcing any such order by reason of any defect therein.

~~172.~~ **176.** (1) Any person who appeals under this Division against any determination of a warden from which he might appeal to a District Court, shall be taken to have abandoned such last-mentioned right of appeal. Persons appealing not to be allowed to appeal to District Court,

(2) Nothing herein shall in any way interfere with, curtail or limit the powers of any person to apply for a writ of prohibition against the determination of any warden. but nothing to prevent applications for prohibition.

PART IX.

General provisions.

Conditional purchases conversion.

173. Notwithstanding anything to the contrary contained in the Crown Lands Titles and Reservations Validation Act of 1884, the Crown Lands Titles and Reservations Validation Act of 1886, the Conversion into Mining Conditional Purchases Validation Act of 1888, and any Regulations made thereunder, the right of any holder of a conditional purchase made under sections thirteen, twenty-one, or twenty-two of the Crown Lands Alienation Act of 1861 to convert such purchase into a conditional ~~purchase~~ Conversion into mineral conditional purchase.

purchase for mining purposes shall, from and after the commencement of this Act, absolutely cease and determine, and no application for such conversion shall be entertained unless lodged in the proper office prior ~~to such commencement.~~

Notices.

~~174.~~ **177.** All notices required by this Act to be served upon the owner or occupier of any private land, or land not Crown land, shall, except where otherwise in this Act provided, either be served personally on the owner or occupier or on his local agent, provided the said agent is registered as such as prescribed, or left at the usual place of abode of such owner or occupier. Service of notices. 57 Vic. No. 32, s. 15.

If in the case of a notice directed to be served on the owner such owner is absent from New South Wales, or he or his agent cannot after diligent inquiry be found, the notice may be left with the occupier, or if there be no such occupier may 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.

Documents and affidavits.

~~175.~~ **178.** (1) All documents used in any proceedings in any court under this Act or in relation to any such proceedings may be in writing or print or partly in writing and partly in print. May be in writing or print. 37 Vic. No. 13, s. 117.

(2) Any affidavit to be used in any warden's or mining appeal court, or before a warden, may be sworn before any judge of the Supreme Court or any commissioner for that Court for taking affidavits, or before the judge of any District Court or any warden or justice. Affidavits may be sworn before Judge, &c. *Ibid.* s. 118.

Contempt of court.

~~176.~~ **179.** If any person wilfully insults any warden sitting in the discharge of any duties imposed by this Act, or wilfully interrupts the proceedings of any warden's court, or being summoned or examined as a witness in any suit or proceeding in any such court refuses to be sworn or to answer any lawful question, or is guilty of wilful prevarication, the warden, if he thinks fit, may commit any such offender to prison for any time not exceeding forty-eight hours, or impose on any such offender a fine not exceeding five pounds for every such offence, and in default of immediate payment thereof, to commit the offender as aforesaid for any time not exceeding forty-eight hours unless the fine is sooner paid. Contempt and penalties therefor. *Ibid.* s. 119.

In either of the cases aforesaid a warrant in the form prescribed by the rules may be issued by such warden, or such court, and shall be good and valid in law without any other order, summons, or adjudication whatsoever, and the bailiff and gaoler to whom the same is addressed shall obey the same.

Interpleader

Interpleader.

~~177.~~ **180.** (1) If any claim is made to or in respect of any goods or chattels taken in execution under any process issued out of any mining appeal court or by a warden, or in respect of the proceeds or value thereof, by any person not being the party against whom such process has issued, the registrar of such court or such warden may, upon application of the officer charged with the execution of such process, as well before as after any action brought against such officer, issue a summons calling before the said court or such warden, as well the party issuing such process as the party making such claim. Proceedings to be taken. 37 Vic. No. 13, s. 120.

(2) Upon the issue of such summons any action which may have been brought in the Supreme Court or in any District Court in respect of such claim shall be stayed, and the court in which such action has been brought, or any judge thereof, on proof of the issue of such summons, and that the goods and chattels were so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action after the service upon him of the said summons. Action taken to be stayed. *Ibid.*

(3) Upon the return of the said summons, the mining appeal court or the warden issuing the process, as the case may be, shall adjudicate upon the said claim and make such order between the parties in respect thereof, and of the costs of the proceedings, as to it or him may seem fit, and such order may be enforced in like manner as any order made in any suit or proceedings before such court or such warden, as the case may be. Such adjudication and order shall be final. Procedure upon return of summons. *Ibid.*

Recovery of fees, &c.

~~178.~~ **181.** All fees, charges, and sums of money payable under this Act or the regulations may, where no other mode of recovery is provided, be recovered in a court of petty sessions or District Court. Recovery of fees, &c. *Ibid.* s. 116.

No certiorari.

~~179.~~ **182.** No proceedings under this Act shall be removed or removable by certiorari or otherwise into the Supreme Court. Certiorari prohibited. *Ibid.* s. 122.

PART X.

REGULATIONS AND RULES.

~~180.~~ **183.** The Governor may make regulations carrying into effect the provisions of this Act, and particularly— Purposes for which regulations may be made. cf. *Ibid.* ss. 59, 64, 66.

(i) prescribing the modes, times, and places of and for the issue of miners' rights and business licenses and defining the various classes of tenements which may be held under miner's right;

(ii)

(ii) prescribing the area and form of land which may be occupied under a miner's right or business license and the dimensions and form of the land to be demised by any lease; the manner in which applicants for the same shall mark out the land applied for; the requirements to be complied with by such persons; the manner of dealing with cases when two or more applications are made for the same tenement or for a lease of the same land or the right to divert, or collect, or use water for mining for gold or other minerals;

(iii) determining the dimensions, boundaries, form, and position of any claim, or class of claims, and the subsequent adjustment of the same where necessary, when such determination shall take effect, and the number, extent, and classes of claims which any one person, or any two or more persons in conjunction, may take possession of under miners' rights;

(iv) regulating the cutting, construction, use, and maintenance of races, dams, and reservoirs upon Crown lands in cases where leases have not been granted by the Governor;

(v) prescribing the manner in which and with what incident rights and obligations, any tenement, or any water taken or diverted by virtue of a miner's right, shall be taken possession of, held, occupied, used, worked, or assigned;

(vi) determining the order of priority among the holders of miners' rights entitled to the use of any water, how such priority is to be regulated, and under what conditions and circumstances;

(vii) prescribing the mode of registration of any tenement occupied, or easement enjoyed under a miner's right, or any share or interest therein, or encumbrance thereon;

(viii) providing for the registration of the assignment of any such tenement easement, share, interest, or encumbrance, or of the discharge of any such encumbrance;

(ix) prescribing the mode of registration of any such share or interest in the case of the death, bankruptcy, or lunacy of the owners thereof, or of the sale of any such share or interest under the decree, judgment or order of any court, or the decision of a warden or mining appeal court;

(x) prescribing the mode of registration of amalgamated claims and of orders for suspension of work;

(xi) fixing the fees to be charged on any such registration as aforesaid;

(xii) prescribing the time and mode of taking possession of forfeited or abandoned tenements, of registering such tenements, and the labour conditions to be performed by the persons taking possession of the same;

(xiii) enforcing and regulating the drainage of tenements;

(xiv) regulating the mode in which the rights and privileges of the owners of tenements, and easements under a miner's right, may be exercised or enjoyed, and limiting, qualifying, or restricting the exercise and enjoyment of such rights and privileges, and generally for the protection of such owners in the exercise and enjoyment of the rights, privileges, and interests conferred by this Act;

(xv) prescribing the circumstances and conditions under which any tenement, or any share, right, or interest therein may be deemed to be or be declared abandoned, and the penalty, including forfeiture, for failure to comply with the conditions to be performed by the holder of any tenement;

(xvi) for the prevention of nuisances in and about residences or places of business held under a miner's right or business license, and for cleansing and keeping clean the same;

(xvii) prescribing how land applied for shall be described in the application;

(xviii) prescribing the forms of applications, notices, and other documents to be used, the fees to be paid in respect of any application and for survey;

(xix) prescribing the forms of leases and authorities to be granted under this Act, and the covenants, conditions, reservations, and provisions to be inserted therein, and the mode of registering the same; the conditions upon which they may be issued and the privileges to be enjoyed under them; the fees to be paid on issue of leases and upon registration thereof;

(xx) prescribing the time within which a lessee shall execute the lease;

(xxi) prescribing the conditions upon which the amalgamation of adjoining leases may be authorised;

(xxii) prescribing the conditions under which suspension of any condition imposed for the expenditure of money may be granted;

(xxiii) for converting any authority issued under any Act repealed by this Act into a lease or leases, and for enforcing the covenants and conditions thereof; 48 Vic. No. 10, s. 4.

(xxiv) for converting any lease granted under any Act repealed by this Act into a lease under this Act;

(xxv) for prescribing what shall entitle a prospector to concessions as a reward, claim, or lease, and the terms and conditions upon which any such reward, claim, or lease may be granted;

(xxvi) for preventing the accumulation of and for the removal to some convenient place of sludge, tailings, and other refuse matter, oozing or flowing from or connected with any Crown land or private land held or occupied under this Act, and worked by means of puddling, quartz-crushing, or other machines, and of waste water, and for the making of such channels as

may

may be necessary for any of the purposes aforesaid, and for otherwise regulating such oozing, flowing, and running to waste;

(xxvii) for the protection from injury, destruction, and unlawful removal of such machines as last aforesaid, and of pegs, posts, fences and notices, and of any plant or appliances used for or in connection with mining under any claim or lease, and for the protection from obstruction of channels, drains, creeks, and rivers used for mining purposes under such claim or lease;

(xxviii) for the construction and keeping in repair of suitable bridges or other crossings over races, channels, or drains, used for mining purposes, and for making proper approaches to such bridges or crossings, and for determining the width of such bridges, crossings, and approaches;

(xxix) for making and keeping in repair, and for regulating the width and formation of private ways and passages over claims or races, or any Crown lands or private lands used for mining purposes, or for or in connection with mining, and for regulating and imposing conditions on the right to change the direction of any such way or passage, and for the protection of the same from injury or obstruction.

(xxx) for securing the baling of water from mines so as to prevent injury from such water to any mining workings;

(xxxi) for preventing the defiling or wasting of water used under this Act for domestic purposes, and for determining whether any and what water-hole, spring, or other depository of water shall be reserved for the domestic use of the holders of miner's rights, business licenses, or leases or authorities under this Act, and the mode of such reservation;

(xxxii) prescribing the procedure to be followed in any inquiry by a warden under this Act;

(xxxiii) regulating the working of machinery on dredges, and making provision for the safety of life and property in connection with dredging operations;

(xxxiv) for enforcing any regulation made under this Act by penalties not exceeding fifty pounds in any case; and

(xxxv) generally for carrying into effect the provisions of this Act.

Until such regulations have been made, the regulations in force at the commencement of this Act for the said purposes shall continue in force and shall apply to any claim, lease, or holding under this Act.

~~181.~~ **184.** The District Court Judges, or any three of them, may, subject to this Act, make such general rules as they may think fit — Power to make rules of practice. 37 Vic. No. 13, s. 113.

(a) regulating the practice and procedure of mining appeal courts and warden's courts under this Act;

(b) for the execution of the process of such courts, and in relation to any of the provisions of this Act which relate to such courts;

(c)

(c) the fees to be allowed to barristers and attorneys practising in the said courts;

(d) the expenses to be paid to witnesses in the said courts;

(e) prescribing the forms for matters or proceedings in the said courts;

(f) for keeping all books, entries, and accounts to be kept by the registrar or clerk of any such court.

All such rules shall, from and after the expiration of the time fixed therein for the commencement thereof, and after the same have been published in the Gazette, be of the same force and effect as if the same had been herein enacted; and in any case not expressly provided for herein or by the said rules, the general rules in force for the time being, made under the District Courts Act, 1901, may be adopted and applied so far as practicable by wardens and District Court judges exercising jurisdiction under this Act.

~~182.~~ **185.** All regulations and all general rules made under this Act shall be laid before both Houses of Parliament within fourteen days after the publication of the same in the Gazette if Parliament is then sitting, and if not, then within fourteen days after the commencement of the next session of Parliament.

Rules and regulations to be laid before Parliament.

37 Vic. No. 13, s. 114.

PART XI.

Penalties.

~~183.~~ **186.** Any person who—

(a) mines or employs any other person to mine in, or cuts or constructs any race, drain, dam, or reservoir through or upon, or cuts or removes any live or dead timber, or any earth from any Crown lands without lawful authority shall be liable for each such offence to a penalty not exceeding ten pounds.

Unauthorised mining, &c.

Ibid. s. 123.

~~184.~~ **187.** Any person who on any Crown land—

(a) mines for gold or any other mineral; or

(b) occupies such land for mining purposes; or

(c) employs any person for any of the above purposes; or

(d) occupies such land for the purposes of any business or for residence,—

shall, unless he proves that he was authorised by or under this or any other Act to so mine on or occupy such land, or where he so employs any person that the said person was so authorised, be liable to a penalty not exceeding ten pounds.

Unauthorised occupation of Crown land.

Ibid. s. 124.

~~185.~~ **188.** Any person who infringes any regulation for the infringement whereof no penalty is prescribed by the regulations, shall be liable for each such offence to a penalty not exceeding ten pounds.

Breach of regulation.

Ibid. s. 126.

~~186.~~ **189.** Any person duly served with any summons issued out of a mining appeal court or any warden's court, or by a warden under this Act, requiring such person to appear as a witness in such court, or on any proceeding for inquiry before such warden, and to whom at the same time payment or tender of his expenses has been made according to the scale to be fixed by the rules, and who refuses or neglects without sufficient cause to appear according to the tenor of such summons, shall be liable to a penalty not exceeding ten pounds, but no conviction for such penalty shall exempt such person from any action for disobeying such summons.

Witness neglecting to appear. 37 Vic. No. 13, s. 130.

~~187.~~ **190.** Any person against whom any order, not being an order for the payment of money, has been made by any mining appeal court or warden's court, who refuses or neglects to obey the same, shall, where no penalty is herein specified, for such refusal or neglect, be liable to a penalty not exceeding fifty pounds.

Disobedience of order.

~~188.~~ **191.** Any person who—

Assault on warden and other offences. *Ibid.* s. 129.

(a) assaults, obstructs, or resists any warden or any person duly authorised by any mining appeal court or warden in lawfully entering upon any claim or land, or in performing any other act authorised hereby, or any bailiff or other officer, or any clerk or assistant of such bailiff or officer, or any inspector or other person, in the performance of his duty, or in the exercise of his powers under this Act; or

(b) after being removed by any warden under the provisions of this Act from any claim or other place, forcibly or clandestinely retakes or retains, or endeavours to retake or retain, possession thereof, or of any portion thereof, or of any share therein; or

(c) after any decision of a mining appeal court, or any decision of a warden's court not reversed on appeal, that any person is entitled to use for mining purposes, or to divert any water, resists such person or his agents in such use or diversion; or

(d) upon or in consequence of the decision of any such court against him, assaults or threatens to assault any person in whose favour such decision has been made

shall be liable to a penalty not exceeding fifty pounds.

~~189.~~ **192.** Any person who wilfully and corruptly exacts, takes, or accepts any fee, sum, or reward whatsoever, other than and except such fees or sums as are lawfully appointed or allowed for or on account of anything done under the authority of this Act or the regulations, shall be liable to a penalty not exceeding fifty pounds.

Wrongful exaction of moneys. *Ibid.* s. 128.

~~190.~~ **193.** Any person who forges any miner's right, or any lease, license, or any authority issued or purporting to be issued under this Act, or fraudulently uses, utters, or exhibits any such forged miner's right, lease, license, or authority, knowing the same to be forged, shall

Forgery of documents. *Ibid.* s. 125.

shall be guilty of a misdemeanour, and shall on conviction thereof be sentenced to imprisonment either with or without hard labour at the discretion of the court for any period not exceeding twelve months.

~~191.~~ **194.** Any owner or occupier of any private land as defined in Part IV, or of any land which is not Crown land as defined in Part V of this Act, or any other person who— Wrongful obstruction on private lands 57 Vic. No. 32, s. 10.

(a) obstructs any holder of a lease, or authority to enter, granted under the provisions of the said Parts respectively in doing any act which he is by this Act authorised to do, on, in, or under such land; or

(b) interferes with, removes, destroys, or defaces any boundary mark authorised by this Act to be placed on any land,

shall be liable for a first offence to a penalty not exceeding ten pounds, and for a second or any subsequent offence to a penalty not exceeding fifty pounds.

~~192.~~ **195.** Any person who without lawful authority commences to mine on, in, or under any private land as defined in Part IV of this Act, shall be liable to a penalty not exceeding ten pounds, and any gold, minerals, or metals obtained by such unauthorised mining may be forfeited by the court before which he is convicted of such offence. Wrongful mining on private lands.

~~193.~~ **196.** Any person who knowingly inserts any false quantity or value in any return directed by this Act to be made or furnished shall be liable to a penalty not exceeding fifty pounds. False quantity or value.

~~194.~~ **197.** (1) All penalties imposed under this Act or the regulations may be recovered in a summary way before any warden who is also a justice, in accordance with the provisions of the Acts in force for the time being regulating proceedings on summary convictions before justices. Recovery before any warden. 37 Vic. No. 13, s. 116.

(2) Notwithstanding the recovery of any penalty under this Act, any person may enforce any civil remedy which he may have by reason of the act or default in respect of which the penalty may have been recovered. Civil remedy remains though penalty recovered. *Ibid.* s. 121.

SCHEDULES.

SCHEDULES.

SCHEDULE ONE.

Year and Number.	Title or Short Title.	Extent of repeal.
37 Vic. No. 13 ...	Mining Act, 1874	The unrepealed portion.
43 Vic. No. 28 ...	An Act to amend the Act 37 Victoria No. 13...	The whole.
46 Vic. No. 7 ...	An Act to further amend the Act 37 Victoria No. 13.	The whole.
48 Vic. No. 10 ...	Mining Act Further Amendment Act of 1884...	The whole.
48 Vic. No. 17 ...	Mining Lease Validating Act of 1884	The whole.
53 Vic. No. 20 ...	Mining Act of 1889	The whole.
57 Vic. No. 32 ..	Mining on Private Lands Act of 1894	The whole.
60 Vic. No. 7 ..	Mining Act Amendment Act of 1896	The whole.
60 Vic. No. 40 ...	Mining Laws Amendment Act of 1896 ...	The whole.
No. 44, 1899 ...	Gold and Mineral Dredging Act, 1899... ..	The whole.
No. 102, 1902 ...	Gold and Mineral Dredging (Amending) Act, 1902.	The whole.
No. 10, 1902 ..	Mining Laws Amendment Act, 1901	The whole.
No. 101, 1902 ...	Mining on Private Lands (Amendment) Act, 1902.	The whole.

SCHEDULE TWO.

Sec. 9.

NEW SOUTH WALES.

No.

[*Insert here sum paid for the miner's right.*]

Mining district and division or place in which issued.

(*Date*)

MINER'S RIGHT.

Issued to , of , under the provisions of the Mining Act, 1906, to be in force until

SCHEDULE THREE.

Sec. 10.

NEW SOUTH WALES.

No.

[*Insert sum paid for the business license.*]

District and division or place in which issued.

(*Date.*)

[*Insert here whether for six or twelve months.*]

BUSINESS LICENSE.

Occupation

Residence

Issued to , of , under the provisions of the Mining Act of 1906, to be in force until the day of

Sydney : William Applegate Gullick, Government Printer. —1906.

[2*s.* 3*d.*]

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, 9 October, 1906.

RICHD. A. ARNOLD,
Clerk of the Legislative Assembly.

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

Legislative Council Chamber,
Sydney, November, 1906.

Clerk of the Parliaments.

New South Wales.

ANNO SEXTO

EDWARDI VII REGIS.

* *

Act No. , 1906.

An Act to consolidate and amend the law relating to mining; to give further facilities for the development of mining; to amend the Crown Lands Act of 1884 and Acts amending the same; and for other purposes.

BE it enacted by the King'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:—

PART I.

PRELIMINARY.

Short title.

1. This Act shall come into operation on a date to be fixed by proclamation by the Governor, and may be cited as the "Mining Act, 1906," and is divided into Parts, as follows:— Short title and division of Act.

PART I.—PRELIMINARY—*ss.* 1–8.

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

PART II.—MINER'S RIGHTS AND BUSINESS LICENSES—*ss.* 9–22.

1. *Issue and transfer—ss.* 9–13.
2. *Occupation—ss.* 14–18.
3. *Registration—s.* 19.
4. *Miscellaneous provisions—ss.* 20–22.

PART III.—LEASES OF CROWN LANDS—*ss.* 23–44.

1. *What leases may be granted—ss.* 23, 24.
2. *Applications—ss.* 25–34.
3. *Conditions—ss.* 35–39.
4. *Special leases—s.* 40.
5. *Minerals not included in lease—ss.* 41–43.
6. *Ownership of tailings and ore—s.* 44.

PART IV.—MINING ON PRIVATE LANDS—*ss.* 45–82.

1. *Preliminary—ss.* 45–48.
2. *Authority to enter—ss.* 49–56.
3. *Leases—ss.* 57–67.
4. *Mining by owner—ss.* 68–70.
5. *Resumption—ss.* 71–80.
6. *General provisions—ss.* 81, 82.

PART V.—DREDGING LEASES—*ss.* 83–101.

PART VI.—TENEMENTS AND LEASES GENERALLY—*ss.* 102–127.

PART VII.—WARDENS' COURTS—*ss.* 128–156.

1. *Jurisdiction—ss.* 128–134.
2. *Hearing and procedure—ss.* 135–140.
3. *Orders—ss.* 141–146.
4. *Execution—ss.* 147–151.
5. *Assessment of compensation—ss.* 152–156.

PART VIII.—APPEALS—*ss.* 157–172.

1. *To District Court—ss.* 157–163.
2. *To Supreme Court—ss.* 164–172.

PART IX.—GENERAL PROVISIONS—*ss.* 173–179.

PART X.—REGULATIONS AND RULES—*ss.* 180–182.

PART XI.—PENALTIES—*ss.* 183–194.

Repeal.

2. (1) The Acts mentioned in the First Schedule are to the extent therein expressed repealed. Repeal.

(2) Persons appointed under any Act hereby repealed, and holding office at the commencement of this Act, shall be deemed to have been appointed hereunder. Persons appointed under repealed Acts.

(3)

(3) Rules, regulations, proclamations, and notifications made under any Act hereby repealed, and being in force at the commencement of this Act, shall be deemed to have been made hereunder, and any references therein to any enactments hereby repealed shall be construed as references to the corresponding provisions of this Act. Rules, &c., under repealed Acts.

(4) Applications pending at the commencement of this Act shall, except as hereinafter provided, be dealt with in accordance with the provisions of the Acts hereby repealed and the regulations thereunder. Applications pending.

(5) Miner's rights, mineral licenses, business licenses, leases, and authorities issued under any Act hereby repealed and in force at the commencement of this Act shall, except as hereinafter in this Act provided, continue in force for the respective periods named therein and confer the same rights and privileges, and entail the same obligations and penalties, as if this Act had not passed; and every right, title, and interest acquired under and by virtue thereof shall remain and continue valid subject to the limitations contained therein: **Provided that with respect to any gold-mining lease of Crown lands so issued and in force the annual rent per acre shall be five shillings, and the term for which such lease was granted is extended a further period of five years.** Miners' rights, leases, &c.

(6) Every gold-field, mining district, and division existing at the commencement of this Act shall continue as then constituted, until dealt with by proclamation under this Act. Existing gold-fields, &c.

Interpretation.

3. In this Act, unless the context or subject-matter otherwise indicates,— Interpretation.
37 Vic. No. 13 s. 2.
43 Vic. No. 28, s. 1.
48 Vic. No. 10, s. 5.
57 Vic. No. 32, s. 2.

"Adjoining" as applicable to claims or leases means that the lands comprised in such claims or leases have a common boundary, or are only separated by a road or stream.

"Business" means profession, trade, calling, or occupation, except mining.

"Claim" means a portion of Crown land lawfully taken possession of for the purpose of mining, or any number of such portions lawfully amalgamated by the holders. But does not include land comprised in a mining lease or lease for mining purposes.

"Crown lands," except for the purpose of Part V, means lands vested in His Majesty, and includes—

(a) lands under lease from the Crown except as hereinafter provided;

(b) lands reserved, dedicated, appropriated, or resumed for public purposes, whether vested in His Majesty or in any person as constructing authority or trustee for public purposes;

(c) lands under any navigable waters, or under any harbour, estuary, bay, river, or creek vested in His Majesty, whether navigable or not; and

(d) lands which the Governor may declare by proclamation to be Crown lands;

but

but does not include—

(e) lands alienated or in process of alienation from the Crown, or lawfully contracted to be granted by the Crown; or

(f) lands subject to a conditional lease, conditional purchase lease, or lease under this Act;

(g) conditional purchases or homestead selections.

"Crown Lands Acts" means Crown Lands Act of 1884, the Western Lands Act of 1901, and the Acts amending the same.

"Earth" means rock, stone, quartz, clay, sand, soil, or mineral.

"Gold" means gold, or earth containing gold, or having gold mixed in the substance thereof, or set apart for the purpose of extracting gold therefrom.

"Gold-field" means lands heretofore or hereafter proclaimed a gold-field.

"Justice" means justice of the peace, and includes a stipendiary or police magistrate.

"Mine" includes any place, pit, shaft, drive, level, or other excavation, drift, gutter, lead, vein, lode, or reef, whereon, wherein, or whereby any operation for or in connection with mining purposes is carried on.

"Mineral field" means lands constituted a mineral field under this Act.

"Minerals" means silver, copper, tin, iron, antimony, cinnabar, galena, nickel, cobalt, platinum, bismuth, manganese, marble, kaolin, mineral pigments, mercury, lead, wolfram, coal, shale, scheelite, chromite, opal, turquoise, diamond, ruby, sapphire, emerald, zircon, apatite and other phosphates, serpentine, molybdenite, alunite and alum, barytes, asbestos, gypsum, mineral oils, monazite, and any other substance which may from time to time be declared a "mineral" within the meaning of this Act by proclamation of the Governor published in the Gazette.

"Mining Appeal Court" means District Court sitting as a court of appeal under this Act.

"Mining purpose" includes cutting and constructing any tunnel, water-race, drain, dam or reservoir, or constructing any railway or tramway, or laying any pipes for the purpose of mining, erecting buildings and machinery to be used for any process whatsoever in connection with the extracting of gold or minerals, pumping or raising water to or from land mined or worked or intended to be worked for the extraction of gold or minerals therefrom, treatment of tailings on abandoned land, and any other work which the Governor may by proclamation declare to be a mining purpose.

"Mining surveyor" means licensed surveyor specially appointed to carry out surveys under this Act. "Minister"

"Minister" means Secretary for Mines.
"Notification" means notification in the Gazette.
"Prescribed" means prescribed by this Act or the regulations.
"Proclamation" means proclamation in the Gazette.
"Prospecting board" means Board appointed to administer the Prospecting Vote.
"Race" includes any artificial channel, flume, aqueduct, tunnel, culvert, or pipe for the conveyance of water or detritus.
"River" includes a frontage creek, or any stream of water, whether perennial or intermittent, flowing in a natural channel not included in a deed of grant or embraced in an area in process of alienation.
"Schedule" means schedule to this Act.
"Small coal" means coal which will pass through a screen the bars of which are not more than three-quarters of an inch apart.
"Tenement" means land lawfully occupied under a miner's right or business license.
"The regulations" means the regulations made under this Act or any Act hereby repealed.
"The State" means the State of New South Wales.
"The warden" includes any warden appointed under this Act.
"To mine" means to disturb, remove, cart, carry, wash, sift, smelt, refine, crush, or otherwise deal with any earth by any mode or method for the purpose of obtaining gold or minerals therefrom.
"To prospect" means to search for gold or any mineral.
"Town or village" means city, town, or village, or site for a city, town, or village, and suburban lands to be attached thereto, declared, proclaimed, reserved, or set apart under the Crown Lands Acts; and includes any township site for a mining settlement which the Minister may notify in the Gazette.

Department of Mines, school, and museum of mines.

4. (1) The Governor may establish and maintain in connection with the Department of Mines, schools of mines and museums for the purpose of providing instruction by means of classes, lectures, or otherwise in geology, mineralogy, and chemistry, in their scientific and practical application to mining pursuits, and may also establish and maintain offices for the assaying of mineral ores. He may appoint such professors and readers in any of the said sciences, and such assayers, curators, keepers, and servants as may, in his opinion, be requisite to give effect to the provisions of this section. Schools of mines and museums may be established. 37 Vic. No. 13, s. 8.

(2) Such schools, museums, and offices, and the staffs thereof, shall be under the control and management of the Minister. Control and management.

Mining.

(3) Provided that if the Governor thinks it desirable that any school or museum should be managed in connection with the University of Sydney, and so proclaims, the same shall, so long as such connection continues, be under the control and management of the Senate of the University, and such Senate shall in that case appoint such professors and readers and other persons as aforesaid as may be required. Control by University.

(4) This section shall apply to the school of mines, museum, and assay offices established at the commencement of this Act, as if they had been established under this section. School, &c., already established.

Gold and mineral fields, mining districts, and divisions.

5. (1) The Governor, by proclamation, on the recommendation of the Minister, may constitute any lands as a gold-field or mineral field, and may fix and alter the name and boundaries thereof. Gold-fields may be proclaimed. 37 Vic. No. 13, s. 10.

(2) In like manner, mining districts and divisions of mining districts may be constituted, and their names and boundaries fixed and altered. Mining districts. *Ibid.* s. 9.

(3) The proclamation of any gold-field, mineral field, mining district, or division, whether made under the Mining Act, 1874, or this Act, may be varied or cancelled in like manner by a subsequent proclamation. Cancellation. *Ibid.* ss. 9, 10.

Officers.

6. (1) The Governor may appoint so many wardens, registrars, mining surveyors, mining engineers, mining appraisers, clerks, bailiffs, assistants, and other officers as he may think necessary for the administration of this Act. Governor may appoint officers. *Ibid.* s. 12.

(2) The persons so appointed shall have the powers and perform the duties prescribed by the regulations in addition to any powers and duties specified in this Act. Powers and duties.

(3) Every warden so appointed shall be a warden for the whole State. Warden.

7. The Minister shall not, nor shall any warden, registrar, surveyor, engineer, or other officer charged with any judicial or official duties under this Act during his tenure of office, hold either directly or indirectly any beneficial interest in any mining tenement or lease or other mining venture in the State, and if, while holding such interest, he acts in his office he shall be guilty of a misdemeanour. Minister or officer not to be interested in any mining venture. *Ibid.*

Royal prerogative.

8. Nothing in this Act, except so far as is herein expressly enacted, shall abridge or control the prerogative rights and powers of His Majesty in respect to gold mines and silver mines. Saving of Royal prerogative. *Ibid.* s. 5.

PART

PART II.

MINERS' RIGHTS AND BUSINESS LICENSES.

DIVISION 1.—ISSUE AND TRANSFER.

Issue of miner's rights.

9. A miner's right shall be issued on the application of any person.

37 Vic. No. 13, s. 14. cf. 60 Vic. No. 7, s. 2.

Any such right shall be in the form of Schedule Two and shall be in force for any term not less than six months and not exceeding twenty years from the date of issue.

There shall, on the issue of any such right, be paid a fee calculated at the rate of five shillings for every year or two shillings and sixpence for every half-year of the term of the right.

Issue of business licenses.

10. A business license shall be issued to any person applying for the same.

37 Vic. No. 13, s. 21.

Such license shall be in the form of the Schedule three, and shall be in force for any term not less than six months and not exceeding twenty years from the date of issue.

Duration. *Ibid.*

There shall, on the issue of any such license, be paid a fee calculated at the rate of one pound for every year or ten shillings for every half-year of the term of the license.

Renewal of miner's rights and business licenses.

11. (1) The holder of any miner's right or business license shall be entitled on application and payment of the prescribed fee to a new miner's right or business license, dating from the expiration of the previous right or license.

Ibid. s. 24.

(2) The application may be made—

(a) within one month before the date of such expiration, in which case the fee payable shall be the same as in the case of the issue of a miner's right or business license in the first instance; or

(b) within seven days after the date of such expiration on production of the expired miner's right or business license and on payment of the fee aforesaid; or

(c) after seven days and within one month after the date of such expiration on production of the expired right or license, but in that case a sum equal to fifty per centum of the amount of the fee aforesaid shall be added thereto.

Transfer.

12. A miner's right or business license may be transferred by endorsement thereon under the hand of the transferror and by registration in the prescribed manner.

Duplicate rights and licenses.

13. On proof to the satisfaction of the warden that any miner's right or business license has been accidentally lost or destroyed, a duplicate right or license may be issued on payment of a fee of one shilling.

DIVISION

DIVISION 2.—OCCUPATION.

Exempted Crown lands.

14. (1) The following classes of Crown lands are (save where otherwise in this Act provided) exempted from occupation under any miner's right or business license, namely,— Certain exemptions. 37 Vic. No. 13, s. 34. 43 Vic. No. 28, s. 1. 48 Vic. No. 10, s. 5. 57 Vic. No. 32, s. 5.

(a) lands reserved, dedicated, appropriated, or resumed for public purposes (except land reserved for a temporary common or for mining purposes), whether vested in His Majesty or in any person as constructing authority or trustee for public purposes.

(b) lands held from the Crown under residential lease, settlement lease, or special lease for other than pastoral or grazing purposes;

(c) lands held under lease for water supply in virtue of any special Act or otherwise; and

(d) lands granted or vested in trust by the Crown for purposes of a racecourse, cricket-ground, recreation reserve, park, or permanent common, or for any other public purpose;

(e) lands the subject of a pending application for a lease under this Act:

Provided that where any such lease or grant contains a reservation of all or any rights or right conferred by any Act relating to mining, the land comprised in such lease or grant shall to the extent so reserved be open to occupation as aforesaid.

(2) Crown lands lawfully and bona fide used as a yard, garden, cultivated field, or orchard, or upon which any house, outhouse, shed, or other building, actually used and occupied, or any artificial dam or reservoir, is lawfully standing are exempted from occupation, as aforesaid, except upon payment of compensation to be assessed by the warden. Crown lands used as orchard, &c. 37 Vic. No. 13, s. 25.

The warden shall fix at what depth from the surface the workings on such land shall be carried on, and on failure to observe his order the person in occupation of the land shall be deemed to be a trespasser. Warden to fix distance. cf. 57 Vic. No. 32, s. 6.

(3) The Governor, by notification, on the recommendation of the Minister, may exempt from occupation as aforesaid any Crown lands, and may revoke or amend any such notification. 37 Vic. No. 13, s. 26.

Rights conferred by a miner's right.

15. (1) Except as against His Majesty a holder of a miner's right, or any number of persons being each the holder of a miner's right, may, subject to the regulations and to the exemptions in this Part— Rights of occupation in respect of Crown lands. *Ibid.* s. 15. 60 Vic. No. 7, s. 3.

(a) take possession of and exclusively occupy as a claim any Crown land for mining purposes, and mine therein; (b)

(b) have and possess any gold or other minerals found in such land whilst so occupied;

(c) erect any building, structure, or machinery upon land so occupied, and remove the same at any time during such occupation;

(d) exercise any rights of the nature of easements in connection with land so occupied;

(e) occupy Crown lands, and construct and use thereon races, dams, reservoirs, roads and tramways for mining purposes;

(f) take or divert water from any lake, pool, spring, or stream, situate in or flowing through Crown lands not exempted from occupation under a miner's right or business license, and use such water for mining or domestic purposes;

(g) procure and remove for mining, smelting, building, or other purposes for his or their personal use only, any bark, or live or dead timber, or any stone or gravel from any Crown lands not

(i) exempted from occupation under a miner's right or business license; or

(ii) within the operation of any proclamation or notification prohibiting the cutting or removal of such timber, bark, stone, or gravel:

Provided that this right to procure and remove bark or timber may be exercised only by persons (not being corporations) actually holding miners' rights;

(h) while following the occupation of a miner or prospector, graze upon Crown lands not exempted as aforesaid such horses or other animals as may be necessary for his or their subsistence and for the carrying on of prospecting or mining:

(2) Provided that for the purposes of taking possession of more than one tenement of any specific class, the person so taking possession must hold an additional miner's right for each additional tenement after the first of the same class. The different classes may be prescribed by the regulations.

Residence area.

cf. 37 Vic. No. 13, s. 15.

16. (1) Except as against His Majesty, a holder of a miner's right may, subject to the exemptions in this Part, take possession of and occupy Crown lands (hereinafter referred to as a "residence area") for the purpose of residing thereon.

(2) The area to be so occupied by any one such holder shall not exceed one quarter of an acre within the boundaries of a town or village, or two acres outside such boundaries: Provided that the occupation shall extend only to the surface and the prescribed depth below the surface, and that no area greater than one quarter of an acre shall be so occupied unless with the approval of the warden.

(3) Every such area shall be taken possession of in the prescribed manner. No person shall hold more than one such area at the same time.

(4)

(4) The proviso to section forty-six of the Crown Lands Act of 1884 is amended by substituting the words, "the areas to be sold shall not exceed one quarter of an acre within the boundaries of a town or village, as defined in the Mining Act, 1906, or two acres outside such boundaries," for the words "the areas to be sold shall not exceed one quarter of an acre for town lands, and one acre for suburban or other lands."

Authority to prospect.

17. (1) A holder of a miner's right may apply to the Minister for an authority to prospect on any Crown lands, whether exempted from occupation under this Part or not, and the Minister may, on the recommendation of the warden or the prospecting board, grant such authority. The area to be held under such authority, the term, rent, and the conditions as to labour and other matters shall be fixed by the Minister. Failure to comply with any conditions so fixed shall render the authority liable to be cancelled by the Minister.

(2) Such authority shall entitle the holder to take possession of the area on payment in advance of the rent fixed as aforesaid, and survey fee if necessary, and to carry on prospecting operations during the term of such authority.

Report of discovery.

(3) On discovery of gold or other minerals, the holder of the authority shall report, within fourteen days from the date of such discovery, to the warden of the district, who shall thereupon report to the Minister on the nature of the discovery. The Minister may thereupon call upon the holder of the authority to apply for a lease of the land or such part thereof as he may deem advisable or to continue prospecting operations.

Rights conferred by business license.

Holder may occupy land and erect buildings.

37 Vic. No. 13, s. 22.

18. A holder of a business license may, except as against His Majesty, and subject to the regulations—

(a) for the purpose of carrying on any business, except mining, occupy the prescribed area of Crown land within a goldfield or mineral field (hereinafter referred to as a "business area") not exceeding a quarter of an acre within the boundaries of a town or village, or one acre outside such boundaries: Provided that such occupation shall extend only to the surface and to the prescribed depth below the surface;

(b) have and possess the land so occupied;

(c) for the purpose aforesaid erect any building or structure upon the land so occupied, and remove the same at any time within one month or within such further time, not exceeding three months, as the warden may order and direct, after ceasing to occupy such land.

Only one area to be occupied in same town or village.

But no such holder may occupy at the same time more than one such area or carry on mining operations upon or in any such area.

DIVISION 3.—REGISTRATION.

Holder to register. 37 Vic. No. 13, s. 16.

19. (1) Where any person takes possession under this Part of a tenement (other than a prospecting area or a block claim, or a residence area not exceeding one quarter of an acre outside the boundaries of any town or village or such other tenement as may be prescribed), he shall, within twenty-eight days thereafter register the same in the prescribed manner in the office of the mining registrar of the division wherein the same is situated.

Transmission.

(2) Where any interest in a tenement required to be registered is transferred to, vests in (absolutely or as security only), or devolves upon any person, such person shall within twenty-eight days thereafter register the same in the prescribed manner in the office aforesaid.

Right to be produced. *Ibid.* s. 16.

(3) On every registration of a tenement the person requiring registration shall produce his miner's right or business license to the registering officer.

Neglect to register. *Ibid.* s. 124.

(4) Any person neglecting to register a claim or a share in a claim within the period aforesaid shall, if he works or mines in such claim, incur the penalty hereinafter in this Act prescribed for unauthorised mining on Crown lands.

Proviso.

(5) Provided that if it is shown to the satisfaction of the warden that the person whose duty is to register was or would be prevented by sickness or any other like disability from effecting such registration, the warden may extend the said period to a further period not exceeding twenty-eight days from the expiration of the first-mentioned period.

DIVISION 4.—MISCELLANEOUS PROVISIONS.

Division of interest in claim. *Ibid.* s. 17.

20. (1) The owner of any registered claim may, subject to the regulations, divide his interest therein into shares and allot any of such shares to any person.

Amalgamation. *Ibid.* s. 17.

(2) The owners of any two or more adjoining claims may, with the consent of the warden, and subject to such conditions as he may impose, and in the prescribed manner, amalgamate the same before or after registration. The amalgamated claim so formed shall be registered, and may be divided into shares or dealt with as an ordinary claim.

Assignment. *Ibid.* s. 15.

(3) The owner of any registered claim or share in a claim may, subject to the regulations, assign, encumber, or create any interest in the same.

Rights held on behalf of owners. cf. *Ibid.* ss. 17, 20.

21. The holding of miners' rights in respect of a claim shall be deemed a holding on behalf of the owners of the claim or of any shares in the same or of any interests therein, and it shall not be necessary for separate miners' rights to be held by the owners of such shares or interests.

22.

22. If the owner of a share in a registered claim fails to represent his share by labour or to contribute his proportion of the working expenses, the warden on the application of one or more of the remaining shareholders may declare such share to be abandoned, and may order the remaining shareholders to be put in possession of such share; and such declaration and order shall be carried out. Default to contribute. cf. 37 Vic. No. 13. s. 70.

PART III.

Leases of Crown lands.

Division 1.—What leases may be granted.

23. (1) The Governor, in the name and on behalf of His Majesty, may lease Crown lands and any street, road, or highway, as follows:— Governor may grant leases. 37 Vic. No. 13, s. 28.

(a) He may grant mining leases, of the surface and the subjacent soil, or of the soil below a certain depth from the surface only, which may be—

(i) gold-mining leases, authorising mining on the land for gold and for purposes connected with gold-mining; *Ibid.* s. 33.

(ii) mineral leases, authorising mining on the land for the minerals therein specified, and for purposes connected with such mining, *Ibid.* s 56.

(b) He may grant leases (to be called leases for mining purposes) of the surface only, and to a limited depth below the surface. Such leases authorise the use of the land for mining purposes, but do not authorise mining on the land or the removal of any gold or minerals won therefrom. Act No. 10, 1902, s. 4.

(2) Provided that—

(a) A claim lawfully occupied under a miner's right shall not be leased unless the holder of the right consents to the leasing, in which case the claim shall be deemed to be abandoned, and the title thereto shall be absolutely extinguished, whether the application for the lease is granted or refused. 37 Vic. No. 13, s. 34 (2).

(b) Crown land occupied as a business or residence area, or for a dam, reservoir, race, or for machinery, shall only be leased from such depth below the surface as the Minister deems sufficient to secure the surface and any buildings, works, and improvements thereon from damage occasioned by mining operations.

(c) The surface of Crown land held under lease from the Crown for purposes other than pastoral purposes shall only be leased subject to the payment of compensation, to be assessed by the warden. *Ibid.* s. 34 (1).

(d)

(d) Auriferous alluvial Crown land shall not be leased unless in the opinion of the Minister— 37 Vic. No. 13, s. 34 (3).

(i) the land has been worked and abandoned; or

(ii) the land is suitable to be leased by reason of the difficulties and cost attending the construction of mine works upon or of mining such land;

(iii) the land may be leased for mining purposes only.

(e) The Governor, by notification, on the recommendation of the Minister, may exempt any Crown lands from the leasing provisions of this Act, and may revoke or amend any such notification.

Conversion of existing leases and authorities into leases under this Act.

24. (1) ~~A gold-mining lease issued under the Acts hereby~~ repealed, may, on the application of the holder thereof, be converted into a gold-mining lease under this Act for the remainder of the term of such first-mentioned lease, or for such further period not exceeding five years as the Governor thinks fit.

(2) A mineral lease issued under the said Acts may, on application as aforesaid, be converted into a mineral lease under this Act for the remainder of the term of such first-mentioned lease.

(~~2~~ **1**) An application for a lease under any Act hereby repealed may, at the request of the applicant, be converted into an application for a lease under this Act.

(~~3~~ **2**) An authority to mine granted under section twenty-eight of the Mining Act, 1874, may, on application of the holder thereof, be converted into a gold-mining lease or a mineral lease as the case may be under this Act, subject to such conditions as the Governor thinks fit.

(~~4~~ **3**) A registered claim under the said Acts or this Act may, on the application of the owner thereof, be converted into a gold-mining lease or mineral lease as the case may be under this Act. *Ibid.* s. 38.

Division 2.—Applications.

Form of application.

Applications to be subject to conditions.

25. Applications for leases shall be made in the prescribed form and manner, and shall be subject to the prescribed conditions as to marking out the land applied for, taking possession thereof, and otherwise, and shall be accompanied by payment of one year's rent in advance, at the rate prescribed. *Ibid.* s. 56 (3). 46 Vic. No. 7, s. 1.

Priority of application.

First applicant to have priority.

26. (1) If more than one application is made for a lease of the same land, the application of the person who has first taken possession shall be first considered and dealt with, and so on, according to priority of possession. 37 Vic. No. 13, ss. 49, 56 (4).

For

For the purposes of this subsection, "possession" means the act of erecting a datum post, provided that the mode of taking possession prescribed by the regulations is forthwith complied with : Possession.

Provided that if, upon inquiry being held as provided in section thirty-four, the warden is of opinion that possession has been taken simultaneously by two or more applicants for the same area, the question of priority may be decided by ballot.

(2) If any application for a lease is refused or abandoned, any other application for a lease of the same land may be considered and dealt with, regard being had, where necessary, to the rule of priority aforesaid. Other applications

Grant or refusal of application.

27. (1) Leases under this Part shall be granted by the Governor in the name and on behalf of His Majesty. The Governor may in his discretion grant a lease, notwithstanding that the applicant has not in every respect complied with the regulations, or notwithstanding that the description of the land in such application does not strictly correspond with the land as marked out by the applicant. Irregular application may be granted. 48 Vic. No. 17, s. 1.

(2) The Governor may, subject to the provisions of this Act, grant an application for a lease in such modified or amended form as he may think fit. Lease granted with modifications. 37 Vic. No. 13, s. 47.

(3) The Governor may refuse any application for a lease, and such refusal shall take effect from the time of publication of such refusal in the Gazette. Refusal to take effect on publication.

Occupation by and rights of applicant.

28. When any application for a mining lease has been duly made, the applicant may, by virtue of his application, until such lease is granted or refused— Applicant may mine upon land. *Ibid.* ss. 39, 56 (3).

(a) occupy the land applied for, and mine upon and in the same :

Provided that nothing herein shall affect the right, title, or interest of any other person in or to the said land, or in or to any gold or mineral obtained or that may be obtained therefrom ;

(b) proceed in the warden's court for trespass against any person entering upon, occupying, or interfering with such land, not having a lawful title thereto originating prior to such application. Applicant may sue for trespass. *Ibid.*, s. 40.

(c) proceed in the warden's court against any person claiming to have an interest in such land under a miner's right or mineral or business license, for the purpose of having such claim declared invalid. Rights of applicant.

(d) apply to the warden for an injunction under this Act against any person claiming to be legally or equitably interested in the land. Injunction. cf. *Ibid.* s. 58.

29.

Mining.

May claim damages. 37 Vic. No. 13, s. 40.

29. (1) In any such proceedings for trespass the complainant may claim damages for such trespass, and for the recovery of any gold or mineral taken by the defendant from such land, or the value thereof. But he shall not be entitled to succeed unless he proves to the satisfaction of the court that he has complied with the regulations relating to the lodging of the application and payment of rent, so far as such regulations were at the time of the trespass capable of being complied with.

Proof of compliance with regulations. *Ibid.*

(2) If the warden decides in favour of the complainant he shall, unless the application for the lease has been already determined, order the defendant to lodge with the warden, any sum awarded as damages, and any gold or mineral he may adjudge the complainant entitled to, or the value thereof.

Warden may order money, gold, &c., to be lodged. *Ibid*

(3) If such application is granted, the warden shall order the said sum and the said gold or mineral, or the value thereof, to be delivered or paid to the complainant; but if such application is refused, he shall order delivery or payment to the person entitled thereto.

Payment out of money, &c., lodged. *Ibid.* s. 40.

Pendency of application.

When application pending. 46 Vic. No. 7, s. 1.

30. (1) An application for any lease under this Part shall be pending from the taking possession of the land for that purpose in the prescribed manner, or from the lodging of the application for conversion into a lease by any person entitled to apply for such conversion.

Land exempt from sale or lease or occupation.

(2) During the pendency of any such application, the land shall be exempt from sale or lease by the Crown, or from occupation as a tenement.

Application for benefit of applicant and his representatives.

(3) Any such application shall subsist for the benefit of the applicant or, in the event of his death or bankruptcy, of his legal representatives, who shall be deemed to hold the land under promise of a lease until default occurs in making or prosecuting the application, or the Governor refuses the same or voids the lease before issue, and notice thereof is published in the Gazette.

Survey of land.

Application for survey. 37 Vic. No. 13, s. 41.

31. If at the time of lodging an application for a lease, the land applied for has not been surveyed by a mining surveyor, or the marks of a previous survey have been removed or obliterated, the applicant shall deliver to the warden a written application for a survey of such land, accompanied by the prescribed survey fee.

Objections.

Lodging and service of objections. *Ibid.* s. 42.

32. (1) Any person may object to the issue of any lease by lodging with the warden and serving upon the applicant within the prescribed time, a written notice of his objection. Such

Such notice may be served by post by registered letter addressed to the last known address of the applicant, or if the applicant's address cannot be ascertained by posting the same on the datum post on the land applied to be leased.

(2) The person so objecting shall, at the time of lodging notice of his objection, deposit with the warden or the warden's clerk the prescribed sum as security for any costs which may be awarded against him by the warden in any inquiry in relation to such objection. Deposit of security. 37 Vic. No. 13, s. 43.

33. (1) Where no notice of objection has been so lodged, the warden shall forward the application, together with a report thereon, to the Minister. If no objection lodged. *Ibid.* s. 44.

(2) When notice of objection has been so lodged, the warden shall appoint a place and time for the hearing of the application and objection, and shall give not less than three clear days' notice thereof to the applicant and the objector respectively. Where an objection has been lodged by several persons jointly, notice to one of them shall be sufficient. If objection lodged. *Ibid.* ss. 44, 57.

34. (1) On the day so appointed, the warden shall inquire into the truth of the particulars stated by the applicant and objector respectively, and may, if necessary, adjourn the inquiry for any time not exceeding one month, or to any other place, on such conditions as to costs as he may think fit. Notice of such adjournment shall be given to the applicant and to each objector. Warden to inquire. *Ibid.* Inquiry may be adjourned. *Ibid.* s. 45.

(2) At the conclusion of such inquiry the warden shall announce in open court the purport of his report to the Minister, and shall thereafter transmit to the Minister the application, objections, and evidence, the report, plan, and map, if any, of the mining surveyor, and his report as aforesaid, recommending the granting or refusal of the lease applied for. Report to be transmitted. *Ibid.* s. 47.

(3) Any person shall, upon application and payment of the prescribed fee, be furnished with a copy of the mining surveyor's report and plan of any land so applied for, and of any evidence taken as aforesaid, and of the warden's recommendation. Copy of report. *Ibid.* s. 48.

(4) The Minister may at any time, whether any notice of objection has been lodged or not, authorise and direct the warden to hold an inquiry or a further inquiry with reference to any matter concerning such application, and thereupon the warden shall appoint the time and place and give the notices and proceed with such inquiry and transmit the evidence and documents relating thereto, and his report, in the manner hereinbefore provided. Further inquiry.

(5) Every inquiry under this section shall be conducted in open court, and the warden shall have the powers of a wardens' court. **On the application of either party to the dispute, the warden may conduct the inquiry at the place in dispute.** Inquiry to be in open court. *Ibid.* s. 44.

DIVISION 3—CONDITIONS.

Area and dimensions of leases.

35. (1) Subject to this section the Minister shall fix the respective areas of leases under this Part. Areas of leases.

(2) The area of a gold-mining lease shall not exceed twenty-five acres, and the land leased shall be of the form and dimensions prescribed. Area of gold-mining lease. 37 Vic. No. 13, s. 36. Dimensions and form.

(3) The area of a mineral lease shall not exceed six hundred and forty acres for coal or shale, nor eighty acres for other minerals, excepting opal. Area of mineral leases. *Ibid.* s. 56 (1).

(4) The area of a lease for mining for opal shall be such as the Minister may in each case determine: Provided that no such lease shall be granted unless the prospecting board certifies that the land is suitable to be leased by reason of the difficulties and cost attending the construction of mine works upon or of mining such land.

(4 **5**) The area and dimensions of leases for mining purposes only shall be such as the Minister may, subject to the regulations, determine. Leases for mining purposes.

(~~5~~ **6**) This section shall not apply to special leases granted under the provisions hereinafter in this Act contained. Special leases.

Rent, royalty, and labour conditions.

36. (1) The annual rent for a gold-mining lease granted under this Part shall be five shillings per acre or portion of an acre, and for a lease so granted to mine for any mineral other than coal or shale five shillings per acre or portion of an acre. Gold leases. Rent. *Ibid.* ss. 37, 56. cf. 48 Vic. No. 10, s. 4.

(2) The annual rent for a lease so granted to mine for coal or shale shall be one shilling per acre or portion of an acre, and a royalty shall be paid of sixpence per ton on all shale or large coal and threepence per ton on all small coal won from the land demised. Coal leases. Rent and royalty.

(3) The rent, terms, and conditions of leases so granted for mining purposes only, shall, subject to this Act, be fixed by the Minister. For mining purposes. Rent. Act No. 10, 1902, s. 4.

(4) All such rent shall be payable annually in advance at the times and in the manner prescribed, the first payment in all cases being made at the time of making application for the lease. Rent payable in advance.

(5) The royalty shall be payable at the times and in the manner prescribed: Provided that if the royalty payable in respect of any lease during any one year exceeds the rent paid for such year, the amount paid as rent may be deducted from the amount of the royalty; but if the royalty in any one year amounts to less than the rent paid for such year the lessee shall not for such year be required to pay royalty: Provided also that the Minister may at his discretion remit the amount of royalty payable on coal used for raising steam for motive power at a colliery. Royalty, how payable. 48 Vic. No. 10, s. 4

(6) Rent and royalty shall be payable by the lessee to the Crown, and may be recovered as a Crown debt.

37. Every mining lease shall contain such labour conditions as the Minister may, subject to the regulations, determine. Labour conditions.

Duration and renewal of leases.

38. (1) A lease granted under this Part may be for any term not exceeding twenty years. Term of lease. cf. 37 Vic. No. 13, ss. 36, 54, 56 (2), (9).

(2) Any such lease may, with the consent of the Governor, be renewed for a further term not exceeding twenty years: Provided that application for such renewal shall be made during the last five years of the term of the lease. Renewal. cf. *Ibid.* ss. 36, 54, 56 (2), (9).

(3) Such renewal shall be at the rent and royalty, and subject to such other covenants and conditions as are prescribed by the Acts and regulations in force at the time of such renewal, and to such further covenants and conditions as the Governor may think fit to impose. Terms of renewal.

39. A lease of Crown lands granted under any Act hereby repealed may be renewed for the term, on the conditions, with the covenants, and under the circumstances stated and prescribed in and by such Act or any Act amending the same hereby repealed and the regulations thereunder, save as regards payment of any fine upon such renewal: ~~Provided that the rent for a gold mining lease so renewed shall be five shillings per acre.~~ **Provided that with respect to a gold-mining lease so granted the annual rent on renewal shall be five shillings per acre, and the term of the renewed lease may be for five years in excess of the term prescribed by the said Acts for such leases when renewed thereunder.** Leases under repealed Acts. *Ibid.* s. 56 (2), (9).

DIVISION 4.—SPECIAL LEASES.

40. (1) The Governor may, upon the recommendation of the Minister, grant a special mining lease of Crown land for mining other than coal or shale mining if the Minister is satisfied that by reason of the difficulties and cost attending the construction of mine works upon or of mining such land it is necessary that such lease be granted. Governor may grant special leases. cf. *Ibid.* s. 53. 48 Vic. No. 10, s. 7.

(2) The Minister may, on application being made for such lease, direct the prospecting board or the warden to inquire and report— Inquiry and report.

(a) whether by reason of the difficulties and cost attending the construction of mine works upon and of mining such land, it is necessary that an area in excess of the limit prescribed should be leased; and

(b) upon the rent and royalty to be paid; and

(c) upon such other matters as the Minister may direct.

(3) The Governor may fix the form of and area to be comprised in any such lease, the rent and royalty to be paid, and the labour and other conditions, reservations, and exceptions to be contained in the same, but in all other respects such special lease and the application for the same shall be subject to the provisions of this Act in respect of ordinary leases under this Part. Conditions of leases.

DIVISION

DIVISION 5.—MINERALS NOT INCLUDED IN LEASE.

Mining for other minerals under mineral lease. 37 Vic. No. 13, s. 61.

41. (1) The Minister may, upon application in writing by the holder of any mineral lease under this Part or under any Act hereby repealed, grant authority upon such terms as he may think fit permitting such holder to mine on the land comprised in his lease for any mineral other than that in respect of which such lease has been granted, and may vary or revoke any such authority.

Forfeiture for unauthorised mining.

(2) If the holder of any mineral lease mines for any mineral other than that in respect of which his lease or any such authority as aforesaid was granted, his lease shall be liable to forfeiture.

Mining for gold under mineral lease. *Ibid.* s. 62.

42. (1) Where gold is associated or combined with any mineral in any land comprised in any such mineral lease, and

(a) the holder of such lease desires to mine for such gold, or

(b) the nature of the mining operations under his lease is such as to lead to the removal of such gold,

the Minister may, if the value of the gold in the ore does not exceed fifty per centum of the value of the ore, upon application in writing by such holder, grant authority, upon such terms as he thinks fit, permitting such holder to mine for gold on the said land.

But if the value of the gold exceeds fifty per centum of the value of the ore, the lessee must apply for and obtain a gold-mining lease; and in that case a gold-mining lease may be granted for the area so held under the mineral lease, although the area exceeds twenty-five acres, and the dimensions are not in accordance with those prescribed. Application for such gold-mining lease shall be made in manner prescribed.

Forfeiture for unauthorised mining.

(2) If any such gold is so mined for or removed by such holder without obtaining such authority or lease, the mineral lease aforesaid shall be liable to forfeiture.

Mining for other minerals under gold-mining lease.

43. (1) The Minister may, upon application in writing by the holder of any gold-mining lease under this Part or under any Act hereby repealed, grant authority upon such terms as he may think fit permitting such holder to mine on the land comprised in such lease for any mineral other than gold.

Forfeiture for unauthorised mining.

(2) If any such mineral is so mined for or removed by him without obtaining such authority the lease shall be liable to forfeiture.

DIVISION 6.—OWNERSHIP OF TAILINGS AND ORE.

Tailings on abandoned Crown land. cf. *Ibid.* s. 56 (10).

44. (1) Any lessee under this Part, whose occupancy is by any means determined, may, within thirty days after such determination, apply to the Minister for leave to enter the land and treat or remove any tailings, ore, or stone left thereon by him. The Minister may grant such leave upon payment of a sum to be fixed by him, and may fix a time within which such treatment or removal is to be completed.

Any

Any application for a lease of any land upon which such tailings, ore, or stone have been so left, and any occupation of such land under a miner's right, shall be subject to the right of the Minister to grant such leave, and to the right of the person to whom such leave is granted, to act in accordance therewith; and any lease granted may contain a reservation of such tailings, ore, or stone, and of the right of any person to whom leave may be or has been granted to treat or remove the same.

(2) The form and mode of application for, and the conditions of such leave, shall be as prescribed. Form.

(3) If such leave is not applied for within the said thirty days, or such treatment or removal is not completed within the time fixed, such tailings, ore, or stone shall become the absolute property of the Crown, and shall form part of the land. Forfeiture of tailings, &c.

PART IV.

Mining on private lands.

Division 1.—Preliminary.

Interpretation.

45. In this Part and in any regulations relating to matters thereunder, unless the context or subject-matter otherwise indicates,— Interpretation. 57 Vic. No. 32, s. 2.

"Authority to enter" means authority to enter upon private lands granted under this Part.

"Lease" means lease under this Part.

"Occupier" means person in occupation of any private land, whether under any special Act or otherwise, or a tenant.

"Owner" includes trustee, guardian in infancy, committee or guardian in lunacy, mortgagee in possession, and conditional lessee.

"Private lands" means lands other than Crown lands but does not include any lands situate within the boundaries of a town or village unless the Governor by proclamation (which he is hereby authorised to make, alter and revoke) declares that they are private lands for the purposes of this Part.

In this Part the word "minerals" shall not include coal or shale, nor shall coal, shale, or mineral oil be included within the substances which may be declared minerals by proclamation of the Governor.

Lands open to mining under this Part.

46. (1) All private lands shall be open to mining under this Part for gold and for any ore of which gold is the chief or most profitable metallic product, and for silver when such mineral is reserved to the Crown. For gold and other metals. *Ibid.* s. 3. Act No. 101, 1902, s. 3.

(2)

(2) If the Crown grant of any private land contains, or if not yet issued will when issued contain, a reservation to the Crown of all minerals, the said land shall also be open to mining under this Part for all minerals. For other minerals.

(3) Provided that, except as hereinafter in this Act provided, no application for an authority to enter shall be granted under this Part in respect of any land in or upon which any person other than the applicant is at the time of the making of the application entitled under this Part to search or prospect for gold or any mineral or in or upon which any person other than the applicant is lawfully carrying on mining operations, whether under this Act or the Acts hereby repealed. Exempted land.

For the purposes of this proviso, a person shall, as to an area not exceeding eighty acres, be deemed to be lawfully carrying on mining operations in respect of any substance notwithstanding that such substance was not a mineral at the time when such mining operations were authorised if such substance has subsequently come within the definition of a mineral under this Act or any Act hereby repealed.

47. No authority to enter and no lease under this Part shall, except with the consent of the owner, extend to— Not to extend to within certain distance of garden, or improved land without consent. 57 Vic. No. 32, s. 11.

(a) within ~~fifty~~ **one hundred** yards on the surface of any land bona fide in use as a garden or orchard; or

(b) within two hundred yards on the surface of the principal residence of the owner or occupier; or

(c) any land whereon is any substantial building, bridge, dam, reservoir, well, or other valuable improvement other than an improvement effected for mining purposes and not bona fide used for any other purpose. The Minister shall determine whether any such improvement is substantial or valuable, and may define an area adjoining such improvement within which no mining operations shall be carried on.

48. No authority to enter and no lease under this Part shall, except with the consent of the owner and occupier, extend to the surface of any land enclosed and under cultivation when the application for the authority was made; and without such consent no operations under such authority shall be conducted, and no such lease shall be granted below the surface of any such land, except with the authority of the Minister, and at such depth as the Minister may, after full inquiry, deem to be sufficient to prevent damage to the surface: Provided that Not to extend to surface of cultivated land without consent. *Ibid.* s. 12. 60 Vic. No. 40, s. 5.

(a) a lease under this Part may be granted of such portion of the surface of such land as the Minister may deem necessary for giving access to the gold or minerals therein; but before any such lease is granted the warden shall assess the amount to be paid as compensation for any loss of or damage to any crop or improvements on such land; and

(b) the Minister may decide, in case of dispute, whether any land is or is not under cultivation.

DIVISION 2.—AUTHORITY TO ENTER.

Interim permit.

Interim permit to enter.

49. (1) The warden may at the request of any applicant for an authority to enter grant an interim permit in the prescribed form authorising such applicant to enter the land the subject of the application for the purpose of defining the boundaries of the area applied for.

(2) Such interim permit shall be for any period not exceeding fourteen days, and shall not entitle the holder thereof to and he shall not carry on any prospecting operations on the said land.

(3) If such holder carries on such operations in contravention of this section, he shall be liable to a penalty not exceeding **ten** pounds.

Application for and grant of authority.

Warden may grant authority. cf. 57 Vic. No. 32, s. 8.

50. (1) The warden, on application made as prescribed, may, subject to any stipulations or conditions which he may think necessary to impose, grant to any holder of a miner's right one or more authority or authorities in the prescribed form to enter, subject to the provisions of this Act, on any private lands.

Discretion to refuse. cf. *Ibid.* s. 8.

(2) The warden may, whether any inquiry has been held as hereinafter in this Act provided or not, refuse any application for authority to enter—

(a) if the land is the subject of an application or holding under this Part or under any Act hereby repealed, or is exempted from lease under this Part; or

(b) if, after the prescribed notice to measure the land to be included in the authority has been given by the warden to the applicant, such applicant fails to attend for the purpose of pointing out the location of the area applied for.

Time to be stated. 57 Vic. No. 32, s. 8.

Deposit to be lodged.

(3) The time during which such authority is required shall be stated in such application, and the applicant shall lodge therewith a deposit of five shillings, to be applied towards payment of the rent or compensation for damage. If any such application is withdrawn or abandoned, before the rent and compensation have been paid in full, the deposit may, if the warden so orders, be forfeited to the Crown.

Rent to be fixed. cf. *Ibid.* ss. 16, 17, 41. 60 Vic. No. 40, s. 2 (*b*).

51. (1) Before issuing such authority in respect of any land the warden shall hold an inquiry, of which due notice shall be given to the owner and occupier, if any, or their respective local agents (if registered as such as prescribed), and fix the annual rent per acre of the land. Such rent shall be paid by the applicant to the owner of the land quarterly in advance from the date of the authority. If the authority is to continue for less than three months one quarter's rent shall be so payable.

Compensation.

(2) The warden shall also assess compensation to be paid by the holder of the authority.

(3)

(3) The first payment of the rent and the payment of compensation shall be made within fourteen days of the issue of the authority, and before entry upon the land in pursuance of the authority.

Effect of non-payment of rent or compensation.

(4) If entry is made before such payment, or if any rent afterwards due, or any compensation afterwards assessed and ordered to be paid, is left unpaid for one month, the warden may cancel the authority.

Duration and extension of authority. 60 Vic. No. 40, s. 2 (*b*).

52. (1) An authority to enter may be granted for any period not exceeding twelve months, but the period of any authority may, while it is in force, be from time to time extended by the warden on such terms as he may think fit for any further period, if it appears to him that further time is requisite to enable the holder to complete the prospecting of the area defined therein; but so that the period for which the authority was granted, together with the periods of all extensions, do not exceed twenty-four months.

Duration to be stated.

(2) Such authority and every extension as aforesaid shall be issued in duplicate, and shall state the time during which it is to continue.

Service of duplicate. 57 Vic. No. 32, s. 8.

(3) The holder of such authority shall, within the period and as directed by the warden, serve the duplicate thereof, and of every extension granted by the warden, upon the owner or occupier, or upon one of the owners if more than one, of the land defined therein.

Extent of area. 60 Vic. No. 40, s. 2 (*a*).

53. (1) Every such authority shall contain a definition of the area and boundaries of the land in respect of which it is granted.

(2) The said area may be such as appears to the warden suitable, having regard to the class of deposit to be searched for, and shall be defined by him as prescribed, but, except as hereinafter provided, shall not exceed the maximum area in this Part prescribed for a lease to mine that class of deposit:

Extended area.

Provided that the Minister on the recommendation of the prospecting board may direct the warden to grant, and he shall thereupon grant, an authority to enter an area exceeding the area prescribed aforesaid, if it is proved at the inquiry held by the warden that the difficulties and cost of conducting prospecting operations render it necessary that authority to enter a greater area be granted.

When prospecting lawful. *Ibid.* s. 2 (*d*).

54. (1) Upon lawful entry as aforesaid, the holder of an authority to enter may construct such works, and conduct such operations on or under the said lands as may be required for prospecting the same.

Effect of breach of conditions. *Ibid.* s. 2 (*e*).

(2) If such holder

(a) does not commence such prospecting operations within fourteen days from the date of such authority; or

(b) after commencing such operations suspends the same without the written permission of the warden; or

(c)

(c) commences such operations before making the payments aforesaid; or

(d) fails to observe any of the stipulations or conditions imposed by the warden under this Act;

the warden may cancel such person's authority to enter.

(3) The warden may also at the request of the holder cancel his authority to enter.

Labour required for prospecting. 60 Vic. No. 40, s. 2 (*h*).

(4) The holder of the authority may employ as many men as he may think fit in such prospecting operations, but he shall not, unless with the consent of the warden, employ less than the minimum number prescribed. If he makes default the warden may cancel the authority.

Residences. *Ibid.* s. 2 (*j*).

55. The holder of an authority to enter may, upon obtaining the permission of the warden, erect temporary residences upon the area defined therein for the use of the persons employed in the prospecting operations, but so that the area to be occupied in connection with such residences shall be in such positions as the warden may consider proper.

Holder continuing in occupation after cancellation of authority, *Ibid.* s. 2 (*e*).

56. If the holder of an authority to enter, after being served with notice of the cancellation under this Act of such authority, continues in occupation of any area therein defined, or any part thereof, he shall be deemed a trespasser.

Division 3.—Leases.

Mining leases.

Power to define boundaries. cf. 57 Vic. No. 32, ss. 9, 28. 60 Vic. No. 40, s. 2 (*f*).

57. (1) Any holder of an authority to enter who desires to obtain a lease of the land defined in such authority, or any part thereof, and—

(a) has served the duplicate of such authority upon the owner or occupier of the said land; and

How application is to be made. cf. 57 Vic. No. 32, s. 13.

(b) has paid rent and compensation as hereinbefore prescribed, may, either personally or by agent, in the prescribed manner, define upon the said land the boundaries of the portion desired to be leased, and may apply to the Minister for a lease thereof. Such application shall be for a lease to mine for gold or any minerals, and must be made during the currency of the authority.

Power to modify application or direct inquiry. *Ibid.* s. 22.

(2) The Minister may modify any such application, or may direct a warden to hold an inquiry on oath in open court with reference to any matter affecting the same or the authority to enter.

Failure to make prescribed payments. *Ibid.* s. 18.

(3) If the applicant fails to make any payment prescribed in respect of his application, the Minister may after the prescribed time declare such application to be void, and all or any part of the moneys paid by the applicant to be forfeited to the Crown; and thereupon the said moneys or such part thereof shall be paid into the Treasury and carried to the Consolidated Revenue Fund.

(4)

(4) If the application is one which can be granted under this Part, the Minister, on receipt of such application, accompanied by the prescribed sum by way of rent, may cause a notice of intention to grant a lease to be advertised in the Gazette, and in a newspaper circulating in the locality in which the land is situated. If the use of the whole or any part of the surface of such land is required the notice shall so state, and if a part only is required the notice shall define such part. Notice of intention to grant lease. cf. 57 Vic. No. 32, s. 13.

(5) The applicant having made all the prescribed payments may carry on mining operations on the land applied for until the application has been granted or refused; but except as hereinafter provided no further assessment of compensation shall be necessary. Mining pending application. 60 Vic. No. 40, s. 2 (*i*).

(6) Unless the lease applied for will cover the whole of a measured portion, the land shall be surveyed by a mining surveyor before the issue of the lease. Where survey necessary. *Ibid.* s. 27.

58. (1) Leases under this Part shall be granted by the Governor in the name and on behalf of His Majesty. It shall not be obligatory on the Governor to grant any such lease, notwithstanding that the applicant may have complied with the provisions of this Act and the regulations; but if an application for such lease is refused, the applicant shall be informed of the reasons for such refusal. Power to refuse, &c. *Ibid.* s. 22.

(2) A lease may, at the request in writing of the applicant, be granted to any person named by him. Lease to nominee.

(3) A lease may be granted notwithstanding that the person applying for the same has not complied in every respect with the regulations.

59. Every lease under this Part shall— Particulars to be stated in lease. 57 Vic. No. 32, s. 11.

(a) state whether it is to have effect on and below the surface of the land leased or on a limited portion of the surface and below the whole area, or below the surface only.

(b) state for what mineral (if any) the lessee may mine, and that the lessee shall not mine for any other mineral without the authority of the Minister.

(c) contain such labour conditions as may be determined by the Minister in accordance with the regulations. Labour conditions. 60 Vic. No. 40, s. 6.

Leases for mining purposes.

60. (1) Subject to the assessment by the warden of compensation, the Governor may grant to the holder of any lease under this Act, or to any person carrying on mining operations who has made application to the Minister in that behalf in the prescribed manner, a lease— Lease for race, tramway, &c. 57 Vic. No. 32, ss. 37, 38.

(a) of the surface and to a limited depth below the surface of any private land irrespective of any reservation of minerals

to

to the Crown, for the purpose only of cutting mining-races thereon, and conveying water or detritus through or over the same to or from any mine of such holder or person; or

(b) of any area of private land 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.

(2) A permit may be granted by the warden in the prescribed manner, entitling any such holder or person to enter upon any such land for the purpose of marking out the portion to be included in his said application. Interim permit to enter.

(3) A lease granted under this section shall be subject to the regulations and to such conditions as the Governor may think fit to impose, and shall be subject to a rent payable to the owner of the land so leased, to be assessed by the warden at the same time as the assessment of compensation. Lease may be subject to special provisions. 57 Vic. No. 32, ss. 37, 38.

(4) This section shall not apply to land the subject of any registered lease or agreement under this Part by the owner of private land with the holder of a miner's right to mine on the land. Saving.

Leases of surface.

61. During the progress of mining operations any lessee having a lease under this Part empowering him to mine below the surface of any land may, subject to the regulations, apply to the Minister for a lease of any portion of the surface thereof, for the purposes of mining or any purpose in connection therewith. Such application shall be dealt with as provided in respect of other applications for leases under this Part. Lessee may apply for lease of additional surface. *Ibid.* s. 20.

Term, rent, and area of lease.

62. (1) The term for which a lease may be granted under this Part shall not exceed twenty years; but, subject to such conditions as the Governor may approve, any such lease may be renewed for a further period not exceeding twenty years. Term of lease. *Ibid.* s. 26.

(2) The Governor may fix the labour and other conditions, reservations, and exceptions, to be contained in the said lease. Labour conditions. 60 Vic. No. 40, s. 6.

63. The area of a lease under this Part to mine for gold shall not exceed twenty-five acres, and to mine for any mineral ~~except coal and shale~~ shall not exceed eighty acres, ~~and to mine for coal or shale shall not exceed six hundred and forty acres~~, and for any other purpose shall be of such area as may be prescribed: Extent of lease. cf. 57 Vic. No. 32, s. 26.

Provided that upon the recommendation of the Minister, the Governor may grant a lease exceeding the area above prescribed; but the Minister shall not make such recommendation unless the prospecting board certifies that, by reason of the difficulties and cost attending the construction of mine works upon or of mining such land, it is necessary that such greater area, to be specified by the board, should be included in the lease Larger area may be granted under certain circumstances. 60 Vic. No. 40, s. 8.

64.

Mining.

Rents payable. 60 Vic. No. 40, s. 8. 57 Vic. No. 32, s. 26.

64. (1) The yearly rental reserved to the owner of the land in respect of any such lease shall be ~~assessed by the warden. Such rental shall be based upon the surface value of the land for other than mining purposes,~~ **twenty shillings per acre, commencing from the date of the notification in the Gazette of the approval of the lease by the Governor and payable half-yearly in advance,** and shall be payable only in respect of the portion of the surface leased.

Compensation.

(2) The warden shall ~~also~~ assess compensation to be paid under this Act in addition to the rental, consideration being given to the compensation already paid in respect of the authority to enter.

Saving of agreements. 57 Vic. No. 32, s. 17.

(3) Provided that nothing in this section shall prevent the owner or occupier, making an agreement with the lessee as to the amount of rent and compensation.

Rights and duties of lessees.

Powers as to surface. *Ibid.* s. 11.

65. (1) Every lease granted under this Part, so far as it extends to the surface of any land, and does not expressly provide to the contrary, shall confer the right of—

(a) cutting and constructing thereon races, drains, dams, reservoirs, or tramways, and of erecting thereon buildings and machinery in connection with the mining or other special purposes authorised by such lease but not otherwise;

(b) fencing the land, and erecting temporary residences thereon for the use of persons employed in connection with mining operations thereon; and

(c) generally doing such acts or things in respect thereof as are necessary for efficiently mining the land.

Powers to mine under the surface. *Ibid.*

(2) Every such lease, so far as it is expressed to have effect below but not on the surface of any land, and does not expressly provide to the contrary, shall confer the right of doing all such acts or things below the surface as are necessary for efficiently mining the said land, but not in such a way as to injure the surface or anything thereon.

Lessee not to use water artificially conserved, nor depasture sheep, nor keep dog, nor remove rock, &c. *Ibid.*

66. No such lease shall give the lessee the right—

(a) to use water artificially conserved by the owner or occupier of such land; or

(b) to fell trees, strip bark, or cut timber on such land, except with the approval of the warden, and subject to payment to the owner of compensation to be assessed as prescribed; or,

(c) unless fenced, to depasture horses thereon, or to keep or permit to be kept on such land any dog, unless chained up or kept under proper control; or,

(d) except in connection with such mining or other operations aforesaid, to remove earth or rock therefrom, without the consent of the owner and occupier.

67.

67. (1) No such lease shall, unless the said land has been securely fenced, and kept securely fenced at the expense of the lessee, give to the said lessee the right—

Lessee not to impound nor molest sheep, &c., unless leasehold fenced securely. 57 Vic. No. 32, s. 14.

(a) to impound any sheep, cattle, horses, or other animals belonging to or in the custody or control of the owner or occupier of the said land; or

(b) to disturb or molest them in any way whatsoever, or prevent them from depasturing on the said land; or

(c) to sue in trespass or otherwise in respect thereof.

(2) Every lessee under this Part whose lease extends to the surface of any land shall, if required in writing so to do by the owner or occupier, cause without delay a secure fence to be erected and kept in good repair around any shafts, machinery, or other works in connection with the mining under such lease not already so protected.

Lessee shall fence shafts, &c., when required. *Ibid.* s. 20.

Division 4.—Mining by owner.

68. (1) If the owner, or the occupier with the consent of the owner, of any private land not applied for or occupied for mining operations under this Part desires to conduct mining operations by way of prospecting on such land, or to obtain a lease of such land under this Part, he may make application in that behalf in the prescribed manner, and thereupon an authority to enter or lease may be granted to him. Such authority or lease shall confer the same rights respectively as an authority to enter or a lease under this Part would confer in the case of other applicants.

Prospecting by owner or occupier. *Ibid.*, s. 25.

(2) An owner or occupier applying as aforesaid shall have no preferential rights over other applicants, and shall be subject to payment of royalty and all other provisions of this Part binding upon other applicants and holders of authorities to enter or leases thereunder as the case may be, with the exception of assessment and payment of rent and compensation, and of those provisions which relate to such notices, and other matters as the owner or occupier would in that character have been entitled to in the case of an application made by some other person.

Owner not to have preferential right.

(3) Any owner or, with the consent of the owner, any occupier of any such land desiring to mine thereon for coal or shale may make application in that behalf in the prescribed manner, and thereupon a lease may be granted to him. The area of any such lease shall not exceed six hundred and forty acres.

69. (1) The owner of any private land not applied for or occupied under this Part may, with the concurrence of the Minister, enter into a lease or agreement in writing with any holder of a miner's right giving such holder power to enter such land and take possession thereof and mine thereon for gold or any mineral.

Lease by owner to holder of a miner's right. *Ibid.* s. 33. 60 Vic. No. 40, s. 11

(2)

(2) The area comprised in any such lease or agreement, and the term thereof, shall not exceed the extent and term, and shall be subject to the payment of the royalty to the Crown (after deduction of any sum paid by way of rent) and performance of the labour conditions prescribed in this Part in respect of a lease thereunder. Area and term.

(3) Such lease or agreement may be transferred with the concurrence of the Minister.

(4) No such lease or agreement and no such transfer shall have any force or validity unless and until it is registered as prescribed. Within twenty-eight days from the date of the Minister's concurrence therewith, on registration of a lease or agreement, a fee shall be paid for survey of the land.

(5) No such lease or agreement shall contain any provision or stipulation for the payment to the owner of any sum by way of royalty upon the gold or minerals won from the land comprised therein. Land subject of lease, &c., not open to occupation. Act No. 10, 1902, s. 3.

(6) The land, from the date of the receipt by the Minister of such lease or agreement, or the draft thereof submitted for his concurrence, shall, until and unless such concurrence is refused, be exempt from entry or occupation under this Part by any person other than the parties to such lease or agreement.

70. (1) The owner of any private land may, without any lease or authority to enter, mine or enter into an agreement with any other person to mine therein for any mineral not reserved to the Crown, notwithstanding that any gold or mineral reserved to the Crown is associated with the mineral so mined for, provided that the value of such gold or mineral so associated does not exceed fifty per centum of the value of the mineral mined for: Provided that such agreement shall not have any force or validity unless it is registered as prescribed, within twenty-eight days from the date of such agreement: Provided also, that all land included under any such agreement shall be marked out in the manner prescribed. Owner may mine or agree with any person to mine for any mineral. 60 Vic. No. 40, s. 9.

(2) No authority to enter or lease shall be granted in respect of any land upon which such mining operations have been commenced, but this prohibition shall extend only to any lode bona fide worked as aforesaid, and to land covering the same to the width of two hundred and twenty yards along the course of such lode. Land protected along lode from authority to enter.

(3) A royalty of one per centum on the value of all gold or silver reserved to the Crown obtained from the land comprised in any such agreement shall be payable to the Crown by the person obtaining the same, at the times and in the manner prescribed. Royalty.

Division 5.—Resumption.

Coal and shale lands.

71. (1) Any Crown land which, since the thirtieth day of September, one thousand eight hundred and eighty-nine, has been or shall hereafter be sold conditionally or by auction or in virtue of improvements Authority to mine on purchased or leased land. 53 Vic. No. 20, s. 2.

improvements or otherwise, and of which the grant contains, or will when issued contain, a reservation of all minerals, and any Crown land which has been leased conditionally under the Crown Lands Acts, shall be subject to the following conditions, namely:—Any person specially authorised in the prescribed manner by the Minister shall, on depositing a sum of money as prescribed to cover the cost of repairing any damage done to the surface of the land, be at liberty to dig and search for coal and shale within such land, and should it be found to contain any such mineral, the Governor may cancel wholly or in part the sale or lease of such land, and upon the notification thereof the proprietor shall be entitled to compensation for the value of the land and the improvements thereon or of his interest therein, as hereinafter provided in the case of land resumed, but exclusive of the value of all minerals contained therein, and such land shall thereupon become Crown land within the meaning of this Act, and shall be reserved from sale or lease until such reservation is revoked by the Governor. The person so specially authorised by the Minister to dig and search for coal and shale, upon satisfying the Minister that he has complied with all the conditions of such authority, shall, on the appearance of such notification, be deemed to be the first applicant for a lease of such land or a portion thereof, and the date of such application shall be reckoned from the day of publication of such notification, but in other respects as to labour conditions and other matters, such application shall be dealt with subject to the provisions of this Act relating to mining leases on Crown land.

(2) No such authority as aforesaid shall be granted in respect of any portion of such land so long as it is the subject of any other holding under this Act. Nor shall any other title to mine be acquired under this Act in respect of any portion of such land so long as it is subject to such an authority as aforesaid.

Resumption of private land.

~~71.~~ **72.** Upon the discovery in any private land of gold in such quantity as the Minister considers payable, the Governor may resume for mining so much of such land as he may consider necessary. But no such resumption shall be made of land occupied for the time being under any lease or agreement under this Part unless with the consent of the lessee or the parties to the agreement: Upon discovery of gold Governor may resume land. 57 Vic. No. 32, s. 40. 60 Vic. No. 40, s. 3.

Provided that such lease or agreement was entered into at least fourteen days before notification of such resumption.

~~72.~~ **73.** Every such resumption shall be notified in the Gazette, and in some newspaper published or circulating in the district in which such land is situated, and shall take effect at the date specified for that purpose in the said notification, and such land shall thereupon vest Resumption to be notified. 60 Vic. No. 40, s. 3.

vest in His Majesty and become Crown land within the meaning of this Act, and shall be reserved from sale and from lease for other than mining until such reservation is revoked by the Governor.

Copies of all such notifications, together with the reasons for the resumption therein notified, shall be laid upon the tables of both Houses of Parliament forthwith if Parliament is then sitting, and if not then within fourteen days after the commencement of the next session thereof.

~~73.~~ **74.** (1) If such discovery as aforesaid has been made by the holder of an authority to enter he shall be deemed to be the first applicant for a claim or for a gold-mining lease under Part II or Part III of this Act, and the date of publication in the Gazette of the said notification of resumption shall be reckoned as the date of possession by such holder for the purpose of his application for such claim or lease. Discoverer to have preferential right. 57 Vic. No. 32, ss. 40, 42. 60 Vic. No. 40, s. 3.

(2) Except in the case of a lease granted to the person who has made such discovery as aforesaid, all land resumed under this ~~section~~ **Part** shall be exempt from leasing, except such as may be deemed by the Minister specially suitable to be leased by reason of its great depth or wetness, or on account of the costly appliances required for its development, or where the Minister is of opinion that it is desirable for any other reason that the same shall be open to lease. As to lease of resumed land. *Ibid.*

~~74.~~ **75.** If such reservation **as aforesaid** is revoked, the land shall become Crown lands within the meaning and for the purposes of the Crown Lands Acts, upon notification to that effect, and the former owner of such land, or any person claiming through or under him, shall be entitled to purchase or lease such land at a price or rental to be determined by the Secretary for Lands after appraisement by the local land board, subject to appeal to the Land Appeal Court, and failing such purchase or lease the land shall be dealt with under the Crown Lands Acts. Former owner to have preferent right to purchase or lease. 57 Vic. No. 32, s. 40.

Lands held without reservation of minerals.

~~75.~~ **76.** (1) The Governor may resume for mining any land alienated or in process of alienation from the Crown without any reservation of minerals, or so much of such land as he may consider desirable in the public interest. Resumption of land held without reservation of minerals.

(2) Every such resumption shall be effected in the manner prescribed in section seventy-two.

(3) The Governor may grant mining leases of any land so resumed, and such leases shall be subject to the provisions of Part III of this Act, relating to mining leases on Crown lands, save only that the Governor may fix the rent and royalty payable and impose such special conditions as he may think fit.

Compensation.

Compensation.

~~76.~~ **77.** When any land is resumed under this Division the Minister may direct the warden or other person to assess the market value of such land (exclusive of any increase in the value of such land by reason of the discovery of gold therein) and the improvements thereon, reasonable allowance being made for any damage that may be caused by severance; and if there is any person other than the owner having interest in such land, the value of such interest shall also be assessed; and such assessed value shall be paid to the persons entitled thereto respectively. Compensation for resumption. 57 Vic. No. 32, s. 40. 60 Vic. No. 40, s. 4.

~~77.~~ **78.** Every person claiming payment for land resumed under this Part shall, within sixty days of the date of the determination of the value of the land and the improvements thereon, lodge with the Minister a notice in the prescribed form setting forth the nature of his estate or interest in the land and an abstract of his title. Claim to payment of compensation.

~~78.~~ **79.** The Minister shall, within three months after being satisfied as to the report of the Crown Solicitor that the valid title is in the claimant, pay to such claimant the value so determined: Provided that if the land be under mortgage, the amount due thereunder shall be paid to the mortgagee. Payment of compensation.

~~79.~~ **80.** All reasonable costs of proceedings for resumption under this Part shall, subject to taxation by the Prothonotary of the Supreme Court, be paid by the Crown, except that the costs of an appeal ~~to arbitrators shall be in the discretion of the arbitrators~~ **shall be paid by the unsuccessful party to the appeal.** Costs.

~~80.~~ **81.** The value so determined shall bear interest at the rate of four per centum per annum from the date when the land vested in the Crown **until the receipt of notification in writing from the Minister that he is prepared to pay the value,** but for no longer period ~~than twelve month from such date.~~ Interest.

DIVISION 6.—GENERAL PROVISIONS.

Royalty.

~~81.~~ **82.** (1) A royalty shall be paid of one per centum of the value of all gold and minerals, ~~except coal and shale,~~ obtained from any land under an authority to enter or a lease under this Part. Amount.

Where the product of any mine is ore, concentrates, matte, or other substance containing gold or minerals, the royalty shall be paid according to the estimated value of the gold or mineral. Royalty to be according to metallic contents.

(2) A royalty shall be paid of sixpence per ton on all shale or large coal, and threepence per ton on all small coal obtained from any land ~~under any such authority or lease~~ **held under lease by the owner or occupier of such land.**

(3)

(3) Such royalty shall be payable to the Crown, at the times, and in the manner prescribed, and may be recovered from the holder of such authority or the lessee as a Crown debt.

(4) The holder of the authority or the lessee may deduct from the total sum payable by way of royalty in any one year a sum equal to the amount paid by him as rent for that year. Rent may be deducted from royalty.

Right of way.

~~82.~~ **83.** Every authority to enter and every lease under this Part shall confer full right of ingress, egress, and regress for the purpose of the exercise of the rights thereby conferred, by a right-of-way to be marked in the prescribed manner from the land defined in the authority or lease to the nearest practicable point of a public road. The cost of marking such right-of-way shall be borne by the holder of the authority or the lessee, who shall place substantial sheep-proof gates at all fences intersected by such right-of-way, **or rabbit-proof gates in any case where such fences are rabbit-netted**; but the right to cross any tenement leasehold or other holding under this Act for the purpose of obtaining access to the nearest public road shall not be exercised except under the authority of the warden, nor shall the said right be exercised over any garden, yard, orchard, or pleasure ground. Right of ingress, egress, and regress. 57 Vic. No. 32, s. 11. Marking of roadway. Gates in fence intersected by roadway.

PART V.

Dredging leases.

Preliminary.

~~83.~~ **84.** In this Part, and in any regulations relating to matters thereunder, unless the context or subject-matter otherwise indicates,— Interpretation. Act No. 44, 1899, s 2.

"Crown land" means land vested in His Majesty except land held under tenure from the Crown for other than pastoral purposes.

"Lake" includes a lagoon, swamp, or other collection of still water, whether permanent or temporary, not contained in an artificial work.

"Occupier" includes any lessee from the Crown under any tenure under the Crown Lands Acts, or any tenant of land alienated from the Crown, or any person in charge of alienated lands for the owner thereof.

"Owner" includes **the owner of the freehold or** conditional purchaser of any land, or holder of a homestead selection, conditional lease, or conditional purchase lease, or any trustee in whom any land is vested.

"River" includes any stream of water, whether perennial or intermittent, flowing in a natural channel.

"River-bed" means soil or detritus lying between the solid rocks forming the banks of a river, to be defined by the mining surveyor when making the survey.

~~84.~~ **85.** Nothing in this Part, except the provisions as to roads of access and sites, shall, unless with the consent of the owner, apply to any lands not Crown lands which are found by the warden to have been at the time of the application for the authority to enter enclosed and under actual cultivation.

Not to apply to lands enclosed and under cultivation except in certain cases. Act No. 44, 1899, s.

Grant of leases.

~~85.~~ **86.** (1) Subject to this Act, the Governor may grant for the purpose of mining for gold or any other mineral, by dredging, pumping, sluicing, or other method, and of erecting the buildings and machinery required in connection with such mining leases of any land (not being land held under or by virtue of any Act relating to mining)—

Governor may grant leases for purposes of mining by dredging, &c., and of what lands. *Ibid.* s. 3.

(a) forming the bed of any river or lake; or

(b) under any tidal water; or

(c) under the ocean contiguous to the coast line; or

(d) contiguous to any such place; or

(e) such as may be suitable for such mining.

(2) The area that may be demised by any such lease shall not exceed one hundred acres. The number of men to be employed shall be in the proportion of not less than seven men to one hundred acres, and the amount to be expended in the purchase and erection of machinery and appliances for the purpose of working the area, shall be not less than ten pounds per acre:

Area that may be demised.

Provided that the Minister may increase such labour or expenditure, or both, if it be shown that the circumstances warrant such increase.

(3) Such leases shall not be granted for a longer term than twenty years, but may be renewed for any term not exceeding twenty years, subject to the prescribed conditions.

Duration of lease and renewals.

(4) The warden may, subject to the regulations, suspend, in whole or in part, the labour conditions of any such lease upon being satisfied by evidence on oath in open court that the circumstances ~~warrant such suspension.~~

Suspension.

Marking of land.

~~86.~~ **87.** (1) Any person desiring to apply for a lease under this Part shall mark out in the manner prescribed the area intended to be included in the application; but where all or any of such area is not Crown land, he must, before so marking out the area, obtain, as prescribed, from the warden of the mining district in which the land is situated an authority under this Part to enter the area or the part thereof which is not Crown land.

Land to be applied for to be entered and marked out. *Ibid.* s. 4.

(2)

(2) Such authority shall be granted by the warden on payment of the deposit prescribed. Deposit.

On the order of the Minister the amount of such deposit, less such sum (if any) as the Minister directs to be retained to cover the expenses incurred by the Crown in relation to the application, shall be refunded to the applicant on the execution of the lease by the lessee, or if the Minister is satisfied that the application was bona fide, on the refusal of the application.

~~87.~~ **88.** (1) Such authority shall entitle the holder thereof to enter, personally or by an agent duly authorised in writing, accompanied, if desired, by not more than three other persons, upon the land therein mentioned, for the purpose aforesaid, during a period named therein, which shall not exceed fourteen days, with right of ingress, egress, and regress to and from the nearest practicable point of a public road, without incurring liability for trespass in respect thereof, but shall not entitle him to commence any mining operations. Entry in pursuance of authority. Act No. 44, 1899, s. 4 (3).

(2) Such authority shall be exhibited on demand to the owner or occupier of the land therein mentioned. Authority to be exhibited.

(3) Such area shall be marked out during the currency of the authority. When area may be marked out.

(4) During the currency of any such authority, unless and until an area has been marked out thereunder as aforesaid, the warden shall not issue any other authority to enter upon the same land. Warden not to issue any other authority in respect of same land.

(5) Any owner, occupier, or other person who obstructs any holder of any such authority, or his agent, or the person accompanying such holder or agent, in the performance of any act, or interferes with, removes, destroys, or defaces any mark made or any notice posted in pursuance of such authority, shall be liable for the first offence to a penalty not exceeding ten pounds, and for the second or any subsequent offence to a penalty not exceeding fifty pounds. Owner, &c., obstructing holder of authority.

Interim possession.

~~88.~~ **89.** The person who has marked any area of land under this Part shall, to the extent of the area applied for as against all persons, be deemed to be in possession thereof until the application has been finally disposed of: Person marking out area to be deemed in possession. Act No. 44, 1899, s. 6.

Provided that the owner or occupier of any such land shall, during such period, be entitled to the continued use and enjoyment thereof for all purposes not inconsistent with such application.

Application for leases.

~~89.~~ **90.** (1) Applications for leases under this Part shall be made within the time and in the manner prescribed to the warden of the mining district in which the land is situate. Applications for leases to be made to warden and forwarded to the Minister.

(2) *Ibid.* s. 7.

(2) Such applications shall be forwarded by the warden to the Minister for consideration, with a recommendation as to whether the application should be granted, wholly or in part, or subject to any and what conditions, stipulations, or restrictions, or should be refused.

(3) The Minister may refuse to entertain any such application, or may direct the warden to hold an inquiry in the manner prescribed. Minister may refuse to entertain application, or may direct inquiry.

Inquiries. Act No. 44, 1899, s. 8.

~~90.~~ **91.** (1) At such inquiry the warden shall determine— Warden to inquire and make orders as to roads of access, sites for machinery, rent, and compensation. *Ibid.* s. 10.

(a) what roads of access and what sites for machinery, workshops, storage of fuel or other material outside the area applied for are necessary for carrying on the mining operations intended;

(b) what sum, by way of rent for the use of any land which is not Crown land and which is to be included in the lease or comprised in roads of access and sites as aforesaid, shall be paid by the lessee to the occupier or owner of the same;

(c) what sum, by way of compensation for damage likely to be caused to the area applied for or to land adjoining such area by acts done in or incidental to carrying on the mining operations intended, shall be assessed;

(d) as to any objection or other matter affecting the application;

and shall issue orders in accordance with such determinations:

Provided that if the applicant for the lease produces to the warden a document duly signed by himself and by the parties who would be entitled to any such rent, and witnessed, certifying that they have agreed as to the amount of such rent, such amount shall be adopted by the warden without any further inquiry in respect thereof. But no such agreement shall contain any provision or stipulation for the payment of any sum by way of royalty upon the gold or minerals won from the land applied for. Proviso that parties may agree as to rent and compensation.

(2) The warden shall hold such inquiry in open Court, and shall have the powers of a Wardens' Court. Inquiry in open Court.

~~91.~~ **92.** The Minister may at any time authorise and direct a warden to hold any further or other inquiry in open Court with reference to any matter concerning an application for a lease under this Part. Notice of such inquiry shall be given to the parties concerned. Further inquiry. *Ibid.* s. 14.

At such inquiry the evidence shall be taken on oath.

~~92.~~ **93.** A warden holding an inquiry as aforesaid shall forward to the Minister the evidence taken by him, and a report of his orders thereon. Evidence and orders to be sent to the Minister. *Ibid.* s. 15.

~~93.~~ **94.** (1) The Minister, on receipt of such evidence and report as aforesaid, may determine that the application shall be refused, or that a lease of the area included in the application, or of any greater or less area, may be granted to the applicant, and may determine whether any and what special conditions shall be inserted in the lease. Minister may refuse application or grant lease. *Ibid.* s. 16.

(2)

(2) Notice of such determination shall be published in the Gazette. Notice in Gazette.

(3) Where the Minister has determined that a lease may be granted, the applicant shall, within the time and in the manner prescribed, give notice to the Minister whether he will accept a lease on the terms mentioned in such notice in the Gazette or not, otherwise the application shall lapse. Applicant to notify whether he accepts or not.

Road of access or site.

~~94.~~ **95.** (1) The warden may order that any road of access or site as aforesaid which he finds to be necessary shall be marked out on the land by a person appointed by him in that behalf, and such person shall not incur liability for trespass committed by him in pursuance of such order. Warden may order such road or site to be marked out. Act No. 44, 1899, s. 11.

Such road shall be marked out in the manner prescribed from the nearest practicable point of a public road.

(2) The order of a warden declaring that a road of access along the line determined by him is necessary shall entitle the lessee to use such road with horses, cattle, and vehicles.

~~95.~~ **96.** If after the issue of any lease it is found that a road of access, or a site as aforesaid other than that mentioned in the original order of the warden, is necessary, the warden may, in the manner prescribed, and subject to such rent as he may by an order which shall be final and not subject to any appeal determine, and to such terms and conditions as he may deem proper, mark or cause to be marked out on the land such other or additional road or site; but such road or site shall not be used until the amount of the first year's rent thereof determined by the warden has been paid and any conditions imposed by him have been fulfilled. Further or other roads of access and sites may be ordered by warden. *Ibid.* s. 20.

Rent and royalty.

~~96.~~ **97.** (1) The amount of the first year's rent of land which is not Crown land, as determined by the warden shall be paid by the applicant to the warden or warden's clerk within the time prescribed. First payment to be made into warden's court. *Ibid.* s. 12.

(2) Such amount shall be paid out to the parties entitled thereto under the order of the warden on the execution of the lease by the lessee, or refunded to the applicant if the application is refused. Payment to be refunded or paid out.

(3) Any subsequent years' rent shall be paid direct by the lessee under this Part to the owner and occupier of the land in such proportions as may be agreed, or as the warden on failure to agree may determine.

~~97.~~ **98.** (1) The rent to be paid to the Crown in respect of Crown land shall be two shillings and sixpence per acre. And such rent shall be payable at the times and places and in the manner prescribed: Provided that all such rents shall be payable yearly in advance, and the first annual payment shall be made on making the application for such lease. Rent. Act No. 102, 1902, s. 2.

(2)

Mining.

(2) A royalty of one per centum of the value of all gold and minerals won from any land leased under this Part shall be payable to the Crown at the times and in the manner prescribed: Provided that if the royalty payable in respect of any lease during any one year exceeds the rent paid for such year, the amount paid as rent as aforesaid may be deducted from the sum payable as royalty; but if such royalty in any one year amounts to less than the rent paid for such year, the lessee shall not for such year be required to pay royalty. Royalty. Act No. 102, 1902, s. 3.

Grant of lease.

~~98.~~ **99.** (1) The Governor may, where the applicant has given notice of acceptance as aforesaid, grant a lease on the said terms to the applicant or to any person named by the applicant. No obligation to grant lease. Act No. 44, 1899, s. 17.

(2) Nothing in this Part shall render 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 Part and of the regulations thereunder. Lease may be granted though regulations not complied with.

(3) A lease may be granted under this Part by the Governor, notwithstanding that the person applying for the same may not in every respect have complied with the regulations.

Right to water.

100. No lease under this Part granted shall prevent the owner or occupier of any freehold or conditionally purchased land included within such lease from having free and uninterrupted access to the water for stock watering and similar purposes. Owner to have access to water.

Penalty.

~~99.~~ **101.** Any applicant for a lease under this Part who commences mining operations in or on the area included in the application, whether covered with water or not, before such lease has been executed by him, shall, unless he proves that he has before commencing such operations obtained the consent of the owner or occupier, be liable to a penalty not exceeding ten pounds. Applicant not to mine till he has executed lease. *Ibid.* s. 19.

Authority to holder of miner's right.

~~100.~~ **102.** (1) If so specified in any lease under this Part, the warden may grant authority in writing to any holder of a miner's right to enter upon any Crown land comprised in such lease, and to mine thereon, subject to such conditions as he may think fit to impose and as may be prescribed. Special condition enabling warden to grant authority to holder of miner's right to mine.

(2) Every such authority shall empower the holder to mine upon the said land with such hand appliances as may be prescribed, and at such distance from the mining operations carried on by the lessee, not being less than two hundred yards, as the warden may consider advisable. Mining by hand appliances.

(3)

(3) If the holder of the authority fails to observe any of the conditions aforesaid, or impedes or otherwise hinders the carrying on of dredging operations by the lessee, such authority may be cancelled by the warden. If such holder mines or continues to mine upon the said land after being notified in writing of the cancellation of the authority, he shall be deemed a trespasser.

~~101.~~ **103.** If so specified in any lease under this Part, such lease shall be subject to a condition that any holder of a miner's right may enter upon any Crown land comprised in such lease for the purpose of washing dirt at the place most convenient to him and may for that purpose cut races, run sludge into a stream, or obtain water therefrom, provided that in so doing the mining operations carried on by the lessee will not, in the opinion of the warden, be interfered with or prejudicially affected. Washing dirt, &c., on lease.

PART VI.

TENEMENTS AND LEASES GENERALLY.

104. Nothing in this Act shall confer the right to grant a lease for mining purposes permitting the construction of a railway or tramway over or under Crown or private lands, or over or under any street, road, or highway for a greater distance than is reasonably necessary to connect the same with the nearest point on any railway or tramway vested in the Chief Commissioner for Railways and Tramways, or any railway or tramway constructed under any special Act of the State which would afford by such connection the necessary facilities for transit to and from any mine: Provided that this section shall not affect the right to grant a lease for a railway or tramway direct from any mine to any waterway. Leases for railways and tramways for mining purposes.

Governor's powers over Crown lands.

~~102.~~ **105.** (1) The Governor may suspend the operation of any Crown lease or license for pastoral purposes of Crown land so far as may be necessary for— Suspension of pastoral lease. 37 Vic. No. 13, s. 13.

(a) the accommodation of the horses, cattle, and sheep required for the subsistence and convenience of any persons holding tenements, leases, or other holdings under this Act;

(b) the supply of water to such persons; and

(c) otherwise for the carrying on of mining operations by such persons.

(2) The Governor shall return or remit to the lessee or licensee such portion of the rent of such land as may be reasonable and just, and shall pay compensation for any improvements upon such land, to be assessed, unless otherwise agreed upon, by the warden of the district in which such land is situated.

(3)

(3) Upon any such suspension as aforesaid, the Crown, by its officers and servants, may enter the land, and do all such acts as may be deemed necessary for the proper regulation of the water supply.

~~37 Vic. No. 13, s. 26.~~ **103.** The Governor, on the recommendation of the Minister, and with the concurrence of the Secretary for Lands, may by notification exempt any Crown lands from alienation and from all classes or any specified class of tenure under the Crown Lands Acts, and may reserve the same for mining purposes, and may in like manner revoke or alter any such exemption or reservation. He may also in like manner alter the boundaries of or revoke any reserve for mining purposes heretofore ~~made under the authority of any Act.~~

Exemption of Crown lands from alienation.

106. The Governor, on the recommendation of the Minister, and with the concurrence of the Secretary for Lands, may, by notification, exempt from alienation and from all classes or any specified class of tenure under the Crown Lands Acts any Crown lands required for mining or mining purposes, and may reserve the same for either or both of such purposes, and may in like manner revoke or alter any such exemption or reservation. He may also in like manner alter the boundaries of or revoke any reserve for mining or mining purposes heretofore made under the authority of any Act.

The power conferred by this section shall only be exercised in relation to reserves for mining or mining purposes, and is in substitution for similar powers conferred by the Crown Lands Acts.

Applicant to execute lease.

Applicant or legal representative to execute lease.

cf. *Ibid.* s. 57.

~~104.~~ **107.** (1) When any application for a lease is granted, it shall be the duty of the applicant, or the person named by him, or his legal representatives on death or bankruptcy, to execute such lease when called upon, and the execution of a lease by such legal representatives shall be as binding upon all persons as if the lease had been duly executed by the applicant or the person aforesaid.

Consequences of refusal to execute lease.

(2) If the applicant or person, or his legal representatives as aforesaid, neglect or refuse to execute such lease or to pay the prescribed deed-fee in respect of the same within the prescribed period, after being notified in writing, as prescribed, that the said lease is ready for execution, the said lease may be voided by the Governor, and thereupon all moneys deposited with the application shall be absolutely forfeited to His Majesty and paid into the Consolidated Revenue Fund. Such voidance shall take effect from the time of publication thereof in the Gazette.

Issue of lease not executed by all the applicants.

(3) Where the application is made by two or more persons, and one or more of such persons fails or fail to execute the lease within the period prescribed as aforesaid, the Minister may, if he thinks fit,

fit, cause the lease to be issued to such of the applicants as have executed the same; and in that case such lease shall be valid and effectual in favour of such applicants.

(4) A lease shall take effect only upon execution thereof by the Governor. 57 Vic. No. 32, s. 11

Form and conditions of leases.

~~105.~~ **108.** (1) Every lease under this Act shall, according to the nature thereof, contain the covenants, conditions, reservations, and exemptions contained in the respective forms prescribed in the regulations, or as near thereto as circumstances will permit, having regard to the special requirements herein provided. Covenants, conditions, &c. 37 Vic. No. 13, s. 51.

(2) Every such lease shall be dated the day of the execution thereof by the Governor. Date of lease. *Ibid.*

Registration.

~~106.~~ **109.** (1) Every lease under this Act shall be registered with the registrar, Department of Mines, Sydney, who shall forward a copy thereof to the warden of the district in which the land comprised in such lease is situated, and thereafter every transfer, sub-lease, or change of ownership of, and every tribute agreement affecting the land comprised in such lease or any portion thereof shall be registered with the registrar aforesaid. Lease to be registered. 57 Vic. No. 32, s. 27.

(2) Any person claiming interest in any such lease may, prior to the registration of any transfer or sub-lease thereof, lodge with the Minister a caveat in the prescribed form and accompanied by the prescribed fee against such registration. On receipt of such caveat, the Minister shall stay registration for fourteen days, unless the caveat is sooner withdrawn, but shall then register the said transfer or sublease unless the person objecting has obtained and served upon him an order of some competent court forbidding such registration. Caveat.

Works in connection with mining.

~~107.~~ **110.** (1) The warden may, subject to the regulations, grant permission in writing to the holder of a claim or of a lease under this Act, upon written application for that purpose, to lay or construct a line of pipes, sluice-box, or a culvert under or along any public road, street, or highway, or across any Crown lands or lands reserved or dedicated to any public purpose, for the purpose of conveying any water, tailings, sludge, waste-water, or earth in connection with any mine. Warden may allow pipe-line, &c., to be constructed on public road, &c. 37 Vic. No. 13, s. 29.

(2) Before granting such permission the warden shall cause the said road, street, or highway to be inspected by some duly authorised officer. Inspection of road. *Ibid.*

(3) Any works authorised by such permission shall be so constructed as not substantially to injure such road, street, or highway, Construction of works.

or

or obstruct the traffic thereon; and if after construction it appears to the warden that they do in fact cause such injury or obstruction, he may cancel such permission and order the person who obtained such permission, or the owner or occupier for the time being, to remove any such works or obstruction within seven days.

(4) If any such order is disobeyed, the line of pipes, sluice-box, or culvert in question shall be deemed a nuisance remediable in like manner as any other obstruction or nuisance upon a highway, and every person so disobeying shall be liable to a penalty not exceeding twenty pounds per day during such disobedience. Penalty for disobedience of order. 37 Vic. No. 13, s. 29.

~~108.~~ **111.** (1) The warden may, subject to the regulations, authorise any holder of a claim or lease under this Act, or any Act hereby repealed, to enter any Crown or private land held under any lease, claim, or other holding under any such Act for the purpose of constructing tunnels, roads, races, shafts, or channels, or of erecting standards carrying wires for the conveyance of electricity to or from any mine held or owned by such holder or lessee: Provided that the works to be constructed shall be carried out in such a manner as shall cause as little injury or inconvenience as possible to the holder of such land. Authority to construct tunnels, &c., on holding. cf. *Ibid.* s. 30.

(2) The warden shall assess the compensation to be paid for any damage caused or likely to be caused by the construction of such works. Compensation.

(3) If the person to whom such authority is granted fails to observe the conditions under which such authority is granted, the warden may at once cancel such authority. If such person continues in occupation of or enters such land after being notified in writing of such cancellation, he shall be deemed a trespasser. Cancellation.

(4) The rights and duties under any authority issued under this section may be assigned and transferred with the claim or lease in connection with which it was issued. Assignment.

~~109.~~ **112.** When at the time of any sale or alienation of Crown lands, any race or drain, dam, or reservoir constructed for mining purposes flows through, or over, or is constructed upon any portion thereof, although no reservation or exception is contained in the Crown grant, no person, unless specially authorised thereto by the Minister, shall obstruct or interfere therewith or prevent access thereto. Easement over Crown lands continues notwithstanding alienation. *Ibid.* s. 31.

Suspension of *labour conditions.*

~~110.~~ **113.** (1) The registered owners, or a majority of the registered owners, of any claim or lease, held under this Act or any Act hereby repealed, may apply to the warden for authority to suspend mining operations for any period not exceeding the limits hereinafter set forth on the occasion of each such suspension. Registered owners may apply. *Ibid.* ss. 32, 55.

(2)

(2) Every such application shall contain the grounds thereof, and a copy thereof shall be posted on the claim or on the land leased, and also outside the warden's office or the mining registrar's office nearest to the land in respect of which suspension is applied for, and shall be served upon the owners of or posted on adjoining claims or leases. Any person may, before the hearing of such application, in the prescribed manner lodge an objection to the granting of the suspension applied for, and shall be entitled to be heard in support of such objection. Grounds of application to be posted.

(3) The warden may grant such authority for any period not exceeding six months on being satisfied by evidence on oath in open court— Proceedings thereon. 37 Vic. No. 13, ss. 32, 55.

(a) that the claim or lease is unworkable by reason of accident to machinery, subsidence, scarcity of water, sudden excess of water, or any other cause whatsoever; or

(b) that the owners of such claim or lease are unable, by reason of sickness, accident, unavoidable absence, or other sufficient cause, to work the same; or

(c) that substantial expenditure has been incurred in mining operations on the claim or lease, and that the owner or lessee is temporarily unable to continue such operations, and requires reasonable time within which to make necessary arrangements.

(4) The warden may—

(a) upon being further satisfied by evidence on oath in open court that the claim or lease cannot be profitably worked under then existing circumstances owing to the low price of the product thereof or other adverse conditions, grant such authority for any period not exceeding six months in respect of any claim; or

(b) recommend to the Minister the granting of, and the Minister may grant, such authority for any such period in respect of any lease, in which case the authority shall be published in the Gazette and registered by the registrar, Department of Mines Sydney.

(5) All applications for suspension of labour conditions shall be made and dealt with as prescribed. Regulations to be observed. 37 Vic. No. 13, ss. 32, 55.

(6) The warden or the Minister (as the case may be) may, when granting suspension as aforesaid, impose such conditions as he may think fit for the protection from injury of adjoining mines by water or otherwise by reason of such suspension being granted. Conditions may be imposed.

~~111.~~ **114.** (1) If any holder of a lease under this Act, or any Act hereby repealed, employs on the land demised labour in excess of that required by the provisions of his lease, he shall, upon application to the warden and upon satisfying him that after the commencement of this Act and during Exemption from labour conditions.

during any expired period of his lease, not being less than six months, the excess labour so employed has been equal to the labour prescribed in his lease for six months, be entitled in respect of such excess labour to exemption from the employment of labour for one month: Provided that such exemption shall not be for any longer cumulative term than six months at any one time.

Inquiry by warden and certificate.

(2) Upon receipt of any such application, the warden shall hold an inquiry in open court, of which notice shall be given as prescribed; and, upon being satisfied that the lessee is entitled to such exemption, he shall issue a certificate in the form prescribed, and such certificate shall be registered in the Department of Mines, Sydney.

Conditions of certificate.

(3) Such exemption shall be subject to the condition that the lessee undertakes to observe and carry out such directions and orders as the warden may give for the protection of adjoining mines from injury by water or otherwise by reason of the exemption.

Returns of minerals won.

Lessee, &c., to furnish returns.

~~112.~~ **115.** Every holder of a lease, claim, or other title under this Act to mine shall, during the first fourteen days of the month of January in each year, furnish to the Minister a full and proper return, verified by statutory declaration, showing the quantity and value of gold and other minerals, except coal and shale, won during the preceding year ending thirty-first December, and the average number of men employed on such lease, claim, or land held under other title during such year, and on default shall be liable to a penalty not exceeding five pounds where no royalty is payable and not exceeding fifty pounds where royalty is payable.

Every person carrying on metallurgical works for the treatment of gold or any other mineral shall, during the first fourteen days of the month of January in each year, furnish to the Minister a full and proper return, verified by statutory declaration, showing the quantity and value of gold and other minerals treated at such works during the preceding year ending thirty-first December, and on default shall be liable to a penalty not exceeding five pounds.

Manager or secretary to furnish return for company.

If such holder or person is a public company, such return shall be furnished by the manager or person acting in the management, or by the secretary of the company; and the said manager, person, or secretary shall on default be liable to the said penalty.

Additional return by coal-mining lessees.

~~113.~~ **116.** (1) Every holder of a coal-mining lease, or other authority to mine for coal, shall, within fourteen days after the last day of March, June, September, and December in each year, furnish to the Minister a return, verified by statutory declaration, showing the quantity and approximate value of coal won from any mine worked by him under such

such lease or authority during the three months ending on such last day as aforesaid, and on default shall be liable to a penalty not exceeding fifty pounds.

If such holder is a public company the return shall be furnished as in the preceding section mentioned, and the manager or secretary as therein mentioned shall on default be liable to the said penalty.

Minister may require further return or may appoint officer to make inquiries.

(2) If the Minister is not satisfied with the return so furnished, he may require such holder, manager, or secretary to furnish further particulars of the coal won, or may, whether any return has been furnished or not, appoint any officer of his department or other person to make all necessary inquiries in relation to such coal. The officer or person so appointed may make all such inquiries, and may require such holder, or his clerk, or the manager, secretary, or clerk of any such company, to produce for his inspection at the office of such holder or company any books, accounts, documents, writings, papers, or instruments in his possession or under his control that such officer or person may consider necessary to enable him to ascertain the quantity of coal won, and may make copies of any entries or matters contained in such books, accounts, documents, writings, papers, or instruments, and upon completion of such inquiries shall report thereon to the Minister.

Secrecy as to information obtained.

(3) Any such officer or person who reveals any information so obtained by him, except as aforesaid or under the authority of a court of competent jurisdiction, shall be liable to a penalty not exceeding one hundred pounds.

The evidence in respect of such information shall not be admissible in any court except in the case of a prosecution under this Act, or in respect of any proceedings in relation to such inspection and inquiry.

Secrecy as to return and reports.

(4) Every officer in the Public Service and every person appointed as aforesaid shall preserve and aid in preserving secrecy with regard to the contents of any return or report or any copy of books, accounts, documents, writings, papers, or instruments made under this section which have come to his knowledge in his official capacity, and shall not communicate any such matter to any other person unless in the performance of his official duties, or under the authority of a court of competent jurisdiction. If he contravenes or fails to observe the provisions of this subsection, he shall be liable to a penalty not exceeding one hundred pounds.

Penalty on person obstructing officer.

(5) Any person who obstructs an officer or person in the performance of his duties under this section, or without lawful excuse refuses to produce any book, account, document, writing, paper, or instrument in his possession or under his control, or to answer any question asked by such officer in the course of such inquiries, shall be liable to a penalty not exceeding twenty pounds.

Reward

Reward areas.

~~114.~~ **117.** The Governor may, with respect to any prospector who makes a new discovery of gold or other mineral, make concessions in respect of any claim or lease applied for or held by such person as to area, rent, royalty, labour, and other conditions applicable by this Act or the regulations to such application, claim, or lease. Reward areas.

Amalgamation of leases.

~~115.~~ **118.** (1) The Minister may, on application in the prescribed manner by the owners of two or more adjoining gold-mining leases, or of two or more adjoining mineral leases, or of two or more adjoining dredging leases (whether such leases have been granted under the provisions of the same Act or not), and on being satisfied that the lands comprised in such leases can be more effectively worked as one mine, authorise the amalgamation of the said leases upon payment of a fee of twenty shillings for each lease so amalgamated. But where the lands comprised in such leases are divided from each other by a road or stream, mining operations shall not be carried on under such roads or streams until and unless a lease thereof has been granted. Minister may authorise amalgamation. 37 Vic. No. 13, s. 60. 48 Vic. No. 10, s. 6. Act No. 44, 1899, s. 24.

Leases may be amalgamated as aforesaid although one or more of such leases may be for mining on private lands under Part IV, and the other or others for mining on Crown lands under Part III. Leases under Parts III and IV.

(2) The Minister may, after obtaining a report from the warden, cancel any such amalgamation of leases. Minister may cancel amalgamation.

(3) When leases have been amalgamated as aforesaid, the labour required to be performed on or in connection therewith shall be the aggregate of the labour required for the respective leases before amalgamation. Labour on amalgamated leases. 37 Vic. No. 13, s. 60. 48 Vic. No. 10, s. 6. Act No. 44, 1899, s. 24.

(4) The Minister may, after inquiry and report by the warden, reduce the number of men to be employed and the capital to be expended on any amalgamated leases should it be shown that the circumstances warrant such reduction. Minister may reduce men and capital on amalgamated leases.

Encroachment.

~~116.~~ **119.** The warden may, subject to the regulations, upon the application of any person having the care and management of any public highway, railway, tramway, street, or road, or any person authorised by him in that behalf, authorise by writing under his hand any mining surveyor to enter and inspect any land or mines comprised in any claim, lease, application for lease, or authority under this Act or any Act hereby repealed, for the purpose of ascertaining whether the persons working such land or mines are encroaching on such Encroaching on highways, streets, &c. 57 Vic. No. 32, s. 29.

such highway, railway, tramway, street, or road, and whether the mining operations so carried on can be continued without causing injury or damage thereto, or to any house, building, or machinery abutting thereon or adjoining thereto.

~~117.~~ **120.** (1) The Minister or the warden may, upon the application of the owner or occupier of any land adjoining any land held as a claim, lease, or under an authority or application for a lease under this Act or any Act hereby repealed, whereon mining is being carried on, or upon the application of any person authorised by such owner or occupier, authorise by writing under his hand any mining surveyor to enter and inspect the land on which mining is being so carried on, for the purpose of ascertaining whether the persons so carrying on mining are encroaching upon any land of such owner or occupier not comprised in such claim, lease, authority, or application for lease. Warden may authorise mining surveyor to inspect as to encroachment. 37 Vic. No. 13, s. 86. 57 Vic. No. 32, s. 30.

(2) Any geological surveyor or other person authorised by the Minister may enter any mine or works for the purpose of inspecting the same, and removing any sample of ore or deposit. No person shall obstruct or hinder such geological surveyor or other authorised person acting as aforesaid, under a penalty not exceeding fifty pounds. Geological surveyor or other authorised person may enter and remove sample.

(3) The mining or geological surveyor authorised as aforesaid, or other authorised person, may enter and inspect and survey the land and mines described in such order. Such surveyor may make such plans and sections of the land entered, and of any drives or other works therein, as are necessary for the purposes aforesaid. Mining or geological surveyor may enter and inspect. 57 Vic. No. 32, s. 31.

~~118.~~ **121.** Every such mining or geological surveyor or other authorised person shall, before entering any land under such authority as aforesaid, make a declaration before the warden (who is hereby authorised to take and forward the same to the Minister) that he will not, except as a witness in a court of justice or to the Minister, without the consent in writing of the occupier or lessee of the land or mines to be entered, divulge or cause to be divulged to any person whomsoever any information which may be obtained upon or by such entry, save only as to whether the persons working such mines are encroaching as in the last preceding section mentioned. Whosoever acts contrary to such declaration shall be liable to a penalty not exceeding fifty pounds. Surveyor to make a declaration. 37 Vic. No. 13, s. 86. 57 Vic. No 32, s. 32.

Sludge abatement provisions.

~~119.~~ **122.** (1) For the purpose of this section, the Governor may appoint a board of three persons, to be called the Sludge Abatement Board, and notification shall be made of such appointment. Any two members of the board shall form a quorum. Sludge Abatement Board.

(2) It shall be the duty of the board— Powers of board.

(a) to investigate any complaint made of pollution or injury caused by sluicing, dredging, or other mining operations to any

any river, stream, watercourse, lake, or reservoir (whether or not there is any water therein) not exempted from the operation of this section, or to any agricultural or grazing land adjacent thereto, and to order any person causing or directing such operations to make such provision or take such steps as the board may direct to prevent the continuance of such pollution or injury;

(b) to order any person about to commence or authorise sluicing, dredging, or other mining operations which would, in the opinion of the board, cause injury or pollution to any such river, stream, watercourse, lake, reservoir, or land to make such provision or take such steps as the board may direct to prevent such pollution or injury; and

(c) at the request of the Minister, to report and make such recommendations as the board may think fit in connection with any application for a mining lease of any area upon which it is intended to carry on sluicing, dredging, or other mining operations which may pollute or injure any such river, stream, watercourse, lake, reservoir, or land.

Exemption of certain rivers, &c.

(3) The Governor may from time to time, upon the report of the board, exempt from the operation of this section such rivers, streams, water-courses, lakes, and reservoirs, or such portions thereof as, in his opinion, are, by reason of their polluted condition, useless as a means of providing a water supply for domestic or stock purposes: Provided that the board, before so reporting, shall satisfy itself that such exemption may be granted without causing damage to any agricultural or grazing lands adjacent to any such rivers, streams, water-courses, lakes, or reservoirs, and shall publish in the Gazette notice of every such proposed exemption.

The Governor may at any time revoke, in whole or in part, any such exemption, and shall give notice thereof in the Gazette.

Penalty.

(4) Any person who, by himself or his agent or workman, carries on any mining operations as aforesaid in contravention of any order of the board as aforesaid, or disobeys any order of the board, and thereby directly or indirectly causes the pollution of, or any injury to any such river, stream, water-course, lake, or reservoir, or to any agricultural or grazing land adjacent thereto, shall be guilty of an offence; and, upon the complaint of any person aggrieved thereby, or of an inspector of mines, shall, for every day upon which mining operations have been so carried on, or such order has been disobeyed as aforesaid, be liable to a penalty not exceeding twenty-five pounds.

What constitutes injury or pollution.

(5) For the purposes of this section, water discharged into any such river, stream, water-course, lake, or reservoir, shall be deemed to injure or pollute the same if it contains in solution at the point of discharge any poisonous matter in the total proportion of more

more than seventy-five grains to one gallon; or other noxious matter in such quantity as to be injurious to public health; or if it contains in suspension any earth or mineral, or any earthy or other insoluble mineral substance in the total proportion of more than eight hundred grains to one gallon.

Surrender and cancellation of lease.

~~120.~~ **123.** Every holder of a lease under this Act may at any time with the consent of the Governor surrender his lease wholly or in part. The Governor may, on acceptance of such surrender, grant such holder a new lease of the whole or any part of the land comprised in the surrendered lease, and upon such conditions not inconsistent with this Act and the regulations, as he may deem advisable. But the surrender of a lease shall not entitle the lessee to the refund or remission of any rent already paid or due.

Lessee may surrender lease wholly or in part.
37 Vic. No. 13, s. 54.
cf 57 Vic. No. 32, s. 35.

~~121.~~ **124.** If the holder of a lease under this Act, his executors, administrators, or assigns, at any time during the term of such lease—

(a) fails to fulfil or contravenes the conditions and covenants contained therein; or

(b) fails to use the land bona fide for the purposes for which it has been demised; or

(c) uses it for a purpose other than that for which it has been demised,

the lease may be cancelled by the Governor, and the cancellation shall take effect on the date proclaimed in the Gazette.

Cancellation of lease
37 Vic. No. 13, s. 56 (11).
57 Vic. No. 32, s. 34.

Removal of machinery.

~~122.~~ **125.** (1) At any time within six months after the determination of any lease under this Act, or within such further time as the Minister may allow, the former lessee may remove or dispose of all tools and machinery and such improvements as the Minister may sanction, except such as are necessary to keep open any shaft or adit: **Provided that this section shall not apply to any lease of private land until and unless all rent due in respect thereof has been paid, and all compensation for damage occasioned to the land demised has been duly assessed and paid.**

Machinery, &c., on forfeited area.
37 Vic. No. 13, s. 56 (10).

(2) If such tools, machinery, and improvements are not so removed they may be sold by auction by order of the warden at the risk of the former lessee. The net proceeds of such sale shall be paid into the Treasury and held until applied for by such former lessee.

Machinery, &c., may be sold.

Surveyor may define road.

~~123.~~ **126.** Any mining surveyor may, in pursuance of an order of the Minister or of a warden, enter any private land for the purpose of defining the road to and the boundaries of the land comprised in any lease or authority to enter, or any application for the same, or for any other purpose authorised by this Act. Minister or warden may authorise surveyor to enter and define road to area or for any other purpose.

Inquiries and inspection.

~~124.~~ **127.** The Minister may direct a warden to hold an inquiry on oath in open court with reference to any matter affecting any lease or application for a lease under this Act or any Act hereby repealed. Inquiry may be directed cf. 37 Vic. No. 13, s. 57. Act No. 44, 1899, s. 14.

~~125.~~ **128.** Any holder of a tenement, lease, or authority to enter under this Act or any Act hereby repealed, or any application for such lease, shall, during ordinary working hours and within a reasonable time, comply with any request of the warden, or of any surveyor or other person acting under the instructions of the warden, or under the authority of this Act or the regulations, to furnish the usual appliances and aid necessary for descending to and ascending from the underground workings of his mine, and for examining the same or doing such things as may be authorised as often as may reasonably be found necessary. Inspection of mine. 57 Vic. No. 32, s. 31.

Nature of holding and evidence of title.

~~126.~~ **129.** (1) Every tenement or share or interest in a claim, and any authority, right, title, or interest acquired or created under this Act, or any Act hereby repealed, or the regulations, shall be deemed and taken in law to be personal property, and shall not be of the nature of real estate, and may be disposed of during the lifetime of the holder, and shall on his death descend or devolve on intestacy or by will as personal property, subject to this Act and the regulations. Share in claim. 37 Vic. No. 13, s. 18.

(2) No person shall be entitled to institute proceedings in any court in respect of any such tenement, share, interest, claim, authority, right or title, as aforesaid, or any grievance respecting the same, unless he was the holder of a miner's right or lease, or was the applicant for a lease, or the holder of a business license, or authority according to the nature of such interest at the time when such cause of action arose. Suit or to hold miner's right, license, or lease. 37 Vic. No. 13, s. 19.

(~~3~~ **2**) The production in any court of a certificate of registration under the hand of a mining registrar or warden's clerk shall be evidence that the person named in such certificate was the holder of a miner's right or of a business license, as the case may be, at the date mentioned in such certificate, and that all the requirements of any Act or regulations necessary to vest the title of such interest as aforesaid in such person had been complied with by him up to the date of such registration. Certificate to be evidence. *Ibid.*

Mining towns.

~~127.~~ **130.** If during the term of any lease of Crown land under this Act or any Act hereby repealed any part of such land is required as a site for a town or village **or for any public purpose,** the Governor may, upon one month's notice to the lessee, cancel the said lease so far as it relates to any right to the surface and the specified depth below the surface of the said part of the land, and thereupon the said part shall, subject to the right of the said lessee to mine thereunder, but without any compensation payable by the Crown, become Crown lands within the meaning of the Crown Lands Acts, and may be dealt with thereunder. Area may be resumed for township.

PART VII.

WARDENS' COURTS.

DIVISION 1.—JURISDICTION.

Wardens' courts.

~~128.~~ **131.** (1) The Governor may, by proclamation, establish wardens' courts, to be held at such places as he may from time to time appoint. Any wardens' courts established under any Act hereby repealed shall have jurisdiction under this Act as if they had been established hereunder. Governor may establish wardens' courts. 37 Vic. No. 13, s. 67.

(2) Every such court shall be a court of record, and shall be held by a warden sitting alone. Court of record.

(3) Any decision or order of such court shall, subject to this Act, be binding and conclusive on all parties.

(4) For the purposes of the jurisdiction hereby conferred, a warden or a warden's clerk may issue summonses and subpœnas, or other process, which shall have legal effect and operation throughout the State. Summons, &c., may be issued. *Ibid.* s. 68.

~~129.~~ **132.** (1) Every warden shall cause a register to be kept in the form prescribed by the rules of the particulars of all complaints and applications made to him under this Act and any decision or order made thereon, and such particulars relating thereto as may be prescribed as aforesaid. Register to be kept. *Ibid.* s. 72.

(2) A copy of an entry in such register of any decision or order of the court shall on demand be given by the warden's clerk to any of the parties interested therein. A document purporting to be any such copy, certified by the warden or warden's clerk as a true copy, shall be admitted in all courts and places whatsoever as conclusive evidence of such decision or order having been given or made.

Jurisdiction

Mining.

Jurisdiction.

~~130.~~ **133.** (1) A warden's court shall have jurisdiction to hear and determine all suits relating to any of the matters following, that is to say:— Subjects within jurisdiction of court. 37 Vic. No. 13, s. 69.

(a) The right to the possession or occupation of any Crown land or private land by virtue of a miner's right, a registered share in a claim, a lease, application for a lease, or of a license, or authority.

(b) The right to cut, construct, use, possess, occupy, or hold any interest in any race, drain, dam, or reservoir for mining under any Act or regulation relating to mining.

(c) The right to recover any land, race, drain, dam, reservoir, building, or machinery alleged to have been abandoned or forfeited under any such Act or regulation, and to mesne profits thereof.

(d) The right to the use, enjoyment, or to sell any water under any such Act or regulation, or to the priority of use and enjoyment as against any other claimant of water taken, diverted, or used, or claimed so to be under any Act or regulation.

(e) Any encroachment or trespass upon, or unlawful interference with, or injury to any land, race, drain, dam, or reservoir occupied, held, or used under any Act or regulation relating to mining, or unlawful interference with or injury to any machinery thereon; any diversion or abstraction of water possessed or used under such Act or regulation; the unlawful ouster or exclusion of any person from any share or interest in any such land, race, drain, dam, reservoir, water or machinery, and the damages and compensation for any such encroachment, trespass, ouster, diversion, abstraction, interference, or injury.

(f) Any demand for debt or damages, or both, arising out of or made in respect of any contract or agreement whatsoever, relating to mining for gold or any other mineral, or to any holding or interest authorised by any such Act or regulation as aforesaid.

(g) The right to any gold or other mineral in or to be taken out of any land occupied or held under any such Act or regulation as aforesaid, or in respect of any matter concerning or arising out of any contract relating to such gold or mineral.

(h) Any demand concerning or arising out of any partnership for or in relation to mining for gold or other mineral in any land occupied or held as aforesaid, or any partnership in any such land, or in any race, drain, dam, reservoir, water, machinery, gold, mineral, or metal, or concerning or arising out of any contract for or in connection therewith, or for the dissolution wholly or in part of any such partnership.

(i) Any demand concerning contribution to calls or to the expense of working or using any such land, race, drain, dam, reservoir, or water, or any share or interest therein.

(j) Any demand concerning or arising out of any mortgage or assignment by way of security of or charge upon any such land, race, drain, dam, reservoir, water, machinery, gold, or mineral, or any share or interest therein.

(k) Any demand concerning the cancellation and delivery up of instruments relating to—

(i) mortgages, charges, or encumbrances of or upon any such land, race, drain, dam, reservoir, water, machinery, gold, or minerals as aforesaid, or any share or interest therein;

(ii) any assignment of such mortgages, charges, and encumbrances;

(iii) any contract respecting the working or use for mining purposes or otherwise in relation to mining of any such race, drain, dam, reservoir, water, or machinery; or

(iv) any partnership for mining, or in any such land, race, drain, dam, reservoir, water, machinery, gold, or mineral, or the total or partial dissolution of any such partnership.

(l) Any demand concerning the ascertainment and adjustment of boundaries of land held or occupied under any such Act, or regulation, where such boundaries are in dispute or doubtful; in which case the court shall ascertain and determine such boundaries by such means as may be found convenient, and shall make and give all such orders and directions as may be necessary for the purpose of carrying out the decree or order of such court.

(m) Any demand concerning any Crown land, or share or interest therein, which the complainant claims to be entitled to take possession of and occupy under a business license, and of which the defendant is and claims to be entitled to be in possession; any trespass upon any such land of which the complainant is in, and of which he claims a right to the occupation or possession under such license.

(n) Any money claimed to be due upon any mining partnership account, or in any way accruing to the complainant from any mining partnership adventure or interest.

(o) The recovery of any money which any person is liable to pay under any such Act or regulation, and for which no other mode of recovery is hereby provided.

(p) All questions and disputes which may arise between miners in relation to mining on Crown lands or private lands.

(q) All questions or disputes which may arise as to the working or management of any lease.

(2) The jurisdiction hereby conferred shall extend to cases where the right or title of either party is derivative by assignment or otherwise as well as to where the same is original. Jurisdiction where title is derivative. 37 Vic. No. 13, s. 69.

~~131.~~ **134.** All debts for wages due by any mining company, or any lessee or claim holder, to any employee in respect of services performed in connection with any mining, not exceeding twenty-five pounds, shall have priority over all other claims, and shall be a first charge upon ~~all property of the company, lessee, or holder~~ **the lease, claim, plant, machinery, and improvements in connection with which such services were performed** notwithstanding any lien, mortgage, or charge thereon, and such debts shall be paid in full unless the said property is insufficient to meet them, in which event they shall abate in equal proportions. Wages to be a first charge.

~~132.~~ **135.** (1) In all suits where the amount claimed or the value of the right or property in dispute does not exceed fifty pounds, the decision of the warden's court shall be final. Decision in certain cases to be final. *Ibid.*

(2) If before the hearing of any complaint or other proceedings in a warden's court the parties agree to accept the decision of the said court as final, a memorandum of such agreement shall be entered by the warden in the register kept by him, and in such case the warden's decision shall be final. Parties may agree that warden's decision shall be final. *Ibid.* s. 107.

~~133.~~ **136.** No person shall be entitled to sue in a warden's court in respect of any matter affecting the title to any land, right, easement, or interest held under this Act or any Act hereby repealed unless he is the holder of a miner's right, business license, authority, application for lease, or lease granted under this or any Act hereby repealed, **or the holder of a registered share in a claim.** Suitor to hold miner's right or lease. cf. *Ibid.* ss. 19, 69.

~~134.~~ **137.** Minors may sue and be sued in connection with holdings of any nature under this Act, and their holdings shall be liable to be taken in execution and sold under legal process. Minors may sue.

Division 2.—Hearing and procedure.

Hearing of complaints.

~~135.~~ **138.** (1) The warden may, if both parties consent thereto, hear and determine any complaint summarily in the presence of them both and without requiring any formal proceedings to be taken in a warden's court, and every such decision shall be final. Complaint may be heard without summons. *Ibid.* s. 71.

(2) Such consent shall be in writing signed by the parties, and the warden may take the statements of the parties on oath. Consent in writing.

(3) Where consent has not been given as aforesaid, proceedings shall be commenced by a summons to be issued by the warden or his clerk to the complainant on his application, on the payment of the fee prescribed by the rules. Summons. *Ibid.* s. 70.

Such

Such summons shall state concisely the facts constituting the complaint, and the amount of money (if any) claimed, and shall state a day for the appearance of the defendant before the warden's court, and shall be in the form and shall contain the particulars prescribed by the rules.

Service of summons.

(4) A summons shall be served on the defendant, either personally or by leaving the same at his last known place of residence with any person apparently of or above the age of sixteen years: Provided that if it is made to appear that any defendant cannot after diligent inquiry be found, or cannot from any cause after reasonable effort be personally served with the summons, the warden may order that service of the summons in such manner as he may direct by such order shall be deemed good service upon such defendant, and if necessary may postpone the hearing to allow of such substituted service; and service of such summons in the manner directed by such order shall be deemed good service for all purposes.

Warden to hear and determine. 37 Vic. No. 13, s. 70.

~~136.~~ **139.** (1) Upon the day named in the summons, or upon any adjourned day of hearing, the court shall require such proof as it thinks sufficient of the service or substituted service of the summons upon all parties interested who have not appeared, and thereupon in the absence of any of the parties interested who, having been duly served with such summons, do not appear, but in the presence of all other parties interested, or of such of them as appear to the court sufficiently to represent all such parties, the court shall proceed to investigate the matter of such complaint, and to hear and determine the same in a summary way.

Audience.

(2) An agent duly authorised in writing by any party to a proceeding, shall have the right of audience in a warden's court.

Amendment of proceedings. cf. 37 Vic. No. 13, s. 75.

~~137.~~ **140.** (1) The court may adjourn the hearing of any complaint to any other time or place, and make all such amendments in any proceedings as may be necessary for the purpose of determining the real question in controversy between the parties, notwithstanding that the summons does not show the substance of the facts constituting the complaint.

If it appears that any person who ought to have been joined as a defendant has not been joined, the court may on the application of the complainant amend the proceedings by including such person as a defendant and adjourn the hearing to allow of the service of the summons upon him.

Complaint not to be dismissed for informality. cf. *Ibid.*, s. 75.

If it appears that any person who should have been joined as a complainant has not been so joined, the court may, with the consent of such person, and on the application of either party to the proceeding, by amendment include such person as a complainant.

Any such amendment may be made subject to such terms as to costs, adjournment, or otherwise as to the court seems just.

(2) No complaint shall be dismissed for informality in the summons or any entry thereof, or for any defect or misnomer or inaccurate description of any person or place, or on the ground that the plaintiff appears to be entitled to different relief from that claimed in the summons, or that there is any variance between the summons and the evidence adduced at the hearing on the part of the complainant. Every such case may be dealt with by amendment under the power to amend hereinbefore contained, so that the real question in controversy shall be determined.

~~138.~~ **141.** If on any day appointed for the holding of a warden's court, or on the day to which any such court has been adjourned, the warden is prevented by any cause from attending such court, the warden's clerk may adjourn the court for such time or until such day as may be necessary. In absence of warden, his clerk may adjourn court.

Payment into court.

~~139.~~ **142.** (1) Notwithstanding anything hereinbefore contained, the defendant may, at any time but not less than two days before the hearing, in any case where the claim is for money, pay into the warden's court the amount claimed, or such less amount as he may think a full satisfaction in respect of the matter complained of, together with the complainant's costs up to the time of payment. Defendant may pay money into court. 37 Vic. No. 13, s. 74.

(2) The warden's clerk shall give the prescribed notice of such payment to the complainant, and shall also, on demand, pay the amount so received to the complainant or his attorney. Notice of payment. *Ibid.* s. 74.

~~140.~~ **143.** If the full amount claimed, together with costs as aforesaid, has been so paid into court, or if the complainant has accepted such less sum as aforesaid, no proceeding shall thereafter be brought in any court in respect of the said claim. But if a less amount than that claimed, with costs as aforesaid, has been so paid in, and the complainant elects to proceed, and not accept the same, then in the event of his not recovering any further sum in respect of such claim, the warden may order him to pay the defendant's costs incurred subsequently to such payment in. Proceedings thereupon. *Ibid.* s. 74.

Division 3.—Orders.

Payment by instalments.

~~141.~~ **144.** When any order for the payment of money is made, the warden's court may order the amount to be paid at such times and by such instalments as the court may deem fit. Instalments may be ordered.

Complaints for injury to property, &c.

~~142.~~ **145.** (1) On the hearing of any complaint before a warden's court for the recovery of possession of, or for any encroachment or trespass upon, or for any unlawful interference with or injury to, any land, Court may determine boundaries. *Ibid.* s. 80.

land, water-race, drain, dam, reservoir, machinery, or water, or any share or interest therein, the court may if it thinks fit determine the boundaries of any such land, or the quantity of water to be taken by either of the parties.

(2) If in any such proceedings the decision is in the complainant's favour, the court shall determine whether any and what sum in the nature of mesne profits or damages shall be paid to him by the defendant. Mesne profits, or damages may be awarded. 37 Vic. No. 13, s. 80.

The court may also in such case order, if necessary, that—

(a) possession of anything sued for be delivered to the complainant;

(b) the complainant be put into possession of any such land, race, drain, dam, reservoir, or machinery, or any share thereof, and any defendant and his servants, and any buildings, fixtures, implements, goods, and chattels, be removed therefrom;

(c) any defendant be restrained from using any such water as aforesaid.

(3) If in any such proceedings the court finds that the complainant himself has wrongfully encroached, or trespassed, or interfered with any land, race, drain, dam, reservoir, machinery, or water, in respect of which such proceedings were brought, the court may grant the same relief to the defendant against the complainant as it is hereinbefore empowered to grant to a successful complainant. Relief may be granted to defendant. *Ibid.* s. 82.

(4) In any proceedings before a warden's court in respect of the right to divert any water, or to remove any water-race, drain, dam, reservoir, or machinery, if the decision is in the complainant's favour the court shall declare him at liberty to divert such water, or remove such race, drain, dam, reservoir, or machinery, and may make an order restraining any defendant from interfering with or preventing such diversion or removal. Proceedings for diversion of water. *Ibid.* s. 81.

(5) Persons in illegal occupation of lands, or in whose names the same may be registered, may be proceeded against by a holder of a miner's right, and the court may order their ejectment and removal in terms of subsection two of this section: Provided the complainant has applied for the ground either as a claim or a lease. Defendants in illegal occupation. *Ibid.* s. 40.

Deposit pending decision.

~~143.~~ **146.** (1) Upon application to the warden's court by any party to any proceedings upon summons therein, such court may order any other party thereto to deposit, in order to abide its decision, any earth, gold, minerals, money, or chattels, the right to which will in the opinion of the court be put in issue in the course of such proceedings, and which may then be, or which at any time before the final termination of such proceedings may come into the possession, power, or control of such party. Such order shall specify the thing to be so deposited, and shall Warden may order deposit of gold, &c. *Ibid.* s. 89.

shall direct such deposit to be made within a time or times mentioned with some person or at some place specified either in the name of the warden or of some other person mentioned in such order.

(2) Unless such order is claimed in the summons it shall only be made after twelve hours' notice served by the applicant upon the parties interested in opposing the same, or such of them as appear to the warden sufficiently to represent such parties. Notice. 37 Vic. No. 13, s. 89.

(3) Any person against whom such order has been made who neglects or refuses to obey such order shall be liable to a penalty not exceeding fifty pounds. Penalty.

Injunction.

~~144.~~ **147.** (1) Upon application to the warden's court by any person claiming to be legally or equitably interested in any land, lease, claim, race, drain, dam, reservoir, water, machinery, or easement, such court may in its discretion and upon such terms as to costs or otherwise as it may consider just, grant an injunction restraining any person named therein from encroaching upon, occupying, using, or working any such property, or from seeking for, washing out, extracting, or removing any earth, gold, or other minerals taken therefrom, or from selling or disposing or otherwise interfering therewith, or from doing any act whereby the right, title, or interest of the applicant in or to the same might be affected. Warden may grant injunction. cf. *Ibid.* ss. 58, 87.

(2) Every such injunction shall be in force for the period named therein, unless the same is sooner discharged by the court making the same or on appeal. Duration of injunction. cf. *Ibid.* ss. 58, 87.

(3) An injunction as aforesaid may be applied for either upon summons claiming the same, with or without other relief, or upon notice served as in the case of a summons upon the persons and within the period prescribed by the rules. The same rules of procedure shall be observed at the hearing of every such application as are herein prescribed in the case of the hearing of an ordinary summons. Application for injunction. cf. *Ibid.* s. 87.

(4) The warden may also grant an injunction as aforesaid to last for not more than one month inclusive of the day of making the same, unless sooner discharged, without such summons or notice, if the applicant satisfies the court that the case is one of extraordinary urgency. No subsequent injunction or continuance of the injunction so granted shall be made under this subsection, but application for a further injunction may be made under the provisions of subsection three, either before or after the expiration of the period of the injunction. Ex parte injunction in case of urgency. *Ibid.* s. 88.

(5) When any injunction has been granted by a warden's court or on appeal therefrom under this Act, the warden, upon the application of any holder of a registered claim adjacent to the property under such injunction who shows to the satisfaction of such warden that After injunction granted, warden may order working upon terms. *Ibid.* s. 91.

that the claim of such holder will sustain damage or be materially depreciated in value by reason of the non-working of the said property under injunction, may order, upon such terms as he thinks fit, such working of the said property as in his opinion will be sufficient to prevent such damage or depreciation, and the said warden shall make such order as to the cost of such working as he may think just.

(6) Any person disobeying an injunction granted by the warden shall be liable to a penalty not exceeding one hundred pounds for every day of such disobedience. Penalty.

Delivery of specific chattels.

~~145.~~ **148.** (1) Where any money or any gold or mineral is claimed in a warden's court, such court may order the payment or delivery of any such money, gold, or mineral which it may find to be due or deliverable by either of the parties to the other of them in respect of the subject matter of the said proceedings. Court may order delivery of gold, &c. 37 Vic. No. 13, s. 83.

(2) In cases where any such claim as aforesaid arises out of any mining partnership, adventure, or interest, the court may take the account of such partnership, adventure, or interest so far as may be necessary to ascertain what moneys, gold, or minerals (if any) are so due from one party to the other, and make such order in the premises as may be just. Accounts. *Ibid.*

Costs.

~~146.~~ **149.** The court may allow costs to the successful party in all suits, inquiries, and proceedings, and may allow the costs of any adjournment of any suit, inquiry, or proceeding. Costs may be allowed.

Division 4.—Execution.

Form and service of orders.

~~147.~~ **150.** (1) Every order made by the warden under this Act may be in the form prescribed by the rules. Form. *Ibid.* s. 90.

(2) Every such order shall, unless the warden otherwise directs, be served by delivering a copy to the person to be bound thereby, and at the same time showing the original order if such person requires to see the same: Provided that if the warden sees fit so to direct, it shall be sufficient service of any such order to publish a copy of such order in such newspaper, and to affix a copy thereof in such conspicuous place at or near the property in dispute as the warden appoints. Service. *Ibid.*

~~148.~~ **151.** If any money ordered by a warden's court to be paid in respect of debt, damages, costs, or otherwise is not paid forthwith, the warden, on the application of the person entitled to receive such Writ of execution. cf. *Ibid.* s. 84.

such payment, or his attorney, or duly authorised agent, shall grant a writ of execution under his hand in the form prescribed by the rules as nearly as practicable. But the warden may withhold the issuing of such writ for a period not exceeding seven days from the date of such order if he considers it just or reasonable so to do.

~~149.~~ **152.** (1) Any bailiff of a warden's court or district court to whom such writ has been delivered for execution, and all constables and peace officers within their several jurisdictions shall do and perform all things in respect of such writ which they are required respectively to do and perform in respect of a writ of execution issued out of a district court in case of the non-payment of money under a judgment of such court. Writ to be obeyed. cf. 37 Vic. No. 13, s. 84.

(2) Every bailiff as aforesaid may by virtue of such writ seize and take such property of the party against whom such writ is directed as could be seized and taken by virtue of a writ issuing out of a district court, and shall have the same powers and duties in respect of the seizure, sale, and disposal of such property, and all matters connected therewith, as are by law conferred and imposed on the bailiff of a district court upon a writ of fieri facias issued by the registrar thereof. Bailiff may seize property. *Ibid.*

~~150.~~ **153.** (1) Where a warden's court orders the payment of money in respect of any debt, damages, costs, or otherwise, the court may at the time of such order being made further order, if it thinks fit, that any gold or mineral in the possession, and being the property of the party directed to make such payment shall (to the extent in value of such payment as estimated by the court) be delivered up to the party entitled to such payment in satisfaction or part satisfaction thereof, and may forthwith cause such gold or mineral to the extent aforesaid to be seized and delivered accordingly. Court may order gold &c., to be delivered. *Ibid.* s. 85.

(2) When any such order as aforesaid has been made, the writ of execution shall only be granted in respect of any balance of such payment as aforesaid remaining due after deducting the value of any gold or mineral so delivered to the party entitled to such payment. Execution for balance only. *Ibid.*

Mode of enforcing orders where not specially provided for.

~~151.~~ **154.** Whenever any warden's court or warden is empowered or required by this Act to cause any act to be performed, and the mode of performing such act is not otherwise expressly provided for, it shall be lawful for any person verbally authorised by the warden, and in his presence, or for any member of the police force or peace officer authorised in writing under the hand of such warden, to perform such act, and all such members and officers shall, if thereunto required, aid and assist any warden or person authorised as aforesaid in the performance of his duty under this Act. Warden may authorise person or officer to perform any prescribed act. *Ibid.* s. 92.

DIVISION 5.—ASSESSMENT OF COMPENSATION.

~~152.~~ **155.** (1) Where compensation is by this Act directed to be assessed by the warden in respect of land entered or occupied, or proposed to be entered or occupied, under a miner's right, authority, lease, or application for lease, or in respect of any land adjoining thereto, such assessment— How compensation assessed. 57 Vic. No. 32, s. 17. 60 Vic. No. 40, s. 2 (*d*).

(a) shall be made in the manner prescribed, and after notice to the persons who appear to him to be interested in the assessment; Act No. 44, 1899, s. 10.

(b) shall be of the loss caused and likely to be caused by damage to the surface of the land, and to any crops, buildings, and improvements thereon by works carried on in pursuance of such right, authority, lease, or application;

(c) shall not exceed in amount the market value for other than mining purposes of the land and the improvements thereon;

(d) shall, subject to the appeal to arbitration hereinafter provided, be final.

(2) The amount so assessed shall be paid by the holder of such right, authority, or lease, or by such applicant, into the warden's court, and shall, from time to time, on damage being caused as aforesaid, be paid out of court on the application of any person having interest in the land.

(3) Provided that, on production of a document in writing signed by the holder or applicant aforesaid, and by the person having interest in such land, agreeing to dispense with such assessment and payment, the warden shall, in terms of such document, dispense with the making of such assessment absolutely or on conditions so as to carry out the terms of such agreement.

(4) If after the expiration of six months, and before the expiration of twelve months, from the determination of such lease or authority, or from the refusal of the application for the lease, the whole or any part of an amount so paid into court has not been paid out under the above provisions of this section, and has not been ordered to be so paid out, any person who has paid such amount into court may apply to the warden for the payment out to him of such amount or part, and the warden may order such payment to be made.

After the expiration of such twelve months, the warden may cause such amount or any part thereof to be paid into the Treasury and carried to the Consolidated Revenue Fund.

~~153.~~ **156.** In making any such assessment, the warden— Procedure in court on making assessment.

(a) may make such assessment at any time and place fixed by him;

(b) may make such assessment in the absence of any persons interested who appear to the warden to have been duly notified;

(c)

(c) may adjourn the hearing to any time and place, subject to such terms as to costs or otherwise as he thinks fit;

(d) shall have the powers of a warden's court.

~~154.~~ **157.** If after such assessment has been made it is proved to the warden that the amount so paid into court in respect of certain land has been duly paid out, and that since such payment out further loss has been caused by damage as aforesaid to such land, or to other land, the warden may as aforesaid assess such loss and order the same to be paid by the holder or applicant aforesaid to any person having interest in the land so damaged. If such payment is not so made, the claim, authority, or lease may be cancelled. Additional assessment. 57 Vic. No. 32, s. 20. Act No. 44, 1899, s. 21.

~~155.~~ **158.** Any person dissatisfied with ~~the amount so assessed~~ **any assessment made by the warden under the provisions of this Act (other than assessments in respect of land resumed)** where the amount so assessed exceeds five pounds, may, in the prescribed manner, give notice that he requires the assessment to be determined by arbitration under this Act. Appeal to arbitration. cf. 57 Vic. No. 32, s. 20.

Such assessment shall thereupon be made and determined by arbitrators appointed as prescribed. The arbitration shall be in the nature of an appeal from the assessment of the warden, and the powers of the arbitrators and proceedings before them shall be as prescribed. The determination of the arbitrators shall be final and shall be given effect to by the parties and by the warden:

Provided that the appellant shall deposit with the warden five pounds to answer any costs which the arbitrators may order him to pay.

~~156.~~ **159.** (1) The Minister, or any person claiming payment for land resumed under this Act, if dissatisfied with the amount of the value assessed ~~by a warden~~ in respect of any such resumed land, may give notice of appeal against such assessment in the manner prescribed ~~by the Closer Settlement Act, 1901, and the provisions of that Act shall, mutatis mutandis, apply to any such appeal under this Act.~~ Appeal against assessment.

(2) Such appeal may be made to a court consisting of a judge of the Supreme Court appointed in that behalf by the Governor and two assessors, one to be appointed by the Minister and one to be appointed by the owner of the land resumed; but if the Minister or such owner fails to appoint an assessor, the judge shall appoint an assessor on his behalf.

Each assessor shall be paid by the person by or on behalf of whom he has been appointed.

(3) The decision of the judge and one of the assessors shall be final:

Provided that if the Minister and the said owner agree in writing that the appeal shall be heard and determined by the judge without assessors, the appeal shall be so heard and determined and the decision of the judge shall be final.

160.

160. (1) A judge of the Supreme Court may give such directions and make such orders as may be thought necessary to enable the appeal to be heard and determined.

(2) The judges of the Supreme Court, or any three of them, may make rules as to the procedure in, and relating to, such appeals.

PART VIII.

APPEALS.

DIVISION 1.—TO DISTRICT COURT.

~~157.~~ **161.** If any party to a complaint or proceeding in a warden's court is dissatisfied with the decision of the said court where such decision is not in or by this Act declared to be final, such party may appeal from the same to the District Court sitting as a court of appeal in its mining jurisdiction at that sitting of such court which next after the expiration of fifteen days from the day of the making of such decision is held at or nearest to the place at which such decision was made.

Right to appeal from warden's court. 37 Vic. No. 13, s. 106.

~~158.~~ **162.** (1) The person so appealing shall, within seven days from the day of the making of such decision, deposit with the registrar of the District Court at the place where such sitting is to be held the sum of ten pounds, or such less sum as the warden may order, to abide the costs of such appeal, and give security to the satisfaction of the warden for the due performance of any order which the District Court hearing such appeal may think fit to make, and shall lodge notice in writing of his appeal, stating the grounds thereof. Thereupon such registrar shall issue out of such court a summons, in the form and containing the particulars prescribed by the rules.

The hearing of the appeal *Ibid.*

(2) Any person so lodging notice of appeal against any such decision shall be taken to have abandoned his right of appeal under Division two of this Part.

Such appeal to a District Court shall be heard before the said court, which shall proceed to make an order reversing or varying such decision or dismissing such appeal or such other order as to the said court may appear just; and in and by such order the said court may make such order with respect to the costs of the appeal, and of the proceeding appealed from, as it may think fit.

(3) Provided that no such appeal shall be so heard unless the said summons has been served seven days before the same is returnable upon all the parties interested in supporting such decision, or upon such of them as appear to the judge sufficiently to represent all the parties interested,

interested, or, in case no such party can be found, upon the warden who made the decision, nor unless at the hearing of such appeal a copy of the minute of such decision, certified under the hand of a warden or warden's clerk, is produced to such court.

Appeal how to be heard.
37 Vic. No. 13, s. 109.

~~159.~~ **163.** Every such appeal shall be in the nature of a rehearing of the whole matter, and shall be heard and determined by the said judge sitting as aforesaid, and no ground of appeal except those stated in the notice of appeal shall be entered upon unless the judge allows, either before or at the hearing, other grounds to be added upon such terms as to adjournment, costs, or otherwise as he may think fit.

Injunction, &c., and stay of proceedings may be had.
Ibid. s. 111.

~~160.~~ **164.** Whenever any such appeal has been brought or be about to be brought, the warden, from the decision of whose court the appeal is or is about to be brought, may on the applicaton of any of the parties interested in such appeal, make such order for an injunction or receiver or payment of money into the hands of the warden, to abide the event of the appeal, or for stay of proceedings or otherwise, and upon such terms as he may think proper; but unless such order, or an order to the same effect, is so made, no appeal shall operate as a stay of proceedings. The said warden may at any time discharge any such order made by him.

No costs on appeal under twenty pounds unless under special circumstances.
Ibid. s. 108.

~~161.~~ **165.** If, upon the hearing of such appeal, the subject matter of the dispute appears to the court before which the appeal is heard not to exceed in value twenty pounds, the appellant shall not, although he succeeds, be entitled to receive any costs of such appeal from the opposite party, unless the judge of such court is of opinion that the special circumstances of the case entitle the appellant to costs.

Mode of enforcing decision after appeal.
Ibid. s. 112.

~~162.~~ **166.** (1) If an appeal against the decision of any warden's court is dismissed, or if on appeal such decision is varied, such decision, or such decision as so varied (as the case may be), shall be deemed to be the decision of the warden's court and may be enforced as if it had been the original decision of such court.

(2) Provided that if a District Court on any such appeal orders that possession of any land, race, drain, dam, reservoir, or water, or of any gold or minerals, or of any share or interest therein, be delivered or restored to any party to the appeal, then it shall be lawful for any warden, and he is hereby required, to cause possession thereof to be delivered or restored to such party, and if necessary for that purpose to cause to be removed from any such land, race, **drain,** dam, reservoir, or water any other person, his servants, goods, and chattels; and all members of the police force and other peace officers shall assist him in doing so.

(3) Provided also that if—

(a) any decision of a warden's court, when so affirmed or varied, contains an award of debt, damages, and costs, or either of them, and the same has not been previously paid or satisfied; or

(b)

(b) any decision of a district court reversing the decision of the warden's court contains an award of debt, damages, and costs, or either of them, or an order for payment or repayment of money, and the same is not forthwith, or within the time limited for such payment in the adjudication on appeal, paid or satisfied; or

(c) if such District Court orders that any money received by any respondent under the decision appealed against be paid into court, and the same is not forthwith, or within the time limited as aforesaid, paid into court; or

(d) if such court decrees costs against any party to such appeal, and the same is not paid within the time so limited,

the registrar of such court (upon the application of the person entitled to receive the same, and without any summons or notice to the person required to pay the same) may forthwith issue execution for the amount thereof in the same manner as upon any judgment or order of the said court for payment of money.

Appeal to Supreme Court.
37 Vic. No. 13, s. 115.

~~163~~ **167.** (1) If the appellant or respondent in any appeal to a mining appeal court, in which the amount of the original claim or the value of the property involved exceeded fifty pounds, is dissatisfied with the determination or direction of the said court in point of law or upon the admission or rejection of any evidence, or if the appellant or respondent is dissatisfied with the determination and direction of the said court on any grounds, and the amount claimed or involved by the decision of such court is not less than five hundred pounds, such appellant or respondent may appeal from the said determination or direction to the Supreme Court:

Provided that the party so appealing shall, within such time and in such manner as may be prescribed by the rules, give notice of such appeal to the other party, or his attorney, and also give security (to be approved of by the registrar of the said mining appeal court) for costs of the appeal and the amount of the judgment, or in lieu of giving such security, deposit in the hands of such registrar the amount of the judgment, together with thirty pounds in addition to such amount, to answer the costs of the appeal if such appeal be dismissed.

(2) The Supreme Court may either order a new trial before such mining appeal court on such terms as it thinks fit, or may order judgment to be entered for either party as the case may be, and make such order with respect to the costs of the said appeal as such court may think proper. Such orders shall be final, and such appeal shall be in such manner and form, and subject to such regulations in all respects as the judges of the Supreme Court may by general rules in that behalf prescribe.

(3) Such appeal shall be transmitted by the appellant to the prothonotary, and be set down for argument in the Supreme Court in the same manner as special cases in actions at law in that court.

DIVISION 2.—TO SUPREME COURT.

~~164~~ **168.** (1) If any party to the proceedings in a warden's court is dissatisfied with the determination by the warden therein as being erroneous in point of law, he may, within the prescribed time, apply in writing to the said warden to state and sign a case, setting forth the facts and grounds of such determination for the opinion thereon of the Supreme Court. Case stated for opinion of Supreme Court. Justices Act, 1902, s. 101.

(2) The party so applying shall be called the appellant, and the other party to the proceedings shall be called the respondent.

~~165~~ **169.** Before such case is stated and delivered to the appellant, he shall lodge with the warden's clerk the prescribed fees, and the sum of twenty pounds, or such less sum as the warden may order, to abide the costs of the appeal, and shall give and provide security to the satisfaction of the warden for the due performance of any order which the Supreme Court may think fit to make. Security to be provided by appellant. *Ibid.* s. 102.

~~166~~ **170.** (1) If the warden is of opinion that the application is merely frivolous, he may then, but shall not otherwise, refuse to state a case. Warden may refuse to state case. *Ibid.* s. 103.

(2) Where the warden refuses to state a case he shall, on the request of the appellant, sign and deliver to him a certificate of such refusal. Certificate of such refusal.

~~167~~ **171.** (1) Where the warden refuses to state a case, the appellant may apply to the Supreme Court upon an affidavit of the facts for a rule calling upon the warden and the respondent to show cause why such case should not be stated. Supreme Court may direct case to be stated. *Ibid.* s. 104.

(2) The court may make absolute or discharge such rule with or without costs.

(3) Where such rule is made absolute, the warden, upon being served with a copy thereof, shall state a case accordingly, upon the appellant lodging the fees making the deposit and giving the security aforesaid.

~~168~~ **172.** The appellant shall, within seven days of receiving the case, serve notice in writing of such appeal, together with a copy of the case as stated and signed, on the respondent, and shall thereafter and within the said time transmit such case to the prothonotary of the Supreme Court. Appellant to give notice. *Ibid.* s. 105.

~~169~~ **173.** (1) The Supreme Court shall hear and determine the questions of law arising on such case; and shall— Powers of Supreme Court. *Ibid.* s. 106.

(a) reverse, affirm, or amend the determination in respect of which the case was stated; or

(b) remit the matter to the warden with the opinion of the Court thereon; or

(c) make such other order in relation to the matter as seems fit:

Provided

Provided that the court may cause the case to be sent back for amendment, and thereupon it shall be amended accordingly, and the order of the court shall be made after it has been so amended. Case may be sent back for amendment.

(2) The court may make such order as to costs as seems fit, provided that no warden who has stated and delivered a case in pursuance of this Act shall be liable to any costs in respect of such appeal. Costs.

(3) All such orders shall be final and conclusive on all parties. Decision to be final.

~~170.~~ **174.** (1) The authority and jurisdiction hereby vested in the Supreme Court may, subject to any rules and orders of the said court in relation thereto, be exercised by a judge of the said court sitting in chambers as well in vacation as in term. Powers of Court may be exercised by Judge in chambers. Justices Act, 1902, s. 107.

(2) The Supreme Court may make and alter rules and orders to regulate the practice and proceedings in reference to the stating of cases as herein provided. Rules of practice.

~~171.~~ **175.** (1) Any order of a warden affirmed or amended, and any order made by the Supreme Court on the determination of any such case, may be enforced in the same manner as an order of the warden who originally decided the matter. Order enforced as order of warden. *Ibid.* s. 108.

(2) No action or proceeding whatever shall be commenced or had against any warden for enforcing any such order by reason of any defect therein.

~~172.~~ **176.** (1) Any person who appeals under this Division against any determination of a warden from which he might appeal to a District Court, shall be taken to have abandoned such last-mentioned right of appeal. Persons appealing not to be allowed to appeal to District Court,

(2) Nothing herein shall in any way interfere with, curtail or limit the powers of any person to apply for a writ of prohibition against the determination of any warden. but nothing to prevent applications for prohibition.

PART IX.

General provisions.

Conditional purchases conversion.

173. Notwithstanding anything to the contrary contained in the Crown Lands Act of 1884, the Crown Lands Titles and Reservations Validation Act of 1886, the Conversion into Mining Conditional Purchases Validation Act of 1888, and any Regulations made thereunder, the right of any holder of a conditional purchase made under sections thirteen, twenty-one, or twenty-two of the Crown Lands Alienation Act of 1861 to convert such purchase into a conditional ~~purchase~~ Conversion into mineral conditional purchase.

purchase for mining purposes shall, from and after the commencement of this Act, absolutely cease and determine, and no application for such conversion shall be entertained unless lodged in the proper office prior ~~to such commencement.~~

Notices.

~~174.~~ **177.** All notices required by this Act to be served upon the owner or occupier of any private land, or land not Crown land, shall, except where otherwise in this Act provided, either be served personally on the owner or occupier or on his local agent, provided the said agent is registered as such as prescribed, or left at the usual place of abode of such owner or occupier. Service of notices. 57 Vic. No. 32, s. 15.

If in the case of a notice directed to be served on the owner such owner is absent from New South Wales, or he or his agent cannot after diligent inquiry be found, the notice may be left with the occupier, or if there be no such occupier may 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.

Documents and affidavits.

~~175.~~ **178.** (1) All documents used in any proceedings in any court under this Act or in relation to any such proceedings may be in writing or print or partly in writing and partly in print. May be in writing or print. 37 Vic. No. 13, s. 117.

(2) Any affidavit to be used in any warden's or mining appeal court, or before a warden, may be sworn before any judge of the Supreme Court or any commissioner for that Court for taking affidavits, or before the judge of any District Court or any warden or justice. Affidavits may be sworn before Judge, &c. *Ibid.* s. 118.

Contempt of court.

~~176.~~ **179.** If any person wilfully insults any warden sitting in the discharge of any duties imposed by this Act, or wilfully interrupts the proceedings of any warden's court, or being summoned or examined as a witness in any suit or proceeding in any such court refuses to be sworn or to answer any lawful question, or is guilty of wilful prevarication, the warden, if he thinks fit, may commit any such offender to prison for any time not exceeding forty-eight hours, or impose on any such offender a fine not exceeding five pounds for every such offence, and in default of immediate payment thereof, to commit the offender as aforesaid for any time not exceeding forty-eight hours unless the fine is sooner paid. Contempt and penalties therefor. *Ibid.* s. 119.

In either of the cases aforesaid a warrant in the form prescribed by the rules may be issued by such warden, or such court, and shall be good and valid in law without any other order, summons, or adjudication whatsoever, and the bailiff and gaoler to whom the same is addressed shall obey the same.

Interpleader

Interpleader.

~~177.~~ **180.** (1) If any claim is made to or in respect of any goods or chattels taken in execution under any process issued out of any mining appeal court or by a warden, or in respect of the proceeds or value thereof, by any person not being the party against whom such process has issued, the registrar of such court or such warden may, upon application of the officer charged with the execution of such process, as well before as after any action brought against such officer, issue a summons calling before the said court or such warden, as well the party issuing such process as the party making such claim. Proceedings to be taken. 37 Vic. No. 13, s. 120.

(2) Upon the issue of such summons any action which may have been brought in the Supreme Court or in any District Court in respect of such claim shall be stayed, and the court in which such action has been brought, or any judge thereof, on proof of the issue of such summons, and that the goods and chattels were so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action after the service upon him of the said summons. Action taken to be stayed. *Ibid.*

(3) Upon the return of the said summons, the mining appeal court or the warden issuing the process, as the case may be, shall adjudicate upon the said claim and make such order between the parties in respect thereof, and of the costs of the proceedings, as to it or him may seem fit, and such order may be enforced in like manner as any order made in any suit or proceedings before such court or such warden, as the case may be. Such adjudication and order shall be final. Procedure upon return of summons. *Ibid.*

Recovery of fees, &c.

~~178.~~ **181.** All fees, charges, and sums of money payable under this Act or the regulations may, where no other mode of recovery is provided, be recovered in a court of petty sessions or District Court. Recovery of fees, &c. *Ibid.* s. 116.

No certiorari.

~~179.~~ **182.** No proceedings under this Act shall be removed or removable by certiorari or otherwise into the Supreme Court. Certiorari prohibited. *Ibid.* s. 122.

PART X.

REGULATIONS AND RULES.

~~180.~~ **183.** The Governor may make regulations carrying into effect the provisions of this Act, and particularly— Purposes for which regulations may be made. cf. *Ibid.* ss. 59, 64, 66.

(i) prescribing the modes, times, and places of and for the issue of miners' rights and business licenses and defining the various classes of tenements which may be held under miner's right;

(ii)

(ii) prescribing the area and form of land which may be occupied under a miner's right or business license and the dimensions and form of the land to be demised by any lease; the manner in which applicants for the same shall mark out the land applied for; the requirements to be complied with by such persons; the manner of dealing with cases when two or more applications are made for the same tenement or for a lease of the same land or the right to divert, or collect, or use water for mining for gold or other minerals;

(iii) determining the dimensions, boundaries, form, and position of any claim, or class of claims, and the subsequent adjustment of the same where necessary, when such determination shall take effect, and the number, extent, and classes of claims which any one person, or any two or more persons in conjunction, may take possession of under miners' rights;

(iv) regulating the cutting, construction, use, and maintenance of races, dams, and reservoirs upon Crown lands in cases where leases have not been granted by the Governor;

(v) prescribing the manner in which and with what incident rights and obligations, any tenement, or any water taken or diverted by virtue of a miner's right, shall be taken possession of, held, occupied, used, worked, or assigned;

(vi) determining the order of priority among the holders of miners' rights entitled to the use of any water, how such priority is to be regulated, and under what conditions and circumstances;

(vii) prescribing the mode of registration of any tenement occupied, or easement enjoyed under a miner's right, or any share or interest therein, or encumbrance thereon;

(viii) providing for the registration of the assignment of any such tenement easement, share, interest, or encumbrance, or of the discharge of any such encumbrance;

(ix) prescribing the mode of registration of any such share or interest in the case of the death, bankruptcy, or lunacy of the owners thereof, or of the sale of any such share or interest under the decree, judgment or order of any court, or the decision of a warden or mining appeal court;

(x) prescribing the mode of registration of amalgamated claims and of orders for suspension of work;

(xi) fixing the fees to be charged on any such registration as aforesaid;

(xii) prescribing the time and mode of taking possession of forfeited or abandoned tenements, of registering such tenements, and the labour conditions to be performed by the persons taking possession of the same;

(xiii) enforcing and regulating the drainage of tenements;

(xiv) regulating the mode in which the rights and privileges of the owners of tenements, and easements under a miner's right, may be exercised or enjoyed, and limiting, qualifying, or restricting the exercise and enjoyment of such rights and privileges, and generally for the protection of such owners in the exercise and enjoyment of the rights, privileges, and interests conferred by this Act;

(xv) prescribing the circumstances and conditions under which any tenement, or any share, right, or interest therein may be deemed to be or be declared abandoned, and the penalty, including forfeiture, for failure to comply with the conditions to be performed by the holder of any tenement;

(xvi) for the prevention of nuisances in and about residences or places of business held under a miner's right or business license, and for cleansing and keeping clean the same;

(xvii) prescribing how land applied for shall be described in the application;

(xviii) prescribing the forms of applications, notices, and other documents to be used, the fees to be paid in respect of any application and for survey;

(xix) prescribing the forms of leases and authorities to be granted under this Act, and the covenants, conditions, reservations, and provisions to be inserted therein, and the mode of registering the same; the conditions upon which they may be issued and the privileges to be enjoyed under them; the fees to be paid on issue of leases and upon registration thereof;

(xx) prescribing the time within which a lessee shall execute the lease;

(xxi) prescribing the conditions upon which the amalgamation of adjoining leases may be authorised;

(xxii) prescribing the conditions under which suspension of any condition imposed for the expenditure of money may be granted;

(xxiii) for converting any authority issued under any Act repealed by this Act into a lease or leases, and for enforcing the covenants and conditions thereof; 48 Vic. No. 10, s. 1.

(xxiv) for converting any lease granted under any Act repealed by this Act into a lease under this Act;

(xxv) for prescribing what shall entitle a prospector to concessions as a reward, claim, or lease, and the terms and conditions upon which any such reward, claim, or lease may be granted;

(xxvi) for preventing the accumulation of and for the removal to some convenient place of sludge, tailings, and other refuse matter, oozing or flowing from or connected with any Crown land or private land held or occupied under this Act, and worked by means of puddling, quartz-crushing, or other machines, and of waste water, and for the making of such channels as

may

may be necessary for any of the purposes aforesaid, and for otherwise regulating such oozing, flowing, and running to waste;

(xxvii) for the protection from injury, destruction, and unlawful removal of such machines as last aforesaid, and of pegs, posts, fences and notices, and of any plant or appliances used for or in connection with mining under any claim or lease, and for the protection from obstruction of channels, drains, creeks, and rivers used for mining purposes under such claim or lease;

(xxviii) for the construction and keeping in repair of suitable bridges or other crossings over races, channels, or drains, used for mining purposes, and for making proper approaches to such bridges or crossings, and for determining the width of such bridges, crossings, and approaches;

(xxix) for making and keeping in repair, and for regulating the width and formation of private ways and passages over claims or races, or any Crown lands or private lands used for mining purposes, or for or in connection with mining, and for regulating and imposing conditions on the right to change the direction of any such way or passage, and for the protection of the same from injury or obstruction.

(xxx) for securing the baling of water from mines so as to prevent injury from such water to any mining workings;

(xxxi) for preventing the defiling or wasting of water used under this Act for domestic purposes, and for determining whether any and what water-hole, spring, or other depository of water shall be reserved for the domestic use of the holders of miner's rights, business licenses, or leases or authorities under this Act, and the mode of such reservation;

(xxxii) prescribing the procedure to be followed in any inquiry by a warden under this Act;

(xxxiii) regulating the working of machinery on dredges, and making provision for the safety of life and property in connection with dredging operations;

(xxxiv) for enforcing any regulation made under this Act by penalties not exceeding fifty pounds in any case; and

(xxxv) generally for carrying into effect the provisions of this Act.

Until such regulations have been made, the regulations in force at the commencement of this Act for the said purposes shall continue in force and shall apply to any claim, lease, or holding under this Act.

~~181.~~ **184.** The District Court Judges, or any three of them, may, subject to this Act, make such general rules as they may think fit— Power to make rules of practice. 37 Vic. No. 13, s. 113.

(a) regulating the practice and procedure of mining appeal courts and warden's courts under this Act;

(b) for the execution of the process of such courts, and in relation to any of the provisions of this Act which relate to such courts;

(c)

(c) the fees to be allowed to barristers and attorneys practising in the said courts;

(d) the expenses to be paid to witnesses in the said courts;

(e) prescribing the forms for matters or proceedings in the said courts;

(f) for keeping all books, entries, and accounts to be kept by the registrar or clerk of any such court.

All such rules shall, from and after the expiration of the time fixed therein for the commencement thereof, and after the same have been published in the Gazette, be of the same force and effect as if the same had been herein enacted; and in any case not expressly provided for herein or by the said rules, the general rules in force for the time being, made under the District Courts Act, 1901, may be adopted and applied so far as practicable by wardens and District Court judges exercising jurisdiction under this Act.

~~182.~~ **185.** All regulations and all general rules made under this Act shall be laid before both Houses of Parliament within fourteen days after the publication of the same in the Gazette if Parliament is then sitting, and if not, then within fourteen days after the commencement of the next session of Parliament.

Rules and regulations to be laid before Parliament.

37 Vic. No. 13, s. 114.

PART XI.

Penalties.

~~183.~~ **186.** Any person who—

(a) mines or employs any other person to mine in, or cuts or constructs any race, drain, dam, or reservoir through or upon, or cuts or removes any live or dead timber, or any earth from any Crown lands without lawful authority shall be liable for each such offence to a penalty not exceeding ten pounds.

Unauthorised mining, &c.

Ibid. s. 123.

~~184.~~ **187.** Any person who on any Crown land—

(a) mines for gold or any other mineral; or

(b) occupies such land for mining purposes; or

(c) employs any person for any of the above purposes; or

(d) occupies such land for the purposes of any business or for residence,—

shall, unless he proves that he was authorised by or under this or any other Act to so mine on or occupy such land, or where he so employs any person that the said person was so authorised, be liable to a penalty not exceeding ten pounds.

Unauthorised occupation of Crown land.

Ibid. s. 124.

~~185.~~ **188.** Any person who infringes any regulation for the infringement whereof no penalty is prescribed by the regulations, shall be liable for each such offence to a penalty not exceeding ten pounds.

Breach of regulation.

Ibid. s. 126.

~~186.~~ **189.** Any person duly served with any summons issued out of a mining appeal court or any warden's court, or by a warden under this Act, requiring such person to appear as a witness in such court, or on any proceeding for inquiry before such warden, and to whom at the same time payment or tender of his expenses has been made according to the scale to be fixed by the rules, and who refuses or neglects without sufficient cause to appear according to the tenor of such summons, shall be liable to a penalty not exceeding ten pounds, but no conviction for such penalty shall exempt such person from any action for disobeying such summons.

Witness neglecting to appear. 37 Vic. No. 13, s. 130.

~~187.~~ **190.** Any person against whom any order, not being an order for the payment of money, has been made by any mining appeal court or warden's court, who refuses or neglects to obey the same, shall, where no penalty is herein specified, for such refusal or neglect, be liable to a penalty not exceeding fifty pounds.

Disobedience of order.

~~188.~~ **191.** Any person who—

Assault on warden and other offences. *Ibid.* s. 129.

(a) assaults, obstructs, or resists any warden or any person duly authorised by any mining appeal court or warden in lawfully entering upon any claim or land, or in performing any other act authorised hereby, or any bailiff or other officer, or any clerk or assistant of such bailiff or officer, or any inspector or other person, in the performance of his duty, or in the exercise of his powers under this Act; or

(b) after being removed by any warden under the provisions of this Act from any claim or other place, forcibly or clandestinely retakes or retains, or endeavours to retake or retain, possession thereof, or of any portion thereof, or of any share therein; or

(c) after any decision of a mining appeal court, or any decision of a warden's court not reversed on appeal, that any person is entitled to use for mining purposes, or to divert any water, resists such person or his agents in such use or diversion; or

(d) upon or in consequence of the decision of any such court against him, assaults or threatens to assault any person in whose favour such decision has been made

shall be liable to a penalty not exceeding fifty pounds.

~~189.~~ **192.** Any person who wilfully and corruptly exacts, takes, or accepts any fee, sum, or reward whatsoever, other than and except such fees or sums as are lawfully appointed or allowed for or on account of anything done under the authority of this Act or the regulations, shall be liable to a penalty not exceeding fifty pounds.

Wrongful exaction of moneys. *Ibid.* s. 128.

~~190.~~ **193.** Any person who forges any miner's right, or any lease, license, or any authority issued or purporting to be issued under this Act, or fraudulently uses, utters, or exhibits any such forged miner's right, lease, license, or authority, knowing the same to be forged, shall

Forgery of documents. *Ibid.* s. 125.

shall be guilty of a misdemeanour, and shall on conviction thereof be sentenced to imprisonment either with or without hard labour at the discretion of the court for any period not exceeding twelve months.

~~191.~~ **194.** Any owner or occupier of any private land as defined in Part IV, or of any land which is not Crown land as defined in Part V of this Act, or any other person who— Wrongful obstruction on private lands. 57 Vic. No. 32, s. 10.

(a) obstructs any holder of a lease, or authority to enter, granted under the provisions of the said Parts respectively in doing any act which he is by this Act authorised to do, on, in, or under such land; or

(b) interferes with, removes, destroys, or defaces any boundary mark authorised by this Act to be placed on any land,

shall be liable for a first offence to a penalty not exceeding ten pounds, and for a second or any subsequent offence to a penalty not exceeding fifty pounds.

~~192.~~ **195.** Any person who without lawful authority commences to mine on, in, or under any private land as defined in Part IV of this Act, shall be liable to a penalty not exceeding ten pounds, and any gold, minerals, or metals obtained by such unauthorised mining may be forfeited by the court before which he is convicted of such offence. Wrongful mining on private lands.

~~193.~~ **196.** Any person who knowingly inserts any false quantity or value in any return directed by this Act to be made or furnished shall be liable to a penalty not exceeding fifty pounds. False quantity or value.

~~194.~~ **197.** (1) All penalties imposed under this Act or the regulations may be recovered in a summary way before any warden who is also a justice, in accordance with the provisions of the Acts in force for the time being regulating proceedings on summary convictions before justices. Recovery before any warden. 57 Vic. No. 13, s. 116.

(2) Notwithstanding the recovery of any penalty under this Act, any person may enforce any civil remedy which he may have by reason of the act or default in respect of which the penalty may have been recovered. Civil remedy remains though penalty recovered. *Ibid.* s. 121.

SCHEDULES.

SCHEDULES.

SCHEDULE ONE.

Year and Number.	Title or Short Title.	Extent of repeal.
37 Vic. No. 13 ...	Mining Act, 1874	The unrepealed portion.
43 Vic. No. 28 ...	An Act to amend the Act 37 Victoria No. 13...	The whole.
46 Vic. No. 7 ...	An Act to further amend the Act 37 Victoria No. 13.	The whole.
48 Vic. No. 10 ...	Mining Act Further Amendment Act of 1884...	The whole.
48 Vic. No. 17 ...	Mining Lease Validating Act of 1884	The whole.
53 Vic. No. 20 ...	Mining Act of 1889	The whole.
57 Vic. No. 32 ..	Mining on Private Lands Act of 1894	The whole.
60 Vic. No. 7 ...	Mining Act Amendment Act of 1896	The whole.
60 Vic. No. 40 ...	Mining Laws Amendment Act of 1896 ...	The whole.
No. 44, 1899 ...	Gold and Mineral Dredging Act, 1899... ...	The whole.
No. 102, 1902 ...	Gold and Mineral Dredging (Amending) Act, 1902.	The whole.
No. 10, 1902 ..	Mining Laws Amendment Act, 1901	The whole.
No. 101, 1902 ...	Mining on Private Lands (Amendment) Act, 1902.	The whole.

SCHEDULE TWO.

Sec. 9.

NEW SOUTH WALES.

No.

[*Insert here sum paid for the miner's right.*]

Mining district and division or place in which issued.

(*Date*)

MINER'S RIGHT.

Issued to , of , under the provisions of the Mining Act, 1906, to be in force until

SCHEDULE THREE.

Sec. 10.

NEW SOUTH WALES.

No.

[*Insert sum paid for the business license.*]

District and division or place in which issued.

(*Date.*)

[*Insert here whether for six or twelve months.*]

BUSINESS LICENSE.

Occupation
Residence

Issued to , of , under the provisions of the Mining Act of 1906, to be in force until the day of

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, 9 October, 1906.

RICHD. A. ARNOLD,
Clerk of the Legislative Assembly.

New South Wales.

ANNO SEXTO

EDWARDI VII REGIS.

* *

Act No. , 1906.

An Act to consolidate and amend the law relating to mining; to give further facilities for the development of mining; to amend the Crown Lands Act of 1884 and Acts amending the same; and for other purposes.

BE it enacted by the King'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:—

PART I.

PRELIMINARY.

Short title.

1. This Act shall come into operation on a date to be fixed by proclamation by the Governor, and may be cited as the "Mining Act, 1906," and is divided into Parts, as follows:— Short title and division of Act.

PART I.—PRELIMINARY—*ss.* 1–8.

Mining.

PART II.—MINER'S RIGHTS AND BUSINESS LICENSES—*ss.* 9–22.

1. *Issue and transfer—ss.* 9–13.
2. *Occupation—ss.* 14–18.
3. *Registration—s.* 19.
4. *Miscellaneous provisions—ss.* 20–22.

PART III.—LEASES OF CROWN LANDS—*ss.* 23–44.

1. *What leases may be granted—ss.* 23, 24.
2. *Applications—ss.* 25–34.
3. *Conditions—ss.* 35–39.
4. *Special leases—s.* 40.
5. *Minerals not included in lease—ss.* 41–43.
6. *Ownership of tailings and ore—s.* 44.

PART IV.—MINING ON PRIVATE LANDS—*ss.* 45–82.

1. *Preliminary—ss.* 45–48.
2. *Authority to enter—ss.* 49–56.
3. *Leases—ss.* 57–67.
4. *Mining by owner—ss.* 68–70.
5. *Resumption—ss.* 71–80.
6. *General provisions—ss.* 81, 82.

PART V.—DREDGING LEASES—*ss.* 83–101.

PART VI.—TENEMENTS AND LEASES GENERALLY—*ss.* 102–127.

PART VII.—WARDENS' COURTS—*ss.* 128–156.

1. *Jurisdiction—ss.* 128–134.
2. *Hearing and procedure—ss.* 135–140.
3. *Orders—ss.* 141–146.
4. *Execution—ss.* 147–151.
5. *Assessment of compensation—ss.* 152–156.

PART VIII.—APPEALS—*ss.* 157–172.

1. *To District Court—ss.* 157–163.
2. *To Supreme Court—ss.* 164–172.

PART IX.—GENERAL PROVISIONS—*ss.* 173–179.

PART X.—REGULATIONS AND RULES—*ss.* 180–182.

PART XI.—PENALTIES—*ss.* 183–194.

Repeal.

2. (1) The Acts mentioned in the First Schedule are to the extent therein expressed repealed. Repeal.

(2) Persons appointed under any Act hereby repealed, and holding office at the commencement of this Act, shall be deemed to have been appointed hereunder. Persons appointed under repealed Acts.

(3)

(3) Rules, regulations, proclamations, and notifications made under any Act hereby repealed, and being in force at the commencement of this Act, shall be deemed to have been made hereunder, and any references therein to any enactments hereby repealed shall be construed as references to the corresponding provisions of this Act. Rules, &c., under repealed Acts.

(4) Applications pending at the commencement of this Act shall, except as hereinafter provided, be dealt with in accordance with the provisions of the Acts hereby repealed and the regulations thereunder. Applications pending.

(5) Miner's rights, mineral licenses, business licenses, leases, and authorities issued under any Act hereby repealed and in force at the commencement of this Act shall, except as hereinafter in this Act provided, continue in force for the respective periods named therein and confer the same rights and privileges, and entail the same obligations and penalties, as if this Act had not passed; and every right, title, and interest acquired under and by virtue thereof shall remain and continue valid subject to the limitations contained therein. Miners' rights, leases, &c.

(6) Every gold-field, mining district, and division existing at the commencement of this Act shall continue as then constituted, until dealt with by proclamation under this Act. Existing gold-fields, &c.

Interpretation.

3. In this Act, unless the context or subject-matter otherwise indicates,— Interpretation.

37 Vic. No. 13 s. 2.
43 Vic. No. 28, s. 1.
48 Vic. No. 10, s. 5.
57 Vic. No. 32, s. 2.

"Adjoining" as applicable to claims or leases means that the lands comprised in such claims or leases have a common boundary, or are only separated by a road or stream.

"Business" means profession, trade, calling, or occupation, except mining.

"Claim" means a portion of Crown land lawfully taken possession of for the purpose of mining, or any number of such portions lawfully amalgamated by the holders. But does not include land comprised in a mining lease or lease for mining purposes.

"Crown lands," except for the purpose of Part V, means lands vested in His Majesty, and includes—

(a) lands under lease from the Crown except as hereinafter provided;

(b) lands reserved, dedicated, appropriated, or resumed for public purposes, whether vested in His Majesty or in any person as constructing authority or trustee for public purposes;

(c) lands under any navigable waters, or under any harbour, estuary, bay, river, or creek vested in His Majesty, whether navigable or not; and

(d) lands which the Governor may declare by proclamation to be Crown lands; but

but does not include—

(e) lands alienated or in process of alienation from the Crown, or lawfully contracted to be granted by the Crown; or

(f) lands subject to a conditional lease, conditional purchase lease, or lease under this Act;

(g) conditional purchases or homestead selections.

"Crown Lands Acts" means Crown Lands Act of 1884, the Western Lands Act of 1901, and the Acts amending the same.

"Earth" means rock, stone, quartz, clay, sand, soil, or mineral.

"Gold" means gold, or earth containing gold, or having gold mixed in the substance thereof, or set apart for the purpose of extracting gold therefrom.

"Gold-field" means lands heretofore or hereafter proclaimed a gold-field.

"Justice" means justice of the peace, and includes a stipendiary or police magistrate.

"Mine" includes any place, pit, shaft, drive, level, or other excavation, drift, gutter, lead, vein, lode, or reef, whereon, wherein, or whereby any operation for or in connection with mining purposes is carried on.

"Mineral field" means lands constituted a mineral field under this Act.

"Minerals" means silver, copper, tin, iron, antimony, cinnabar, galena, nickel, cobalt, platinum, bismuth, manganese, marble, kaolin, mineral pigments, mercury, lead, wolfram, coal, shale, scheelite, chromite, opal, turquoise, diamond, ruby, sapphire, emerald, zircon, apatite and other phosphates, serpentine, molybdenite, alunite and alum, barytes, asbestos, gypsum, mineral oils, monazite, and any other substance which may from time to time be declared a "mineral" within the meaning of this Act by proclamation of the Governor published in the Gazette.

"Mining Appeal Court" means District Court sitting as a court of appeal under this Act.

"Mining purpose" includes cutting and constructing any tunnel, water-race, drain, dam or reservoir, or constructing any railway or tramway, or laying any pipes for the purpose of mining, erecting buildings and machinery to be used for any process whatsoever in connection with the extracting of gold or minerals, pumping or raising water to or from land mined or worked or intended to be worked for the extraction of gold or minerals therefrom, treatment of tailings on abandoned land, and any other work which the Governor may by proclamation declare to be a mining purpose.

"Mining surveyor" means licensed surveyor specially appointed to carry out surveys under this Act. "Minister"

"Minister" means Secretary for Mines.
"Notification" means notification in the Gazette.
"Prescribed" means prescribed by this Act or the regulations.
"Proclamation" means proclamation in the Gazette.
"Prospecting board" means Board appointed to administer the Prospecting Vote.
"Race" includes any artificial channel, flume, aqueduct, tunnel, culvert, or pipe for the conveyance of water or detritus.
"River" includes a frontage creek, or any stream of water, whether perennial or intermittent, flowing in a natural channel not included in a deed of grant or embraced in an area in process of alienation.
"Schedule" means schedule to this Act.
"Small coal" means coal which will pass through a screen the bars of which are not more than three-quarters of an inch apart.
"Tenement" means land lawfully occupied under a miner's right or business license.
"The regulations" means the regulations made under this Act or any Act hereby repealed.
"The State" means the State of New South Wales.
"The warden" includes any warden appointed under this Act.
"To mine" means to disturb, remove, cart, carry, wash, sift, smelt, refine, crush, or otherwise deal with any earth by any mode or method for the purpose of obtaining gold or minerals therefrom.
"To prospect" means to search for gold or any mineral.
"Town or village" means city, town, or village, or site for a city, town, or village, and suburban lands to be attached thereto, declared, proclaimed, reserved, or set apart under the Crown Lands Acts; and includes any township site for a mining settlement which the Minister may notify in the Gazette.

Department of Mines, school, and museum of mines.

4. (1) The Governor may establish and maintain in connection with the Department of Mines, schools of mines and museums for the purpose of providing instruction by means of classes, lectures, or otherwise in geology, mineralogy, and chemistry, in their scientific and practical application to mining pursuits, and may also establish and maintain offices for the assaying of mineral ores. He may appoint such professors and readers in any of the said sciences, and such assayers, curators, keepers, and servants as may, in his opinion, be requisite to give effect to the provisions of this section.

Schools of mines and museums may be established.
37 Vic. No. 13, s. 8.

(2) Such schools, museums, and offices, and the staffs thereof, shall be under the control and management of the Minister.

Control and management.

(3) Provided that if the Governor thinks it desirable that any school or museum should be managed in connection with the University of Sydney, and so proclaims, the same shall, so long as such connection continues, be under the control and management of the Senate of the University, and such Senate shall in that case appoint such professors and readers and other persons as aforesaid as may be required. Control by University.

(4) This section shall apply to the school of mines, museum, and assay offices established at the commencement of this Act, as if they had been established under this section. School, &c., already established.

Gold and mineral fields, mining districts, and divisions.

5. (1) The Governor, by proclamation, on the recommendation of the Minister, may constitute any lands as a gold-field or mineral field, and may fix and alter the name and boundaries thereof. Gold-fields may be proclaimed. 37 Vic. No. 13, s. 10.

(2) In like manner, mining districts and divisions of mining districts may be constituted, and their names and boundaries fixed and altered. Mining districts. *Ibid.* s. 9.

(3) The proclamation of any gold-field, mineral field, mining district, or division, whether made under the Mining Act, 1874, or this Act, may be varied or cancelled in like manner by a subsequent proclamation. Cancellation. *Ibid.* ss. 9, 10.

Officers.

6. (1) The Governor may appoint so many wardens, registrars, mining surveyors, mining engineers, mining appraisers, clerks, bailiffs, assistants, and other officers as he may think necessary for the administration of this Act. Governor may appoint officers. *Ibid.* s. 12.

(2) The persons so appointed shall have the powers and perform the duties prescribed by the regulations in addition to any powers and duties specified in this Act. Powers and duties.

(3) Every warden so appointed shall be a warden for the whole State. Warden.

7. The Minister shall not, nor shall any warden, registrar, surveyor, engineer, or other officer charged with any judicial or official duties under this Act during his tenure of office, hold either directly or indirectly any beneficial interest in any mining tenement or lease or other mining venture in the State, and if, while holding such interest, he acts in his office he shall be guilty of a misdemeanour. Minister or officer not to be interested in any mining venture. *Ibid.*

Royal prerogative.

8. Nothing in this Act, except so far as is herein expressly enacted, shall abridge or control the prerogative rights and powers of His Majesty in respect to gold mines and silver mines. Saving of Royal prerogative. *Ibid.* s. 5.

PART

PART II.

MINERS' RIGHTS AND BUSINESS LICENSES.

DIVISION 1.—ISSUE AND TRANSFER.

Issue of miner's rights.

9. A miner's right shall be issued on the application of any person.

37 Vic. No. 13, s. 14. cf. 60 Vic. No. 7, s. 2.

Any such right shall be in the form of Schedule Two and shall be in force for any term not less than six months and not exceeding twenty years from the date of issue.

There shall, on the issue of any such right, be paid a fee calculated at the rate of five shillings for every year or two shillings and sixpence for every half-year of the term of the right.

Issue of business licenses.

10. A business license shall be issued to any person applying for the same.

37 Vic. No. 13, s. 21.

Duration.

Ibid.

Such license shall be in the form of the Schedule three, and shall be in force for any term not less than six months and not exceeding twenty years from the date of issue.

There shall, on the issue of any such license, be paid a fee calculated at the rate of one pound for every year or ten shillings for every half-year of the term of the license.

Renewal of miner's rights and business licenses.

Ibid. s. 24.

11. (1) The holder of any miner's right or business license shall be entitled on application and payment of the prescribed fee to a new miner's right or business license, dating from the expiration of the previous right or license.

(2) The application may be made—

(a) within one month before the date of such expiration, in which case the fee payable shall be the same as in the case of the issue of a miner's right or business license in the first instance; or

(b) within seven days after the date of such expiration on production of the expired miner's right or business license and on payment of the fee aforesaid; or

(c) after seven days and within one month after the date of such expiration on production of the expired right or license, but in that case a sum equal to fifty per centum of the amount of the fee aforesaid shall be added thereto.

Transfer.

12. A miner's right or business license may be transferred by endorsement thereon under the hand of the transferror and by registration in the prescribed manner.

Duplicate rights and licenses.

13. On proof to the satisfaction of the warden that any miner's right or business license has been accidentally lost or destroyed, a duplicate right or license may be issued on payment of a fee of one shilling.

DIVISION

Division 2.—Occupation.

Exempted Crown lands.

14. (1) The following classes of Crown lands are (save where otherwise in this Act provided) exempted from occupation under any miner's right or business license, namely,— Certain exemptions. 37 Vic. No. 13, s. 34. 43 Vic. No. 28, s. 1. 48 Vic. No. 10, s. 5. 57 Vic. No. 32, s. 5.

(a) lands reserved, dedicated, appropriated, or resumed for public purposes (except land reserved for a temporary common or for mining purposes), whether vested in His Majesty or in any person as constructing authority or trustee for public purposes.

(b) lands held from the Crown under residential lease, settlement lease, or special lease for other than pastoral or grazing purposes;

(c) lands held under lease for water supply in virtue of any special Act or otherwise; and

(d) lands granted or vested in trust by the Crown for purposes of a racecourse, cricket-ground, recreation reserve, park, or permanent common, or for any other public purpose;

(e) lands the subject of a pending application for a lease under this Act:

Provided that where any such lease or grant contains a reservation of all or any rights or right conferred by any Act relating to mining, the land comprised in such lease or grant shall to the extent so reserved be open to occupation as aforesaid.

(2) Crown lands lawfully and bona fide used as a yard, garden, cultivated field, or orchard, or upon which any house, outhouse, shed, or other building, actually used and occupied, or any artificial dam or reservoir, is lawfully standing are exempted from occupation, as aforesaid, except upon payment of compensation to be assessed by the warden. Crown lands used as orchard, &c. 37 Vic. No. 13, s. 25.

The warden shall fix at what depth from the surface the workings on such land shall be carried on, and on failure to observe his order the person in occupation of the land shall be deemed to be a trespasser. Warden to fix distance. cf. 57 Vic. No. 32, s. 6.

(3) The Governor, by notification, on the recommendation of the Minister, may exempt from occupation as aforesaid any Crown lands, and may revoke or amend any such notification. 37 Vic. No. 13, s. 26.

Rights conferred by a miner's right.

15. (1) Except as against His Majesty a holder of a miner's right, or any number of persons being each the holder of a miner's right, may, subject to the regulations and to the exemptions in this Part— Rights of occupation in respect of Crown lands. *Ibid.* s. 15. 60 Vic. No. 7, s. 3.

(a) take possession of and exclusively occupy as a claim any Crown land for mining purposes, and mine therein; (b)

(b) have and possess any gold or other minerals found in such land whilst so occupied;

(c) erect any building, structure, or machinery upon land so occupied, and remove the same at any time during such occupation;

(d) exercise any rights of the nature of easements in connection with land so occupied;

(e) occupy Crown lands, and construct and use thereon races, dams, reservoirs, roads and tramways for mining purposes;

(f) take or divert water from any lake, pool, spring, or stream, situate in or flowing through Crown lands not exempted from occupation under a miner's right or business license, and use such water for mining or domestic purposes;

(g) procure and remove for mining, smelting, building, or other purposes for his or their personal use only, any bark, or live or dead timber, or any stone or gravel from any Crown lands not

(i) exempted from occupation under a miner's right or business license; or

(ii) within the operation of any proclamation or notification prohibiting the cutting or removal of such timber, bark, stone, or gravel:

Provided that this right to procure and remove bark or timber may be exercised only by persons (not being corporations) actually holding miners' rights;

(h) while following the occupation of a miner or prospector, graze upon Crown lands not exempted as aforesaid such horses or other animals as may be necessary for his or their subsistence and for the carrying on of prospecting or mining:

(2) Provided that for the purposes of taking possession of more than one tenement of any specific class, the person so taking possession must hold an additional miner's right for each additional tenement after the first of the same class. The different classes may be prescribed by the regulations.

Residence area.

cf. 37 Vic. No. 13, s. 15.

16. (1) Except as against His Majesty, a holder of a miner's right may, subject to the exemptions in this Part, take possession of and occupy Crown lands (hereinafter referred to as a "residence area") for the purpose of residing thereon.

(2) The area to be so occupied by any one such holder shall not exceed one quarter of an acre within the boundaries of a town or village, or two acres outside such boundaries: Provided that the occupation shall extend only to the surface and the prescribed depth below the surface, and that no area greater than one quarter of an acre shall be so occupied unless with the approval of the warden.

(3) Every such area shall be taken possession of in the prescribed manner. No person shall hold more than one such area at the same time.

(4)

(4) The proviso to section forty-six of the Crown Lands Act of 1884 is amended by substituting the words, "the areas to be sold shall not exceed one quarter of an acre within the boundaries of a town or village, as defined in the Mining Act, 1906, or two acres outside such boundaries," for the words "the areas to be sold shall not exceed one quarter of an acre for town lands, and one acre for suburban or other lands."

Authority to prospect.

17. (1) A holder of a miner's right may apply to the Minister for an authority to prospect on any Crown lands, whether exempted from occupation under this Part or not, and the Minister may, on the recommendation of the warden or the prospecting board, grant such authority. The area to be held under such authority, the term, rent, and the conditions as to labour and other matters shall be fixed by the Minister. Failure to comply with any conditions so fixed shall render the authority liable to be cancelled by the Minister.

(2) Such authority shall entitle the holder to take possession of the area on payment in advance of the rent fixed as aforesaid, and survey fee if necessary, and to carry on prospecting operations during the term of such authority.

Report of discovery.

(3) On discovery of gold or other minerals, the holder of the authority shall report, within fourteen days from the date of such discovery, to the warden of the district, who shall thereupon report to the Minister on the nature of the discovery. The Minister may thereupon call upon the holder of the authority to apply for a lease of the land or such part thereof as he may deem advisable or to continue prospecting operations.

Rights conferred by business license.

Holder may occupy land and erect buildings.
37 Vic. No. 13, s. 22.

18. A holder of a business license may, except as against His Majesty, and subject to the regulations—

(a) for the purpose of carrying on any business, except mining, occupy the prescribed area of Crown land within a goldfield or mineral field (hereinafter referred to as a "business area") not exceeding a quarter of an acre within the boundaries of a town or village, or one acre outside such boundaries: Provided that such occupation shall extend only to the surface and to the prescribed depth below the surface;

(b) have and possess the land so occupied;

(c) for the purpose aforesaid erect any building or structure upon the land so occupied, and remove the same at any time within one month or within such further time, not exceeding three months, as the warden may order and direct, after ceasing to occupy such land.

Only one area to be occupied in same town or village.

But no such holder may occupy at the same time more than one such area or carry on mining operations upon or in any such area.

DIVISION 3.—REGISTRATION.

Holder to register. 37 Vic. No. 13, s. 16.

19. (1) Where any person takes possession under this Part of a tenement (other than a prospecting area or a block claim, or a residence area not exceeding one quarter of an acre outside the boundaries of any town or village or such other tenement as may be prescribed), he shall, within twenty-eight days thereafter register the same in the prescribed manner in the office of the mining registrar of the division wherein the same is situated.

Transmission.

(2) Where any interest in a tenement required to be registered is transferred to, vests in (absolutely or as security only), or devolves upon any person, such person shall within twenty-eight days thereafter register the same in the prescribed manner in the office aforesaid.

Right to be produced. *Ibid.* s. 16.

(3) On every registration of a tenement the person requiring registration shall produce his miner's right or business license to the registering officer.

Neglect to register. *Ibid.* s. 124.

(4) Any person neglecting to register a claim or a share in a claim within the period aforesaid shall, if he works or mines in such claim, incur the penalty hereinafter in this Act prescribed for unauthorised mining on Crown lands.

Proviso.

(5) Provided that if it is shown to the satisfaction of the warden that the person whose duty is to register was or would be prevented by sickness or any other like disability from effecting such registration, the warden may extend the said period to a further period not exceeding twenty-eight days from the expiration of the first-mentioned period.

DIVISION 4.—MISCELLANEOUS PROVISIONS.

Division of interest in claim. *Ibid.* s. 17.

20. (1) The owner of any registered claim may, subject to the regulations, divide his interest therein into shares and allot any of such shares to any person.

Amalgamation. *Ibid.* s. 17.

(2) The owners of any two or more adjoining claims may, with the consent of the warden, and subject to such conditions as he may impose, and in the prescribed manner, amalgamate the same before or after registration. The amalgamated claim so formed shall be registered, and may be divided into shares or dealt with as an ordinary claim.

Assignment. *Ibid.* s. 15.

(3) The owner of any registered claim or share in a claim may, subject to the regulations, assign, encumber, or create any interest in the same.

Rights held on behalf of owners. cf. *Ibid.* ss. 17, 20.

21. The holding of miners' rights in respect of a claim shall be deemed a holding on behalf of the owners of the claim or of any shares in the same or of any interests therein, and it shall not be necessary for separate miners' rights to be held by the owners of such shares or interests.

22.

22. If the owner of a share in a registered claim fails to represent his share by labour or to contribute his proportion of the working expenses, the warden on the application of one or more of the remaining shareholders may declare such share to be abandoned, and may order the remaining shareholders to be put in possession of such share; and such declaration and order shall be carried out. Default to contribute. cf. 37 Vic. No. 13. s. 70.

PART III.

Leases of Crown lands.

Division I.—What leases may be granted.

23. (1) The Governor, in the name and on behalf of His Majesty, may lease Crown lands and any street, road, or highway, as follows:— Governor may grant leases. 37 Vic. No. 13, s. 28.

(a) He may grant mining leases, of the surface and the subjacent soil, or of the soil below a certain depth from the surface only, which may be—

(i) gold-mining leases, authorising mining on the land for gold and for purposes connected with gold-mining; *Ibid.* s. 33

(ii) mineral leases, authorising mining on the land for the minerals therein specified, and for purposes connected with such mining, *Ibid.* s 56.

(b) He may grant leases (to be called leases for mining purposes) of the surface only, and to a limited depth below the surface. Such leases authorise the use of the land for mining purposes, but do not authorise mining on the land or the removal of any gold or minerals won therefrom. Act No. 10, 1902, s. 4.

(2) Provided that—

(a) A claim lawfully occupied under a miner's right shall not be leased unless the holder of the right consents to the leasing, in which case the claim shall be deemed to be abandoned, and the title thereto shall be absolutely extinguished, whether the application for the lease is granted or refused. 37 Vic. No. 13, s. 34 (2).

(b) Crown land occupied as a business or residence area, or for a dam, reservoir, race, or for machinery, shall only be leased from such depth below the surface as the Minister deems sufficient to secure the surface and any buildings, works, and improvements thereon from damage occasioned by mining operations.

(c) The surface of Crown land held under lease from the Crown for purposes other than pastoral purposes shall only be leased subject to the payment of compensation, to be assessed by the warden. *Ibid.* s. (1).

(d)

(d) Auriferous alluvial Crown land shall not be leased unless in the opinion of the Minister— 37 Vic. No. 13, s. 34 (3).

(i) the land has been worked and abandoned; or

(ii) the land is suitable to be leased by reason of the difficulties and cost attending the construction of mine works upon or of mining such land;

(iii) the land may be leased for mining purposes only.

(e) The Governor, by notification, on the recommendation of the Minister, may exempt any Crown lands from the leasing provisions of this Act, and may revoke or amend any such notification.

Conversion of existing leases and authorities into leases under this Act.

24. (1) A gold-mining lease issued under the Acts hereby repealed, may, on the application of the holder thereof, be converted into a gold-mining lease under this Act for the remainder of the term of such first-mentioned lease, or for such further period not exceeding five years as the Governor thinks fit.

(2) A mineral lease issued under the said Acts may, on application as aforesaid, be converted into a mineral lease under this Act for the remainder of the term of such first-mentioned lease.

(3) An application for a lease under any Act hereby repealed may, at the request of the applicant, be converted into an application for a lease under this Act.

(4) An authority to mine granted under section twenty-eight of the Mining Act, 1874, may, on application of the holder thereof, be converted into a gold-mining lease or a mineral lease as the case may be under this Act, subject to such conditions as the Governor thinks fit.

(5) A registered claim under the said Acts or this Act may, on the application of the owner thereof, be converted into a gold-mining lease or mineral lease as the case may be under this Act. *Ibid.* s. 38.

Division 2.—Applications.

Form of application.

Applications to be subject to conditions.

25. Applications for leases shall be made in the prescribed form and manner, and shall be subject to the prescribed conditions as to marking out the land applied for, taking possession thereof, and otherwise, and shall be accompanied by payment of one year's rent in advance, at the rate prescribed. *Ibid.* s. 56 (3). 46 Vic. No. 7, s. 1.

Priority of application.

First applicant to have priority.

26. (1) If more than one application is made for a lease of the same land, the application of the person who has first taken possession shall be first considered and dealt with, and so on, according to priority of possession. 37 Vic. No. 13, ss. 49, 56 (4).

For

For the purposes of this subsection, "possession" means the act of erecting a datum post, provided that the mode of taking possession prescribed by the regulations is forthwith complied with : Possession.

Provided that if, upon inquiry being held as provided in section thirty-four, the warden is of opinion that possession has been taken simultaneously by two or more applicants for the same area, the question of priority may be decided by ballot.

(2) If any application for a lease is refused or abandoned, any other application for a lease of the same land may be considered and dealt with, regard being had, where necessary, to the rule of priority aforesaid. Other applications.

Grant or refusal of application.

27. (1) Leases under this Part shall be granted by the Governor in the name and on behalf of His Majesty. The Governor may in his discretion grant a lease, notwithstanding that the applicant has not in every respect complied with the regulations, or notwithstanding that the description of the land in such application does not strictly correspond with the land as marked out by the applicant. Irregular application may be granted. 48 Vic. No. 17, s. 1.

(2) The Governor may, subject to the provisions of this Act, grant an application for a lease in such modified or amended form as he may think fit. Lease granted with modifications. 37 Vic. No. 13, s. 47.

(3) The Governor may refuse any application for a lease, and such refusal shall take effect from the time of publication of such refusal in the Gazette. Refusal to take effect on publication.

Occupation by and rights of applicant.

28. When any application for a mining lease has been duly made, the applicant may, by virtue of his application, until such lease is granted or refused— Applicant may mine upon land. *Ibid.* ss. 39, 56 (3).

(a) occupy the land applied for, and mine upon and in the same : Provided that nothing herein shall affect the right, title, or interest of any other person in or to the said land, or in or to any gold or mineral obtained or that may be obtained therefrom ;

(b) proceed in the warden's court for trespass against any person entering upon, occupying, or interfering with such land, not having a lawful title thereto originating prior to such application. Applicant may sue for trespass. *Ibid.*, s. 40.

(c) proceed in the warden's court against any person claiming to have an interest in such land under a miner's right or mineral or business license, for the purpose of having such claim declared invalid. Rights of applicant.

(d) apply to the warden for an injunction under this Act against any person claiming to be legally or equitably interested in the land. Injunction. cf. *Ibid.* s. 58.

29.

Mining.

29. (1) In any such proceedings for trespass the complainant may claim damages for such trespass, and for the recovery of any gold or mineral taken by the defendant from such land, or the value thereof. But he shall not be entitled to succeed unless he proves to the satisfaction of the court that he has complied with the regulations relating to the lodging of the application and payment of rent, so far as such regulations were at the time of the trespass capable of being complied with.

May claim damages. 37 Vic. No. 13, s. 40.

Proof of compliance with regulations. *Ibid.*

(2) If the warden decides in favour of the complainant he shall, unless the application for the lease has been already determined, order the defendant to lodge with the warden, any sum awarded as damages, and any gold or mineral he may adjudge the complainant entitled to, or the value thereof.

Warden may order money, gold, &c., to be lodged. *Ibid*

(3) If such application is granted, the warden shall order the said sum and the said gold or mineral, or the value thereof, to be delivered or paid to the complainant; but if such application is refused, he shall order delivery or payment to the person entitled thereto.

Payment out of money, &c., lodged. *Ibid.* s. 40.

Pendency of application.

30. (1) An application for any lease under this Part shall be pending from the taking possession of the land for that purpose in the prescribed manner, or from the lodging of the application for conversion into a lease by any person entitled to apply for such conversion.

When application pending. 46 Vic. No. 7, s. 1.

(2) During the pendency of any such application, the land shall be exempt from sale or lease by the Crown, or from occupation as a tenement.

Land exempt from sale or lease or occupation.

(3) Any such application shall subsist for the benefit of the applicant or, in the event of his death or bankruptcy, of his legal representatives, who shall be deemed to hold the land under promise of a lease until default occurs in making or prosecuting the application, or the Governor refuses the same or voids the lease before issue, and notice thereof is published in the Gazette.

Application for benefit of applicant and his representatives.

Survey of land.

31. If at the time of lodging an application for a lease, the land applied for has not been surveyed by a mining surveyor, or the marks of a previous survey have been removed or obliterated, the applicant shall deliver to the warden a written application for a survey of such land, accompanied by the prescribed survey fee.

Application for survey. 37 Vic. No. 13, s. 41.

Objections.

32. (1) Any person may object to the issue of any lease by lodging with the warden and serving upon the applicant within the prescribed time, a written notice of his objection. Such

Lodging and service of objections. *Ibid.* s. 42.

Such notice may be served by post by registered letter addressed to the last known address of the applicant, or if the applicant's address cannot be ascertained by posting the same on the datum post on the land applied to be leased.

Deposit of security. *37 Vic. No. 13, s. 43.*

(2) The person so objecting shall, at the time of lodging notice of his objection, deposit with the warden or the warden's clerk the prescribed sum as security for any costs which may be awarded against him by the warden in any inquiry in relation to such objection.

If no objection lodged. *Ibid. s. 44.*

33. (1) Where no notice of objection has been so lodged, the warden shall forward the application, together with a report thereon, to the Minister.

If objection lodged. *Ibid. ss. 44, 57.*

(2) When notice of objection has been so lodged, the warden shall appoint a place and time for the hearing of the application and objection, and shall give not less than three clear days' notice thereof to the applicant and the objector respectively. Where an objection has been lodged by several persons jointly, notice to one of them shall be sufficient.

Warden to inquire. *Ibid.*

34. (1) On the day so appointed, the warden shall inquire into the truth of the particulars stated by the applicant and objector respectively, and may, if necessary, adjourn the inquiry for any time not exceeding one month, or to any other place, on such conditions as to costs as he may think fit. Notice of such adjournment shall be given to the applicant and to each objector.

Inquiry may be adjourned. *Ibid. s. 45.*

Report to be transmitted. *Ibid. s. 47.*

(2) At the conclusion of such inquiry the warden shall announce in open court the purport of his report to the Minister, and shall thereafter transmit to the Minister the application, objections, and evidence, the report, plan, and map, if any, of the mining surveyor, and his report as aforesaid, recommending the granting or refusal of the lease applied for.

Copy of report. *Ibid. s. 48.*

(3) Any person shall, upon application and payment of the prescribed fee, be furnished with a copy of the mining surveyor's report and plan of any land so applied for, and of any evidence taken as aforesaid, and of the warden's recommendation.

Further inquiry.

(4) The Minister may at any time, whether any notice of objection has been lodged or not, authorise and direct the warden to hold an inquiry or a further inquiry with reference to any matter concerning such application, and thereupon the warden shall appoint the time and place and give the notices and proceed with such inquiry and transmit the evidence and documents relating thereto, and his report, in the manner hereinbefore provided.

Inquiry to be in open court. *Ibid. s. 44.*

(5) Every inquiry under this section shall be conducted in open court, and the warden shall have the powers of a wardens' court.

DIVISION 3—CONDITIONS.

Area and dimensions of leases.

35. (1) Subject to this section the Minister shall fix the respective areas of leases under this Part. Areas of leases.

(2) The area of a gold-mining lease shall not exceed twenty-five acres, and the land leased shall be of the form and dimensions prescribed. Area of gold-mining lease. 37 Vic. No. 13, s. 36. Dimensions and form.

(3) The area of a mineral lease shall not exceed six hundred and forty acres for coal or shale, nor eighty acres for other minerals, excepting opal. Area of mineral leases. *Ibid.* s. 56 (1).

(4) The area and dimensions of leases for mining purposes only shall be such as the Minister may, subject to the regulations, determine. Leases for mining purposes.

(5) This section shall not apply to special leases granted under the provisions hereinafter in this Act contained. Special leases.

Rent, royalty, and labour conditions.

36. (1) The annual rent for a gold-mining lease granted under this Part shall be five shillings per acre or portion of an acre, and for a lease so granted to mine for any mineral other than coal or shale five shillings per acre or portion of an acre. Gold leases. Rent. *Ibid.* ss. 37, 56. cf. 48 Vic. No. 10, s. 4.

(2) The annual rent for a lease so granted to mine for coal or shale shall be one shilling per acre or portion of an acre, and a royalty shall be paid of sixpence per ton on all shale or large coal and threepence per ton on all small coal won from the land demised. Coal leases. Rent and royalty.

(3) The rent, terms, and conditions of leases so granted for mining purposes only, shall, subject to this Act, be fixed by the Minister. For mining purposes. Rent. Act No. 10, 1902, s. 4.

(4) All such rent shall be payable annually in advance at the times and in the manner prescribed, the first payment in all cases being made at the time of making application for the lease. Rent payable in advance.

(5) The royalty shall be payable at the times and in the manner prescribed: Provided that if the royalty payable in respect of any lease during any one year exceeds the rent paid for such year, the amount paid as rent may be deducted from the amount of the royalty; but if the royalty in any one year amounts to less than the rent paid for such year the lessee shall not for such year be required to pay royalty: Provided also that the Minister may at his discretion remit the amount of royalty payable on coal used for raising steam for motive power at a colliery. Royalty, how payable. 48 Vic. No. 10, s. 4

(6) Rent and royalty shall be payable by the lessee to the Crown, and may be recovered as a Crown debt.

37. Every mining lease shall contain such labour conditions as the Minister may, subject to the regulations, determine. Labour conditions.

Duration and renewal of leases.

Term of lease. cf. 37 Vic. No. 13, ss. 36, 54, 56 (2), (9).

38. (1) A lease granted under this Part may be for any term not exceeding twenty years.

Renewal. cf. *Ibid.* ss. 36, 54, 56 (2), (9).

(2) Any such lease may, with the consent of the Governor, be renewed for a further term not exceeding twenty years: Provided that application for such renewal shall be made during the last five years of the term of the lease.

Terms of renewal.

(3) Such renewal shall be at the rent and royalty, and subject to such other covenants and conditions as are prescribed by the Acts and regulations in force at the time of such renewal, and to such further covenants and conditions as the Governor may think fit to impose.

Leases under repealed Acts. *Ibid.* s. 56 (2), (9).

39. A lease granted under any Act hereby repealed may be renewed for the term, on the conditions, with the covenants, and under the circumstances stated and prescribed in and by such Act or any Act amending the same hereby repealed and the regulations thereunder, save as regards payment of any fine upon such renewal: Provided that the rent for a gold-mining lease so renewed shall be five shillings per acre.

DIVISION 4.—SPECIAL LEASES.

Governor may grant special leases. cf. *Ibid.* s. 53. 48 Vic. No. 10, s. 7.

40. (1) The Governor may, upon the recommendation of the Minister, grant a special mining lease of Crown land for mining other than coal or shale mining if the Minister is satisfied that by reason of the difficulties and cost attending the construction of mine works upon or of mining such land it is necessary that such lease be granted.

Inquiry and report.

(2) The Minister may, on application being made for such lease, direct the prospecting board or the warden to inquire and report—

(a) whether by reason of the difficulties and cost attending the construction of mine works upon and of mining such land, it is necessary that an area in excess of the limit prescribed should be leased; and

(b) upon the rent and royalty to be paid; and

(c) upon such other matters as the Minister may direct.

Conditions of leases.

(3) The Governor may fix the form of and area to be comprised in any such lease, the rent and royalty to be paid, and the labour and other conditions, reservations, and exceptions to be contained in the same, but in all other respects such special lease and the application for the same shall be subject to the provisions of this Act in respect of ordinary leases under this Part.

DIVISION

DIVISION 5.—MINERALS NOT INCLUDED IN LEASE.

Mining for other minerals under mineral lease. 37 Vic. No. 13, s. 61.

41. (1) The Minister may, upon application in writing by the holder of any mineral lease under this Part or under any Act hereby repealed, grant authority upon such terms as he may think fit permitting such holder to mine on the land comprised in his lease for any mineral other than that in respect of which such lease has been granted, and may vary or revoke any such authority.

Forfeiture for unauthorised mining.

(2) If the holder of any mineral lease mines for any mineral other than that in respect of which his lease or any such authority as aforesaid was granted, his lease shall be liable to forfeiture.

Mining for gold under mineral lease. *Ibid.* s. 62.

42. (1) Where gold is associated or combined with any mineral in any land comprised in any such mineral lease, and

(a) the holder of such lease desires to mine for such gold, or

(b) the nature of the mining operations under his lease is such as to lead to the removal of such gold,

the Minister may, if the value of the gold in the ore does not exceed fifty per centum of the value of the ore, upon application in writing by such holder, grant authority, upon such terms as he thinks fit, permitting such holder to mine for gold on the said land.

But if the value of the gold exceeds fifty per centum of the value of the ore, the lessee must apply for and obtain a gold-mining lease; and in that case a gold-mining lease may be granted for the area so held under the mineral lease, although the area exceeds twenty-five acres, and the dimensions are not in accordance with those prescribed. Application for such gold-mining lease shall be made in manner prescribed.

Forfeiture for unauthorised mining.

(2) If any such gold is so mined for or removed by such holder without obtaining such authority or lease, the mineral lease aforesaid shall be liable to forfeiture.

Mining for other minerals under gold-mining lease.

43. (1) The Minister may, upon application in writing by the holder of any gold-mining lease under this Part or under any Act hereby repealed, grant authority upon such terms as he may think fit permitting such holder to mine on the land comprised in such lease for any mineral other than gold.

Forfeiture for unauthorised mining.

(2) If any such mineral is so mined for or removed by him without obtaining such authority the lease shall be liable to forfeiture.

DIVISION 6.—OWNERSHIP OF TAILINGS AND ORE.

Tailings on abandoned Crown land. cf. *Ibid.* s. 56 (10).

44. (1) Any lessee under this Part, whose occupancy is by any means determined, may, within thirty days after such determination, apply to the Minister for leave to enter the land and treat or remove any

any tailings, ore, or stone left thereon by him. The Minister may grant such leave upon payment of a sum to be fixed by him, and may fix a time within which such treatment or removal is to be completed.

Any application for a lease of any land upon which such tailings, ore, or stone have been so left, and any occupation of such land under a miner's right, shall be subject to the right of the Minister to grant such leave, and to the right of the person to whom such leave is granted, to act in accordance therewith; and any lease granted may contain a reservation of such tailings, ore, or stone, and of the right of any person to whom leave may be or has been granted to treat or remove the same.

(2) The form and mode of application for, and the conditions of such leave, shall be as prescribed. Form.

(3) If such leave is not applied for within the said thirty days, or such treatment or removal is not completed within the time fixed, such tailings, ore, or stone shall become the absolute property of the Crown, and shall form part of the land. Forfeiture of tailings, &c.

PART IV.

MINING ON PRIVATE LANDS.

DIVISION 1.—PRELIMINARY.

Interpretation.

45. In this Part and in any regulations relating to matters thereunder, unless the context or subject-matter otherwise indicates,— Interpretation. 57 Vic. No. 32, s. 2.

"Authority to enter" means authority to enter upon private lands granted under this Part.

"Lease" means lease under this Part.

"Occupier" means person in occupation of any private land, whether under any special Act or otherwise, or a tenant.

"Owner" includes trustee, guardian in infancy, committee or guardian in lunacy, mortgagee in possession, and conditional lessee.

"Private lands" means lands other than Crown lands but does not include any lands situate within the boundaries of a town or village unless the Governor by proclamation (which he is hereby authorised to make, alter and revoke) declares that they are private lands for the purposes of this Part.

Lands open to mining under this Part.

46. (1) All private lands shall be open to mining under this Part for gold and for any ore of which gold is the chief or most profitable metallic product, and for silver when such mineral is reserved to the Crown. For gold and other metals. *Ibid.* s. 3. Act No. 101, 1902, s. 3.

(2)

(2) If the Crown grant of any private land contains, or if not yet issued will when issued contain, a reservation to the Crown of all minerals, the said land shall also be open to mining under this Part for all minerals. For other minerals.

(3) Provided that, except as hereinafter in this Act provided, no application for an authority to enter shall be granted under this Part in respect of any land in or upon which any person other than the applicant is at the time of the making of the application entitled under this Part to search or prospect for gold or any mineral or in or upon which any person other than the applicant is lawfully carrying on mining operations, whether under this Act or the Acts hereby repealed. Exempted land.

For the purposes of this proviso, a person shall, as to an area not exceeding eighty acres, be deemed to be lawfully carrying on mining operations in respect of any substance notwithstanding that such substance was not a mineral at the time when such mining operations were authorised if such substance has subsequently come within the definition of a mineral under this Act or any Act hereby repealed.

47. No authority to enter and no lease under this Part shall, except with the consent of the owner, extend to— Not to extend to within certain distance of garden, or improved land without consent. 57 Vic. No. 32, s. 11.

(a) within fifty yards on the surface of any land bona fide in use as a garden or orchard; or

(b) within two hundred yards on the surface of the principal residence of the owner or occupier; or

(c) any land whereon is any substantial building, bridge, dam, reservoir, well, or other valuable improvement other than an improvement effected for mining purposes and not bona fide used for any other purpose. The Minister shall determine whether any such improvement is substantial or valuable, and may define an area adjoining such improvement within which no mining operations shall be carried on.

48. No authority to enter and no lease under this Part shall, except with the consent of the owner and occupier, extend to the surface of any land enclosed and under cultivation when the application for the authority was made; and without such consent no operations under such authority shall be conducted, and no such lease shall be granted below the surface of any such land, except with the authority of the Minister, and at such depth as the Minister may, after full inquiry, deem to be sufficient to prevent damage to the surface: Provided that Not to extend to surface of cultivated land without consent. *Ibid.* s. 12. 60 Vic. No. 40, s. 5.

(a) a lease under this Part may be granted of such portion of the surface of such land as the Minister may deem necessary for giving access to the gold or minerals therein; but before any such lease is granted the warden shall assess the amount to be paid as compensation for any loss of or damage to any crop or improvements on such land; and

(b) the Minister may decide, in case of dispute, whether any land is or is not under cultivation.

DIVISION 2.—AUTHORITY TO ENTER.

Interim permit.

Interim permit to enter.

49. (1) The warden may at the request of any applicant for an authority to enter grant an interim permit in the prescribed form authorising such applicant to enter the land the subject of the application for the purpose of defining the boundaries of the area applied for.

(2) Such interim permit shall be for any period not exceeding fourteen days, and shall not entitle the holder thereof to and he shall not carry on any prospecting operations on the said land.

(3) If such holder carries on such operations in contravention of this section, he shall be liable to a penalty not exceeding pounds.

Application for and grant of authority.

Warden may grant authority. cf. 57 Vic. No. 32, s. 8.

50. (1) The warden, on application made as prescribed, may, subject to any stipulations or conditions which he may think necessary to impose, grant to any holder of a miner's right one or more authority or authorities in the prescribed form to enter, subject to the provisions of this Act, on any private lands.

Discretion to refuse. cf. *Ibid.* s. 8.

(2) The warden may, whether any inquiry has been held as hereinafter in this Act provided or not, refuse any application for authority to enter—

(a) if the land is the subject of an application or holding under this Part or under any Act hereby repealed, or is exempted from lease under this Part; or

(b) if, after the prescribed notice to measure the land to be included in the authority has been given by the warden to the applicant, such applicant fails to attend for the purpose of pointing out the location of the area applied for.

Time to be stated. 57 Vic. No. 32, s. 8.

(3) The time during which such authority is required shall be stated in such application, and the applicant shall lodge therewith a deposit of five shillings, to be applied towards payment of the rent or compensation for damage. If any such application is withdrawn or abandoned, before the rent and compensation have been paid in full, the deposit may, if the warden so orders, be forfeited to the Crown.

Deposit to be lodged.

Rent to be fixed. cf. *Ibid.* ss. 16, 17, 41. 60 Vic. No. 40, s. 2 (*b*).

51. (1) Before issuing such authority in respect of any land the warden shall hold an inquiry, of which due notice shall be given to the owner and occupier, if any, or their respective local agents (if registered as such as prescribed), and fix the annual rent per acre of the land. Such rent shall be paid by the applicant to the owner of the land quarterly in advance from the date of the authority. If the authority is to continue for less than three months one quarter's rent shall be so payable.

Compensation.

(2) The warden shall also assess compensation to be paid by the holder of the authority.

(3)

(3) The first payment of the rent and the payment of compensation shall be made within fourteen days of the issue of the authority, and before entry upon the land in pursuance of the authority.

Effect of non-payment of rent or compensation.

(4) If entry is made before such payment, or if any rent afterwards due, or any compensation afterwards assessed and ordered to be paid, is left unpaid for one month, the warden may cancel the authority.

Duration and extension of authority.

60 Vic. No. 40, s. 2 (*b*).

52. (1) An authority to enter may be granted for any period not exceeding twelve months, but the period of any authority may, while it is in force, be from time to time extended by the warden on such terms as he may think fit for any further period, if it appears to him that further time is requisite to enable the holder to complete the prospecting of the area defined therein; but so that the period for which the authority was granted, together with the periods of all extensions, do not exceed twenty-four months.

Duration to be stated.

(2) Such authority and every extension as aforesaid shall be issued in duplicate, and shall state the time during which it is to continue.

Service of duplicate.

57 Vic. No. 32, s. 8.

(3) The holder of such authority shall, within the period and as directed by the warden, serve the duplicate thereof, and of every extension granted by the warden, upon the owner or occupier, or upon one of the owners if more than one, of the land defined therein.

Extent of area.

60 Vic. No. 40, s. 2 (*a*).

53. (1) Every such authority shall contain a definition of the area and boundaries of the land in respect of which it is granted.

(2) The said area may be such as appears to the warden suitable, having regard to the class of deposit to be searched for, and shall be defined by him as prescribed, but, except as hereinafter provided, shall not exceed the maximum area in this Part prescribed for a lease to mine that class of deposit:

Extended area.

Provided that the Minister on the recommendation of the prospecting board may direct the warden to grant, and he shall thereupon grant, an authority to enter an area exceeding the area prescribed aforesaid, if it is proved at the inquiry held by the warden that the difficulties and cost of conducting prospecting operations render it necessary that authority to enter a greater area be granted.

When prospecting lawful.

Ibid. s. 2 (*d*).

54. (1) Upon lawful entry as aforesaid, the holder of an authority to enter may construct such works, and conduct such operations on or under the said lands as may be required for prospecting the same.

Effect of breach of conditions.

Ibid. s. 2 (*e*).

(2) If such holder

(a) does not commence such prospecting operations within fourteen days from the date of such authority; or

(b) after commencing such operations suspends the same without the written permission of the warden; or

(c)

(c) commences such operations before making the payments aforesaid; or

(d) fails to observe any of the stipulations or conditions imposed by the warden under this Act;

the warden may cancel such person's authority to enter.

(3) The warden may also at the request of the holder cancel his authority to enter.

Labour required for prospecting. 60 Vic. No. 40, s. 2 (*h*).

(4) The holder of the authority may employ as many men as he may think fit in such prospecting operations, but he shall not, unless with the consent of the warden, employ less than the minimum number prescribed. If he makes default the warden may cancel the authority.

Residences. *Ibid.* s. 2 (*j*).

55. The holder of an authority to enter may, upon obtaining the permission of the warden, erect temporary residences upon the area defined therein for the use of the persons employed in the prospecting operations, but so that the area to be occupied in connection with such residences shall be in such positions as the warden may consider proper.

Holder continuing in occupation after cancellation of authority, *Ibid.* s. 2 (*e*).

56. If the holder of an authority to enter, after being served with notice of the cancellation under this Act of such authority, continues in occupation of any area therein defined, or any part thereof, he shall be deemed a trespasser.

Division 3.—Leases.

Mining leases.

Power to define boundaries. cf. 57 Vic. No. 32, ss. 9, 28. 60 Vic. No. 40, s. 2 (*f*).

57. (1) Any holder of an authority to enter who desires to obtain a lease of the land defined in such authority, or any part thereof, and—

(a) has served the duplicate of such authority upon the owner or occupier of the said land; and

(b) has paid rent and compensation as hereinbefore prescribed,

How application is to be made. cf. 57 Vic. No. 32, s. 13.

may, either personally or by agent, in the prescribed manner, define upon the said land the boundaries of the portion desired to be leased, and may apply to the Minister for a lease thereof. Such application shall be for a lease to mine for gold or any minerals, and must be made during the currency of the authority.

Power to modify application or direct inquiry. *Ibid.* s. 22.

(2) The Minister may modify any such application, or may direct a warden to hold an inquiry on oath in open court with reference to any matter affecting the same or the authority to enter.

Failure to make prescribed payments. *Ibid.* s. 18.

(3) If the applicant fails to make any payment prescribed in respect of his application, the Minister may after the prescribed time declare such application to be void, and all or any part of the moneys paid by the applicant to be forfeited to the Crown; and thereupon the said moneys or such part thereof shall be paid into the Treasury and carried to the Consolidated Revenue Fund.

(4)

(4) If the application is one which can be granted under this Part, the Minister, on receipt of such application, accompanied by the prescribed sum by way of rent, may cause a notice of intention to grant a lease to be advertised in the Gazette, and in a newspaper circulating in the locality in which the land is situated. If the use of the whole or any part of the surface of such land is required the notice shall so state, and if a part only is required the notice shall define such part. Notice of intention to grant lease. cf. 57 Vic. No. 32, s. 13.

(5) The applicant having made all the prescribed payments may carry on mining operations on the land applied for until the application has been granted or refused; but except as hereinafter provided no further assessment of compensation shall be necessary. Mining pending application. 60 Vic. No. 40, s. 2 (*i*).

(6) Unless the lease applied for will cover the whole of a measured portion, the land shall be surveyed by a mining surveyor before the issue of the lease. Where survey necessary. *Ibid.* s. 27.

58. (1) Leases under this Part shall be granted by the Governor in the name and on behalf of His Majesty. It shall not be obligatory on the Governor to grant any such lease, notwithstanding that the applicant may have complied with the provisions of this Act and the regulations; but if an application for such lease is refused, the applicant shall be informed of the reasons for such refusal. Power to refuse, &c. *Ibid.* s. 22.

(2) A lease may, at the request in writing of the applicant, be granted to any person named by him. Lease to nominee.

(3) A lease may be granted notwithstanding that the person applying for the same has not complied in every respect with the regulations.

59. Every lease under this Part shall— Particulars to be stated in lease. 57 Vic. No. 32, s. 11.

(a) state whether it is to have effect on and below the surface of the land leased or on a limited portion of the surface and below the whole area, or below the surface only.

(b) state for what mineral (if any) the lessee may mine, and that the lessee shall not mine for any other mineral without the authority of the Minister.

(c) contain such labour conditions as may be determined by the Minister in accordance with the regulations. Labour conditions. 60 Vic. No. 40, s. 6.

Leases for mining purposes.

60. (1) Subject to the assessment by the warden of compensation, the Governor may grant to the holder of any lease under this Act, or to any person carrying on mining operations who has made application to the Minister in that behalf in the prescribed manner, a lease— Lease for race, tramway, &c. 57 Vic. No. 32, ss. 37, 38.

(a) of the surface and to a limited depth below the surface of any private land irrespective of any reservation of minerals

to

to the Crown, for the purpose only of cutting mining-races thereon, and conveying water or detritus through or over the same to or from any mine of such holder or person; or

(b) of any area of private land 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.

(2) A permit may be granted by the warden in the prescribed manner, entitling any such holder or person to enter upon any such land for the purpose of marking out the portion to be included in his said application. Interim permit to enter.

(3) A lease granted under this section shall be subject to the regulations and to such conditions as the Governor may think fit to impose, and shall be subject to a rent payable to the owner of the land so leased, to be assessed by the warden at the same time as the assessment of compensation. Lease may be subject to special provisions. 57 Vic. No. 32, ss. 37, 38.

(4) This section shall not apply to land the subject of any registered lease or agreement under this Part by the owner of private land with the holder of a miner's right to mine on the land. Saving.

Leases of surface.

61. During the progress of mining operations any lessee having a lease under this Part empowering him to mine below the surface of any land may, subject to the regulations, apply to the Minister for a lease of any portion of the surface thereof, for the purposes of mining or any purpose in connection therewith. Such application shall be dealt with as provided in respect of other applications for leases under this Part. Lessee may apply for lease of additional surface. *Ibid.* s. 20.

Term, rent, and area of lease.

62. (1) The term for which a lease may be granted under this Part shall not exceed twenty years; but, subject to such conditions as the Governor may approve, any such lease may be renewed for a further period not exceeding twenty years. Term of lease. *Ibid.* s. 26.

(2) The Governor may fix the labour and other conditions, reservations, and exceptions, to be contained in the said lease. Labour conditions. 60 Vic. No. 40, s. 6.

63. The area of a lease under this Part to mine for gold shall not exceed twenty-five acres, and to mine for any mineral except coal and shale shall not exceed eighty acres, and to mine for coal or shale shall not exceed six hundred and forty acres, and for any other purpose shall be of such area as may be prescribed: Extent of lease. cf. 57 Vic. No. 32, s. 26.

Provided that upon the recommendation of the Minister, the Governor may grant a lease exceeding the area above prescribed; but the Minister shall not make such recommendation unless the prospecting board certifies that, by reason of the difficulties and cost attending Larger area may be granted under certain circumstances. 60 Vic. No. 40, s. 8.

attending the construction of mine works upon or of mining such land, it is necessary that such greater area, to be specified by the board, should be included in the lease.

Rents payable. 60 Vic. No. 40, s. 8.

64. (1) The yearly rental reserved to the owner of the land in respect of any such lease shall be assessed by the warden. Such rental shall be based upon the surface value of the land for other than mining purposes, and shall be payable only in respect of the portion of the surface leased.

Compensation.

(2) The warden shall also assess compensation to be paid under this Act in addition to the rental, consideration being given to the compensation already paid in respect of the authority to enter.

Saving of agreements. 57 Vic. No. 32, s. 17.

(3) Provided that nothing in this section shall prevent the owner or occupier, making an agreement with the lessee as to the amount of rent and compensation.

Rights and duties of lessees.

Powers as to surface. *Ibid.* s. 11.

65. (1) Every lease granted under this Part, so far as it extends to the surface of any land, and does not expressly provide to the contrary, shall confer the right of—

(a) cutting and constructing thereon races, drains, dams, reservoirs, or tramways, and of erecting thereon buildings and machinery in connection with the mining or other special purposes authorised by such lease but not otherwise;

(b) fencing the land, and erecting temporary residences thereon for the use of persons employed in connection with mining operations thereon; and

(c) generally doing such acts or things in respect thereof as are necessary for efficiently mining the land.

Powers to mine under the surface. *Ibid.*

(2) Every such lease, so far as it is expressed to have effect below but not on the surface of any land, and does not expressly provide to the contrary, shall confer the right of doing all such acts or things below the surface as are necessary for efficiently mining the said land, but not in such a way as to injure the surface or anything thereon.

Lessee not to use water artificially conserved, nor depasture sheep, nor keep dog, nor remove rock, &c. *Ibid.*

66. No such lease shall give the lessee the right—

(a) to use water artificially conserved by the owner or occupier of such land; or

(b) to fell trees, strip bark, or cut timber on such land, except with the approval of the warden, and subject to payment to the owner of compensation to be assessed as prescribed; or,

(c) unless fenced, to depasture horses thereon, or to keep or permit to be kept on such land any dog, unless chained up or kept under proper control; or,

(d) except in connection with such mining or other operations aforesaid, to remove earth or rock therefrom, without the consent of the owner and occupier.

67.

67. (1) No such lease shall, unless the said land has been securely fenced, and kept securely fenced at the expense of the lessee, give to the said lessee the right— Lessee not to impound nor molest sheep, &c., unless leasehold fenced securely. 57 Vic. No. 32, s. 14.

(a) to impound any sheep, cattle, horses, or other animals belonging to or in the custody or control of the owner or occupier of the said land; or

(b) to disturb or molest them in any way whatsoever, or prevent them from depasturing on the said land; or

(c) to sue in trespass or otherwise in respect thereof.

(2) Every lessee under this Part whose lease extends to the surface of any land shall, if required in writing so to do by the owner or occupier, cause without delay a secure fence to be erected and kept in good repair around any shafts, machinery, or other works in connection with the mining under such lease not already so protected. Lessee shall fence shafts, &c., when required. *Ibid.* s. 20.

Division 4.—Mining by owner.

68. (1) If the owner, or the occupier with the consent of the owner, of any private land not applied for or occupied for mining operations under this Part desires to conduct mining operations by way of prospecting on such land, or to obtain a lease of such land under this Part, he may make application in that behalf in the prescribed manner, and thereupon an authority to enter or lease may be granted to him. Such authority or lease shall confer the same rights respectively as an authority to enter or a lease under this Part would confer in the case of other applicants. Prospecting by owner or occupier. *Ibid.*, s. 25.

(2) An owner or occupier applying as aforesaid shall have no preferential rights over other applicants, and shall be subject to payment of royalty and all other provisions of this Part binding upon other applicants and holders of authorities to enter or leases thereunder as the case may be, with the exception of assessment and payment of rent and compensation, and of those provisions which relate to such notices, and other matters as the owner or occupier would in that character have been entitled to in the case of an application made by some other person. Owner not to have preferential right.

69. (1) The owner of any private land not applied for or occupied under this Part may, with the concurrence of the Minister, enter into a lease or agreement in writing with any holder of a miner's right giving such holder power to enter such land and take possession thereof and mine thereon for gold or any mineral. Lease by owner to holder of a miner's right. *Ibid.* s. 33. 60 Vic. No. 40, s. 11

(2) The area comprised in any such lease or agreement, and the term thereof, shall not exceed the extent and term, and shall be subject to the payment of the royalty to the Crown (after deduction of any sum paid by way of rent) and performance of the labour conditions prescribed in this Part in respect of a lease thereunder. Area and term.

(3) Such lease or agreement may be transferred with the concurrence of the Minister.

(4)

(4) No such lease or agreement and no such transfer shall have any force or validity unless and until it is registered as prescribed. Within twenty-eight days from the date of the Minister's concurrence therewith, on registration of a lease or agreement, a fee shall be paid for survey of the land.

(5) No such lease or agreement shall contain any provision or stipulation for the payment to the owner of any sum by way of royalty upon the gold or minerals won from the land comprised therein.

(6) The land, from the date of the receipt by the Minister of such lease or agreement, or the draft thereof submitted for his concurrence, shall, until and unless such concurrence is refused, be exempt from entry or occupation under this Part by any person other than the parties to such lease or agreement.

Land subject of lease &c., not open to occupation. Act No. 10, 1902, s. 3.

70. (1) The owner of any private land may, without any lease or authority to enter, mine or enter into an agreement with any other person to mine therein for any mineral not reserved to the Crown, notwithstanding that any gold or mineral reserved to the Crown is associated with the mineral so mined for, provided that the value of such gold or mineral so associated does not exceed fifty per centum of the value of the mineral mined for: Provided that such agreement shall not have any force or validity unless it is registered as prescribed, within twenty-eight days from the date of such agreement: Provided also, that all land included under any such agreement shall be marked out in the manner prescribed.

Owner may mine or agree with any person to mine for any mineral. 60 Vic. No. 40, s. 9.

(2) No authority to enter or lease shall be granted in respect of any land upon which such mining operations have been commenced, but this prohibition shall extend only to any lode bona fide worked as aforesaid, and to land covering the same to the width of two hundred and twenty yards along the course of such lode.

Land protected along lode from authority to enter.

(3) A royalty of one per centum on the value of all gold or silver reserved to the Crown obtained from the land comprised in any such agreement shall be payable to the Crown by the person obtaining the same, at the times and in the manner prescribed.

Royalty.

Division 5.—Resumption.

Resumption of private land.

71. Upon the discovery in any private land of gold in such quantity as the Minister considers payable, the Governor may resume for mining so much of such land as he may consider necessary. But no such resumption shall be made of land occupied for the time being under any lease or agreement under this Part unless with the consent of the lessee or the parties to the agreement:

Upon discovery of gold Governor may resume land. 57 Vic. No. 32, s. 40. 60 Vic. No. 40, s. 3.

Provided that such lease or agreement was entered into at least fourteen days before notification of such resumption.

72.

Resumption to be notified. 60 Vic. No. 40, s. 3.

72. Every such resumption shall be notified in the Gazette, and in some newspaper published or circulating in the district in which such land is situated, and shall take effect at the date specified for that purpose in the said notification, and such land shall thereupon vest in His Majesty and become Crown land within the meaning of this Act, and shall be reserved from sale and from lease for other than mining until such reservation is revoked by the Governor.

Copies of all such notifications, together with the reasons for the resumption therein notified, shall be laid upon the tables of both Houses of Parliament forthwith if Parliament is then sitting, and if not then within fourteen days after the commencement of the next session thereof.

Discoverer to have preferential right. 57 Vic. No. 32, ss. 40, 42. 60 Vic. No. 40, s. 3.

73. (1) If such discovery as aforesaid has been made by the holder of an authority to enter he shall be deemed to be the first applicant for a claim or for a gold-mining lease under Part II or Part III of this Act, and the date of publication in the Gazette of the said notification of resumption shall be reckoned as the date of possession by such holder for the purpose of his application for such claim or lease.

As to lease of resumed land. *Ibid.*

(2) Except in the case of a lease granted to the person who has made such discovery as aforesaid, all land resumed under this section shall be exempt from leasing, except such as may be deemed by the Minister specially suitable to be leased by reason of its great depth or wetness, or on account of the costly appliances required for its development, or where the Minister is of opinion that it is desirable for any other reason that the same shall be open to lease.

Former owner to have preferent right to purchase or lease. 57 Vic. No. 32, s. 40.

74. If such reservation is revoked, the land shall become Crown lands within the meaning and for the purposes of the Crown Lands Acts, upon notification to that effect, and the former owner of such land, or any person claiming through or under him, shall be entitled to purchase or lease such land at a price or rental to be determined by the Secretary for Lands after appraisement by the local land board, subject to appeal to the Land Appeal Court, and failing such purchase or lease the land shall be dealt with under the Crown Lands Acts.

Lands held without reservation of minerals.

Resumption of land held without reservation of minerals.

75. (1) The Governor may resume for mining any land alienated or in process of alienation from the Crown without any reservation of minerals, or so much of such land as he may consider desirable in the public interest.

(2) Every such resumption shall be effected in the manner prescribed in section seventy-two.

(3)

(3) The Governor may grant mining leases of any land so resumed, and such leases shall be subject to the provisions of Part III of this Act, relating to mining leases on Crown lands, save only that the Governor may fix the rent and royalty payable and impose such special conditions as he may think fit.

Compensation.

Compensation for resumption. 57 Vic. No. 32, s. 40. 60 Vic. No. 40, s. 4.

76. When any land is resumed under this Division the Minister may direct the warden or other person to assess the market value of such land (exclusive of any increase in the value of such land by reason of the discovery of gold therein) and the improvements thereon, reasonable allowance being made for any damage that may be caused by severance; and if there is any person other than the owner having interest in such land, the value of such interest shall also be assessed; and such assessed value shall be paid to the persons entitled thereto respectively.

Claim to payment of compensation.

77. Every person claiming payment for land resumed under this Part shall, within sixty days of the date of the determination of the value of the land and the improvements thereon, lodge with the Minister a notice in the prescribed form setting forth the nature of his estate or interest in the land and an abstract of his title.

Payment of compensation.

78. The Minister shall, within three months after being satisfied as to the report of the Crown Solicitor that the valid title is in the claimant, pay to such claimant the value so determined: Provided that if the land be under mortgage, the amount due thereunder shall be paid to the mortgagee.

Costs.

79. All reasonable costs of proceedings for resumption under this Part shall, subject to taxation by the Prothonotary of the Supreme Court, be paid by the Crown, except that the costs of an appeal to arbitrators shall be in the discretion of the arbitrators.

Interest.

80. The value so determined shall bear interest at the rate of four per centum per annum from the date when the land vested in the Crown, but for no longer period than twelve months from such date.

Division 6.—General Provisions.

Royalty.

Amount.

81. (1) A royalty shall be paid of one per centum of the value of all gold and minerals, except coal and shale, obtained from any land under an authority to enter or a lease under this Part.

Royalty to be according to metallic contents.

Where the product of any mine is ore, concentrates, matte, or other substance containing gold or minerals, the royalty shall be paid according to the estimated value of the gold or mineral.

(2) A royalty shall be paid of sixpence per ton on all shale or large coal, and threepence per ton on all small coal obtained from any land under any such authority or lease.

(3)

(3) Such royalty shall be payable to the Crown, at the times, and in the manner prescribed, and may be recovered from the holder of such authority or the lessee as a Crown debt.

(4) The holder of the authority or the lessee may deduct from the total sum payable by way of royalty in any one year a sum equal to the amount paid by him as rent for that year. Rent may be deducted from royalty.

Right of way.

82. Every authority to enter and every lease under this Part shall confer full right of ingress, egress, and regress for the purpose of the exercise of the rights thereby conferred, by a right-of-way to be marked in the prescribed manner from the land defined in the authority or lease to the nearest practicable point of a public road. The cost of marking such right-of-way shall be borne by the holder of the authority or the lessee, who shall place substantial sheep-proof gates at all fences intersected by such right-of-way; but the right to cross any tenement leasehold or other holding under this Act for the purpose of obtaining access to the nearest public road shall not be exercised except under the authority of the warden, nor shall the said right be exercised over any garden, yard, orchard, or pleasure ground. Right of ingress, egress, and regress. 57 Vic. No. 32, s. 11. Marking of roadway. Gates in fence intersected by roadway.

PART V.

Dredging leases.

Preliminary.

83. In this Part, and in any regulations relating to matters thereunder, unless the context or subject-matter otherwise indicates,— Interpretation. Act No. 44, 1899, s 2.

"Crown land" means land vested in His Majesty except land held under tenure from the Crown for other than pastoral purposes.

"Lake" includes a lagoon, swamp, or other collection of still water, whether permanent or temporary, not contained in an artificial work.

"Occupier" includes any lessee from the Crown under any tenure under the Crown Lands Acts, or any tenant of land alienated from the Crown, or any person in charge of alienated lands for the owner thereof.

"Owner" includes conditional purchaser of any land, or holder of a homestead selection, conditional lease, or conditional purchase lease, or any trustee in whom any land is vested.

"River" includes any stream of water, whether perennial or intermittent, flowing in a natural channel.

"River-bed"

"River-bed" means soil or detritus lying between the solid rocks forming the banks of a river, to be defined by the mining surveyor when making the survey.

Not to apply to lands enclosed and under cultivation except in certain cases. Act No. 44, 1899, s

84. Nothing in this Part, except the provisions as to roads of access and sites, shall, unless with the consent of the owner, apply to any lands not Crown lands which are found by the warden to have been at the time of the application for the authority to enter enclosed and under actual cultivation.

Grant of leases.

Governor may grant leases for purposes of mining by dredging, &c., and of what lands. *Ibid.* s. 3.

85. (1) Subject to this Act, the Governor may grant for the purpose of mining for gold or any other mineral, by dredging, pumping, sluicing, or other method, and of erecting the buildings and machinery required in connection with such mining leases of any land (not being land held under or by virtue of any Act relating to mining)—

(a) forming the bed of any river or lake; or

(b) under any tidal water; or

(c) under the ocean contiguous to the coast line; or

(d) contiguous to any such place; or

(e) such as may be suitable for such mining.

Area that may be demised.

(2) The area that may be demised by any such lease shall not exceed one hundred acres. The number of men to be employed shall be in the proportion of not less than seven men to one hundred acres, and the amount to be expended in the purchase and erection of machinery and appliances for the purpose of working the area, shall be not less than ten pounds per acre:

Provided that the Minister may increase such labour or expenditure, or both, if it be shown that the circumstances warrant such increase.

Duration of lease and renewals.

(3) Such leases shall not be granted for a longer term than twenty years, but may be renewed for any term not exceeding twenty years, subject to the prescribed conditions.

Suspension.

(4) The warden may, subject to the regulations, suspend, in whole or in part, the labour conditions of any such lease upon being satisfied by evidence on oath in open court that the circumstances warrant such suspension.

Marking of land.

Land to be applied for to be entered and marked out. *Ibid.* s. 4.

86. (1) Any person desiring to apply for a lease under this Part shall mark out in the manner prescribed the area intended to be included in the application; but where all or any of such area is not Crown land, he must, before so marking out the area, obtain, as prescribed, from the warden of the mining district in which the land is situated an authority under this Part to enter the area or the part thereof which is not Crown land.

(2) Such authority shall be granted by the warden on payment of the deposit prescribed. Deposit

On the order of the Minister the amount of such deposit, less such sum (if any) as the Minister directs to be retained to cover the expenses incurred by the Crown in relation to the application, shall be refunded to the applicant on the execution of the lease by the lessee, or if the Minister is satisfied that the application was bona fide, on the refusal of the application.

87. (1) Such authority shall entitle the holder thereof to enter, personally or by an agent duly authorised in writing, accompanied, if desired, by not more than three other persons, upon the land therein mentioned, for the purpose aforesaid, during a period named therein, which shall not exceed fourteen days, with right of ingress, egress, and regress to and from the nearest practicable point of a public road, without incurring liability for trespass in respect thereof, but shall not entitle him to commence any mining operations. Entry in pursuance of authority. Act No. 44, 1899, s. 4 (3).

(2) Such authority shall be exhibited on demand to the owner or occupier of the land therein mentioned. Authority to be exhibited.

(3) Such area shall be marked out during the currency of the authority. When area may be marked out.

(4) During the currency of any such authority, unless and until an area has been marked out thereunder as aforesaid, the warden shall not issue any other authority to enter upon the same land. Warden not to issue any other authority in respect of same land.

(5) Any owner, occupier, or other person who obstructs any holder of any such authority, or his agent, or the person accompanying such holder or agent, in the performance of any act, or interferes with, removes, destroys, or defaces any mark made or any notice posted in pursuance of such authority, shall be liable for the first offence to a penalty not exceeding ten pounds, and for the second or any subsequent offence to a penalty not exceeding fifty pounds. Owner, &c., obstructing holder of authority.

Interim possession.

88. The person who has marked any area of land under this Part shall, to the extent of the area applied for as against all persons, be deemed to be in possession thereof until the application has been finally disposed of: Person marking out area to be deemed in possession. Act No. 44, 1899, s. 6.

Provided that the owner or occupier of any such land shall, during such period, be entitled to the continued use and enjoyment thereof for all purposes not inconsistent with such application.

Application for leases.

89. (1) Applications for leases under this Part shall be made within the time and in the manner prescribed to the warden of the mining district in which the land is situate. Applications for leases to be made to warden and forwarded to the Minister.

(2) *Ibid.* s. 7

(2) Such applications shall be forwarded by the warden to the Minister for consideration, with a recommendation as to whether the application should be granted, wholly or in part, or subject to any and what conditions, stipulations, or restrictions, or should be refused.

(3) The Minister may refuse to entertain any such application, or may direct the warden to hold an inquiry in the manner prescribed. Minister may refuse to entertain application, or may direct inquiry.

Inquiries. Act No. 44, 1899, s. 8.

90. (1) At such inquiry the warden shall determine— Warden to inquire and make orders as to roads of access, sites for machinery, rent, and compensation. *Ibid.* s. 10.

(a) what roads of access and what sites for machinery, workshops, storage of fuel or other material outside the area applied for are necessary for carrying on the mining operations intended;

(b) what sum, by way of rent for the use of any land which is not Crown land and which is to be included in the lease or comprised in roads of access and sites as aforesaid, shall be paid by the lessee to the occupier or owner of the same;

(c) what sum, by way of compensation for damage likely to be caused to the area applied for or to land adjoining such area by acts done in or incidental to carrying on the mining operations intended, shall be assessed;

(d) as to any objection or other matter affecting the application;

and shall issue orders in accordance with such determinations:

Provided that if the applicant for the lease produces to the warden a document duly signed by himself and by the parties who would be entitled to any such rent, and witnessed, certifying that they have agreed as to the amount of such rent, such amount shall be adopted by the warden without any further inquiry in respect thereof. But no such agreement shall contain any provision or stipulation for the payment of any sum by way of royalty upon the gold or minerals won from the land applied for. Proviso that parties may agree as to rent and compensation.

(2) The warden shall hold such inquiry in open Court, and shall have the powers of a Wardens' Court. Inquiry in open Court.

91. The Minister may at any time authorise and direct a warden to hold any further or other inquiry in open Court with reference to any matter concerning an application for a lease under this Part. Notice of such inquiry shall be given to the parties concerned. Further inquiry. *Ibid.* s. 14.

At such inquiry the evidence shall be taken on oath.

92. A warden holding an inquiry as aforesaid shall forward to the Minister the evidence taken by him, and a report of his orders thereon. Evidence and orders to be sent to the Minister. *Ibid.* s. 15.

93. (1) The Minister, on receipt of such evidence and report as aforesaid, may determine that the application shall be refused, or that a lease of the area included in the application, or of any greater or less area, may be granted to the applicant, and may determine whether any and what special conditions shall be inserted in the lease. Minister may refuse application or grant lease. *Ibid.* s. 16.

(2)

(2) Notice of such determination shall be published in the Gazette. Notice in Gazette.

(3) Where the Minister has determined that a lease may be granted, the applicant shall, within the time and in the manner prescribed, give notice to the Minister whether he will accept a lease on the terms mentioned in such notice in the Gazette or not, otherwise the application shall lapse. Applicant to notify whether he accepts or not.

Road of access or site.

94. (1) The warden may order that any road of access or site as aforesaid which he finds to be necessary shall be marked out on the land by a person appointed by him in that behalf, and such person shall not incur liability for trespass committed by him in pursuance of such order. Warden may order such road or site to be marked out. Act No. 44, 1899, s. 11.

Such road shall be marked out in the manner prescribed from the nearest practicable point of a public road.

(2) The order of a warden declaring that a road of access along the line determined by him is necessary shall entitle the lessee to use such road with horses, cattle, and vehicles.

95. If after the issue of any lease it is found that a road of access, or a site as aforesaid other than that mentioned in the original order of the warden, is necessary, the warden may, in the manner prescribed, and subject to such rent as he may by an order which shall be final and not subject to any appeal determine, and to such terms and conditions as he may deem proper, mark or cause to be marked out on the land such other or additional road or site ; but such road or site shall not be used until the amount of the first year's rent thereof determined by the warden has been paid and any conditions imposed by him have been fulfilled. Further or other roads of access and sites may be ordered by warden. *Ibid.* s. 20.

Rent and royalty.

96. (1) The amount of the first year's rent of land which is not Crown land, as determined by the warden shall be paid by the applicant to the warden or warden's clerk within the time prescribed. First payment to be made into warden's court. *Ibid.* s. 12.

(2) Such amount shall be paid out to the parties entitled thereto under the order of the warden on the execution of the lease by the lessee, or refunded to the applicant if the application is refused. Payment to be refunded or paid out.

(3) Any subsequent years' rent shall be paid direct by the lessee under this Part to the owner and occupier of the land in such proportions as may be agreed, or as the warden on failure to agree may determine.

97. (1) The rent to be paid to the Crown in respect of Crown land shall be two shillings and sixpence per acre. And such rent shall be payable at the times and places and in the manner prescribed: Rent. Act No. 102, 1902, s. 2.

Provided

Provided that all such rents shall be payable yearly in advance, and the first annual payment shall be made on making the application for such lease.

Royalty. Act No. 102, 1902, s. 3.

(2) A royalty of one per centum of the value of all gold and minerals won from any land leased under this Part shall be payable to the Crown at the times and in the manner prescribed: Provided that if the royalty payable in respect of any lease during any one year exceeds the rent paid for such year, the amount paid as rent as aforesaid may be deducted from the sum payable as royalty; but if such royalty in any one year amounts to less than the rent paid for such year, the lessee shall not for such year be required to pay royalty.

Grant of lease.

No obligation to grant lease. Act No. 44, 1899, s. 17.

98. (1) The Governor may, where the applicant has given notice of acceptance as aforesaid, grant a lease on the said terms to the applicant or to any person named by the applicant.

Lease may be granted though regulations not complied with.

(2) Nothing in this Part shall render 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 Part and of the regulations thereunder.

(3) A lease may be granted under this Part by the Governor, notwithstanding that the person applying for the same may not in every respect have complied with the regulations.

Right to water.

Owner to have access to water.

No lease under this Part granted shall prevent the owner or occupier of any freehold or conditionally purchased land included within such lease from having free and uninterrupted access to the water for stock watering and similar purposes.

Penalty.

Applicant not to mine till he has executed lease. *Ibid.* s. 19.

99. Any applicant for a lease under this Part who commences mining operations in or on the area included in the application, whether covered with water or not, before such lease has been executed by him, shall, unless he proves that he has before commencing such operations obtained the consent of the owner or occupier, be liable to a penalty not exceeding ten pounds.

Authority to holder of miner's right.

Special condition enabling warden to grant authority to holder of miner's right to mine.

100. (1) If so specified in any lease under this Part, the warden may grant authority in writing to any holder of a miner's right to enter upon any Crown land comprised in such lease, and to mine thereon, subject to such conditions as he may think fit to impose and as may be prescribed.

(2)

(2) Every such authority shall empower the holder to mine upon the said land with such hand appliances as may be prescribed, and at such distance from the mining operations carried on by the lessee, not being less than two hundred yards, as the warden may consider advisable. Mining by hand appliances.

(3) If the holder of the authority fails to observe any of the conditions aforesaid, or impedes or otherwise hinders the carrying on of dredging operations by the lessee, such authority may be cancelled by the warden. If such holder mines or continues to mine upon the said land after being notified in writing of the cancellation of the authority, he shall be deemed a trespasser.

101. If so specified in any lease under this Part, such lease shall be subject to a condition that any holder of a miner's right may enter upon any Crown land comprised in such lease for the purpose of washing dirt at the place most convenient to him and may for that purpose cut races, run sludge into a stream, or obtain water therefrom, provided that in so doing the mining operations carried on by the lessee will not, in the opinion of the warden, be interfered with or prejudicially affected. Washing dirt, &c., on lease.

PART VI.

TENEMENTS AND LEASES GENERALLY.

Governor's powers over Crown lands.

102. (1) The Governor may suspend the operation of any Crown lease or license for pastoral purposes of Crown land so far as may be necessary for— Suspension of pastoral lease. 37 Vic. No. 13, s. 13.

(a) the accommodation of the horses, cattle, and sheep required for the subsistence and convenience of any persons holding tenements, leases, or other holdings under this Act;

(b) the supply of water to such persons; and

(c) otherwise for the carrying on of mining operations by such persons.

(2) The Governor shall return or remit to the lessee or licensee such portion of the rent of such land as may be reasonable and just, and shall pay compensation for any improvements upon such land, to be assessed, unless otherwise agreed upon, by the warden of the district in which such land is situated.

(3) Upon any such suspension as aforesaid, the Crown, by its officers and servants, may enter the land, and do all such acts as may be deemed necessary for the proper regulation of the water supply.

103.

103. The Governor, on the recommendation of the Minister, and with the concurrence of the Secretary for Lands, may by notification exempt any Crown lands from alienation and from all classes or any specified class of tenure under the Crown Lands Acts, and may reserve the same for mining purposes, and may in like manner revoke or alter any such exemption or reservation. He may also in like manner alter the boundaries of or revoke any reserve for mining purposes heretofore made under the authority of any Act. 37 Vic. No. 13, s. 26.

Applicant to execute lease.

104. (1) When any application for a lease is granted, it shall be the duty of the applicant, or the person named by him, or his legal representatives on death or bankruptcy, to execute such lease when called upon, and the execution of a lease by such legal representatives shall be as binding upon all persons as if the lease had been duly executed by the applicant or the person aforesaid. Applicant or legal representative to execute lease. cf. *Ibid.* s. 57.

(2) If the applicant or person, or his legal representatives as aforesaid, neglect or refuse to execute such lease or to pay the prescribed deed-fee in respect of the same within the prescribed period, after being notified in writing, as prescribed, that the said lease is ready for execution, the said lease may be voided by the Governor, and thereupon all moneys deposited with the application shall be absolutely forfeited to His Majesty and paid into the Consolidated Revenue Fund. Such voidance shall take effect from the time of publication thereof in the Gazette. Consequences of refusal to execute lease.

(3) Where the application is made by two or more persons, and one or more of such persons fails or fail to execute the lease within the period prescribed as aforesaid, the Minister may, if he thinks fit, cause the lease to be issued to such of the applicants as have executed the same; and in that case such lease shall be valid and effectual in favour of such applicants. Issue of lease not executed by all the applicants.

(4) A lease shall take effect only upon execution thereof by the Governor. 57 Vic. No. 32, s. 11.

Form and conditions of leases.

105. (1) Every lease under this Act shall, according to the nature thereof, contain the covenants, conditions, reservations, and exemptions contained in the respective forms prescribed in the regulations, or as near thereto as circumstances will permit, having regard to the special requirements herein provided. Covenants, conditions, &c. 37 Vic. No. 13, s. 51.

(2) Every such lease shall be dated the day of the execution thereof by the Governor. Date of lease. *Ibid.*

Registration.

106. (1) Every lease under this Act shall be registered with the registrar, Department of Mines, Sydney, who shall forward a copy thereof to the warden of the district in which the land comprised in such Lease to be registered. 57 Vic. No. 32, s. 27.

such lease is situated, and thereafter every transfer, sub-lease, or change of ownership of, and every tribute agreement affecting the land comprised in such lease or any portion thereof shall be registered with the registrar aforesaid.

(2) Any person claiming interest in any such lease may, prior to the registration of any transfer or sub-lease thereof, lodge with the Minister a caveat in the prescribed form and accompanied by the prescribed fee against such registration. On receipt of such caveat, the Minister shall stay registration for fourteen days, unless the caveat is sooner withdrawn, but shall then register the said transfer or sublease unless the person objecting has obtained and served upon him an order of some competent court forbidding such registration. Caveat.

Works in connection with mining.

107. (1) The warden may, subject to the regulations, grant permission in writing to the holder of a claim or of a lease under this Act, upon written application for that purpose, to lay or construct a line of pipes, sluice-box, or a culvert under or along any public road, street, or highway, or across any Crown lands or lands reserved or dedicated to any public purpose, for the purpose of conveying any water, tailings, sludge, waste-water, or earth in connection with any mine. Warden may allow pipe-line, &c., to be constructed on public road, &c. 37 Vic. No. 13, s. 29.

(2) Before granting such permission the warden shall cause the said road, street, or highway to be inspected by some duly authorised officer. Inspection of road. *Ibid.*

(3) Any works authorised by such permission shall be so constructed as not substantially to injure such road, street, or highway, or obstruct the traffic thereon; and if after construction it appears to the warden that they do in fact cause such injury or obstruction, he may cancel such permission and order the person who obtained such permission, or the owner or occupier for the time being, to remove any such works or obstruction within seven days. Construction of works.

(4) If any such order is disobeyed, the line of pipes, sluice-box, or culvert in question shall be deemed a nuisance remediable in like manner as any other obstruction or nuisance upon a highway, and every person so disobeying shall be liable to a penalty not exceeding twenty pounds per day during such disobedience. Penalty for disobedience of order. *Ibid.*

108. (1) The warden may, subject to the regulations, authorise any holder of a claim or lease under this Act, or any Act hereby repealed, to enter any Crown or private land held under any lease, claim, or other holding under any such Act for the purpose of constructing tunnels, roads, races, shafts, or channels, or of erecting standards carrying wires for the conveyance of electricity to or from any mine held or owned by such holder or lessee: Provided that the works to be constructed shall be carried out in such a manner as shall cause as little injury or inconvenience as possible to the holder of such land. Authority to construct tunnels, &c., on holding. cf. *Ibid.* s. 30.

(2)

(2) The warden shall assess the compensation to be paid for any damage caused or likely to be caused by the construction of such works. Compensation.

(3) If the person to whom such authority is granted fails to observe the conditions under which such authority is granted, the warden may at once cancel such authority. If such person continues in occupation of or enters such land after being notified in writing of such cancellation, he shall be deemed a trespasser. Cancellation.

(4) The rights and duties under any authority issued under this section may be assigned and transferred with the claim or lease in connection with which it was issued. Assignment.

109. When at the time of any sale or alienation of Crown lands, any race or drain, dam, or reservoir constructed for mining purposes flows through, or over, or is constructed upon any portion thereof, although no reservation or exception is contained in the Crown grant, no person, unless specially authorised thereto by the Minister, shall obstruct or interfere therewith or prevent access thereto. Easement over Crown lands continues notwithstanding alienation. 37 Vic. No. 13, s. 31.

Labour conditions.

110. (1) The registered owners, or a majority of the registered owners, of any claim or lease, held under this Act or any Act hereby repealed, may apply to the warden for authority to suspend mining operations for any period not exceeding the limits hereinafter set forth on the occasion of each such suspension. Registered owners may apply. *Ibid.* ss. 32, 55.

(2) Every such application shall contain the grounds thereof, and a copy thereof shall be posted on the claim or on the land leased, and also outside the warden's office or the mining registrar's office nearest to the land in respect of which suspension is applied for, and shall be served upon the owners of or posted on adjoining claims or leases. Any person may, before the hearing of such application, in the prescribed manner lodge an objection to the granting of the suspension applied for, and shall be entitled to be heard in support of such objection. Grounds of application to be posted.

(3) The warden may grant such authority for any period not exceeding six months on being satisfied by evidence on oath in open court— Proceedings thereon. *Ibid.*

(a) that the claim or lease is unworkable by reason of accident to machinery, subsidence, scarcity of water, sudden excess of water, or any other cause whatsoever; or

(b) that the owners of such claim or lease are unable, by reason of sickness, accident, unavoidable absence, or other sufficient cause, to work the same; or

(c) that substantial expenditure has been incurred in mining operations on the claim or lease, and that the owner or lessee

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is temporarily unable to continue such operations, and requires reasonable time within which to make necessary arrangements.

(4) The warden may—

(a) upon being further satisfied by evidence on oath in open court that the claim or lease cannot be profitably worked under then existing circumstances owing to the low price of the product thereof or other adverse conditions, grant such authority for any period not exceeding six months in respect of any claim; or

(b) recommend to the Minister the granting of, and the Minister may grant, such authority for any such period in respect of any lease, in which case the authority shall be published in the Gazette and registered by the registrar, Department of Mines Sydney.

Regulations to be observed. 37 Vic. No. 13, ss. 32, 55.

(5) All applications for suspension of labour conditions shall be made and dealt with as prescribed.

Conditions may be imposed.

(6) The warden or the Minister (as the case may be) may, when granting suspension as aforesaid, impose such conditions as he may think fit for the protection from injury of adjoining mines by water or otherwise by reason of such suspension being granted.

Exemption from labour conditions.

111. (1) If any holder of a lease under this Act, or any Act hereby repealed, employs on the land demised labour in excess of that required by the provisions of his lease, he shall, upon application to the warden and upon satisfying him that after the commencement of this Act and during any expired period of his lease, not being less than six months, the excess labour so employed has been equal to the labour prescribed in his lease for six months, be entitled in respect of such excess labour to exemption from the employment of labour for one month: Provided that such exemption shall not be for any longer cumulative term than six months at any one time.

Inquiry by warden and certificate.

(2) Upon receipt of any such application, the warden shall hold an inquiry in open court, of which notice shall be given as prescribed; and, upon being satisfied that the lessee is entitled to such exemption, he shall issue a certificate in the form prescribed, and such certificate shall be registered in the Department of Mines, Sydney.

Conditions of certificate.

(3) Such exemption shall be subject to the condition that the lessee undertakes to observe and carry out such directions and orders as the warden may give for the protection of adjoining mines from injury by water or otherwise by reason of the exemption.

Returns of minerals won.

Lessee, &c., to furnish returns.

112. Every holder of a lease, claim, or other title under this Act to mine shall, during the first fourteen days of the month of January in each year, furnish to the Minister a full and proper return, verified by

by statutory declaration, showing the quantity and value of gold and other minerals, except coal and shale, won during the preceding year ending thirty-first December, and the average number of men employed on such lease, claim, or land held under other title during such year, and on default shall be liable to a penalty not exceeding five pounds where no royalty is payable and not exceeding fifty pounds where royalty is payable.

Every person carrying on metallurgical works for the treatment of gold or any other mineral shall, during the first fourteen days of the month of January in each year, furnish to the Minister a full and proper return, verified by statutory declaration, showing the quantity and value of gold and other minerals treated at such works during the preceding year ending thirty-first December, and on default shall be liable to a penalty not exceeding five pounds.

Manager or secretary to furnish return for company.

If such holder or person is a public company, such return shall be furnished by the manager or person acting in the management, or by the secretary of the company; and the said manager, person, or secretary shall on default be liable to the said penalty.

Additional return by coal-mining lessees.

113. (1) Every holder of a coal-mining lease, or other authority to mine for coal, shall, within fourteen days after the last day of March, June, September, and December in each year, furnish to the Minister a return, verified by statutory declaration, showing the quantity and approximate value of coal won from any mine worked by him under such lease or authority during the three months ending on such last day as aforesaid, and on default shall be liable to a penalty not exceeding fifty pounds.

If such holder is a public company the return shall be furnished as in the preceding section mentioned, and the manager or secretary as therein mentioned shall on default be liable to the said penalty.

Minister may require further return or may appoint officer to make inquiries.

(2) If the Minister is not satisfied with the return so furnished, he may require such holder, manager, or secretary to furnish further particulars of the coal won, or may, whether any return has been furnished or not, appoint any officer of his department or other person to make all necessary inquiries in relation to such coal. The officer or person so appointed may make all such inquiries, and may require such holder, or his clerk, or the manager, secretary, or clerk of any such company, to produce for his inspection at the office of such holder or company any books, accounts, documents, writings, papers, or instruments in his possession or under his control that such officer or person may consider necessary to enable him to ascertain the quantity of coal won, and may make copies of any entries or matters contained in such books, accounts, documents, writings, papers, or instruments, and upon completion of such inquiries shall report thereon to the Minister.

(3) Any such officer or person who reveals any information so obtained by him, except as aforesaid or under the authority of a court of competent jurisdiction, shall be liable to a penalty not exceeding one hundred pounds. Secrecy as to information obtained.

The evidence in respect of such information shall not be admissible in any court except in the case of a prosecution under this Act, or in respect of any proceedings in relation to such inspection and inquiry.

(4) Every officer in the Public Service and every person appointed as aforesaid shall preserve and aid in preserving secrecy with regard to the contents of any return or report or any copy of books, accounts, documents, writings, papers, or instruments made under this section which have come to his knowledge in his official capacity, and shall not communicate any such matter to any other person unless in the performance of his official duties, or under the authority of a court of competent jurisdiction. If he contravenes or fails to observe the provisions of this subsection, he shall be liable to a penalty not exceeding one hundred pounds. Secrecy as to return and reports.

(5) Any person who obstructs an officer or person in the performance of his duties under this section, or without lawful excuse refuses to produce any book, account, document, writing, paper, or instrument in his possession or under his control, or to answer any question asked by such officer in the course of such inquiries, shall be liable to a penalty not exceeding twenty pounds. Penalty on person obstructing officer.

Reward areas.

114. The Governor may, with respect to any prospector who makes a new discovery of gold or other mineral, make concessions in respect of any claim or lease applied for or held by such person as to area, rent, royalty, labour, and other conditions applicable by this Act or the regulations to such application, claim, or lease. Reward areas.

Amalgamation of leases.

115. (1) The Minister may, on application in the prescribed manner by the owners of two or more adjoining gold-mining leases, or of two or more adjoining mineral leases, or of two or more adjoining dredging leases (whether such leases have been granted under the provisions of the same Act or not), and on being satisfied that the lands comprised in such leases can be more effectively worked as one mine, authorise the amalgamation of the said leases upon payment of a fee of twenty shillings for each lease so amalgamated. But where the lands comprised in such leases are divided from each other by a road or stream, mining operations shall not be carried on under such roads or streams until and unless a lease thereof has been granted. Minister may authorise amalgamation. 37 Vic. No. 13, s. 60. 48 Vic. No. 10, s. 6. Act No. 44, 1899, s. 24.

Leases

Mining.

Leases may be amalgamated as aforesaid although one or more of such leases may be for mining on private lands under Part IV, and the other or others for mining on Crown lands under Part III. Leases under Parts III and IV.

(2) The Minister may, after obtaining a report from the warden, cancel any such amalgamation of leases. Minister may cancel amalgamation.

(3) When leases have been amalgamated as aforesaid, the labour required to be performed on or in connection therewith shall be the aggregate of the labour required for the respective leases before amalgamation. Labour on amalgamated leases. 37 Vic. No. 13, s. 60. 48 Vic. No. 10, s. 6. Act No. 44, 1899, s. 24.

(4) The Minister may, after inquiry and report by the warden, reduce the number of men to be employed and the capital to be expended on any amalgamated leases should it be shown that the circumstances warrant such reduction. Minister may reduce men and capital on amalgamated leases.

Encroachment.

116. The warden may, subject to the regulations, upon the application of any person having the care and management of any public highway, railway, tramway, street, or road, or any person authorised by him in that behalf, authorise by writing under his hand any mining surveyor to enter and inspect any land or mines comprised in any claim, lease, application for lease, or authority under this Act or any Act hereby repealed, for the purpose of ascertaining whether the persons working such land or mines are encroaching on such highway, railway, tramway, street, or road, and whether the mining operations so carried on can be continued without causing injury or damage thereto, or to any house, building, or machinery abutting thereon or adjoining thereto. Encroaching on highways, streets, &c. 57 Vic. No. 32, s. 29.

117. (1) The Minister or the warden may, upon the application of the owner or occupier of any land adjoining any land held as a claim, lease, or under an authority or application for a lease under this Act or any Act hereby repealed, whereon mining is being carried on, or upon the application of any person authorised by such owner or occupier, authorise by writing under his hand any mining surveyor to enter and inspect the land on which mining is being so carried on, for the purpose of ascertaining whether the persons so carrying on mining are encroaching upon any land of such owner or occupier not comprised in such claim, lease, authority, or application for lease. Warden may authorise mining surveyor to inspect as to encroachment. 37 Vic. No. 13, s. 86. 57 Vic. No. 32, s. 30.

(2) Any geological surveyor or other person authorised by the Minister may enter any mine or works for the purpose of inspecting the same, and removing any sample of ore or deposit. No person shall obstruct or hinder such geological surveyor or other authorised person acting as aforesaid, under a penalty not exceeding fifty pounds. Geological surveyor or other authorised person may enter and remove sample.

(3) The mining or geological surveyor authorised as aforesaid, or other authorised person, may enter and inspect and survey the land and mines described in such order. Such surveyor may make Mining or geological surveyor may enter and inspect. 57 Vic. No. 32, s. 31.

make such plans and sections of the land entered, and of any drives or other works therein, as are necessary for the purposes aforesaid.

Surveyor to make a declaration.
37 Vic. No. 13, s. 86.
57 Vic. No. 32, s. 32.

118. Every such mining or geological surveyor or other authorised person shall, before entering any land under such authority as aforesaid, make a declaration before the warden (who is hereby authorised to take and forward the same to the Minister) that he will not, except as a witness in a court of justice or to the Minister, without the consent in writing of the occupier or lessee of the land or mines to be entered, divulge or cause to be divulged to any person whomsoever any information which may be obtained upon or by such entry, save only as to whether the persons working such mines are encroaching as in the last preceding section mentioned. Whosoever acts contrary to such declaration shall be liable to a penalty not exceeding fifty pounds.

Sludge abatement provisions.

Sludge Abatement Board.

119. (1) For the purpose of this section, the Governor may appoint a board of three persons, to be called the Sludge Abatement Board, and notification shall be made of such appointment. Any two members of the board shall form a quorum.

Powers of board.

(2) It shall be the duty of the board—

(a) to investigate any complaint made of pollution or injury caused by sluicing, dredging, or other mining operations to any river, stream, watercourse, lake, or reservoir (whether or not there is any water therein) not exempted from the operation of this section, or to any agricultural or grazing land adjacent thereto, and to order any person causing or directing such operations to make such provision or take such steps as the board may direct to prevent the continuance of such pollution or injury;

(b) to order any person about to commence or authorise sluicing, dredging, or other mining operations which would, in the opinion of the board, cause injury or pollution to any such river, stream, watercourse, lake, reservoir, or land to make such provision or take such steps as the board may direct to prevent such pollution or injury; and

(c) at the request of the Minister, to report and make such recommendations as the board may think fit in connection with any application for a mining lease of any area upon which it is intended to carry on sluicing, dredging, or other mining operations which may pollute or injure any such river, stream, watercourse, lake, reservoir, or land.

Exemption of certain rivers, &c.

(3) The Governor may from time to time, upon the report of the board, exempt from the operation of this section such rivers, streams, water-courses, lakes, and reservoirs, or such portions thereof as,

as, in his opinion, are, by reason of their polluted condition, useless as a means of providing a water supply for domestic or stock purposes: Provided that the board, before so reporting, shall satisfy itself that such exemption may be granted without causing damage to any agricultural or grazing lands adjacent to any such rivers, streams, water-courses, lakes, or reservoirs, and shall publish in the Gazette notice of every such proposed exemption.

The Governor may at any time revoke, in whole or in part, any such exemption, and shall give notice thereof in the Gazette.

Penalty.

(4) Any person who, by himself or his agent or workman, carries on any mining operations as aforesaid in contravention of any order of the board as aforesaid, or disobeys any order of the board, and thereby directly or indirectly causes the pollution of, or any injury to any such river, stream, water-course, lake, or reservoir, or to any agricultural or grazing land adjacent thereto, shall be guilty of an offence; and, upon the complaint of any person aggrieved thereby, or of an inspector of mines, shall, for every day upon which mining operations have been so carried on, or such order has been disobeyed as aforesaid, be liable to a penalty not exceeding twenty-five pounds.

What constitutes injury or pollution.

(5) For the purposes of this section, water discharged into any such river, stream, water-course, lake, or reservoir, shall be deemed to injure or pollute the same if it contains in solution at the point of discharge any poisonous matter in the total proportion of more than seventy-five grains to one gallon; or other noxious matter in such quantity as to be injurious to public health; or if it contains in suspension any earth or mineral, or any earthy or other insoluble mineral substance in the total proportion of more than eight hundred grains to one gallon.

Surrender and cancellation of lease.

Lessee may surrender lease wholly or in part.

37 Vic. No. 13, s. 54. cf 57 Vic. No. 32, s. 35.

120. Every holder of a lease under this Act may at any time with the consent of the Governor surrender his lease wholly or in part. The Governor may, on acceptance of such surrender, grant such holder a new lease of the whole or any part of the land comprised in the surrendered lease, and upon such conditions not inconsistent with this Act and the regulations, as he may deem advisable. But the surrender of a lease shall not entitle the lessee to the refund or remission of any rent already paid or due.

Cancellation of lease.

37 Vic. No. 13, s. 56 (11).

57 Vic. No. 32, s. 34.

121. If the holder of a lease under this Act, his executors, administrators, or assigns, at any time during the term of such lease—

(a) fails to fulfil or contravenes the conditions and covenants contained therein; or

(b) fails to use the land bona fide for the purposes for which it has been demised; or

(c)

(c) uses it for a purpose other than that for which it has been demised,

the lease may be cancelled by the Governor, and the cancellation shall take effect on the date proclaimed in the Gazette.

Removal of machinery.

Machinery, &c., on forfeited area. 37 Vic. No. 13, s. 56 (10).

122. (1) At any time within six months after the determination of any lease under this Act, or within such further time as the Minister may allow, the former lessee may remove or dispose of all tools and machinery and such improvements as the Minister may sanction, except such as are necessary to keep open any shaft or adit.

Machinery, &c., may be sold.

(2) If such tools, machinery, and improvements are not so removed they may be sold by auction by order of the warden at the risk of the former lessee. The net proceeds of such sale shall be paid into the Treasury and held until applied for by such former lessee.

Surveyor may define road.

Minister or warden may authorise surveyor to enter and define road to area or for any other purpose.

123. Any mining surveyor may, in pursuance of an order of the Minister or of a warden, enter any private land for the purpose of defining the road to and the boundaries of the land comprised in any lease or authority to enter, or any application for the same, or for any other purpose authorised by this Act.

Inquiries and inspection.

Inquiry may be directed. cf. 37 Vic. No. 13, s. 57. Act No. 44, 1899, s. 14.

124. The Minister may direct a warden to hold an inquiry on oath in open court with reference to any matter affecting any lease or application for a lease under this Act or any Act hereby repealed.

Inspection of mine. 57 Vic. No. 32, s. 31.

125. Any holder of a tenement, lease, or authority to enter under this Act or any Act hereby repealed, or any application for such lease, shall, during ordinary working hours and within a reasonable time, comply with any request of the warden, or of any surveyor or other person acting under the instructions of the warden, or under the authority of this Act or the regulations, to furnish the usual appliances and aid necessary for descending to and ascending from the underground workings of his mine, and for examining the same or doing such things as may be authorised as often as may reasonably be found necessary.

Nature of holding and evidence of title.

Share in claim. 37 Vic. No. 13, s. 18.

126. (1) Every tenement or share or interest in a claim, and any authority, right, title, or interest acquired or created under this Act, or any Act hereby repealed, or the regulations, shall be deemed and taken

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in law to be personal property, and shall not be of the nature of real estate, and may be disposed of during the lifetime of the holder, and shall on his death descend or devolve on intestacy or by will as personal property, subject to this Act and the regulations.

(2) No person shall be entitled to institute proceedings in any court in respect of any such tenement, share, interest, claim, authority, right or title, as aforesaid, or any grievance respecting the same, unless he was the holder of a miner's right or lease, or was the applicant for a lease, or the holder of a business license, or authority according to the nature of such interest at the time when such cause of action arose. Suitor to hold miner's right, license, or lease. 37 Vic. No. 13, s. 19.

(3) The production in any court of a certificate of registration under the hand of a mining registrar or warden's clerk shall be evidence that the person named in such certificate was the holder of a miner's right or of a business license, as the case may be, at the date mentioned in such certificate, and that all the requirements of any Act or regulations necessary to vest the title of such interest as aforesaid in such person had been complied with by him up to the date of such registration. Certificate to be evidence. *Ibid.*

Mining towns.

127. If during the term of any lease of Crown land under this Act or any Act hereby repealed any part of such land is required as a site for a town or village, the Governor may, upon one month's notice to the lessee, cancel the said lease so far as it relates to any right to the surface and the specified depth below the surface of the said part of the land, and thereupon the said part shall, subject to the right of the said lessee to mine thereunder, but without any compensation payable by the Crown, become Crown lands within the meaning of the Crown Lands Acts, and may be dealt with thereunder. Area may be resumed for township.

PART VII.

WARDENS' COURTS.

DIVISION 1.—JURISDICTION.

Wardens' courts.

128. (1) The Governor may, by proclamation, establish wardens' courts, to be held at such places as he may from time to time appoint. Any wardens' courts established under any Act hereby repealed shall have jurisdiction under this Act as if they had been established hereunder. Governor may establish wardens' courts. *Ibid.* s. 67.

(2) Every such court shall be a court of record, and shall be held by a warden sitting alone. Court of record.

(3) Any decision or order of such court shall, subject to this Act, be binding and conclusive on all parties.

(4) For the purposes of the jurisdiction hereby conferred, a warden or a warden's clerk may issue summonses and subpœnas, or other process, which shall have legal effect and operation throughout the State. Summons, &c., may be issued. 37 Vic. No. 13, s. 68.

129. (1) Every warden shall cause a register to be kept in the form prescribed by the rules of the particulars of all complaints and applications made to him under this Act and any decision or order made thereon, and such particulars relating thereto as may be prescribed as aforesaid. Register to be kept. *Ibid.* s. 72.

(2) A copy of an entry in such register of any decision or order of the court shall on demand be given by the warden's clerk to any of the parties interested therein. A document purporting to be any such copy, certified by the warden or warden's clerk as a true copy, shall be admitted in all courts and places whatsoever as conclusive evidence of such decision or order having been given or made.

Jurisdiction.

130. (1) A warden's court shall have jurisdiction to hear and determine all suits relating to any of the matters following, that is to say:— Subjects within jurisdiction of court. *Ibid.* s. 69.

(a) The right to the possession or occupation of any Crown land or private land by virtue of a miner's right, a registered share in a claim, a lease, application for a lease, or of a license, or authority.

(b) The right to cut, construct, use, possess, occupy, or hold any interest in any race, drain, dam, or reservoir for mining under any Act or regulation relating to mining.

(c) The right to recover any land, race, drain, dam, reservoir, building, or machinery alleged to have been abandoned or forfeited under any such Act or regulation, and to mesne profits thereof.

(d) The right to the use, enjoyment, or to sell any water under any such Act or regulation, or to the priority of use and enjoyment as against any other claimant of water taken, diverted, or used, or claimed so to be under any Act or regulation.

(e) Any encroachment or trespass upon, or unlawful interference with, or injury to any land, race, drain, dam, or reservoir occupied, held, or used under any Act or regulation relating to mining, or unlawful interference with or injury to any machinery

machinery thereon; any diversion or abstraction of water possessed or used under such Act or regulation; the unlawful ouster or exclusion of any person from any share or interest in any such land, race, drain, dam, reservoir, water or machinery, and the damages and compensation for any such encroachment, trespass, ouster, diversion, abstraction, interference, or injury.

(f) Any demand for debt or damages, or both, arising out of or made in respect of any contract or agreement whatsoever, relating to mining for gold or any other mineral, or to any holding or interest authorised by any such Act or regulation as aforesaid.

(g) The right to any gold or other mineral in or to be taken out of any land occupied or held under any such Act or regulation as aforesaid, or in respect of any matter concerning or arising out of any contract relating to such gold or mineral.

(h) Any demand concerning or arising out of any partnership for or in relation to mining for gold or other mineral in any land occupied or held as aforesaid, or any partnership in any such land, or in any race, drain, dam, reservoir, water, machinery, gold, mineral, or metal, or concerning or arising out of any contract for or in connection therewith, or for the dissolution wholly or in part of any such partnership.

(i) Any demand concerning contribution to calls or to the expense of working or using any such land, race, drain, dam, reservoir, or water, or any share or interest therein.

(j) Any demand concerning or arising out of any mortgage or assignment by way of security of or charge upon any such land, race, drain, dam, reservoir, water, machinery, gold, or mineral, or any share or interest therein.

(k) Any demand concerning the cancellation and delivery up of instruments relating to—

(i) mortgages, charges, or encumbrances of or upon any such land, race, drain, dam, reservoir, water, machinery, gold, or minerals as aforesaid, or any share or interest therein;

(ii) any assignment of such mortgages, charges, and encumbrances;

(iii) any contract respecting the working or use for mining purposes or otherwise in relation to mining of any such race, drain, dam, reservoir, water, or machinery; or

(iv) any partnership for mining, or in any such land, race, drain, dam, reservoir, water, machinery, gold, or mineral, or the total or partial dissolution of any such partnership.

(l) Any demand concerning the ascertainment and adjustment of boundaries of land held or occupied under any such Act, or regulation, where such boundaries are in dispute or doubtful;

in

in which case the court shall ascertain and determine such boundaries by such means as may be found convenient, and shall make and give all such orders and directions as may be necessary for the purpose of carrying out the decree or order of such court.

(m) Any demand concerning any Crown land, or share or interest therein, which the complainant claims to be entitled to take possession of and occupy under a business license, and of which the defendant is and claims to be entitled to be in possession; any trespass upon any such land of which the complainant is in, and of which he claims a right to the occupation or possession under such license.

(n) Any money claimed to be due upon any mining partnership account, or in any way accruing to the complainant from any mining partnership adventure or interest.

(o) The recovery of any money which any person is liable to pay under any such Act or regulation, and for which no other mode of recovery is hereby provided.

(p) All questions and disputes which may arise between miners in relation to mining on Crown lands or private lands.

(q) All questions or disputes which may arise as to the working or management of any lease.

(2) The jurisdiction hereby conferred shall extend to cases where the right or title of either party is derivative by assignment or otherwise as well as to where the same is original.

Jurisdiction where title is derivative. 37 Vic. No. 13, s. 69.

131. All debts for wages due by any mining company, or any lessee or claim holder, to any employee in respect of services performed in connection with any mining, not exceeding twenty-five pounds, shall have priority over all other claims, and shall be a first charge upon all property of the company, lessee, or holder, notwithstanding any lien, mortgage, or charge thereon, and such debts shall be paid in full unless the said property is insufficient to meet them, in which event they shall abate in equal proportions.

Wages to be a first charge.

132. (1) In all suits where the amount claimed or the value of the right or property in dispute does not exceed fifty pounds, the decision of the warden's court shall be final.

Decision in certain cases to be final. *Ibid.*

(2) If before the hearing of any complaint or other proceedings in a warden's court the parties agree to accept the decision of the said court as final, a memorandum of such agreement shall be entered by the warden in the register kept by him, and in such case the warden's decision shall be final.

Parties may agree that warden's decision shall be final. *Ibid.* s. 107.

133. No person shall be entitled to sue in a warden's court in respect of any matter affecting the title to any land, right, easement, or interest held under this Act or any Act hereby repealed unless he

Suitor to hold miner's right or lease. cf. *Ibid.* ss. 19, 69.

he is the holder of a miner's right, business license, authority, application for lease, or lease granted under this or any Act hereby repealed.

134. Minors may sue and be sued in connection with holdings of any nature under this Act, and their holdings shall be liable to be taken in execution and sold under legal process. Minors may sue.

Division 2.—Hearing and procedure.

Hearing of complaints.

135. (1) The warden may, if both parties consent thereto, hear and determine any complaint summarily in the presence of them both and without requiring any formal proceedings to be taken in a warden's court, and every such decision shall be final. Complaint may be heard without summons. 37 Vic. No. 13, s. 71.

(2) Such consent shall be in writing signed by the parties, and the warden may take the statements of the parties on oath. Consent in writing.

(3) Where consent has not been given as aforesaid, proceedings shall be commenced by a summons to be issued by the warden or his clerk to the complainant on his application, on the payment of the fee prescribed by the rules. Summons. *Ibid.* s. 70.

Such summons shall state concisely the facts constituting the complaint, and the amount of money (if any) claimed, and shall state a day for the appearance of the defendant before the warden's court, and shall be in the form and shall contain the particulars prescribed by the rules.

(4) A summons shall be served on the defendant, either personally or by leaving the same at his last known place of residence with any person apparently of or above the age of sixteen years: Provided that if it is made to appear that any defendant cannot after diligent inquiry be found, or cannot from any cause after reasonable effort be personally served with the summons, the warden may order that service of the summons in such manner as he may direct by such order shall be deemed good service upon such defendant, and if necessary may postpone the hearing to allow of such substituted service; and service of such summons in the manner directed by such order shall be deemed good service for all purposes. Service of summons.

136. (1) Upon the day named in the summons, or upon any adjourned day of hearing, the court shall require such proof as it thinks sufficient of the service or substituted service of the summons upon all parties interested who have not appeared, and thereupon in the absence of any of the parties interested who, having been duly served with such summons, do not appear, but in the presence of all other parties interested, or of such of them as appear to the court sufficiently to represent all such parties, the court shall proceed to investigate the matter of such complaint, and to hear and determine the same in a summary way. Warden to hear and determine. *Ibid.* s. 70.

(2)

(2) An agent duly authorised in writing by any party to a proceeding, shall have the right of audience in a warden's court. Audience.

137. (1) The court may adjourn the hearing of any complaint to any other time or place, and make all such amendments in any proceedings as may be necessary for the purpose of determining the real question in controversy between the parties, notwithstanding that the summons does not show the substance of the facts constituting the complaint. Amendment of proceedings. cf. 37 Vic. No. 13, s. 75.

If it appears that any person who ought to have been joined as a defendant has not been joined, the court may on the application of the complainant amend the proceedings by including such person as a defendant and adjourn the hearing to allow of the service of the summons upon him.

If it appears that any person who should have been joined as a complainant has not been so joined, the court may, with the consent of such person, and on the application of either party to the proceeding, by amendment include such person as a complainant. Complaint not to be dismissed for informality. cf. *Ibid.*, s. 75.

Any such amendment may be made subject to such terms as to costs, adjournment, or otherwise as to the court seems just.

(2) No complaint shall be dismissed for informality in the summons or any entry thereof, or for any defect or misnomer or inaccurate description of any person or place, or on the ground that the plaintiff appears to be entitled to different relief from that claimed in the summons, or that there is any variance between the summons and the evidence adduced at the hearing on the part of the complainant. Every such case may be dealt with by amendment under the power to amend hereinbefore contained, so that the real question in controversy shall be determined.

138. If on any day appointed for the holding of a warden's court, or on the day to which any such court has been adjourned, the warden is prevented by any cause from attending such court, the warden's clerk may adjourn the court for such time or until such day as may be necessary. In absence of warden, his clerk may adjourn court.

Payment into court.

139. (1) Notwithstanding anything hereinbefore contained, the defendant may, at any time but not less than two days before the hearing, in any case where the claim is for money, pay into the warden's court the amount claimed, or such less amount as he may think a full satisfaction in respect of the matter complained of, together with the complainant's costs up to the time of payment. Defendant may pay money into court. *Ibid.* s. 74.

(2) The warden's clerk shall give the prescribed notice of such payment to the complainant, and shall also, on demand, pay the amount so received to the complainant or his attorney. Notice of payment. *Ibid.* s. 74.

140.

140. If the full amount claimed, together with costs as aforesaid, has been so paid into court, or if the complainant has accepted such less sum as aforesaid, no proceeding shall thereafter be brought in any court in respect of the said claim. But if a less amount than that claimed, with costs as aforesaid, has been so paid in, and the complainant elects to proceed, and not accept the same, then in the event of his not recovering any further sum in respect of such claim, the warden may order him to pay the defendant's costs incurred subsequently to such payment in.

Proceedings thereupon. 37 Vic. No. 13, s. 74.

DIVISION 3.—ORDERS.

Payment by instalments.

141. When any order for the payment of money is made, the warden's court may order the amount to be paid at such times and by such instalments as the court may deem fit.

Instalments may be ordered.

Complaints for injury to property, &c.

142. (1) On the hearing of any complaint before a warden's court for the recovery of possession of, or for any encroachment or trespass upon, or for any unlawful interference with or injury to, any land, water-race, drain, dam, reservoir, machinery, or water, or any share or interest therein, the court may if it thinks fit determine the boundaries of any such land, or the quantity of water to be taken by either of the parties.

Court may determine boundaries. *Ibid.* s. 80.

(2) If in any such proceedings the decision is in the complainant's favour, the court shall determine whether any and what sum in the nature of mesne profits or damages shall be paid to him by the defendant.

Mesne profits, or damages may be awarded. *Ibid.*

The court may also in such case order, if necessary, that—

(a) possession of anything sued for be delivered to the complainant;

(b) the complainant be put into possession of any such land, race, drain, dam, reservoir, or machinery, or any share thereof, and any defendant and his servants, and any buildings, fixtures, implements, goods, and chattels, be removed therefrom;

(c) any defendant be restrained from using any such water as aforesaid.

(3) If in any such proceedings the court finds that the complainant himself has wrongfully encroached, or trespassed, or interfered with any land, race, drain, dam, reservoir, machinery, or water, in respect of which such proceedings were brought, the court may grant the same relief to the defendant against the complainant as it is herein-before empowered to grant to a successful complainant.

Relief may be granted to defendant. *Ibid.* s. 82.

(4)

Mining.

(4) In any proceedings before a warden's court in respect of the right to divert any water, or to remove any water-race, drain, dam, reservoir, or machinery, if the decision is in the complainant's favour the court shall declare him at liberty to divert such water, or remove such race, drain, dam, reservoir, or machinery, and may make an order restraining any defendant from interfering with or preventing such diversion or removal. Proceedings for diversion of water. 37 Vic. No. 13, s. 81.

(5) Persons in illegal occupation of lands, or in whose names the same may be registered, may be proceeded against by a holder of a miner's right, and the court may order their ejectment and removal in terms of subsection two of this section: Provided the complainant has applied for the ground either as a claim or a lease. Defendants in illegal occupation. *Ibid.* s. 40.

Deposit pending decision.

143. (1) Upon application to the warden's court by any party to any proceedings upon summons therein, such court may order any other party thereto to deposit, in order to abide its decision, any earth, gold, minerals, money, or chattels, the right to which will in the opinion of the court be put in issue in the course of such proceedings, and which may then be, or which at any time before the final termination of such proceedings may come into the possession, power, or control of such party. Such order shall specify the thing to be so deposited, and shall direct such deposit to be made within a time or times mentioned with some person or at some place specified either in the name of the warden or of some other person mentioned in such order. Warden may order deposit of gold, &c. *Ibid.* s. 89.

(2) Unless such order is claimed in the summons it shall only be made after twelve hours' notice served by the applicant upon the parties interested in opposing the same, or such of them as appear to the warden sufficiently to represent such parties. Notice. *Ibid.*

(3) Any person against whom such order has been made who neglects or refuses to obey such order shall be liable to a penalty not exceeding fifty pounds. Penalty.

Injunction.

144. (1) Upon application to the warden's court by any person claiming to be legally or equitably interested in any land, lease, claim, race, drain, dam, reservoir, water, machinery, or easement, such court may in its discretion and upon such terms as to costs or otherwise as it may consider just, grant an injunction restraining any person named therein from encroaching upon, occupying, using, or working any such property, or from seeking for, washing out, extracting, or removing any earth, gold, or other minerals taken therefrom, or from selling or disposing or otherwise interfering therewith, or from doing any act whereby the right, title, or interest of the applicant in or to the same might be affected. Warden may grant injunction. cf. *Ibid.* ss. 58, 87.

(2)

(2) Every such injunction shall be in force for the period named therein, unless the same is sooner discharged by the court making the same or on appeal. Duration of injunction. cf. *Ibid.* ss. 58, 87.

(3) An injunction as aforesaid may be applied for either upon summons claiming the same, with or without other relief, or upon notice served as in the case of a summons upon the persons and within the period prescribed by the rules. The same rules of procedure shall be observed at the hearing of every such application as are herein prescribed in the case of the hearing of an ordinary summons. Application for injunction. cf. *Ibid.* s. 87.

(4) The warden may also grant an injunction as aforesaid to last for not more than one month inclusive of the day of making the same, unless sooner discharged, without such summons or notice, if the applicant satisfies the court that the case is one of extraordinary urgency. No subsequent injunction or continuance of the injunction so granted shall be made under this subsection, but application for a further injunction may be made under the provisions of subsection three, either before or after the expiration of the period of the injunction. Ex parte injunction in case of urgency. *Ibid.* s. 88.

(5) When any injunction has been granted by a warden's court or on appeal therefrom under this Act, the warden, upon the application of any holder of a registered claim adjacent to the property under such injunction who shows to the satisfaction of such warden that the claim of such holder will sustain damage or be materially depreciated in value by reason of the non-working of the said property under injunction, may order, upon such terms as he thinks fit, such working of the said property as in his opinion will be sufficient to prevent such damage or depreciation, and the said warden shall make such order as to the cost of such working as he may think just. After injunction granted, warden may order working upon terms. *Ibid.* s. 91.

(6) Any person disobeying an injunction granted by the warden shall be liable to a penalty not exceeding one hundred pounds for every day of such disobedience. Penalty.

Delivery of specific chattels.

145. (1) Where any money or any gold or mineral is claimed in a warden's court, such court may order the payment or delivery of any such money, gold, or mineral which it may find to be due or deliverable by either of the parties to the other of them in respect of the subject matter of the said proceedings. Court may order delivery of gold, &c. *Ibid.* s. 83.

(2) In cases where any such claim as aforesaid arises out of any mining partnership, adventure, or interest, the court may take the account of such partnership, adventure, or interest so far as may be necessary to ascertain what moneys, gold, or minerals (if any) are so due from one party to the other, and make such order in the premises as may be just. Accounts. *Ibid.*

Costs

Costs.

146. The court may allow costs to the successful party in all suits, inquiries, and proceedings, and may allow the costs of any adjournment of any suit, inquiry, or proceeding. Costs may be allowed.

Division 4.—Execution.

Form and service of orders.

147. (1) Every order made by the warden under this Act may be in the form prescribed by the rules. Form. 37 Vic. No. 13, s. 90.

(2) Every such order shall, unless the warden otherwise directs, be served by delivering a copy to the person to be bound thereby, and at the same time showing the original order if such person requires to see the same: Provided that if the warden sees fit so to direct, it shall be sufficient service of any such order to publish a copy of such order in such newspaper, and to affix a copy thereof in such conspicuous place at or near the property in dispute as the warden appoints. Service. *Ibid.*

148. If any money ordered by a warden's court to be paid in respect of debt, damages, costs, or otherwise is not paid forthwith, the warden, on the application of the person entitled to receive such payment, or his attorney, or duly authorised agent, shall grant a writ of execution under his hand in the form prescribed by the rules as nearly as practicable. But the warden may withhold the issuing of such writ for a period not exceeding seven days from the date of such order if he considers it just or reasonable so to do. Writ of execution. cf. *Ibid.* s. 84.

149. (1) Any bailiff of a warden's court or district court to whom such writ has been delivered for execution, and all constables and peace officers within their several jurisdictions shall do and perform all things in respect of such writ which they are required respectively to do and perform in respect of a writ of execution issued out of a district court in case of the non-payment of money under a judgment of such court. Writ to be obeyed. cf. *Ibid.*

(2) Every bailiff as aforesaid may by virtue of such writ seize and take such property of the party against whom such writ is directed as could be seized and taken by virtue of a writ issuing out of a district court, and shall have the same powers and duties in respect of the seizure, sale, and disposal of such property, and all matters connected therewith, as are by law conferred and imposed on the bailiff of a district court upon a writ of fieri facias issued by the registrar thereof. Bailiff may seize property. *Ibid.*

150. (1) Where a warden's court orders the payment of money in respect of any debt, damages, costs, or otherwise, the court may at the time of such order being made further order, if it thinks fit, that any Court may order gold &c., to be delivered. *Ibid.* s. 85.

any gold or mineral in the possession, and being the property of the party directed to make such payment shall (to the extent in value of such payment as estimated by the court) be delivered up to the party entitled to such payment in satisfaction or part satisfaction thereof, and may forthwith cause such gold or mineral to the extent aforesaid to be seized and delivered accordingly.

(2) When any such order as aforesaid has been made, the writ of execution shall only be granted in respect of any balance of such payment as aforesaid remaining due after deducting the value of any gold or mineral so delivered to the party entitled to such payment.

Execution for balance only. 37 Vic. No. 13, s. 85.

Mode of enforcing orders where not specially provided for.

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

Warden may authorise person or officer to perform any prescribed act. *Ibid.* s. 92.

DIVISION 5.—ASSESSMENT OF COMPENSATION.

152. (1) Where compensation is by this Act directed to be assessed by the warden in respect of land entered or occupied, or proposed to be entered or occupied, under a miner's right, authority, lease, or application for lease, or in respect of any land adjoining thereto, such assessment—

How compensation assessed. 57 Vic. No. 32, s. 17. 60 Vic. No. 40, s. 2 (*d*).

(a) shall be made in the manner prescribed, and after notice to the persons who appear to him to be interested in the assessment; Act No. 41, 1899, s. 10.

(b) shall be of the loss caused and likely to be caused by damage to the surface of the land, and to any crops, buildings, and improvements thereon by works carried on in pursuance of such right, authority, lease, or application;

(c) shall not exceed in amount the market value for other than mining purposes of the land and the improvements thereon;

(d) shall, subject to the appeal to arbitration hereinafter provided, be final.

(2) The amount so assessed shall be paid by the holder of such right, authority, or lease, or by such applicant, into the warden's court, and shall, from time to time, on damage being caused as aforesaid, be paid out of court on the application of any person having interest in the land.

(3)

(3) Provided that, on production of a document in writing signed by the holder or applicant aforesaid, and by the person having interest in such land, agreeing to dispense with such assessment and payment, the warden shall, in terms of such document, dispense with the making of such assessment absolutely or on conditions so as to carry out the terms of such agreement.

(4) If after the expiration of six months, and before the expiration of twelve months, from the determination of such lease or authority, or from the refusal of the application for the lease, the whole or any part of an amount so paid into court has not been paid out under the above provisions of this section, and has not been ordered to be so paid out, any person who has paid such amount into court may apply to the warden for the payment out to him of such amount or part, and the warden may order such payment to be made.

After the expiration of such twelve months, the warden may cause such amount or any part thereof to be paid into the Treasury and carried to the Consolidated Revenue Fund.

Procedure in court on making assessment.

153. In making any such assessment, the warden—

(a) may make such assessment at any time and place fixed by him;

(b) may make such assessment in the absence of any persons interested who appear to the warden to have been duly notified;

(c) may adjourn the hearing to any time and place, subject to such terms as to costs or otherwise as he thinks fit;

(d) shall have the powers of a warden's court.

Additional assessment. 57 Vic. No. 32, s. 20. Act No. 44, 1899, s. 21.

154. If after such assessment has been made it is proved to the warden that the amount so paid into court in respect of certain land has been duly paid out, and that since such payment out further loss has been caused by damage as aforesaid to such land, or to other land, the warden may as aforesaid assess such loss and order the same to be paid by the holder or applicant aforesaid to any person having interest in the land so damaged. If such payment is not so made, the claim, authority, or lease may be cancelled.

Appeal to arbitration. cf. 57 Vic. No. 32, s. 20.

155. Any person dissatisfied with the amount so assessed by the warden, where the amount so assessed exceeds five pounds, may, in the prescribed manner, give notice that he requires the assessment to be determined by arbitration under this Act.

Such assessment shall thereupon be made and determined by arbitrators appointed as prescribed. The arbitration shall be in the nature of an appeal from the assessment of the warden, and the powers of the arbitrators and proceedings before them shall be as prescribed. The determination of the arbitrators shall be final and shall be given effect to by the parties and by the warden:

Provided that the appellant shall deposit with the warden five pounds to answer any costs which the arbitrators may order him to pay.

Appeal against assessment.

156. The Minister, or any person claiming payment for land resumed under this Act, if dissatisfied with the amount of the value assessed by a warden in respect of any such resumed land, may give notice of appeal against such assessment in the manner prescribed by the Closer Settlement Act, 1901, and the provisions of that Act shall, mutatis mutandis, apply to any such appeal under this Act.

PART VIII.

Appeals.

Division 1.—To District Court.

Right to appeal from warden's court. 37 Vic. No. 13, s. 106.

157. If any party to a complaint or proceeding in a warden's court is dissatisfied with the decision of the said court where such decision is not in or by this Act declared to be final, such party may appeal from the same to the District Court sitting as a court of appeal in its mining jurisdiction at that sitting of such court which next after the expiration of fifteen days from the day of the making of such decision is held at or nearest to the place at which such decision was made.

The hearing of the appeal *Ibid.*

158. (1) The person so appealing shall, within seven days from the day of the making of such decision, deposit with the registrar of the District Court at the place where such sitting is to be held the sum of ten pounds, or such less sum as the warden may order, to abide the costs of such appeal, and give security to the satisfaction of the warden for the due performance of any order which the District Court hearing such appeal may think fit to make, and shall lodge notice in writing of his appeal, stating the grounds thereof. Thereupon such registrar shall issue out of such court a summons, in the form and containing the particulars prescribed by the rules.

(2) Any person so lodging notice of appeal against any such decision shall be taken to have abandoned his right of appeal under Division two of this Part.

Such appeal to a District Court shall be heard before the said court, which shall proceed to make an order reversing or varying such decision or dismissing such appeal or such other order as to the said court may appear just; and in and by such order the said court may make such order with respect to the costs of the appeal, and of the proceeding appealed from, as it may think fit.

(3) Provided that no such appeal shall be so heard unless the said summons has been served seven days before the same is returnable upon all the parties interested in supporting such decision, or upon such

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of them as appear to the judge sufficiently to represent all the parties interested, or, in case no such party can be found, upon the warden who made the decision, nor unless at the hearing of such appeal a copy of the minute of such decision, certified under the hand of a warden or warden's clerk, is produced to such court.

Appeal how to be heard.
37 Vic. No. 13, s. 109.

159. Every such appeal shall be in the nature of a rehearing of the whole matter, and shall be heard and determined by the said judge sitting as aforesaid, and no ground of appeal except those stated in the notice of appeal shall be entered upon unless the judge allows, either before or at the hearing, other grounds to be added upon such terms as to adjournment, costs, or otherwise as he may think fit.

Injunction, &c., and stay of proceedings may be had.
Ibid. s. 111.

160. Whenever any such appeal has been brought or be about to be brought, the warden, from the decision of whose court the appeal is or is about to be brought, may on the applicaton of any of the parties interested in such appeal, make such order for an injunction or receiver or payment of money into the hands of the warden, to abide the event of the appeal, or for stay of proceedings or otherwise, and upon such terms as he may think proper; but unless such order, or an order to the same effect, is so made, no appeal shall operate as a stay of proceedings. The said warden may at any time discharge any such order made by him.

No costs on appeal under twenty pounds unless under special circumstances.
Ibid. s. 108.

161. If, upon the hearing of such appeal, the subject matter of the dispute appears to the court before which the appeal is heard not to exceed in value twenty pounds, the appellant shall not, although he succeeds, be entitled to receive any costs of such appeal from the opposite party, unless the judge of such court is of opinion that the special circumstances of the case entitle the appellant to costs.

Mode of enforcing decision after appeal.
Ibid. s. 112.

162. (1) If an appeal against the decision of any warden's court is dismissed, or if on appeal such decision is varied, such decision, or such decision as so varied (as the case may be), shall be deemed to be the decision of the warden's court and may be enforced as if it had been the original decision of such court.

(2) Provided that if a District Court on any such appeal orders that possession of any land, race, drain, dam, reservoir, or water, or of any gold or minerals, or of any share or interest therein, be delivered or restored to any party to the appeal, then it shall be lawful for any warden, and he is hereby required, to cause possession thereof to be delivered or restored to such party, and if necessary for that purpose to cause to be removed from any such land, race, dam, reservoir, or water any other person, his servants, goods, and chattels; and all members of the police force and other peace officers shall assist him in doing so.

(3) Provided also that if—

(a) any decision of a warden's court, when so affirmed or varied, contains an award of debt, damages, and costs, or either of them, and the same has not been previously paid or satisfied; or

(b)

(b) any decision of a district court reversing the decision of the warden's court contains an award of debt, damages, and costs, or either of them, or an order for payment or repayment of money, and the same is not forthwith, or within the time limited for such payment in the adjudication on appeal, paid or satisfied; or

(c) if such District Court orders that any money received by any respondent under the decision appealed against be paid into court, and the same is not forthwith, or within the time limited as aforesaid, paid into court; or

(d) if such court decrees costs against any party to such appeal, and the same is not paid within the time so limited,

the registrar of such court (upon the application of the person entitled to receive the same, and without any summons or notice to the person required to pay the same) may forthwith issue execution for the amount thereof in the same manner as upon any judgment or order of the said court for payment of money.

Appeal to Supreme Court.
37 Vic. No. 13, s. 115.

163. (1) If the appellant or respondent in any appeal to a mining appeal court, in which the amount of the original claim or the value of the property involved exceeded fifty pounds, is dissatisfied with the determination or direction of the said court in point of law or upon the admission or rejection of any evidence, or if the appellant or respondent is dissatisfied with the determination and direction of the said court on any grounds, and the amount claimed or involved by the decision of such court is not less than five hundred pounds, such appellant or respondent may appeal from the said determination or direction to the Supreme Court:

Provided that the party so appealing shall, within such time and in such manner as may be prescribed by the rules, give notice of such appeal to the other party, or his attorney, and also give security (to be approved of by the registrar of the said mining appeal court) for costs of the appeal and the amount of the judgment, or in lieu of giving such security, deposit in the hands of such registrar the amount of the judgment, together with thirty pounds in addition to such amount, to answer the costs of the appeal if such appeal be dismissed.

(2) The Supreme Court may either order a new trial before such mining appeal court on such terms as it thinks fit, or may order judgment to be entered for either party as the case may be, and make such order with respect to the costs of the said appeal as such court may think proper. Such orders shall be final, and such appeal shall be in such manner and form, and subject to such regulations in all respects as the judges of the Supreme Court may by general rules in that behalf prescribe.

(3) Such appeal shall be transmitted by the appellant to the prothonotary, and be set down for argument in the Supreme Court in the same manner as special cases in actions at law in that court.

DIVISION 2.—TO SUPREME COURT.

Case stated for opinion of Supreme Court. Justices Act, 1902, s. 101.

164. (1) If any party to the proceedings in a warden's court is dissatisfied with the determination by the warden therein as being erroneous in point of law, he may, within the prescribed time, apply in writing to the said warden to state and sign a case, setting forth the facts and grounds of such determination for the opinion thereon of the Supreme Court.

(2) The party so applying shall be called the appellant, and the other party to the proceedings shall be called the respondent.

Security to be provided by appellant. *Ibid.* s. 102.

165. Before such case is stated and delivered to the appellant, he shall lodge with the warden's clerk the prescribed fees, and the sum of twenty pounds, or such less sum as the warden may order, to abide the costs of the appeal, and shall give and provide security to the satisfaction of the warden for the due performance of any order which the Supreme Court may think fit to make.

Warden may refuse to state case. *Ibid.* s. 103.

166. (1) If the warden is of opinion that the application is merely frivolous, he may then, but shall not otherwise, refuse to state a case.

Certificate of such refusal.

(2) Where the warden refuses to state a case he shall, on the request of the appellant, sign and deliver to him a certificate of such refusal.

Supreme Court may direct case to be stated. *Ibid.* s. 104.

167. (1) Where the warden refuses to state a case, the appellant may apply to the Supreme Court upon an affidavit of the facts for a rule calling upon the warden and the respondent to show cause why such case should not be stated.

(2) The court may make absolute or discharge such rule with or without costs.

(3) Where such rule is made absolute, the warden, upon being served with a copy thereof, shall state a case accordingly, upon the appellant lodging the fees making the deposit and giving the security aforesaid.

Appellant to give notice. *Ibid.* s. 105.

168. The appellant shall, within seven days of receiving the case, serve notice in writing of such appeal, together with a copy of the case as stated and signed, on the respondent, and shall thereafter and within the said time transmit such case to the prothonotary of the Supreme Court.

Powers of Supreme Court. *Ibid.* s. 106.

169. (1) The Supreme Court shall hear and determine the questions of law arising on such case; and shall—

(a) reverse, affirm, or amend the determination in respect of which the case was stated; or

(b) remit the matter to the warden with the opinion of the Court thereon; or

(c) make such other order in relation to the matter as seems fit:

Provided

Provided that the court may cause the case to be sent back for amendment, and thereupon it shall be amended accordingly, and the order of the court shall be made after it has been so amended. Case may be sent back for amendment.

(2) The court may make such order as to costs as seems fit, provided that no warden who has stated and delivered a case in pursuance of this Act shall be liable to any costs in respect of such appeal. Costs.

(3) All such orders shall be final and conclusive on all parties. Decision to be final.

170. (1) The authority and jurisdiction hereby vested in the Supreme Court may, subject to any rules and orders of the said court in relation thereto, be exercised by a judge of the said court sitting in chambers as well in vacation as in term. Powers of Court may be exercised by Judge in chambers. Justices Act, 1902, s. 107.

(2) The Supreme Court may make and alter rules and orders to regulate the practice and proceedings in reference to the stating of cases as herein provided. Rules of practice.

171. (1) Any order of a warden affirmed or amended, and any order made by the Supreme Court on the determination of any such case, may be enforced in the same manner as an order of the warden who originally decided the matter. Order enforced as order of warden. *Ibid.* s. 108.

(2) No action or proceeding whatever shall be commenced or had against any warden for enforcing any such order by reason of any defect therein.

172. (1) Any person who appeals under this Division against any determination of a warden from which he might appeal to a District Court, shall be taken to have abandoned such last-mentioned right of appeal. Persons appealing not to be allowed to appeal to District Court,

(2) Nothing herein shall in any way interfere with, curtail or limit the powers of any person to apply for a writ of prohibition against the determination of any warden. but nothing to prevent applications for prohibition.

PART IX.

General provisions.

Conditional purchases conversion.

173. Notwithstanding anything to the contrary contained in the Crown Lands Act of 1884, the Crown Lands Titles and Reservations Validation Act of 1886, the Conversion into Mining Conditional Purchases Validation Act of 1888, and any Regulations made thereunder, the right of any holder of a conditional purchase made under sections thirteen, twenty-one, or twenty-two of the Crown Lands Alienation Act of 1861 to convert such purchase into a conditional Conversion into mineral conditional purchase.

purchase for mining purposes shall, from and after the commencement of this Act, absolutely cease and determine, and no application for such conversion shall be entertained unless lodged in the proper office prior to such commencement.

Notices.

Service of notices. 57 Vic. No. 32, s. 15.

174. All notices required by this Act to be served upon the owner or occupier of any private land, or land not Crown land, shall, except where otherwise in this Act provided, either be served personally on the owner or occupier or on his local agent, provided the said agent is registered as such as prescribed, or left at the usual place of abode of such owner or occupier.

If in the case of a notice directed to be served on the owner such owner is absent from New South Wales, or he or his agent cannot after diligent inquiry be found, the notice may be left with the occupier, or if there be no such occupier may 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.

Documents and affidavits.

May be in writing or print. 37 Vic. No. 13, s. 117.

175. (1) All documents used in any proceedings in any court under this Act or in relation to any such proceedings may be in writing or print or partly in writing and partly in print.

Affidavits may be sworn before Judge, &c. *Ibid.* s. 118.

(2) Any affidavit to be used in any warden's or mining appeal court, or before a warden, may be sworn before any judge of the Supreme Court or any commissioner for that Court for taking affidavits, or before the judge of any District Court or any warden or justice.

Contempt of court.

Contempt and penalties therefor. *Ibid.* s. 119.

176. If any person wilfully insults any warden sitting in the discharge of any duties imposed by this Act, or wilfully interrupts the proceedings of any warden's court, or being summoned or examined as a witness in any suit or proceeding in any such court refuses to be sworn or to answer any lawful question, or is guilty of wilful prevarication, the warden, if he thinks fit, may commit any such offender to prison for any time not exceeding forty-eight hours, or impose on any such offender a fine not exceeding five pounds for every such offence, and in default of immediate payment thereof, to commit the offender as aforesaid for any time not exceeding forty-eight hours unless the fine is sooner paid.

In either of the cases aforesaid a warrant in the form prescribed by the rules may be issued by such warden, or such court, and shall be good and valid in law without any other order, summons, or adjudication whatsoever, and the bailiff and gaoler to whom the same is addressed shall obey the same.

Interpleader

Interpleader.

177. (1) If any claim is made to or in respect of any goods or chattels taken in execution under any process issued out of any mining appeal court or by a warden, or in respect of the proceeds or value thereof, by any person not being the party against whom such process has issued, the registrar of such court or such warden may, upon application of the officer charged with the execution of such process, as well before as after any action brought against such officer, issue a summons calling before the said court or such warden, as well the party issuing such process as the party making such claim. Proceedings to be taken. 37 Vic. No. 13, s. 120.

(2) Upon the issue of such summons any action which may have been brought in the Supreme Court or in any District Court in respect of such claim shall be stayed, and the court in which such action has been brought, or any judge thereof, on proof of the issue of such summons, and that the goods and chattels were so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action after the service upon him of the said summons. Action taken to be stayed. *Ibid.* s. 120.

(3) Upon the return of the said summons, the mining appeal court or the warden issuing the process, as the case may be, shall adjudicate upon the said claim and make such order between the parties in respect thereof, and of the costs of the proceedings, as to it or him may seem fit, and such order may be enforced in like manner as any order made in any suit or proceedings before such court or such warden, as the case may be. Such adjudication and order shall be final. Procedure upon return of summons. *Ibid.*

Recovery of fees, &c.

178. All fees, charges, and sums of money payable under this Act or the regulations may, where no other mode of recovery is provided, be recovered in a court of petty sessions or District Court. Recovery of fees, &c. *Ibid.* s. 116.

No certiorari.

179. No proceedings under this Act shall be removed or removable by certiorari or otherwise into the Supreme Court. Certiorari prohibited. *Ibid.* s. 122.

PART X.

Regulations and rules.

180. The Governor may make regulations carrying into effect the provisions of this Act, and particularly— Purposes for which regulations may be made. cf. *Ibid.* ss. 59, 64, 66.

prescribing the modes, times, and places of and for the issue of miners' rights and business licenses defining the various classes of tenements which may be held under miner's right;

prescribing

prescribing the area and form of land which may be occupied under a miner's right or business license and the dimensions and form of the land to be demised by any lease; the manner in which applicants for the same shall mark out the land applied for; the requirements to be complied with by such persons; the manner of dealing with cases when two or more applications are made for the same tenement or for a lease of the same land or the right to divert, or collect, or use water for mining for gold or other minerals;

determining the dimensions, boundaries, form, and position of any claim, or class of claims, and the subsequent adjustment of the same where necessary, when such determination shall take effect, and the number, extent, and classes of claims which any one person, or any two or more persons in conjunction, may take possession of under miners' rights;

regulating the cutting, construction, use, and maintenance of races, dams, and reservoirs upon Crown lands in cases where leases have not been granted by the Governor;

prescribing the manner in which and with what incident rights and obligations, any tenement, or any water taken or diverted by virtue of a miner's right, shall be taken possession of, held, occupied, used, worked, or assigned;

determining the order of priority among the holders of miners' rights entitled to the use of any water, how such priority is to be regulated, and under what conditions and circumstances;

prescribing the mode of registration of any tenement occupied, or easement enjoyed under a miner's right, or any share or interest therein, or encumbrance thereon;

providing for the registration of the assignment of any such tenement easement, share, interest, or encumbrance, or of the discharge of any such encumbrance;

prescribing the mode of registration of any such share or interest in the case of the death, bankruptcy, or lunacy of the owners thereof, or of the sale of any such share or interest under the decree, judgment or order of any court, or the decision of a warden or mining appeal court;

prescribing the mode of registration of amalgamated claims and of orders for suspension of work;

fixing the fees to be charged on any such registration as aforesaid;

prescribing the time and mode of taking possession of forfeited or abandoned tenements, of registering such tenements, and the labour conditions to be performed by the persons taking possession of the same;

enforcing and regulating the drainage of tenements

regulating the mode in which the rights and privileges of the owners of tenements, and easements under a miner's right, may be exercised or enjoyed, and limiting, qualifying, or restricting the exercise and enjoyment of such rights and privileges, and generally for the protection of such owners in the exercise and enjoyment of the rights, privileges, and interests conferred by this Act;

prescribing the circumstances and conditions under which any tenement, or any share, right, or interest therein may be deemed to be or be declared abandoned, and the penalty, including forfeiture, for failure to comply with the conditions to be performed by the holder of any tenement;

for the prevention of nuisances in and about residences or places of business held under a miner's right or business license, and for cleansing and keeping clean the same;

prescribing how land applied for shall be described in the application;

prescribing the forms of applications, notices, and other documents to be used, the fees to be paid in respect of any application and for survey;

prescribing the forms of leases and authorities to be granted under this Act, and the covenants, conditions, reservations, and provisions to be inserted therein, and the mode of registering the same; the conditions upon which they may be issued and the privileges to be enjoyed under them; the fees to be paid on issue of leases and upon registration thereof;

prescribing the time within which a lessee shall execute the lease;

prescribing the conditions upon which the amalgamation of adjoining leases may be authorised;

prescribing the conditions under which suspension of any condition imposed for the expenditure of money may be granted;

for converting any authority issued under any Act repealed by this Act into a lease or leases, and for enforcing the covenants and conditions thereof; 48 Vic. No. 10, s. 4.

for converting any lease granted under any Act repealed by this Act into a lease under this Act;

for prescribing what shall entitle a prospector to concessions as a reward, claim, or lease, and the terms and conditions upon which any such reward, claim, or lease may be granted;

for preventing the accumulation of and for the removal to some convenient place of sludge, tailings, and other refuse matter, oozing or flowing from or connected with any Crown land or private land held or occupied under this Act, and worked by means of puddling, quartz-crushing, or other machines, and of waste water, and for the making of such channels as

may

may be necessary for any of the purposes aforesaid, and for otherwise regulating such oozing, flowing, and running to waste;

for the protection from injury, destruction, and unlawful removal of such machines as last aforesaid, and of pegs, posts, fences and notices, and of any plant or appliances used for or in connection with mining under any claim or lease, and for the protection from obstruction of channels, drains, creeks, and rivers used for mining purposes under such claim or lease;

for the construction and keeping in repair of suitable bridges or other crossings over races, channels, or drains, used for mining purposes, and for making proper approaches to such bridges or crossings, and for determining the width of such bridges, crossings, and approaches;

for making and keeping in repair, and for regulating the width and formation of private ways and passages over claims or races, or any Crown lands or private lands used for mining purposes, or for or in connection with mining, and for regulating and imposing conditions on the right to change the direction of any such way or passage, and for the protection of the same from injury or obstruction.

for securing the baling of water from mines so as to prevent injury from such water to any mining workings;

for preventing the defiling or wasting of water used under this Act for domestic purposes, and for determining whether any and what water-hole, spring, or other depository of water shall be reserved for the domestic use of the holders of miner's rights, business licenses, or leases or authorities under this Act, and the mode of such reservation;

prescribing the procedure to be followed in any inquiry by a warden under this Act;

regulating the working of machinery on dredges, and making provision for the safety of life and property in connection with dredging operations;

for enforcing any regulation made under this Act by penalties not exceeding fifty pounds in any case; and

generally for carrying into effect the provisions of this Act.

Until such regulations have been made, the regulations in force at the commencement of this Act for the said purposes shall continue in force and shall apply to any claim, lease, or holding under this Act.

Power to make rules of practice.
37 Vic. No. 13, s. 113.

181. The District Court Judges, or any three of them, may, subject to this Act, make such general rules as they may think fit—

(a) regulating the practice and procedure of mining appeal courts and warden's courts under this Act;

(b) for the execution of the process of such courts, and in relation to any of the provisions of this Act which relate to such courts;

(c)

(c) the fees to be allowed to barristers and attorneys practising in the said courts;

(d) the expenses to be paid to witnesses in the said courts;

(e) prescribing the forms for matters or proceedings in the said courts;

(f) for keeping all books, entries, and accounts to be kept by the registrar or clerk of any such court.

All such rules shall, from and after the expiration of the time fixed therein for the commencement thereof, and after the same have been published in the Gazette, be of the same force and effect as if the same had been herein enacted; and in any case not expressly provided for herein or by the said rules, the general rules in force for the time being, made under the District Courts Act, 1901, may be adopted and applied so far as practicable by wardens and District Court judges exercising jurisdiction under this Act.

Rules and regulations to be laid before Parliament.

182. All regulations and all general rules made under this Act shall be laid before both Houses of Parliament within fourteen days after the publication of the same in the Gazette if Parliament is then sitting, and if not, then within fourteen days after the commencement of the next session of Parliament.

37 Vic. No. 13, s. 114.

PART XI.

Penalties.

Unauthorised mining, &c.

Ibid. s. 123.

183. Any person who—

(a) mines or employs any other person to mine in, or cuts or constructs any race, drain, dam, or reservoir through or upon, or cuts or removes any live or dead timber, or any earth from any Crown lands without lawful authority shall be liable for each such offence to a penalty not exceeding ten pounds.

Unauthorised occupation of Crown land.

Ibid. s. 124.

184. Any person who on any Crown land—

(a) mines for gold or any other mineral; or

(b) occupies such land for mining purposes; or

(c) employs any person for any of the above purposes; or

(d) occupies such land for the purposes of any business or for residence,—

shall, unless he proves that he was authorised by or under this or any other Act to so mine on or occupy such land, or where he so employs any person that the said person was so authorised, be liable to a penalty not exceeding ten pounds.

Breach of regulation.

Ibid. s. 126.

185. Any person who infringes any regulation for the infringement whereof no penalty is prescribed by the regulations, shall be liable for each such offence to a penalty not exceeding ten pounds.

186.

Witness neglecting to appear. 37 Vic. No. 13, s. 130.

186. Any person duly served with any summons issued out of a mining appeal court or any warden's court, or by a warden under this Act, requiring such person to appear as a witness in such court, or on any proceeding for inquiry before such warden, and to whom at the same time payment or tender of his expenses has been made according to the scale to be fixed by the rules, and who refuses or neglects without sufficient cause to appear according to the tenor of such summons, shall be liable to a penalty not exceeding ten pounds, but no conviction for such penalty shall exempt such person from any action for disobeying such summons.

Disobedience of order.

187. Any person against whom any order, not being an order for the payment of money, has been made by any mining appeal court or warden's court, who refuses or neglects to obey the same, shall, where no penalty is herein specified, for such refusal or neglect, be liable to a penalty not exceeding fifty pounds.

Assault on warden and other offences. *Ibid.* s. 129.

188. Any person who—

(a) assaults, obstructs, or resists any warden or any person duly authorised by any mining appeal court or warden in lawfully entering upon any claim or land, or in performing any other act authorised hereby, or any bailiff or other officer, or any clerk or assistant of such bailiff or officer, or any inspector or other person, in the performance of his duty, or in the exercise of his powers under this Act; or

(b) after being removed by any warden under the provisions of this Act from any claim or other place, forcibly or clandestinely retakes or retains, or endeavours to retake or retain, possession thereof, or of any portion thereof, or of any share therein; or

(c) after any decision of a mining appeal court, or any decision of a warden's court not reversed on appeal, that any person is entitled to use for mining purposes, or to divert any water, resists such person or his agents in such use or diversion; or

(d) upon or in consequence of the decision of any such court against him, assaults or threatens to assault any person in whose favour such decision has been made

shall be liable to a penalty not exceeding fifty pounds.

Wrongful exaction of moneys. *Ibid.* s. 128.

189. Any person who wilfully and corruptly exacts, takes, or accepts any fee, sum, or reward whatsoever, other than and except such fees or sums as are lawfully appointed or allowed for or on account of anything done under the authority of this Act or the regulations, shall be liable to a penalty not exceeding fifty pounds.

Forgery of documents. *Ibid.* s. 125.

190. Any person who forges any miner's right, or any lease, license, or any authority issued or purporting to be issued under this Act, or fraudulently uses, utters, or exhibits any such forged miner's right, lease, license, or authority, knowing the same to be forged, shall

shall be guilty of a misdemeanour, and shall on conviction thereof be sentenced to imprisonment either with or without hard labour at the discretion of the court for any period not exceeding twelve months.

Wrongful obstruction on private lands. 57 Vic. No. 32, s. 10.

191. Any owner or occupier of any private land as defined in Part IV, or of any land which is not Crown land as defined in Part V of this Act, or any other person who—

(a) obstructs any holder of a lease, or authority to enter, granted under the provisions of the said Parts respectively in doing any act which he is by this Act authorised to do, on, in, or under such land; or

(b) interferes with, removes, destroys, or defaces any boundary mark authorised by this Act to be placed on any land,

shall be liable for a first offence to a penalty not exceeding ten pounds, and for a second or any subsequent offence to a penalty not exceeding fifty pounds.

Wrongful mining on private lands.

192. Any person who without lawful authority commences to mine on, in, or under any private land as defined in Part IV of this Act, shall be liable to a penalty not exceeding ten pounds, and any gold, minerals, or metals obtained by such unauthorised mining may be forfeited by the court before which he is convicted of such offence.

False quantity or value.

193. Any person who knowingly inserts any false quantity or value in any return directed by this Act to be made or furnished shall be liable to a penalty not exceeding fifty pounds.

Recovery before any warden. 37 Vic. No. 13, s. 116.

194. (1) All penalties imposed under this Act or the regulations may be recovered in a summary way before any warden who is also a justice, in accordance with the provisions of the Acts in force for the time being regulating proceedings on summary convictions before justices.

Civil remedy remains though penalty recovered. *Ibid.* s. 121.

(2) Notwithstanding the recovery of any penalty under this Act, any person may enforce any civil remedy which he may have by reason of the act or default in respect of which the penalty may have been recovered.

SCHEDULES.

SCHEDULE ONE.

Year and Number.	Title or Short Title.	Extent of repeal.
37 Vic. No. 13 ..	Mining Act, 1874	The unrepealed portion.
43 Vic. No. 28 ...	An Act to amend the Act 37 Victoria No. 13...	The whole.
46 Vic. No. 7 ...	An Act to further amend the Act 37 Victoria No. 13.	The whole.
48 Vic. No. 10 ...	Mining Act Further Amendment Act of 1884...	The whole.
48 Vic. No. 17 ..	Mining Lease Validating Act of 1884	The whole.
53 Vic. No. 20 ...	Mining Act of 1889	The whole.
57 Vic. No. 32 ..	Mining on Private Lands Act of 1894	The whole.
60 Vic. No. 7 ...	Mining Act Amendment Act of 1896	The whole.
60 Vic. No. 40 ...	Mining Laws Amendment Act of 1896 ...	The whole.
No. 44, 1899 ...	Gold and Mineral Dredging Act, 1899... ...	The whole.
No. 102, 1902 ...	Gold and Mineral Dredging (Amending) Act, 1902.	The whole.
No. 10, 1902 ..	Mining Laws Amendment Act, 1901	The whole.
No. 101, 1902 ...	Mining on Private Lands (Amendment) Act, 1902.	The whole.

SCHEDULE TWO.

Sec. 9.

NEW SOUTH WALES.

No.

[*Insert here sum paid for the miner's right.*]

Mining district and division or place in which issued.

(*Date*)

MINER'S RIGHT.

Issued to , of , under the provisions of the Mining Act, 1906, to be in force until

SCHEDULE THREE.

Sec. 10.

NEW SOUTH WALES.

No.

[*Insert sum paid for the business license.*]

District and division or place in which issued.

(*Date.*)

[*Insert here whether for six or twelve months.*]

BUSINESS LICENSE.

Occupation
Residence

Issued to , of , under the provisions of the Mining Act of 1906, to be in force until the day of

Sydney : William Applegate Gullick, Government Printer.—1906.

[2*s.* 3*d.*]