G.—No. 20.

REPORT

OF THE

GOLD FIELDS ROYAL COMMISSION OF INQUIRY, 1871, NEW SOUTH WALES,

APPOINTED TO INQUIRE INTO

THE WORKING OF THE PRESENT GOLD FIELDS ACT AND REGULATIONS OF NEW SOUTH WALES, AND INTO THE BEST MEANS OF SECURING A PERMANENT WATER SUPPLY FOR THE GOLD FIELDS OF THE COLONY.

COMMISSIONERS:

J. G. Long Innes, Esq., Barrister-at-Law, President.
Edwd. Combes, Esq., C.E.
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Richard Frappell, Esq.

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WELLINGTON.

1872.

GOLD FIELDS COMMISSION, NEW SOUTH WALES, 1871.

REPORT.

To His Excellency the Right Honorable SOMERSET RICHARD, Earl of Belmore, Governor and Commander-in-Chief of the Colony of New South Wales.

May it please your Excellency,—

We, the Commissioners appointed by your Excellency to enquire into the working of the present Gold Fields Act and Regulations, and to report upon the same with such suggestions as we think will be desirable for the framing of new Laws and Regulations for the Gold Fields of New South Wales, and also to examine and report upon the best means of procuring permanent Water Supply on the different Gold Fields of the said Colony, so far as the same may be effected by legislation, have the honor to submit to your Excellency the following Report:—

Introductory.

1. The short Progress Report furnished by us to your Excellency, of date September 2nd, 1870, will show briefly the places visited by your Commissioners up to the time of presenting that Report; but inasmuch as it does not enter into the detail of our labours, it may be well to refer now more specifically to the course adopted by us in pursuance of the powers conferred upon and the instructions given to us.

Means taken to procure evidence.

2. Your Commissioners, then, commenced the taking of evidence in Sydney, having employed ample means to invite before them witnesses of every class of experience, and representing every shade of opinion; and we are happy to be able to state that, not only in Sydney but throughout the country, the invitation thus put forth by the Commission has been responded to most liberally by those interested in, and acquainted with, the subjects under investigation. Obviously, an inquiry conducted in Sydney alone would not have, in any way, met the requirements of the trust confided to us, or have in any way enabled us to discharge satisfactorily the duty imposed upon us; and your Commissioners therefore lost no time in visiting the principal mining districts of the Colony. We took due care to apprise the miners of the respective districts visited by us of our intention to visit them, and of the objects of our visit; and we believe that the evidence which has been collected by us will show that the mining community generally has not, on its part, failed to appreciate the great boon which it has been generally thought the Parliament meant to confer upon that community, in appointing this Commission of Inquiry. Hardly a Field of any importance throughout the Colony has been unvisited by us; and in the body of evidence which we have now the honor to lay before your Excellency, it will be seen that there is not a mining district of the Colony that is not represented. Doubtless there may be many individuals of much experience and of great ability who have not availed themselves of this opportunity of putting their views before the Country; but if so, it cannot be for want of the opportunity.

Circular inviting communications.

3. It was of course not possible that every Gold Field could be visited by us; and, in especial consideration of that circumstance, your Commissioners prepared for distribution the circular letter which will be found in the Appendix. This circular embraces almost all the branches of the inquiry committed to us, and we have reason to believe it has found its way to every post town in the Country in the neighborhood of any Gold Field. Most of the written communications received by your Commissioners, in answer to that circular, are printed either in the body of the evidence or in the Appendix; and of those communications which it has not been thought necessary to print, there is hardly one the views contained in which have not found in some shape or other fitting expression. Some of the written communications which are printed are really valuable documents, evidencing much careful study of the subject, and containing views and suggestions of great intrinsic worth.

Inability to visit Victoria, matter of regret.

4. Your Commissioners cannot but express a regret that an opportunity has not been afforded them of visiting the neighboring Colony of Victoria. We would desire to quote here an extract from our letter of the 3rd December to the Minister for Lands, specifying some of the more important objects which appeared to us to render it desirable that we should visit that Colony:—

"1st.—The mining legislation of Victoria differs so essentially, both in principle and detail, from that of New South Wales, that it seems to us of great importance to ascertain, with the certainty only attainable by personal investigation upon the spot, how far the superior mining prosperity of that Colony is due to her legislation. It has been asserted that if an Act and a code of Regulations similar to those of New South Wales were in operation in Victoria, three-fourths of the profitable mining now carried on in that Colony would never have been entered on.

"2nd.—We desire to inquire into the working and details of the Victorian Department of Mines, the general administration of the Gold Fields of that Colony, and the framing of their Mining Regulations.

"3rd.—We hope to obtain valuable information upon the Water Supply question. A Water Supply scheme, intended to be self-supporting, has been partially brought into operation in Victoria, and it is most desirable that we should know how far the expectations formed of that scheme have been realised, particularly with a view to the consideration of whether a similar plan, or any adaptation of it, would be suitable to the Gold Fields of this Colony."

Circumstances, however, did not appear to permit of your Commissioners being authorized to proceed to Victoria.

Mode of taking evidence.

5. It will be seen that, in taking the evidence, your Commissioners have not adopted the plan generally followed of taking down at full length question and answer. The course which we have preferred is one which we venture to think is an improvement upon the more usual plan. Doubtless, if the object of your Commissioners had been to swell the bulk of the volume of evidence, that object would have been more effectually attained by putting down in full all the questions and the answers. But, in the first place, the services of a Short-hand Writer were not at our disposal, and had they been we should not have availed ourselves of those services for this purpose; for a very cursory perusal of printed "Minutes of Evidence," as generally presented to Parliament, will show that nine-tenths of the evidence, so called, of witnesses, are but echoes of leading questions put by the persons examining; so that in truth it too often happens that the result attained is not the opinion of the witnesses, but of the examiners. Your Commissioners have anxiously guarded against the possibility of any such miscarriage of the functions committed to them, and have been careful to ensure that the views and opinions subscribed by the various witnesses before them were the veritable views and opinions of the witnesses themselves, and not of your Commissioners. In some few instances, where it has been desirable to follow out, somewhat argumentatively, the bearings of particular views, the questions and answers have both been specifically set down. And by a careful side-noting of the evidence, with regard to the particular heads of inquiry, your Commissioners hope that every reasonable facility in reference will be found to be furnished.

Commissioners not responsible for delay in presentation of Report.

6. Our labours in taking evidence and preparing the Report were brought to a close in Sydney, on the 29th December of last year, and we regret that there has been an interruption for so lengthened a period of the concluding work of your Commissioners in drawing up our Report. We feel that, in justice to ourselves, we must take leave to say that for the delay which has taken place in presenting this Report we are in no wise responsible; for had not our labours in that direction been interrupted at the close of last year, our Report would have been laid before your Excellency in the early part of January.

PRINCIPLES UPON WHICH MINING LEGISLATION SHOULD BE BASED.

Fundamental principles.

7. We think that at the outset of a Report which is in itself to contain suggestions and recommendations upon so important a subject as that of mining legislation, we may be expected to state shortly the opinion entertained by us as to the fundamental principles upon which such legislation should be based.

Gold Fields property of entire community.

8. In the first place, then, we consider it almost as a self-evident proposition that the Gold Fields of the Colony—at all events, upon the unalienated lands of the Colony—are the property of the entire community, and should be legislated for with a view to the general prosperity, and not for the exclusive or even special benefit of any particular class. A very little consideration of the views frequently enunciated by many who profess to be the leaders of public opinion will show that, axiomatic as this proposition is, it is not seldom practically ignored. Therefore it is that, at the risk of being charged with uttering something very like a mere truism, we think it well to place this principle prominently on record.

Should be made a source of attraction to valuable immigration.

9. Secondly, we think it should be borne in mind that the auriferous deposits of the Colony contain in themselves an element of great attraction to labour and enterprise, and that laws with reference to such deposits should be so framed as to render them really and practically a means of attracting to the Colony a large influx of desirable immigrants. The advantages to be derived by the Colony generally from such immigration are too obvious to need specific mention; but the course which legislation upon gold-mining affairs has hitherto taken in New South Wales seems to indicate that it has by no means been thought by the framers of our laws that our Gold Fields should be regarded as an inducement to people of other countries to come amongst us. We hope that even at this late period this error will be acknowledged, and in future avoided.

Economy and efficiency in working.

10. Lastly, population for the working of our Gold Fields being supposed, the grand end and aim of mining legislation should be *the thorough development of the mineral wealth of the Colony, with*

especial regard to economical and efficient working. As of all other fields of operation, it is essentially true of mining that there should be no unnecessary expenditure of labour or capital, such, for instance, as putting two men upon ground that could be efficiently worked by one, or the sinking of half a dozen shafts where one would be enough. Again, the *efficient* working of the Field should, as far as possible, be secured; for if a claim be in the first place, inefficiently worked, this alternative evil follows of necessity—either the ground must be worked twice over, and thus you have a wasteful expenditure of labour—or there remains an absolute loss of material wealth, inasmuch as much auriferous deposit which might profitably have been extracted remains in the ground. It is well, too, to point out here, both to those who, on the one hand, imagine that to mere monied Companies we must look to the development of the Gold Fields, and to those who, on the other hand, are of opinion that Companies are to be rigidly excluded from the Gold Fields, as tending to undue monopoly, and to an unfair interference with the rights of the individual digger, that in our unanimous opinion we cannot look to Companies for the thorough development of the auriferous wealth of the Colony, but that for such development we must mainly rely upon the labouring miner. Fair encouragement should no doubt be given to Companies for the expenditure of capital; but Companies, merely as such, with unlimited power of hiring labour, have not the power thoroughly to develop the Fields: the miner, as distinguished from the hired labourer, can alone do so; but is only by raising the digger to the position of the miner that you can expect this development. And the condition of the digger can be so beneficially affected only by giving him large and liberal areas for his working,—by giving him great encouragement for prospecting,—by giving him secure tenure of his holding; in fine, by putting him by these means upon a footing to make equal terms with the monied capitalists, or, in other words, putting labour, energy, skill, and enterprise, upon fair terms with the capital of Companies.

ESTABLISHMENT OF SEPARATE AND DISTINCT DEPARTMENT OF MINES UNDER RESPONSIBLE MINISTER.

Necessity for establishing Department of Mines.

11. The great and growing importance of the mining interest, and the very wide-spread feeling of dissatisfaction at the imperfect nature of the departmental machinery at head-quarters having charge of this interest, induced your Commissioners to make very special and searching enquiries into the question of the expediency of the establishment of a separate and distinct Department of Mines, with or without a responsible Minister at its head; and the result of our enquiries has forced upon us the conviction that the establishment of such a Department is urgently required. Some little difference of opinion existed amongst us as to the appointment of a special Minister of Mines, it being thought by the President of the Commission that, in the present and proximately probable state of political affairs, it may be matter for grave doubt whether it is desirable to have any additional Ministerial Departments; but, although not without some little misgivings upon the same score, he has concurred in the opinion entertained by his colleagues,—and we now unanimously recommend that not only should a distinct Department of Mines be forthwith established, but also that a Minister of Mines be placed at the head of that Department. This Minister should of course be a political officer directly responsible to Parliament; and his main duties, in especial reference to gold-mining, should be, to borrow the words of the Victorian Commissioners of 1862, "to watch over the internal management of the Gold Fields, their legislative requirements, and the efficient administration of their laws."

Great mineral wealth of the Colony independently of gold.

12. We have pointedly particularised that these last should be the chief duties of the Minister, in especial reference to *gold-mining*; but it must be remembered that the mineral resources of the Colony are by no means confined to auriferous deposits. It is established beyond question that New South Wales is rich in silver, copper, iron, tin, lead, and coal—mineral wealth practically inexhaustible, and a source of prosperity which we think should no longer be regarded with the indifference and neglect which successive Governments have evinced for it.

Permanent Secretary for Mines.

13. In addition to the ministerial head of the Department of Mines, we are unanimously and emphatically of opinion that there should be a permanent officer, second only to the Minister, and invested with large and responsible duties. Such officer to be called Secretary for Mines, and to be clothed with functions at least as effective as those possessed by the Under Secretaries of any of the existing Departments. Mining is the only interest in the Colony of anything like the same importance that is without some such officer; and we would desire shortly to advert to some of the present defects arising from the absence of such a man. Mining departmental administration is supposed at present to be centered in the Lands Office. We do not hesitate to say, without casting the slightest reflection on the highly meritorious officers of that Department, that there is no one in the Office who has even a rudimentary knowledge of practical mining in its technical details, or of the principles which should guide the administration of mining affairs; consequently there is not, nor has there been, any officer who is responsible for the Regulations which have been issued. And with regard to the Regulations in existence at the time your Commissioners were engaged in taking evidence, it is a fact adduced in evidence before us, that not one of the officials, either in the Office in Sydney or on the Gold Fields, knew at all from what source those Regulations emanated. The three Gold Commissioners themselves—Mr. Johnson, Mr. Buchanan, and Mr. Clarke—not only declined to be in any way responsible for them, but have expressed their disapproval of them; while Mr. Rich, whom we examined as being the gentleman in the Sydney Office who had had most to do with gold-mining departmental affairs for some years, also stated that he knew nothing whatever

of the origin of the Regulations. It is not to be wondered at then, that a code of Regulations framed under such auspicies—without a parent bold enough to acknowledge his offspring—should fail to meet the adequate requirements of an interest such as gold-mining. Nominally and theoretically, on doubt the Minister for Lands is the framer of the Regulations; but it is not to be supposed, that under a system such as ours, a Minister for Lands should possess the technical knowledge required.

Impossibility of obtaining reliable information in Sydney Office.

14. Another glaring defeat of our present system is, impossibility of obtaining reliable information in Sydney as to the condition of the mines. It is obvious that the existance of an Office in which information can be obtained that can be really depended upon, with reference to the condition of the mining affairs of particular localities, would materially conduct to the employment of capital and energy in such matters. Such an Office as we recommend should be the repository of the official statistics of the Gold Fields—as indeed of all mining localities; and by the periodical publication of these statistics, information would be authoritatively furnished which would either warrant the embarking of combined capital and of individual energy in mining enterprise, or prevent the wasteful expenditure of money in bubble Companies, and the fruitless journeyings to profitless fields by individual miners who can ill afford to throw away time and labour. Such an Office would diffuse *sound* information, and would without unduly interfering with private agencies, operate as a sulutary check upon the delusively glowing representations of professional puffers. The imperfect and exaggerated accounts of new discoveries, which are furnished by interested parties, not unfrequently caused great excitement, giving rise to hopes only doomed to disappointment, and to expectations never to be realised. A very marked illustration was afforded only recently by what occurred at Trunkey Creek, where the discovery of a few hundredweight of rich quartz was magnified into a discovery of what was said to be the richest quartz-mining field ever discovered in any of the Australian Colonies. Such a statement immediately gave rise to the formation of several Companies, all resulting in mere failure. The disastrous consequences of this kind of thing are not confined to the shareholders in those Companies, but, engendering a well-grounded distrust of all reports, true as well as false, operate most injuriously to the whole mining interest. Had there been a Government Office in Sydney to send up a competent and reliable officer to examine and report upon the true state of things, these deplorable results could never have happened.

Information as to geological discoveries—improved methods of working—machinery, &c.

15. Again, such a department would be made a valuable storehouse of information, with regard not only to geological discoveries tending to throw light upon and to guide the operations of prospectors, but also to the most recent improvements in machinery, modes of working, treating gold and other such particulars. And not only would this information be easily accessible to such of the public as could attend personally at the Office, but by periodical publication such as we have before hinted at, the Department could be made the means of disseminating largely and most beneficially this most useful knowledge. In the neighbouring Colony of Victoria, whose mining legislation and administration are so far in advance of ours and whose material prosperity is by consequence of so much greater than ours, (notwithstanding that the mineral wealth of this Colony in metals other than gold is far in excess of any known in Victoria, and that the area over which our gold deposits extend is much larger), the Government has established a most valuable Museum in connection with the Department; returns are collected from every mining district, and reports published from the mining surveyors quarterly; a summary of the mining work of the year is published, and from time to time the Department issues maps of the more important mining districts; new Fields are examined and reported upon by the competent officers and these reports published; and, under the immediate supervision of Mr Brough Smyth, the Secretary for Mines for that Colony, a most valuable and comprehensive work upon the Gold Fields and Mineral Districts of Victoria has been compiled and published.

Delay in proclaiming Gold Fields.

16. Still another very serious defect on the existing system must be pointed out, and this is, the difficulty and delay which occur in declaring auriferous tracts as Gold Fields, so as to protect such tracts from absolute alienation. Promptitude in this matter is of the last importance; and yet it is clearly established in evidence that, for many months after localities are known to be payably auriferous, no proclamation issues declaring them to be Gold Fields, and in the meantime they are selected and practically alienated in fee.

Necessity for supervision of administration.

17. In addition to the great and beneficial objects we have already indicated as being likely to be attained by the establishment of such a Department with a Responsible Minister and a permanent Secretary and efficient officers, we may point out that it appears to us to be most essential that there should be centred in one individual directly responsible to Parliament some power of effective supervision of the administeration of the Gold Fields. This we think would tend to a *uniformity of administration* hardly to be expected so long as different officials are allowed to proceed according to their individual views, in the practical irresponsibility which must exist where there is no controlling powers possessed of the requisite knowledge at head quarters.

Second special permanent officer in the Department.

18. Besides the chief permanent official—the Secretary for Mines—we recommend that there should be a second officer possessing special practical qualifications, particularly with a view to the contingency of his being sent up temporarily to new Fields, or to his being able to discharge the duties of the permanent Secretary, in the event of the latter officer himself visiting the Fields. The special objects with which these officers should visit newly discovered Gold Fields may shortly be summarised thus:—reporting upon the Field, its general geological features, and probable gold-bearing prospects,—the most convenient postal routes to be established,—the sites of townships,—police requirements,—water facilities, and so on. These are the only two officers of the Sydney Department whose appointment would need special care and discrimination. All that would be required in addition would be

the mere ordinary clerical assistance, the materials for which could, we doubt not, easily be obtained from the existing clerical staff.

19. In making these proposals, as in other recommendations which we have the honor to submit, we have had regard to the maintenance of the principle of rigid economy, so far as is consistent with due consideration to the interests of the community. But we take this opportunity of urging the absolute necessity, in appointing gentlemen to such positions as that of Secretary for Mines, or the officer next to him, of selecting only men who possess a thorough practical knowledge of the duties they are expected to discharge. None but gentlemen practically acquainted with mining matters, and of a high degree of administrative ability, could fill either of these offices with benefit to the public or with credit to themselves; and we respectfully but firmly venture to deprecate, in the interest of the Colony generally, and of the mining community especially, the application in these appointments of that ruling principle of official patronage which regards rather the amount of parliamentary support such and such an appointment will secure, than the merits of candidates or their qualifications for the office.

Absolute necessity for selection of thoroughly qualified officers.

THE FRAMING OF REGULATIONS.

20. In order to the satisfactory working of any scheme of Gold Fields Management, it is clear that the Regulations under a Mining Statute must be framed by some person, or body of persons, having not only a thorough knowledge of the subject, but also being influenced by no considerations other than a desire to promote the welfare of the entire Mining Interest.

Persons who should frame Regulations.

21. Upon no part of the whole subject of our inquiry more than upon this question,—to whom the duty of framing the Regulations should be deputed,—is there a greater difference of opinion amongst the witnesses who have been personally examined before your Commissioners. The same variety of opinion is apparent in the written communications which have been sent to us. And our opinions have not been arrived at without the most searching inquiry, not until after the most matured deliberation. We regret that the recommendation upon this head which we have the honor to submit to your Excellency does not represent the unanimous opinion of your Commissioners; but upon some branches of this head of inquiry we are unanimously agreed. Various plans have been under consideration during the investigation; and perhaps all the alternatives may be thus classified:—

Great diversity of opinion.

(1.) Should this duty be deputed to the Executive Government, as under the system at present existing?

(2.) Or to local Elective Boards?

(3.) Or to one central Board, elected or nominee, or partly elected and partly nominee?

(4.) Or, lastly, in the event of the establishment of a separate Department of Mines, to that Department?

Your Commissioners proceed to state shortly the reasons for and against these various plans, taking them in order.

22. (1.) We have been unable to find any satisfactory reason for continuing the existing system. The tendency of the evidence has upon this point been singularly in accord; and almost unanimously the witnesses, as well officials as non-officials, have condemned as a whole the Regulations which have been passed under the present Act. That condemnation was extended, though perhaps hardly as strongly, to the Regulations framed under previous Acts. And we may remark, in passing, that the fact of the condemnation of later Regulations being stronger than that expressed with regard to Regulations of an earlier date illustrates forcibly the position that the tendency of our Gold Fields legislation has been retrogressive rather than progressive. And it is of course only fair to the framers of the existing Regulations to point out that in great measure the existing Statute is responsible for many of the shortcomings of the Regulations. Without going into detail upon the objections to the existing code of Regulations, your Commissioners would, in order not to incur the charge of merely generalizing upon so important a matter as that now under discussion, desire to point out a few of the salient defects in that code. It may be sufficient, then, to say that by the existing Regulations water privileges are most mischievously curtailed—river and creek workings under miners' rights are, by the smallness of the areas allowed, almost prohibited—no provision is made for sluicing in claims held under miners' rights, and, by the Regulations of February, 1870, this important description of mining is practically proscribed, by excluding from lease all tracts, however poor, of shallow alluvial ground—but little inducement to prospecting is held out—leases are limited to the absurdly small term of five years—and the conditions generally under which leases are to be granted are so restrictive as virtually to be prohibitive, to those leases, at all events, who intend to abide by the conditions. As matter of smaller detail, but still of great practical importance, your Commissioners would, in no spirit of hypercriticism, call attention to the fact that by the inaccurate wording of some of the Regulations, not only is a fruitful cause of litigation created, but it would seem that the intention of the framers themselves have not been expressed. For instance—with reference to clause 8 of the Regulations of February, 1870—we have it in evidence, outside the wording of the clause, that the intention of the framers of this clause was to allow leases of any quartz reefs, whether old or abandoned or not old or abandoned, and that those actually charged with the administration of the Regulations—the Commissioners in charge—give this reading to that clause; and yet by the wording of the clause itself the allowing of leases of

Existing system must not be continued.

Objections.

quartz reefs is limited to such quartz reefs as are old or abandoned.* Again, clause 62 of the Regulations of September 1869 says that "no occupant of a business allotment shall be permitted to alienate or sublet any portion thereof." His Honor Judge Josephson, no longer ago than in November of last year, held, upon the construction of this clause, that according to the rule *expressio unius exclusio alterius*, inasmuch as the prohibition merely expressed "any *portion* thereof," it permitted an alienation or subletting of the *whole* thereof. It may possibly be thought that this ruling of Judge Josephson's is erroneous, but we have it from one of the ablest, as certainly one of the most experienced of the framers of these Regulations, Mr. Harold Maclean, that, erroneous or not in point of law, His Honor's ruling exactly gave effect to the intention of those who in the first instance framed this rule; such intention being not to prohibit the transfer of the whole undivided allotment from one holder to another, but merely to prevent the splitting up of such holdings. Your Commissioners are of opinion that it would be well to entrust the framing of Regulations in future to some person or persons somewhat less likely than the framers of this Regulation (if this was the object they had in view) seem to have been to forget that the whole includes its parts.

Case of *ex parte* M'Innes.

23. The case of *ex parte M'Innes and or's.* (a case valuable for another purpose, to which we need not now allude), reported in the ninth volume of the Supreme Court Reports, p. 28, furnishes another instance of the unfortunate inability in the framers of the Regulations to give expression to the intention in view. It is now clear that the 45th Regulation of September, 1869, was intended to allow on a quartz reef to one party of six miners desiring in the first instance to take up together that area, the extent of six men's ground *as one entire claim.* From the defective wording of the clause, however, the Judges, while remarking upon the difficulty of construing the Regulation at all, were constrained to give it a construction entirely at variance with what really was the actual (though not the expressed) intention of the framer of that Regulation. Immediately upon this decision the 45th Regulation of September, 1869, was repealed, and by Regulation 6 of February, 1870, a more successful expression of the intention entertained all through was accomplished. Though not altogether a case of shutting the stable-door after the horse had been stolen, it is a matter of very grave regret that through carelessness or inaccuracy in framing the earlier Regulation many persons should have been exposed to most vexatious delay and to very costly litigation. While adverting to this case, we may be allowed to call attention to a dictum of the learned Chief Justice upon the effect of clause 14 of September, 1869, the "amalgamation of claims" clause. The Chief Justice says: "The amalgamation of several claims does not give each member of the party a title to or interest in the claim of every other." If this be law—and coming as it does from the highest judicial authority it cannot be doubted to be law—the whole intended beneficial operation of amalgamation must be negatived.

Absence of responsibility in framers.

24. Besides pointing out the evils of ignorance of the wants of the various kinds of mining, and of inability to express legislative intention in clear and unambigious language, we would again revert to our former mention of the practical irresponsibility which, under the present system, seems to exist upon this most important question, the framing of Regulations. In our remarks upon the necessity for the institution of a separate Department of Mines, we pointed out the exceeding difficulty of tracing Regulations to any parent source. The nominal responsibility of the Minister for Lands for the Regulations is merely nominal—no Under Secretary or Clerk in the Lands Department seems to know anything about their origin—while the Commissioners, one and all, repudiate any connexion with them. Obviously, then, this state of things cannot be defended, nor could its continuance be justified.

Local elective Boards.

25. (2.) We proceed to consider the second suggested alternative—the creation of local elective bodies to frame By-laws or Regulations for their respective districts. Such bodies would be constituted upon the model of the Mining Boards of Victoria, a certain number of paid members elected periodically by the holders of miners' rights, or leases, or business licenses, and possessing very large legislative powers.

One argument in favour of.

26. The one great advantage which may fairly be admitted as being likely to flow from the adoption of such a system would be that the members of such bodies would probably be men of practical knowledge and experience, and more especially would possess an acquaintance with the local requirements of the particular Fields or Districts within the geographical limits of their legislative functions. A large proportion of the witnesses,—as many as forty-two out of ninety-six individual witnesses examined before the Commission, and no less than thirteen out of twenty-one deputations received by the Commission,—expressed themselves in favour of local bodies in preference to any other scheme. The witnesses and deputations entertained very conflicting ideas as to the details of the constitution of these Local Bodies; and only one ground of advocacy was common to all. That one ground was, that *the physical circumstances of different localities differ so much as to render it impossible to make one general comprehensive code applicable to all localities.* This reason, at first sight apparently sound, seems to us not to bear examination. Your Commissioners have, in the execution of duty imposed upon them, had the advantage of visiting nearly every Gold Field in the Colony, and with this proposition before them, have diligently examined the physical features of all these different localities; but they have been unable to see wherein consist such distinctive circumstances as to necessitate the special legislation of merely local application which is advocated.

Fallacy in principal reason adduced for establishment of Local Bodies.

* Clause 8 of Gold Fields Regulations of February, 1870:—"Leases will be granted of from 1 to 25 acres of old or abandoned alluvial ground or quartz reefs * * * at an annual rent of £2 per acre."

That some ground is wetter than other ground—that some ground is harder than other ground—that some ground requires deeper sinking than other ground—that in some localities water is more abundant and more easily accessible than in others—all these are positions which are indisputable (and, for the purposes of practical mining legislation, in these varieties consist all the physical distinctions); but their admission by no means establishes that in one code apt Regulations may not be framed for each of these physical differences. It is with regard to the general principles upon which *the various kinds of mining* are conducted that the argument, if sound, would have weight. But here it is that we see this argument of "variety" does not apply. Quartz-reefing is conducted on the same general principles everywhere; so with ground sluicing—so with shallow alluvial working—so with deep alluvial working—so with puddling-machine work—so with river bed and creek working. For each of these descriptions of gold-mining of course different sets of Regulations must be made; but one general code of application throughout the Colony would well comprise these different sets. It may possibly happen that in some few exceptional cases there may be a necessity for some slight temporary modification of a particular Regulation in some particular locality; and to meet such a case, power might be given to the Warden to make some temporary Regulation to meet the exceptional local requirements, provided that those Regulations or Orders were not inconsistent with the provisions of the general code. In Victoria, for the last fifteen years, they have had a system of local mining legislation; and not only was the abolition of this system recommended, for many reasons, by the Gold Fields Commission of that Colony of 1862-3, but a careful collation of the existing By-laws of the seven Mining Board Districts,—which collation has, in the course of their labours, been made by your Commission,—shows that there is no difficulty whatever in embodying in one code all the Regulations applicable to the different descriptions of mining. This course was strongly recommended by the same Victoria Commission to which we have just referred. We may state also that fifty-four out of ninety-six individual witnesses, and eight of thirteen deputations before us have recommended one code only. We are unanimously of opinion that the argument as to differing local requirements is not sound, and therefore furnishes no good reason for instituting local legislative bodies. We would not be thought to sneer at the actually accomplished results of those legislative efforts which have been made by the local legislative bodies which have been in existence in this Colony; but we may be allowed, without saying more, to point to the evidence of Mr. Maclean,—of Mr. D. S. M'Kay,—of Mr. T. F. de Courcy Brown,—and of several other witnesses of experience; and specially to refer to the paper to be found in the Appendix, upon the History of Gold-mining Legislation in New South Wales.

Doubts as to satisfactory results of elections.

27. Whether in the majority of cases competent men would be elected is a matter upon which there may fairly be expected to exist—as in point of fact there does exist—considerable difference of opinion; but contenting ourselves with stating that we consider such a result of the elections as, at least, very questionable, we proceed to state some of the objections to a system of local elected legislative bodies, which objections induce us unanimously to report against the institution of such a system.

Objections to Local Boards.

28. The objections then are that (1) there must almost of a necessity be *a great absence of uniformity in the provisions of the various codes.* The consequences of this clashing and conflict between the codes of different districts may very easily be conjectured, and have been very well described by some of the witnesses we have had before us. Both to the miners themselves and to those entrusted with the administration of the laws it must be a source of great perplexity, uncertainty, and consequent litigation, causing, almost inevitably, a cramping of the energy and enterprise of those upon whose well-directed enterprise and energy must depend the development of our mineral resources.

29. Not only would there, we feel persuaded, be a great and perplexing diversity between the various codes of different districts, but experience has shown, and it is the opinion of very many intelligent witnesses, that *in the legislation of succeeding bodies in the same district there will also be constant change.* The formation of cliques and coteries is not peculiar to the great Councils of Nations; and perhaps this evil, apparently inseparable from representative institutions, flourishes with greatest luxuriance in small communities. Again, in the minds of the members of these successive Boards it is not unlikely that it may be regarded as an imperative duty to exercise with zeal, unrestrained by discretion, the legislative function with which an admiring constituency has invested them. To show that this last apprehension of your Commissioners is not altogether groundless, we may be allowed to quote here a statement made by one of the witnesses examined before the Victorian Commission. The witness was a barrister of long standing, and of high professional reputation and large practice. He said: "In Ballarat I may say that each succeeding Mining Board generally commences the exercise of its functions by repealing the laws of its predecessors"; and it would appear that in the instance of the Ballarat Boards this had been done no less than fourteen times! These frequent changes in the local codes must largely aggravate the evils above pointed out.

30. A minor objection, but still one of considerable practical importance, is in the probability that the legislative intentions of these bodies would labour under considerable difficulty of expression. Mr. Harold Maclean, in speaking of this subject, says: "I have on several occasions had referred to me the codes of so-called Regulations which had been drawn up by Local Bodies; and in every instance these codes have been utterly useless—repugnant to the Laws, repugnant to one another, and objectionable in every way. The most strenuous efforts have been made by myself and others—Ministers, other Commissioners, and Crown Law Officers—to bring these codes so into shape as

to give effect to what we thought was meant by their framers; but one and all these efforts had to be given up." When to these objections we add that the expense of maintaining these Bodies would in all probability increase the burdens of the State by the amount of several thousand pounds a year, we think we may conclude that sufficient objections have been stated to show that the disadvantages of the scheme preponderate over the advantages.

Last alternative: the Department or a Central Board.

31. It remains for us to consider whether the Parliament should delegate the power of framing Regulations to the Department of Mines, assuming such a Department to be created, or whether such authority should be given to a central elective Mining Board. And here your Commissioners arrive at a point in which unfortunately they have been unable to attain a unanimity of opinion, or unanimously to concur in the recommendation to be submitted to your Excellency. The portion of the Report therefore which now immediately follows embodies the views entertained by the majority of the Commission.

Difference of opinion amongst members of Commisssion.

Opinion of majority—Messrs. Combes' Baker, and Frappell.

32. We desire to express our opinion that the most suitable persons to frame Regulations are the miners themselves. We think that in matters requiring for their settlement a purely technical knowledge, persons are required as legislators who have been educated in those technicalities. We cannot, as we have before stated, recommend that there should be, as in Victoria, a number of Local Bodies legislating on mining subjects, but we think that the principle of local self-government might, to a certain extent, be adopted by Parliament authorizing the gold-miners to elect representatives to sit as a central Mining Board to frame one code of Regulations for the whole Colony. There is, however, a large portion of the evidence given before us which declares that the officers who would constitute an efficient Mining Department would be most suitable persons to frame Regulations. We are of opinion that the scientific and official knowledge of such officers would be valuable to *assist* the practical miners in framing Regulations; and we would recommend that the Mining Board should not be wholly elective, but that the Government should nominate a certain number of its members. Whilst on the one hand we cannot think that the Government officers, however able, could frame good mining By-laws without the salutary check of public opinion, we believe that the elected members of a Mining Board would be materially assisted by the official and scientific element being introduced amongst them. Perhaps it would be well to constitute the Board of four elective members and three nominees, the former to be paid for their services, so that good men might be induced to give their time to the duties devolving on them. The Board to be constituted for (say) two years, to sit in Sydney at such times as may be deemed advisable by the Governor, and the Regulations made by it not to be in force until a short time had elapsed after they were gazetted. We have given the most mature consideration to this question of the nature of the authority which shall frame the By-laws under any new mining Statute, for it is in our opinion the most vital part of the whole question of Gold Fields management.

Opinion of the dissentient minority—the President and Mr. Thompson.

[We have the misfortune to differ from the majority of the members of the Commission; but with every desire to bring about unanimity of recommendation, we cannot assent either to the views entertained by our colleagues or to the justness of their reasoning in some particulars. We think that if such a Department as we have recommended be constituted, the duty of framing Regulations may with perfect safety, and would more conveniently, be entrusted to that Department. That a thorough knowledge of the requirements of the interest to be legislated for is required we have before said, and unless this knowledge can be obtained and acted upon by the Department, the Department will not be of that efficiency which we expect it to possess. We do not recognize the justice of the argument which maintains that the miners are the most suitable persons to legislate for themselves. This position contains to our minds two fallacies: in the first place, the miners would not be called upon to legislate for themselves alone; for, as we have laid down in an earlier part of the Report, mining legislation must affect the whole community, and not merely a particular class. In the second place, we see no more reason for saying that miners should legislate for the mining interests than that merchants should legislate for the mercantile interest, squatters for the pastoral interest, or farmers for the agricultural interest. Or if it be said that the technical knowledge required lends a different complexion to the matter, we answer that if the argument be sound, then clergymen should legislate for ecclesiastical affairs, doctors for the medical profession, and lawyers for the legal profession. We imagine that, in the last two cases, patients and clients might not unreasonably object. We do not think indeed that persons should be either judges or legislators in their own cause. The doubts expressed by many very intelligent witnesses, that the best men would not be elected, cannot be entirely ignored. The possibility of self-interest and of indirect influences being brought to bear upon a body such as is proposed would, in our opinion, not tend to general satisfaction in the Regulations framed by it; while we entertain grave doubts as to the harmonious working of the two elements, the nominee and the elective,—properties in this Colony almost of prescriptive hostility. But on the score of expense alone we think that, *on the assumption that we have a really efficient Mining Department*, the wiser course would be to vest the power of framing Regulations in such a Department. There can be very little question that the attendance of really competent, practical, and experienced men at such a Board in Sydney could not be obtained without giving them some considerable remuneration; and unless such a Board were composed of really competent men, its institution would be not merely useless but positively injurious.

We think, moreover, that in a body such as this there would at the best be an absence of that direct responsibility which under a well-organised and an efficiently constituted official Department would exist. At the same time, we feel assured that unless the Mining Department be well organized and under the direction of some thoroughly competent permanent head, there can be no hope of satisfactory Regulations emanating from such a source. And in recommending the giving of this power to the Department, we only do so in the confident hope that it will take every means to ascertain authoritatively the real state of circumstances upon and requirements of the Gold Fields,—and not, as has unfortunately been two frequently done hitherto, adventure upon haphazard legislation, upon the untrustworthy representations of parties having either selfish interests to serve or a merely superficial acquaintance with the subject.—J.G.L.I.; H.A.T.]

ADMINISTRATION OF JUSTICE.

Principles to be observed in appointing Courts of Judicature.

33. That their adjudications shall be entitled to general respect and confidence is obviously the paramount consideration in the establishment of Courts of Judicature. The appointment then of competent judicial officers is absolutely essential. And of hardly less practical importance is it, in the framing of a scheme for the satisfactory administration of justice, to adhere to the principles of *expedition*, *cheapness*, *simplicity of procedure*, and *effectiveness of decision*. The well-being of the whole community, and not merely the particular interests of one section of that community, is directly

concerned in the maintenance of the due and effective Administration of Justice. If an important interest such as that of Gold-mining is left without adequate provision being made in this matter, the evil consequences are not merely confined to that particular interest. That sufficient regard to the considerations just stated is not evidenced by the provisions of the present Gold Fields Act, and Regulations can hardly be doubted by even the most superficial inquirer. In the first place,—as indeed might have been expected,—we have the unanimous testimony of all the witnesses whom we have examined—a host of witnesses, composed not merely of miners, but of storekeepers, paid Gold Commissioners, stipendary Magistrates, and ordinary unpaid Justices of the Peace,—that the present plan of Judicature, established by and existing under the Act of 1866, is worse than useless.

Disregarded in our existing system.

34. The entrusting of the hearing and settlement of disputes to unpaid Magistrates as the Court of first instance is universally disapproved, and we think justly so,—while the constitution of the Court of Appeal calls for still stronger condemnation. An appeal from one person who knows nothing about the matter upon which he has adjudicated, to two persons equally ignorant of the subject, can hardly be very valuable or satisfactory; while an appeal from one person, such as a Commissioner, who may have some acquaintance with the matters in question, to two persons wholly unacquainted with these matters, is still less likely to work well. Such however, curious as it may seem, are the provisions for the Administration of Justice upon the Gold Fields under the present Act. The well-grounded objections to the entrusting of the settlement of mining disputes to the ordinary unpaid Justice, by no means involved any discreditable reflection upon a most respectable body. That no such reflection can fairly be said to be intended, sufficiently appears from the fact that the unpaid Justices themselves agree in the objections to such a plan. And indeed it would seem unnecessary to point out that the special knowledge requisite for the comprehension of mining disputes is not to be acquired as is knowledge upon ordinary matters. The technical phraseology alone is matter for some little study; while the diversities of interests involved, and the many different classes of mining upon which questions may arise, necessarily present features of peculiar difficulty. We quote the evidence of one Magistrate,—a gentleman for years resident upon Gold Fields, and, as all Magistrates ought to be, a man of education, intelligence, and respectability. That witness, Mr. William Cleghorn, states:—"I am an unpaid Magistrate resident upon a Gold Field, and I strongly condemn the system of requiring unpaid Magistrates to adjudicate in cases of mining disputes. It is not fair either to the miner or to the Magistrate. In the great majority of cases the Magistrate knows nothing whatever about it; and even if he does, he is required to do a great deal of very disagreeable work which he ought not to be called upon to do. Such Magistrates are always liable to imputations of partiality and injustice; no matter how fair they really may have been, many people, and certainly the losers, will think and say otherwise." Again, Mr. Harold Maclean, who was for many years a Gold Commissioner, and who speaks in this matter with unquestionable authority, says—"I desire to express, in the strongest possible way, my disapproval of those provisions of the present Act which vest in the unpaid Magistracy administrative functions. I look upon those provisions as, to say the least, quite impracticable. These gentlemen are, for the most part, unacquainted with the nature of the questions, and are indisposed to act. Gold-mining disputes are too troublesome and difficult to be dealt with voluntarily, and it is not to be expected that unpaid Magistrates should devote the requisite time to the special study necessary. There are many other considerations which deter a Magistrate from interfering in such a matter." Many other Magistrates, paid and unpaid, who have been before us have expressed the same view; and we have thought it better to quote these opinions pronounced by two such witnesses than to set forth here the same opinions from miners not Magistrates; but, as we have before said, the testimony of all classes of witnesses has been given strongly in concurrence with these views. Without then desiring for one moment to impute any improper conduct, either on the score of unfairness or of negligent discharge of duty, to the unpaid Magistracy, we are clearly and unanimously of opinion that the entrusting of judicial functions to them has been a mistake, and a continuance in such a mistake would be absolutely fatal to the efficient management of the Gold Fields.

Universal disapproval of entrusting settlement of gold mining disputes to unpaid Magistrates.

35. The reasons stated by us against the ordinary unpaid Justices having judicial power in Gold-mining disputes will have indicated that such powers should exclusively be vested in officials whose duty it should be to acquire—if they do not already possess—that special and indeed technical acquaintance with the subject which to some extent is indispensable to the efficient discharge of judicial functions upon matters of so special a nature. Confidence in the decisions pronounced cannot be entertained in the public mind when the persons adjudicating, however zealous, however patient, however industrious, and however honest, lack *knowledge*. And the objections on the ground of absence of requisite knowledge of the subject which have been expressed with regard to unpaid Magistrates apply with undiminished force, and with scarcely an exception, to the stipendiary Magistrates who are merely *ex officio* Gold Commissioners. From all sides we have had evidence of the utter inadequacy of the present staff of Commissioners to the requirements of the Gold Fields; and not only is the number (three) wholly insufficient, but by some recent departmental arrangements these three officers are practically prevented from visiting the legitimate sphere of their duties as Gold Commissioners. The three Commissioners—Mr. Johnson, Mr. Buchanan, and Mr. Clarke—have pronounced their strong disapproval of the present arrangements, and Mr. Buchanan thus forcibly expresses the view shared by himself and his brother Commissioners upon this point:—"There are at the present time in reality but three Gold Commissioners, the 'Commissioners in charge,' as the Police Magistrates but seldom act in their capacity of Gold Commissioners, the duties of deciding mining disputes being left to the unpaid Magistrates, who in their turn avoid acting as

Necessity for appointment of adequate staff of Wardens.

much as possible. The consequence is that disputes remain unsettled for a very long period, to the serious injury of the mining community. Although I see most clearly that there is great necessity for a proper supervision of these Gold Fields in the North, yet I am unable, having the duties of Police Magistrate at this place (Armidale) to attend to, to travel to and inspect the various diggings, and hear the complaints of the miners." The effect of the present legislation is, if not entirely to annihilate the Gold Commissioner as such, to reduce that position to one merely subsidiary and ancillary to the position of Magistrate. We have no hesitation in saying that such a plan is wholly unsuited to the proper management of the Gold Fields. We adopt the opinion thus concisely expressed by Mr. Maclean:—"Any efficient Gold Commissioner must necessarily be able to discharge a Police Magistrate's duties well, while a man may be an excellent Police Magistrate and a perfectly incompetent Gold Commissioner."

Principal practical grievance of the miners.

36. Perhaps the greatest of all the grievances under which the miners labour—certainly the grievance most universally felt—is the absence of any person upon the Gold Fields to discharge the important functions which should be intrusted to a Commissioner or Warden.

No great additional expense requisite.

37. We have not kept out of sight, at any period of our investigation, nor do we forget now, the urgent importance of adhering to strict economy in the expenditure to be incurred in any improved system of Gold Fields management; and we are happy to see the way clear to such a recasting of the official arrangements as, while it will very materially remove the just cause of complaint entertained so universally to the present defective plan, and will provide the miners with fair official and judicial machinery, will not in any appreciable degree increase the expense at present borne by the State.

Division of Colony into Mining Districts.

We would, then, suggest the division of the Colony into certain Mining Districts; and with a view to this arrangement we recommend the immediate abolition of the present wholly insufficient and therefore unsatisfactory partition of the Colony into merely the Northern, Southern and Western Gold Fields Districts. For this system of division we would substitute the division of the Colony into Mining Districts, to be called respectively by the name of some principal town or well-known river within the district. For example, the District comprising the Gulgong, Meroo, and other Gold Fields in the immediate neighborhood should be called the "Mudgee Mining District." The District comprising Sofala, Wattle Flat, and other Fields in that neighborhood to be called the "Turon Mining District." These examples will illustrate our meaning in this particular, but of course the definite arrangement of this plan should be left to the Department of Mines.

Appointment of Wardens.

38. We recommend that each of these Mining Districts should be under the charge of an official to be called Warden* of the District. The Wardens should also be Police Magistrates of their respective Districts, but it must be carefully borne in mind that the ordinary Bench duties as Police Magistrates are to be considered as only claiming from the Warden a consideration and attention secondary to the paramount duties as Warden; and with regard to the appointment of these officials, we beg to emphatically endorse the opinion of Mr Maclean that "every efficient Warden must necessarily be a competent Police Magistrate, but it by no means follows that every competent Police Magistrate should necessarily be an efficient Warden." The Warden should reside at some central spot within his District, and wherever practicable, in a locality itself a Gold Field actually the scene of gold-mining operations. We entertain no doubt that, with the assistance in the ordinary Bench duties which the Warden and Police Magistrate would receive from the unpaid Justices, the same official could efficiently discharge the duties of both offices, and that no detriment whatever to the fair requirements of the general community would be caused. It appears in evidence before us—and we ourselves believe—that were such an arrangement effected, the unpaid Magistracy, who now lend perhaps only a lukewarm assistance in the discharge of Bench duties where there is a stipendiary Magistrate with nothing else to do than preside upon the Bench, would readily and cheerfully give the Country and the District the benefit of their magisterial services, so as to relieve the Warden as much as possible from this part of his work. Looking, then, at the existing number of Police Magistrates throughout the Colony, we think that, if our recommendation were adopted, there would not, except for the purposes of clerical assistance, exist any occasion for the appointment of a single additional salaried official. It might be that, in some few instances, it would be expedient to increase the amount of salary,—for unquestionably gentlemen who would be thoroughly competent to discharge the duties of Warden should receive an adequate remuneration; and the salaries should not, in our opinion, be less in any case than £600 a year. Mental ability of a high order, combined with physical activity and energy to a considerable degree, is essential to the efficient discharge of duties such as we would entail upon a Warden; and we believe that the parsimonious curtailment of salaries is not a system of true economy. The payment of liberal salaries to a few really competent officers, seems to us more in accordance with prudence and sound economy than the maintenance, upon salaries just above starvation point, of a number of officers, the services of a large proportion of whom might, without any injury to the public, be dispensed with. In our opinion, moreover, the occasional presidency of such an officer as a Warden upon the more remote Benches within his District would be gladly welcomed by the unpaid Magistracy of those Benches, and would operate very beneficially upon the general population.

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* Whether the official designation be "Commissioner" or "Warden" is doubtless not very material; but inasmuch as this latter term is used in the neighbouring Colonies of Victoria and New Zealand for the Gold Fields officials of those Colonies, we have thought it better, for the sake of uniformity, to recommend the substitution of the term Warden for that of Commissioner upon the Gold Fields of New South Wales.

39. The Wardens should have the general local administration of their Districts, with a jurisdiction (upon any Crown Lands of the Colony)* to entertain and, as a Court of first instance, to adjudicate upon all questions arising upon mining matters of every kind. We have already said that we are of opinion that the nature of the questions likely to arise in mining cases is of so special and peculiar a character that it it is absolutely necessary to have officers of special and peculiar qualifications to deal with them; and in order to prevent any confusion between the proceedings of ordinary Courts of Petty Sessions, we think it desirable to confer upon the Wardens a special and peculiar jurisdiction. That jurisdiction should, in our opinion, embrace every kind of question likely to arise connected with mining matters, including encroachment and trespass cases,—all breaches of the provisions of the Act and Regulations,—all matters of contract or actionable wrong between shareholders in a claim or lease, the amount of debt or damages to be limited to one hundred pounds,—and all partnership questions of every kind, whether during the continuance of the partnership or after its dissolution. The Wardens should also be invested with powers to grant injunctions,—to appoint Receivers and Managers,—and to make all necessary orders for the working of claims and the appropriation of the proceeds pending the final settlement of disputes. Under the head of the framing of the Regulations, we have pointed out that it would perhaps be well to give to the Wardens a power to make temporary orders (under the Regulations, and not inconsistent therewith) upon minor matters, as occasion might require. We think that the Wardens should be required, at short, fixed intervals, to hold periodial Courts, to be called "Wardens' Courts," upon all places of any importance within their districts; and reasonable notice of these sittings should be published in the *Gazette*, and affixed to the various Registrars' Offices throughout the District. It is impossible to attempt in a Report such as this to fix definitely the periods within which these Courts are to be held, but they should be reasonably frequent, and at such intervals as would insure the holding at every place of importance of a Warden's Court at least once a month. The determination of matters of administration such as this would of course be the especial province of the Mining Department. The Warden should also have power to hold a Special Court of Emergency whenever and wherever he thought it necessary.

Jurisdiction and powers of Wardens.

Holding of "Wardens' Courts."

40. The establishment of uniform procedure must unquestionably tend to the effective working of any judicial system. We think it would be advisable that rules and a schedule of forms should be determined upon as fixing procedure and the process in the Warden's Court. These rules and forms should we think be framed by the Department of Mines, and be subject to the approval of the Attorney General for the time being. Upon this point we have had under our consideration the expediency of adopting the forms in the Administration of Justice Acts (commonly known as Jervis's Acts); but after patient investigation we have unanimously come to the conclusion that, having regard to the special and peculiar nature of the questions to be adjudicated upon, these forms, while no doubt furnishing a valuable guide in the framing of the Warden's Court Rules, would require such extensive alteration that the simplest and most effective plan would be to have an entirely new set of rules.

Procedure.

41. The question as to the procedure to be adopted in the hearing of cases has engaged our most serious attention. Prior to the passing of the present Act the mode of proceeding in all cases of dispute has been merely this:—The party aggrieved, or considering himself aggrieved, has made a verbal complaint to the Commissioner. Then, at a time fixed by the Commissioner, the complaint has been heard upon the ground,—no evidence taken down in writing,—and the decision of the Commissioner then and there pronounced. Now, a rough-and-ready mode of proceeding such as this does not seem to us to be calculated to lead to satisfactory adjudications. In the first place, in a very large proportion of cases, the party complained of does not really know what complaint he is called upon to meet. It is difficult to give sufficient time to procure the attendance of witnesses. The investigation takes place amongst very many disturbing influences—in the open air, and not unfrequently in the presence of an excited crowd; and not only is the decision itself very often likely to be wrong, but, through the absence of any written evidence or of any record of the decision or the grounds on which it rested, there are no materials whereon to base an appeal which might set matters right. Moreover, undue facilities are granted for the initiation and prosecution of groundless complaints, and by reason thereof, no expense being incurred even by a losing party, a most vexatious and harassing spirit of litigation is sometimes fostered. The introduction of a system of procedure in Court, crude and insufficient as that system was, was in itself unquestionably a step in the right direction; but, for reasons upon which we have already dwelt, the beneficial efficacy of this improved plan of adjudication has been entirely nullified by entrusting the hearing of mining disputes to the ordinary unpaid Justices.

Hearing of cases. Plan disapproved of.

42. We have desired to see how we could combine reasonable expedition in the settlement of cases with that amount of regularity and uniformity in procedure which is so essential to the administration of justice. We think, then, that all proceedings should be initiated by the laying of a complaint, written or verbal. Upon the laying of this complaint, which, for the sake of convenience, and dispatch, might be done before the person acting as Clerk of the Warden's Court, a summons to issue (and this summons again as a mere ministerial act might be issued by the same Clerk), returnable at the earliest Court. Then we would propose that, unless both parties insist upon the

System recommended.

* We think the jurisdiction should extend to *all* the Crown Lands of the Colony, and that it should be a matter of departmental arrangement to assign to each particular Warden particular Districts within which ordinarily to exercise that jurisdiction.

hearing taking place in Court, the Warden should be invested with a discretion either to conduct the investigation in Court or on the ground. In all cases, either party should be entitled to demand a view, and the Warden should be at liberty to make an inspection upon his own mere motion. We would permit either party to demand that the evidence should be taken down in writing, and in all cases we would require a record to be kept of the decision, with a minute of the grounds for such decision. The Warden should be empowered to award and enforce the payment of costs, and in all cases the Warden should have ample power to enforce by execution his own decisions; with, in certain aggravated cases, a power to issue process in the nature of execution against the person for unsatisfied judgments. We think that power should be given to Wardens to draw up a special case for the opinion of the Supreme Court.

Assessors.

43. There has been considerable difference of opinion as to the utility of permitting the intervention of Assessors in cases of mining dispute, but on the whole, we would recommend that either of the litigant parties should have the option of requiring Assessors, and we would give the Warden the power of calling in Assessors even if not required by either party. The functions of the Assessors should be merely confined to issues of fact. These Assessors should be holders of miners' rights, or leaseholders upon the roll of Mining Jurors for the year, and should be chosen for the nonce by the Warden. The costs of payment to the Assessors to be upon a scale to be fixed in the Rules, and to be costs in the cause.

Jury panel of Assessors.

44. We recommend that a Jury panel, from which Assessors both in the Court of first instance and in the Court of Appeal, should be chosen, be prepared in the manner following:—Let a list be prepared annually, by the Warden of the District, of all proprietors of registered mining property,—such proprietors being resident within the district,—and from this list let the Warden select alphabetically a limited number (say forty-eight) of practical miners, which forty-eight shall constitute the Jury panel for the year. This plan, we believe, will on the one hand secure the attendance and the services of valuable assistants in the administration of justice upon the difficult and complicated questions likely to arise; and, on the other hand, will fairly distribute the work amongst all who should be competent and compellable to serve.

Court of Appeal.

45. Upon the question of the constitution of the Court of Appeal we have taken a great deal of evidence, and have received a variety of suggestions. It is unnecessary to say anything more as to the entire unsuitability of the present Appellate Court, viz., a Court composed of "two or more Justices in *any* Court of Petty Sessions assembled,"* but perhaps it may be worth while to point out that under this section a case which may have been decided in the first instance before the most experienced paid Commissioner, perhaps assisted by practical miners sitting with him as Assessors, may at the mere caprice of any successful litigant be brought on appeal before a Bench of unpaid Magistrates situated at the most remote bounds of the Colony, and composed of two Justices utterly ignorant of mining affairs, and yet not impossibly quite satisfied of their competence to review and over-ride the decision of any tribunal whose decision the law—through some curious freak of legislative eccentricity—may have submitted to their consideration. And to show how large are the powers committed to such an Appeal Court, we would desire to call special attention to the very recent case of *ex parte Irwin and others*, 10 Sup. Ct. Rep. 49, wherein the Chief Justice, in his judgment, concurred in by the rest of the Court, says:—"Does not the twenty-first section take away our power of entertaining the appeal? On this point the argument that it does is unanswered, and is we think unanswerable. Surely the Legislature never intended the Judges of this Court to upset or vary the decision of the Appeal Court established by that section; for we, most likely, are not so competent to decide cases between miners, concerning claims and other disputes arising on the Gold Fields, as those Appellate Courts convened for that very purpose; therefore, I am of opinion that our jurisdiction is here taken away." Now, it must be obvious that it is not longer to be tolerated that interests of such vast importance as are and will be involved in litigation upon gold-mining matters, should be jeopardised by being intrusted to the arbitrament of such a Court of Appeal, whose decisions are thus authoritatively pronounced to be absolutely final.

See sec. 21 of present Act.

Case of *ex parte Irwin and others.* Appeal final.

Court of Appeal recommended.

46. We do not stop to examine in detail the different plans which have been suggested in the evidence we have taken; but we desire to say that, notwithstanding some few objections to it, we, recognizing the expediency of availing ourselves of existing judicial machinery, and thinking that on the whole the District Court can be made the best Court of Appeal, are of opinion that the District Court should be made a Court of Appeal in mining matters. Such appeal we recommend to be in the nature of a rehearing of the whole matter, provision being made that upon disputed questions of fact the Court might, if so desired, have the assistance of a Jury of miners, such Jury being not chosen by ballot, but struck from the mining Jury panel. The high degree of intelligence and legal culture which is to be looked for in a District Court Judge would furnish sufficient guarantee that, at all events in the great majority of cases, the litigants and the public interested would obtain a sound judicial exposition of the law bearing upon the questions; while the objection on the score of the possible absence in the Judge of a special acquaintance with mining knowledge would be obviated by his having the assistance upon questions of fact of a Jury, themselves, in all probability, skilled and practical miners. The Judges themselves, moreover, with that painstaking industry and care which always accompany the conscientious discharge of their high and important functions, would,

* The Gold Fields Act now in force was assented to on the 27th September, 1866. By this Act power to decide mining disputes was given to any Justice of the Peace, with or without Assessors, and the appeal from his decision was to "two or more Justices in any Court of Petty Sessions assembled,"—with or without Assessors.

we feel assured, very soon acquire a sufficient acquaintance with the mere technicalities of this branch of their jurisdiction.

47. We would suggest that the District Court should sit, in its Mining Appellate Jurisdiction, at least four times a year. Appeal Court to sit at least four times a year.

48. Where the property at stake was worth a sum of £200 or upwards, we would recommend the allowing of a further appeal from the District Court to the Supreme Court—the Supreme Court to have power, amongst other things, to order a new rehearing before the District Court.* Further appeal in some cases, to Supreme Court.

49. In all cases, upon a deposit of £10, we would permit an appeal to the District Court; but in the case of an appeal to the Supreme Court the deposit should be at least £30. We have before stated that power should be given to the Warden to state a special case for the opinion of the Supreme Court, and pending such opinion to make necessary interim orders, so as not to cause any delay in the prosecution of gold workings. A certain amount of delay is unadvoidable in all litigation,—but in order to reduce the practical consequences of this inevitable evil, we have already (*see par.* 39) suggested that, pending the final settlement of disputes in all cases of appeal, the Warden should be empowered to make all necessary orders for the interim working of claims, and appropriation of the proceeds of such workings. And, in concluding our observations upon the Administration of Justice generally, and the constitution of the Court of Appeal in particular, we must be allowed to express our belief that, if the recommendation of your Commissioners with regard to the appointment of Wardens be carried out, the tribunal of first instance will give such general and well-grounded satisfaction as to render the necessity for resort to any second Court of rare and exceptional occurrence. Deposit for security on appeal.

[I regret that I am unable to concur in the recommendation, as made in the above paragraph, viz., that the District Court should be the Court of Appeal in mining cases. I think that, though in some instances, where the property at stake was of large value, the District Court might be suitable enough as a Court to which to appeal from the Warden's decision; yet, in the great majority of cases, so great a delay would arise, and such an expense to the litigants be incurred, as to be most hurtful to the mining interest. Were the operations of gold-mining confined *merely* to persons associated together by the means of joint stock Companies, I should perhaps not have an objection to the Appeal Court which is recommended by my colleagues; but I submit that Parliament will have, in gold-mining matters, to legislate as much for the wants of the individual miner as for those who go into large undertakings, by means of Companies; and for this reason, that our Gold Fields must ever, from the nature of the thing, be quite as much developed by the parties of four or five individual diggers as by joint stock Companies, by the means of their hired labour and costly machinery. District Courts cannot, unless indeed the Country goes to increased expense for additional Judges, be held more frequently than at the present time; and it follows that mining appeal cases would, in numberless instances, have to stand over for hearing for three, and even four months. Where the property in dispute was of considerable magnitude, such as a rich quartz claim, worked possibly by a Company, it is true a receiver could be appointed, and the claim be worked until the dispute was settled; but on new alluvial Gold Fields, such as Gulgong, the Bushman's, &c., such a method of working claims while the grounds was in dispute would be quite impracticable. It would come to this,—that the disputed claim must, as a rule lie unworked till the time came for the District Court to sit; and thus a number of men, litigants in mining disputes would be hanging about a Field idle for months, and a quantity of auriferous ground would remain for long periods unworked. The losing party in the case, heard before the Warden, knowing that the District Court being the Court of Appeal the claim must often lie unworked for a long time, would very often make an appeal, and pay the small sum necessary, on the mere chance of something turning up in his favour, combined with the certainty that, even if his opponent ultimately triumphed, he, the loser, could inflict a serious injury on him by the delay he could cause. I think this state of things would be most undesireable. It would cause very great difficulty to the Government officers to manage new Gold Fields, would entail a serious loss to the miner, and a great waste of our mineral resources. Memo. by Mr. Baker. Court of Appeal.

What is wanted, in regard to nine-tenths of the mining disputes that arise, is a simple, cheap and expeditious mode of rehearing the case which has been previously heard by the Warden. A Commissioner or Warden, in the excitement and turmoil of a great rush, often gives decisions which, in a calmer moment, and when additional facts could be adduced, he would be glad to reverse; and it is highly necessary that the miners' property should be protected from the effect of the hasty judgements which the best and ablest officer is likely to give.

The Appeal Court, such as is recommended by the majority of the Commission, would be a tribunal consisting of a Jury of miners, to decide questions of fact (to give a verdict), presided over by a District Court Judge to interpret the law. It appears to me that an Appeal Court might be constituted, on Gold Fields of any extent, which would be much cheaper for the litigants than the District Court, more expedious in the settlement of cases, and in which *precisely* the same class of men as jurors might be obtained. I would suggest that the Government should appoint some gentleman of known respectibilty in the locality where the Appeal Court is to be constituted, as Chairman of the Court of Appeal; and that upon intimation being given to him by the Warden that notice of appeal was lodged and the required fee paid, he should empanel a Jury of miners, *id est*, persons being holders of miner's rights, who thereupon should in a few days meet and under his presidency, hear and decide the case. The Jury to give a verdict, as in the District Court, the Chairman to preside, and, if necessary, interpret the law. The fee to be paid by the losing party, in such a Court, need not be more than that under the Gold Fields Act of 1866, viz., £3, and the time between the day of lodging the notice of appeal and the day of hearing need not be more than three or four days.

No doubt, notwithstanding, the Jury would be the same in such a Court as I have indicated as in the District Appeal Court, and the persons presiding would not be so efficient in the one as in the other. It would be most certainly of some advantage to have the Chairman or Judge a lawyer of high attainments, such as a District Court Judge; but of the two evils, viz., the incomparitively inefficient Judge on the one hand, and the great delay and the expense to litigants on the other, I am most strongly of opinion that the lesser evil by far would be the local Appeal Court.

It may be said, and I think with some reason, that it would not be altogether wise to leave the absolute determination of the right to valuable mining property to a local Appeal Court; but I think this objection might be obviated, possibly, by some competent person, such as the Warden, being authorized to certify when, from the intricacy of the question in dispute or the magnitude of the property at stake, the circumstances justified it, that the appeal case should go direct from the Warden's Court to the District Court.

Should the recommendation of the Commission in reference to the Administration of Justice on Gold Fields by the Wardens and the creation of a Mining Department be acted upon, I have little doubt that the vexatious delays, which in almost all matters relating to Gold Fields management have so harrassed the miner, will be obviated; unless, indeed, the "Law's delays" are brought to bear on him in another direction by a Court of Appeal being constituted such as the

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* With respect to the granting of rehearings we advisedly limit the power to the Supreme Court, the final Court of Appeal; for although we are aware that in the neighbouring Colonies both Wardens and Judges of Courts of Mines have power to grant rehearings before their own respective Courts, we do not think it desireable to adopt this plan, for we think such a plan tends to disastrous uncertainty in the adminstration of the Law, and to a great probability of careless and ill-considered adjudications in the first instance.

District Court. It is impossible to tell one day from another what new "Gulgongs" may arise in the far interior. Whilst this very Report is being written, payable gold is being found at Lake Cowal, in the Bland District, a place distant some fifty or sixty miles from the town where the nearest District Court is held. The most uninformed person on gold-mining matters can understand the difficulties that would arise were dozens, it might be hundreds, of claims lying unworked for months in such a place and the owners walking idly about.—E. A. BAKER.]

COLLECTION OF REVENUE.

More liberal ideas now obtaining.

50. The days are gone by when it was thought politic to lock up the gold unless it were bought from the State at a price almost commensurate with the net value of the article; it is no longer thought desirable to virtually prohibit members of a community from developing one of the most valuable resources of the Country; and it is now unnecessary to point out the immense material advantages which must accrue to the State from the increased population likely to be attracted by throwing open to industry and enterprise rich auriferous tracks, and by inviting such a population to benefit themselves and the Country at one and the same time. It must, on the other hand, be equally obvious that, before permitting individuals to appropriate to themselves that wealth which is the common property of the entire community, it is but reasonable to call upon those individuals to pay some small price for such a privilege; and when, moreover, the State is put to the expense of providing machinery for the preservation of law and order, especially for the mining section of the community, it would be idle to suppose that that expense should not be defrayed by those who benefit specially by that machinery. Your Commissioners recognize gladly the liberality of the provision by which, upon payment of a nominal fee of ten shillings per annum, an individual is entitled to mine for gold upon lands not otherwise his own, and to enjoy all other privileges which the possession of a miner's right carries with it. We do not, therefore, desire to recommend any reduction of the existing charge for miner's rights; nor are we, though at first sight the suggestion appears to possess some features of advantage, prepared to recommend what has been suggested as an improvement upon the existing system, viz., that the miner's right should continue in operation for twelve months from date of issue, nor do we propose any decrease in the charge for business licenses; but while we think that the miner's right fee is not too high, nor the charge for a business license excessive, there are some matters in which we think the charges are more than they should be.

Collection of Revenue.

Rental of leases too high.

51. We unanimously think that the rental imposed upon leases is too high; we would recommend that, instead of £2 per acre per annum, the rental should be ten shillings per acre per annum. It may be said that a rental of £2 an acre would not deter capitalist or Companies, representing large capital, from taking out leases, and we do not contest that proposition; but it is in the special interest of the ordinary claimholder that we recommend this reduction, as from the greater security of tenure which a lease would afford, we are of opinion that the ordinary claimholder would in very many instances gladly convert his holding into a lease, if not deterred by high rentals.

Escort fee—Government should be responsible for safe carriage

52. The escort fee may perhaps not be considered so much a source of revenue as a remuneration paid for services rendered, but still this may not be an inopportune point at which to place on record our unanimous and emphatic opinion, that if the Government exact a fee—by no means a small or insignificant fee either—for the carriage of gold, they should not be at liberty to exempt themselves from the ordinary liability of common carriers of property. From motives of general policy perhaps more than from the ordinary principles applying to contracts of carrying, we think that the Government, having unquestionably at their command the means of perfect security, should, more than any other carriers, be regarded as insurers.

Loss of the Revenue through insufficient means of collection.

53. So much for the sources of Revenue directly obtainable from the Gold Fields. With regard to its collection, we desire in the first place to call attention to those portions of the evidence which establish that a very large proportion of persons actually carrying on mining operations do not take out any miner's rights at all. Thus at once arises a direct loss of Revenue. In a great measure this failure to take out miners' rights is attributable not to any culpable evasion of the law by the miner, but to the practical difficulties that exist in procuring the document. It seemeth to us unreasonable to require that a miner should be compelled to go many miles to obtain this document. We suggest that every Mining Registrar and every Postmaster on a Gold Field should be authorized to issue miners' rights, accounting monthly to the Warden of the District for such issue. We also recommend that in Sydney, at the Office of the Mining Department, such rights should be obtainable. Some more effective measures should also be devised for enforcing the payment and for punishing the wilful evasion of the payment of the fee. These objects are sought to be obtained by the 8th section of the present Act, but the well-founded odium which very justly attaches to the character of an informer renders that section practically inoperative. It is sufficient to quote Mr. O'Mally Clarke upon this matter; that officer says—"Clause 8 of the present Act has been practically inoperative, because miners will not inform upon one another." We recommend the immediate abolition of that provision which directs that one half the penalty should go to the informer; but we think that the police upon a Gold Field should, *upon the orders of a Warden*, be empowered to demand the production within a reasonable time of the miner's right, and on failure of the production, or of a satisfactory accounting for non-production, the person so making default, should be proceeded against for unauthorisedly mining. The principal evasion of the fee seems to be on the part of the Chinese; it being in evidence that they are peculiarly given to evasion of the payment of the fee. The great physical resemblance of one Chinaman to another, combined with the imperfect acquaintance possessed by officials with the distinctive peculiarities of Chinese nomenclature, enables this class of miners to make one miner's right do duty for several individuals;—and possibly more stringent measures might be devised for the case

of Chinese;—but we are of opinion that the above-mentioned power of demanding production of miners' right would answer the purpose, amd would, if not entirely prevent, at least most materially check the evil of evasion.

TENURE—REGISTRATION—SURVEY—FORFEITURE.

Miner's Right.

54. We are unanimously of opinion that the taking out of a miner's right shall be considered as absolutely necessary to conferring upon any individual the status of a gold-miner, and that the possession of such document should be an indispensable condition precedent to any authority to mine for gold on any of the public lands of the Colony. This muniment of title, merely as an authority to mine, is simple, and easily understood, and cannot, we think, be improved upon. We have elsewhere stated that we think the miner's right should only continue in force until the end of the then current year, *i.e.*, the 31st of December in each year (except in the case of rights to endure for a term of years); for uniformity of period of duration is manifestly a great benefit; but with regard to the *renewal* of miners' rights, we do not approve of the present system by which the neglect to renew, immediately upon the expiration of the year, involves the forfeiture of the claim held by the person so making default. It will hardly be believed that, while this arbitrary rule is in force, the official arrangements are so defective that in many instances a miner's right cannot be obtained until after the commencement of the new year. Assuredly then, either facilities should be afforded for obtaining miners' rights for the ensuing year a month at least before the expiration of the current year, or a month's grace should be given to the miners, during which the failure to possess themselves of the document should not involve any penalty.

Forfeiture.

55. The forfeiture of claims upon certain occasions of default involves considerations of great moment, and your Commissioners have bestowed much anxious thought upon this branch of the subject. A large preponderance of the evidence tends to show that there exists very grave objections to forfeiture as a penalty. The most obvious objection is its gross inequality. For if forfeiture be the uniform penalty, then it may not unfrequently happen that for precisely the same quality of offence two different claimholders may be visited with outrageously disproportionate punishment. To take a simple example:—A owns a claim worth £1,000; B owns another claim worth £5. A and B both neglect to renew their miners' rights; both claims are forfeited. There may indeed be many circumstances of excuse or extenuation in A's case which do not exist in the case of B, and yet though A's fault be so much more the venial, A's punishment is practically nil; and indeed owing to the comparative worthlessness of the claim of B he will be permitted to retain that which was theoretically forfeited. This is no strained instance for the purpose of pointing an objection, and it certainly does seem curious that after twenty years of Gold Fields legislation such a blot should have been allowed to remain upon our code. The spirit of progressive intelligence does not seem in this matter to have descended upon our Legislature. Again, absence from a claim for a certain period (three days) renders it liable to forfeiture,—forfeiture summarily enforced by a most odious and demoralising practice known as "jumping" (a practice justly stigmatised by some witnesses as "legalised robbery," and concerning which we shall have some more detailed observations to make before this Report is concluded). Now, the same observation as to the flagrant inequality of punishment applies to this instance of forfeiture. But in order to show how excusable, or indeed how utterly without culpability may be the conduct of a claimholder thus absent, we may cite the evidence of one witness, Mr. James Ellis, of Major's Creek. That witness says:—"Jumping is a great evil. From any cause that might arise from accident, a man's claim may be jumped. I went myself one day to Jembaicumbene to buy a chaff-cutter; I was stopped by the floods for three days; when I got back my claim was jumped. I had been watched away. It cost me nearly £100 to get my claim restored to me." Surely it cannot be consistent with wise legislation that this kind of thing should exist.

Necessity for compelling fair working of claims.

56. We are, however, fully aware that, although on the one hand, a tenure so insecure as to be liable to destruction upon the happening of contingencies always probable, often inevitable, must operate most prejudicially to the development of our mineral resources; yet, on the other hand, an absolute security of title, opening the door to abuses by which the persistently idle and thriftless may benefit by the labours of the energetic and careful, may be attended with almost equally pernicious results. Your Commissioners recognize the ability with which, in the main, this branch of the subject is treated by the Victorian Commissioners of 1862; and we emphatically endorse most of the views elaborately propounded by those gentlemen in their Report (See particularly, Sections 32 and 33). Some effective means must therefore be devised which, without harshly oppressing or unduly restricting the miner, will compel an efficient working of his claim.

Penalty for not renewing miners' rights.

57. We recommend that the penalty for default in renewing a miner's right should, in addition to the payment of the fee, be a fine of not more than forty shillings. We draw the distinction between the case of a miner who has taken possession of a claim without having a miner's right at all, and the case of one who having held his claim under miner's right has neglected to renew it upon its expiration. In the one case there would be no right whatever to hold any ground, and provided there had been a prior application for the ground, the defaulter should be compelled, in addition to the payment of a fine, to immediately give up possession; whereas in the other case we think an absolute forfeiture should not take place, but the payment of the fine to be considered an atonement for the offence. The period during which the right to renew on these terms should remain should of course be limited, and we recommend the period of limitation to be one month. After that period the position of the defaulter to be that of one having had no miner's right at all.

Penalty for non-working in accordance with the Regulations.

58. We have before said that we consider that some means must be devised for compelling the fairly efficient working of claims, as otherwise very considerable injury may be done to the adjacent claimholders, and generally the development of the Field may be retarded. But your Commissioners consider that by a stringent system of fines, the payment of which fines can always be enforced by levying upon the claim, or interest in the claim, of the defaulter, this desirable object can be secured without having recourse to the objectionable system of forfeiture. It matters not, we think, whether the penalty be in the shape of a fine direct, to be levied if necessary upon the claim, or of a forfeiture of the claim, redeemable on payment of a certain sum. We desire that in no case shall the forfeiture—as such—be considered as absolute and iredeemable. We may here state that in this and in all other cases of fines for breaches of the Regulations, we recommend that the moneys so derived shall be bestowed upon the hospital or some other charitable institution of the district. In a plan such as this we think no odium can possibly attach to any person who, by laying a complaint against a defaulter, puts the Law in motion to compel the performance of an obvious duty; and in the possibility of the defaulter having to give up his claim through inability to pay the fine, there will be sufficient inducement held out not only to adjacent claimholders, but to the miners of the Field generally, to resort to legal proceedings for a cause so clearly just.

Powers to award compensation for injuries through non-working, &c.

59. In addition to the power of pronouncing a penalty by way of fine or redeemable forfeiture, we recommend that the Warden be empowered to order the payment of a sum of money as compensation for any damages proved to have been sustained by any individuals in consequence of default through non-working or from any other cause; such damages to be assessed, if required by either party, by Assessors chosen by the Warden.

"Jumping" an intolerable evil.

60. Somewhat allied to this question of forfeiture is the system known as "jumping." So long as it is law that upon certain things happening, thereupon *ipso facto* a claim is forfeited, without the necessity for any recourse to legal proceedings, or for any authoritative official adjudication of forfeiture, so long will there be a class of persons, generally idlers and "loafers," possessing neither industry nor energy to prospect for themselves, or to take up fresh ground and bestow upon it the preliminary labour of opening the claim, and preferring systematically to lie by and watch for the tripping of others more industrious and energetic than themselves, in order, upon any real or even any merely alleged default, to take possession, as for a forfeiture incurred, of the claim upon which much beneficial work may have been expended. This is what is called "jumping"; and it is a system so fraught with evil, and so inherently unjust,—holding out as it does a premium to laziness, to dishonesty, and to mere bullying brute force,—that it is to us a matter of wonderment how a system so demoralizing to the entire community can have obtained so long. The one attempted justification for permitting this system is that it checks the non-working of claims. We have shown that we also desire to check that evil, and have indicated a fair and legal manner in which it may effectively be done. We content ourselves with saying, upon this matter, that in no case should a claim be considered as forfeited unless after an adjudication to that effect by the Warden, and then only in the manner indicated in the preceding paragraphs of this Report.

Consolidated miner's right recommended; also the continuance in force for a term of years of miners' rights.

61. We think that, with the exception of the annual fee which we have already said we would continue at ten shillings, the provisions of the 4th section of the Victorian Mining Statue of 1865 might with advantage be introduced into our mining legislation; and we therefore recommend its adoption in any Statue to be passed upon the subject of Gold Fields Management. That section is as follows:—"It shall be lawful for the Governor in Council to cause documents to be issued, each of which shall be called a 'miner's right,' and which shall be in force for any number of years not exceeding fifteen; and any such document shall be granted to any person applying for the same, upon payment of a sum at the rate of ten shillings for every year for which the same is to be in force. It shall also be lawful for the Governor in Council to cause other documents to be issued, each to be called a 'consolidated miner's right,' and to be in force for any number of years not exceeding fifteen; and any such last-mentioned document shall, on the application of the Manager or any Trustee or Trustees of any Company of persons who shall have agreed to work in partnership any claim or claims registered under the provisions hereof, be granted to such Manager, Trustee, or Trustees, on behalf of the persons who shall from time to time be members of such Company; and shall, during its continuance, be held by the Manager, or the Trustee or Trustees for the time being of such Company, on behalf of such last-mentioned persons; and shall be in lieu of, and represent, and be of the same force and effect as a number of miner's rights granted for the same period of time equal to the number of the miner's rights by virtue of which the said claim or claims shall have originally been taken possession of; and the same shall be granted to any person aforesaid so applying, on payment of a sum at the rate aforesaid, multiplied by the number of miner's rights which the same is to represent; and every such document shall be dated of the day and at the place of the issuing thereof, and shall date the number of years for which it is to be in force, and contain the Christian name and surname, and the residence of (in case of a miner's right) the person in whose favour the same shall be issued, and (in case of a consoldiated miner's right) the Manager, or Trustee or Trustees to whom, and the name of the Company on whose behalf, the same shall be issued."

Consolidated miner's right.

Registration.

62. The advantages of a well-devised and judiciously administered system of registration are great. Among the most obvious of these advantages may be enumerated—(1) increased security of tenure, (2) inducement to persons to advance money upon security of the claim, (3) easy indentification of claim, and consequent prevention of dispute and litigation, and (4) facility in proving title. The objections to registration are, so far as we can see, only these: the time and trouble expended in attending the Registrar's Office, and the exaction of a fee for registration. The

first objection we propose to meet, so as to reduce the objection to one of very little weight, by making provision for Mining Registrars to be of easy access in almost all parts of the District; and as to the fee, we would recommend the imposing of so small a fee as to render its payment light, and in view of the benefits conferred by registration, almost inappreciable. On the whole, we unanimously concur in thinking that the advantages immensely preponderate over the disadvantages.

Compulsory registration in all but ordinary alluvial block claims.

63. We recommend that, in all cases except the ordinary block claim in alluvial ground, registration should be compulsory, so that no right to a claim or to any interest in any claim other than those comprised in the above exception, shall be recognized unless registered. And, with a view to encourage registration, we propose that certain peculiar advantages shall attend the registration even of ordinary alluvial block claims.

Mining Registrars.

64. We would further recommend that Mining Registrars should be resident on every Gold Field, and in such places on the Fields as would afford the miners every reasonable facility of access to these officers. A District Registrar should, we think, be appointed to each district, and this officer might conveniently hold his office in conjunction with that of Clerk of Petty Sessions, or Warden's Clerk. His remuneration for his duties as Registrar to be by fees, and his office to be central, and open for registration business at least four hours every working day. Books according to a uniform plan should be furnished to these Registrars, and kept by them as record of all transactions affecting the property to any claim or share. In addition to the District Registrar, we think there should be Divisional or Sub-Registrars for the more outlying portions of the District. The conduct of the business of these Sub-Registrars to be regulated by the same rule applying to the District Registrar. The appointment of these Sub-Registrars to rest with the Warden of the District. Both the District Registrar and the Sub-Registrar to furnish monthly statistical returns to the Department, such returns to be certified by the Warden. All registrations to be made either in the Office nearest to the claim, or in the Office of the District Registrar. And where claims have once been registered at one Office, all subsequent dealings, either by way of transfer or mortgage, or in any other mode, to be registered at that same Office. The Sub-Registrar, in any place where the Warden holds his Court, to take plaints and to issue summonses. We recommend that all certificates of registration of titles shall be on parchment.

Registration fees too high.

65. The fees for registration at present charged we all think too high. The work on the part of the Registrar is not arduous, the expenses of the Office should not be great, and therefore we think the fee should be small. Where the fee is now half-a-crown, we think one shilling would be ample.

Registration for reserve. Evils of present system.

66. We desire to point out a very serious evil which exists under the present system, with regard to registering claims to be held in reserve. The principle of allowing Mining Registrars to registrar claims as held in reserve, without the sanction of the Warden being first obtained, is in our opinion faulty,—because such registration may be, as indeed the evidence shows it constantly is, effected without the existence of any real cause for it. Upon the mere unquestioned allegation of the claimowner that he has reasonable cause for the suspension of labour, the Registrar, whose interest it is to secure as many fees as possible, and who is not required to make any investigation, nor indeed has the means of making any, into the truth of the allegation, thereupon takes the half-crown and grants the certificate. The frequent abuses in practice of a system so susceptible of abuse constitute a very just cause of dissatisfaction amongst the industrious and honest miners, who see the claim of an idle and unscrupulous neighbour lying unworked and protected, even though without any due cause it is so unworked, and when by means of its not being worked injury results to others. We think, then, that the Warden should be applied to before registration is made, and that only under his authority should the Registrar grant this kind of certificate. Means also should be provided for hearing objections, on the part of others interested, to the holding of a claim in reserve.

Survey.

67. In addition to compulsory registration of all claims other than the ordinary alluvial block claim, we recommend, with a view to fixing and defining the boundaries of claims, that survey should be compulsory in all cases where registration is compulsory. The evidence adduced before us shows that a very large proportion, certainly three-fourths, while some witnesses put it as high as nine-tenths, of the disputes which have arisen, have been upon the question of boundary; and taking into consideration the largely increased areas which we hope to see granted to the miners, your Commissioners agree in thinking that the comparatively trifling expense which compulsory survey would involve to the claimholders would cheerfully be borne by them, and that it would be acknowledged that a benefit far exceeding the cost would thereby be conferred. More money is expended, and more time absolutely wasted upon litigating these disputed questions of boundary than would a hundred times pay all the expense of survey, to say nothing of the spirit of hostility and heart-burnings which are kept alive by such often-recurring strife.

Mining Surveyors.

68. We recommend that Mining Surveyors be appointed for each district. Care should be taken by the Department of Mines that none but gentlemen of competent skill be appointed to the performance of duties, upon the accurate performance of which, interests of such great importance will mainly depend. The smaller details of the duties of the Mining Surveyor may be left to the determination of the Mining Department, but we recommend that they shall be under the immediate supervisions of the Wardens of the District; and in order to ensure care and efficiency in the discharge of his duties, we think it would be well to hold the Surveyor responsible for the accuracy of his surveys, maps, and plans. Periodical returns of surveys effected should be made at short intervals to the Department.

Survey fees.

69. The fees for survey should, in our opinion, be on the lowest scale commensurate with the due remuneration of the Surveyors. From the large number of claims which would doubtless require to be surveyed, we venture to believe that, without the necessity for the payment of any fee that would unduly press upon the miner, an adequate reward would be guaranteed for the services of competent officers.

[While agreeing with my colleagues as to the evils attending forfeiture, I think still greater evils would result from the remedy they propose. There is a strong and natural dislike on the part of the miners to become informers against their neighbours where the penalty inflicted is a money fine for non-working; and as the miner can hold any number of claims under his miner's right, large areas would be occupied and held without working, unless Inspectors were appointed on each field to superintend the mining, and prosecute parties for non-working. As this latter plan could not be adopted—and it is certainly not desirable to allow the gold lands of the Colony granted to the miner on the condition that he works them, to be held unworked—I have reluctantly come to the conclusion that forfeiture should be enforced for non-working or non-payment of calls or liens. But I think most of the objections to the present system would be met if, for a first and second offence, the miner was allowed to redeem his forfeited property by the payment of the costs and a fixed sum to the complainant, in lieu of the share or claim. For any subsequent offence forfeiture should ensue, unless it could be shown to the satisfaction of the Warden that the claim had been generally fairly worked, when a large sum (say £50) might be fixed as the redemption. No forfeiture should be incurred if the claim-holders had commenced work forty-eight hours before proceedings were begun in any competent Court.—H. A. T.]

LEASES.

Security of tenure offered by leases.

70. In order to encourage the embarkation of capital in gold-mining enterprise, it is obvious that fair security of tenure must be offered. The tenure by miners' rights, although well adapted for miners who reside upon the Gold Fields, and who may personally exercise a constant supervision over the workings in which they are interested, is clearly not sufficient for the interests of those who may be necessarily resident away from the Gold Fields, but who may have capital which they are willing to invest in reasonably secure and legitmate enterprise. Unless, therefore, some such system of tenure as that secured by a lease is permitted, there would be virtually an exclusion of outside capital—a result certainly not to be desired by any but a few persons representing an extreme and narrow-minded view of Gold Fields legislation, and who are borne down by an unreasoning and unreasonable dread of the great bugbear monopoly. But it is by no means merely with a view to attract capital from persons not themselves resident on a Gold Field that we think leasing should be permitted. The encouragement afforded by leases would operate more generally, and with at least equal benefit upon the interests of the miners themselves, and would tend largely to the introduction of an improved system of mining, combining the two great desiderata—efficiency and economy. The privilege of being able to convert his holding under the miner's right into a holding under lease would also be a great advantage to the miner who might have proved his claim to be remunerative, but was unable to expend the amount required to develope the claim without calling in the aid of capital, which he would have difficulty in procuring if the tenure depended on the miner's right. There, no doubt, exists a considerable amount of feeling against the leasing of new alluvial gold deposits, on the ground that it tends to a monopoly, and interferes with the just rights of the individual miner. We do not desire by any means to treat these objections with disrespect, but we are unaimously of opinion that, provided proper safeguards are established to prevent an injury to the interests of individual labour, it would be a mistaken policy to shut up new alluvial ground entirely from lease. We would recommend, therefore, that, in the first place, all ground should be open for lease; but, in order to prevent any abuse of this privilege to the detriment of the interests of the poorer miner, we at the same time recommend that no leases should be granted unless, after due inquiry has been made, the Minister is of opinion that no injury to those interests will arise by the issuing of such lease. With exclusive reference to the case of new alluvial ground, we propose at the outset the establishment of a provision likely to nip in the bud the pernicious practice which has been represented to your Commissioners to be only too common, of applying for a lease of ground where there is no prospect of such lease being granted, merely for the purpose of impeding the occupation of the land by the miner. To prevent this, we recommend that, where application for leases are really opposed to the beneficial interests of the individual miner, as, for instance in the case of a new rush or newly-opened alluvial ground, the Warden on the spot, without reference to the Minister, should be empowered absolutely and at once to refuse such applications. We also think that the Warden might be empowered to grant an application for a lease of any ground already held by the applicants under miners' rights, without reference to the Minister. In other cases, the provisions with reference to the applying for, considering, granting, or refusing leases, apply equally in principle to all kinds of ground, and will, we think, establish the necessary safeguards for the interests of all parties concerned.

Question of leasing new alluvial ground.

Objections to present system.

71. Before recommending a change in the Leasing Regulations, your Commissioners would desire to point out a few of the objections urged against the present system.

Delay and want of precision in surveys.

72. The survey is not made previous to the granting of the lease, although the survey fee is deposited when the application is made, and in many instances months elapse before the lessee can get his lease surveyed and boundaries fixed; while occasionally the ground is worked out and the lease abandoned before it is surveyed. In fact, the gold-mining leases at present issued describe the position of the ground leased so vaguely, that it would be impossible by their aid to identify the blocks leased, so that their boundaries could be fixed. To remedy this evil, we think that in all cases the survey should immediately follow the application for a lease, and that a copy of such survey, together with a plan of the ground leased, should be endorsed on the lease.

73. The fixed labour conditions binding the lessee to employ two men per acre are also oppressive, and have evidently been imposed without due knowledge of the conditions under which mining works are carried on. In the establishment of a mine there are two periods wherein the amount of labour that can be beneficially employed is very different. While engaged in opening and testing the mine, only a limited number of men can be employed; and to compel the lessee to employ the full number of men required to work the mine when opened out during this period, is an act of injustice to the lessee, and certainly not beneficial to the Country. We are of opinion that every application for a lease should state the number of men it is proposed to employ while opening and testing the mine, the time the opening is expected to occupy, and also the number of men to be employed when the mine is in full work. Oppressive fixed labour conditions.

74. Your Commissioners are also of opinion that the relaxation of the labour conditions on which a lease is held where steam or horse power is employed is not founded on any sound principle. The fact of a lessee erecting steam machinery to puddle, crush quartz, or pump water, or his using horses on his claim, ought not to excuse him from employing such an amount of labour as is required to open and work the mine efficiently; and more than this should not be required. Generally, we may state that, in our opinion, if the employment of such a number of men as can be advantageously engaged in opening the mine is enforced, the increase in the amount of labour employed afterwards will only be limited by the number that can be profitably engaged on the work. Erroneous view existing as to relaxation of labour conditions.

75. To ensure the performance of the conditions under which leases are held, we think that a return of the number of men employed on each lease should be made by the lessee quarterly, and those returns should be accompanied by a corresponding report from the Mining Surveyor of the district. Quarterly returns and reports.

76. By the Regulations of the 17th February, 1870, the term for which a lease can be granted was reduced from fifteen to five years; but we have failed to elicit any tangible reason for such an impolitic alteration, and would recommend a return to the old term of fifteen years, with a right of renewal. Enlarged term of leases.

77. The present maximum area of twenty-five acres for gold leases is, we consider, sufficient for ordinary mining, but the power to grant special leases of larger areas should be reserved, to meet special cases where the difficulties to be overcome are greater than usual. In leases for quartz-mining, a width of 200 yards should be allowed, for the reasons mentioned under the head of areas of quartz claims. Leasing areas.

78. The rent now imposed on gold leases has been generally condemned as too high. In the case of the individual gold-miner, the principle of offering him every inducement to develop the mineral wealth of the Colony, by placing only a nominal charge on the right to mine for gold, has been virtually affirmed; and the same policy has been followed in the case of minerals other than gold, where the yearly rental is fixed at five shillings per acre. Your Commissioners have failed to discover any valid reason why gold leases should be made an exception to this rule, and they would therefore recommend that the yearly rent for gold leases should not exceed ten shillings per acre. Rent.

79. We would suggest that the portion of the Regulations affecting the application for and granting of leases should be based on the following outline:—

Applicant to mark out the ground, and post notice upon it of his intention to apply for a lease of it within seven days.

Application for the lease, accompanied by deposit and survey fee, to be made to the Warden, who shall at once direct the Mining Surveyor to make a survey of the ground applied for and report on it. Fourteen days to be allowed for the lodging of objections to the proposed lease; and after that time has elapsed, the Warden to hear the applicant and objectors (if any) in open Court. The evidence taken, together with the report of the Mining Surveyor and Warden, to be then forwarded to the Mining Department, for the consideration and decision of the Minister.

[I dissent from that part of the Report which relates to what may be termed the labour conditions respecting auriferous leases. The majority of the Commission recommend the Victorian system of allowing the lessees to name the quantity of labour they would employ per acre,—the Minister for Mines acceding or not to the proposed terms. I do not think this works well, or gives satisfaction in Victoria. I would recommend that the Regulations should lay it down as a rule that a fixed amount of labour should be employed on a lease, but with this important provisio,—that the Minister for Mines or his Warden should have power, for a period of time at the commencement of operations on the ground, or indeed at the time during the currency of the lease, to give a certificate exempting the lessee from employing a certain portion of the specified labour. At first sight it may appear to be much the same thing whether the lessee names the amount of labour he requires to employ on the leased ground,—the Minister having the power to raise the quantity to that which he considers to be reasonable and fair,—or whether the amount of labour be fixed by law, the Minister having the power to reduce that quantity to that which is reasonable and fair. Practically the two systems are, however, very different. According to the recommendations I venture to make, the onus of proof that the nature of the work to be performed does not require so much labour as the law as a rule demands, lies on the lessee when he makes his application for exemption. By the Victorian system it is the Minister or his officer who has to discover reasons why the small amount of labour the lessee wants to employ should be increased. In the way I propose, the diminution of labour to be permitted is an exceptional case, and as such will be necessarily examined into carefully by the officer. By the Victorian system, though indeed the public can make objections, and thus show that the intending lessee is not acting *bonâ fide* in stating the amount of labour he intends to employ, yet, by oversight on the part of the public, or neglect on the part of the Warden, the lease is often granted upon terms which do not impose the putting on of sufficient labour; or, in other words, which allow the ground to be held for scheming and shepherding. I am strongly of opinion that fixed labour conditions for leases, without a provisio for the allowance of diminution of labour, is bad, and has done much to keep capital from our gold mines. Leases. Memo. by Mr. Baker.

If however the law were such that the labour should as a rule be fixed, say two men to the acre, but that the Warden should grant certificates of exemption, upon proof being shown that such two men per acre would entail a waste of labour, then, I submit, a security would exist to the capitalist that no unnecessary hired men need be put on the leased ground,

and the general public would also be secured against designing persons getting leases, which, by oversight on the part of the authorities, would allow them (the lessees), to hold large tracts of the auriferous land for long periods, inefficiently worked.—E. A. B.]

THE FRONTAGE SYSTEM.

The frontage system of very doubtful advantage.

80. Your Commissioners have given very anxious consideration to the question of the expediency of retaining what is known as the frontage system in our code of mining legislation; and we regret to say that here again we have not been able to attain unanimity in the recommendation to be submitted to your Excellency. The majority of the Commission fail to see in the frontage system those great advantages which recommend it to its advocates. In the doubt and uncertainty as to the right to claims—which doubt and uncertainty it seems almost impossible to avoid where the frontage system obtains—mainly springing from the frequently recurring junction of leads, and also from the numerous independent leads running either parallel, or nearly parallel, to one another—the majority of your Commissioners see very grave objections to the system; for experience has shown that in this doubt and uncertainty there is a very fertile source of litigation and dispute. And the majority of your Commissioners entertain serious doubts whether it would not be better to entirely abolish the frontage system, substituting in its place extended block claims. Recognizing, however, the extreme practical improbability of establishing such large block claims, and the fact that in their absence under some circumstances the frontage system may be adhered to with advantage, we agree in the proposal for retaining that system; but in the opinion of the majority of the Commission, the principle of the frontage system should only be applied where (1st) the lead is narrow and tortuous—where (2ndly) on the surface there is no indication, or hardly any indication, as to which direction the run of gold takes—and (3rdly) either where in great probability, unless the principle were applied, there would be a large expenditure of unproductive labour, or, in consequence of the great depth of sinking, rock or water drifts, requiring the aid of powerful machinery, great expense would probably be occasioned in testing the ground. Even under these conditions, experience of the evils arising from the working of the frontage system in the Colony of Victoria has led many of the Mining Boards of that Colony to substitute large block claims for the frontage holdings; and more especially has this been the case at Ballarat,—the district where this system first originated, and where the physical conditions of the gold deposits render it most applicable. In the absence, however, of these extended block claims, we think that in the cases indicated above the system may be advantageous; but we would recommend its being strictly limited to those cases alone; and where the conditions of the country will, with any approach to precision, define the lead, no frontage should be proclaimed. We would desire to add that, in all cases where the frontage system is applicable, the claims should embrace the whole width of the lead; in other words, where the system is applicable it should be observed in its integrity; and, in our opinion, the fact of block claims being allowed outside the frontage claims shows that the system is not applicable at all, and therefore should not have been introduced.

Memo. by Messrs. Baker and Combes, as to frontage.

[Should Parliament, in legislating for the future management of our Gold Fields, adopt the recommendation of the Commission, viz., that the framing of Regulations should be left to a Mining Board, the maintenance of the frontage system, as a mode of holding claims, will be decided by that Board. The majority of the Commission have, however, made a recommendation to the effect that the frontage principle should not prevail as a rule, but only in certain exceptional cases.

We desire to say that in those views we do not concur. We are of opinion that the frontage system, as a general principle, is approved of by an immense majority of the miners, and is greatly advantageous for the mining interest. It secures to the miner a portion of the lead or gutter, and thus gives to him, most probably, a payable claim immediately he put in his pegs. It tends to fix him on the land for a much longer period than does the block system, and it prevents much unproductive labour. It also tends to prevent very great rushes to and from a Field, and, indeed, makes the miner less a roving person than does the block system. By necessarily being on the gold, the owner of a frontage claim can get credit and the assistance of capital, which as the owner of a block claim he could not obtain.

We do not more fully enter into the question of the advantages or disadvantages of the frontage system, because it is a detail not so much for determination by the Legislature as by the authority which frames the Regulations, and which we trust will, to a great extent, be the miners themselves. We would merely give it as a recommendation that all claims should be on the frontage where the depth was over 60 feet; and that a frontage lead should be declared by the depth, without any declaration by any Commissioner or Warden, such as was the case under the Regulations in February 1870. It is said that great difficulties occur in the working of frontage leads. We confess we do not see any insuperable objections (no difficulties, in fact) for which practical and experienced men could not suggest remedies in any Regulations to be hereafter made.—E. A. B. E. C.]

"Shepherding" an evil, and an unnecessary evil.

81. As a feature of the practical working of the frontage system in this Colony, we have become familiarized with the operation called "shepherding," and this we all agree in thinking an evil, and an entirely unnecessary evil; inasmuch as, by a judiciously planned and a carefully administered system of registration, all the beneficial results of shepherding will be obtained, and its evils obviated. The arguments in favour of shepherding have been that by its operation a great deal of needless and unproductive labour has been prevented, and that, inasmuch as it has required the actual bodily presence of the occupier—for at all events, a certain period of the day—it has ensured the *bona fide* holding of claims by the real claimholders. As we have however said, we think these advantages may be secured by registration, and the undoubted evil consequences of shepherding will be removed. For it is clear that, in the case of really useful labourers, the breaking into a day by an enforce attendance in mere inaction upon ground during some hours of a day, means only too often the entire loss of the whole day, while the pernicious results of fostering a legalized idleness are also sufficiently obvious. The persons who answer the purpose of "shepherds" are not, as a rule, desirable members of society, inasmuch as they are generally loafers, who are only too glad to be maintained in idleness at the expense of the claimholders.

82. We recommend that, in future in all frontage claims registration shall be compulsory; then, that, starting from the prospector's shaft, no claim, after payable gold has been struck in such shaft, should be left unworked within sixty single men's ground from that point. That this distance—sixty men's ground—be the guide in subsequent operations, so that no payable gold being struck in any other shaft, all claims within a similar distance should immediately be worked. So far our recommendation merely amounts to the principal embodied in some of the Frontage Regulations already in force. But we would recommend that, in addition to this, this registration should be endorsed on the miners' rights upon the registration being effected, and that a copy of the registration certificate be kept continuously and conspicuously posted on each frontage claim. Upon such posting of the certificate, the claimholders to be exempt from either the necessity for working (pending the striking of payable gold within the prescribed distance), or from attendance upon such claims, *i.e.*, shepherding. The striking of payable gold in any fresh shaft should be notified by some particular signal, as perhaps by the hoisting of a flag; and upon such notification being made, the exemption from work to cease within the prescribed limits. Registration in this Colony has hitherto been confined to registration merely by individuals for one man's ground; whereas we think that power should be given to register as a party,—it being always required that the miners' rights for the whole of such party be produced at the time of registration.

Compulsory registration in all frontage claims recommended.

AREAS.

83. Your Commissioners found a general impression existing among all classes connected with the Gold Fields, that the mining operations of this Colony are usually conducted in a manner far inferior to that adopted in Victoria, and they have ever reason to believe that this impression is only too well grounded. This inefficient working may fairly be ascribed to our defective mining Regulations, which are apparently only intended to provide for mining on the rudest scale with pick and shovel,—as if our mineral deposits were confined to the shallow and easily worked alluvial ground. Certainly the present Regulations are not calculated to encourage the working of deposits requiring *mining*. The length to which the Report will necessarily extend prevents our quoting in detail the evidence bearing upon this part of the question we therefore contend ourselves with referring to the evidence of (amongst others) Mr. Mohr, Mr. Cleghorn, Mr. M'Kay, Mr. Travers Jones, Mr. Commissioner Johnson, and Mr. Rossister. These witnesses are all men of large and varied experience upon the subject of gold mining management, and most of them are thoroughly well acquainted with the theory and practice of the systems of both Victoria and of New South Wales. Nearly all the witnesses who have had an opportunity of comparing the working of the Gold Fields in Victoria and New South Wales corroborated the statements made by the witnesses named, and a comparison of the Victorian Regulations with those in force here bears out there views. Victorian mining legislation offers every facility and encouragement to the miner to enter on large operations: ours appears as if intended to cramp the miner's energies, and to keep him to mining work of the rudest and most wasteful kind. It would appear as if the Government thought it good policy to dole out the gold deposits to him in the smallest portions,—and the Regulations upon this head afford a singular contrast to the reckless way in which the gold-bearing lands have been and are being alienated on a large scale.

Existence of general feeling that our mining system is inferior to that of Victoria.

84. The present Regulations provide for two modes of working the gold deposits: first, by the miners under the miner's right, under conditions which place him at a great disadvantge; and second, by Companies working on a large scale and holding the land under lease. While not desiring to undervalue the benefit to be derived from the introduction of capital, or Companies,—and urging that to both every facility and encouragement should be given,—we are unanimously of opinion that it is to the working miner we must look as the principal developer of our mineral wealth, and our Regulations should be so framed as to encourage the miner to adopt an efficient system of mining. If we agree with the principle that, in the interest of the Colony, the gold deposit should be so worked as to secure the extraction of the gold at the least cost of time and labour,—or in other words, mined with the greatest degree of efficiency and economy combined,—such areas must be granted to the miner as will allow him to carry out his work in this desirable method. With the present small areas economical working is impracticable, and therefore an indespensable step towards improvement will be the increase of the areas to such an extent as will allow it. It has been pointed out, when speaking of leases, that the working of a mine may be divided into two periods of time: first, the opening and proving of the ground, during which only a limited number of men can be advantageously employed; and second, the working out of the deposits, when a much larger body of men can be engaged. Every prudent Company will open and prove the value of their mining ground prior to incur the expenses necessary before the deposit can be worked to profit; and this same work of opening and testing can generally be undertaken by parties of working miners, with greater economy, and in many instances with greater efficiency, than it can be by Companies. If successful the party of working miners would have no difficulty in getting capitalists to join them, and to provide the appliances required for working the mine on reasonable terms. We cannot see why the same inducements and the same chances of making an independence should not be offered to the miner, whose principle capital is his labour, as is offered to the capitalist, who pays for the labour he has to employ; and if this were done, we feel assured a great impulse would be given to gold-mining, much to the advantage of the miner and of the Colony. We are aware that one section of the miners is opposed to any large increase in the areas granted for mining, through a groundless

Advantages of liberal areas.

dread of the Gold Fields being monopolized by a comparatlvely small body of men. Considering the vast area of unoccupied gold country in New South Wales and that if the claims are larger they will take a longer time to work out, we can discover on reasonable cause for this dread. On the contrary, we are of opinion that the settlement of the miner on claims of such a size that they will take a long period to work out, instead of compelling him to wander about in search of new claims, would be a great benefit to the miner and the community. No doubt cases are not uncommon where small claims return large sums to their fortunate owners,—but the limited extent of this rich ground renders it of little importance when compared with the aggregate value of the much larger area of poor ground which will only yield moderate profits for efficient working. The Regulations should be specially framed to encourage the working of these poorer deposits, even at the risk of the rich claims being greater prizes than they now are, if this is any practical disadvantage. Many of the skilled miners now in other Colonies would be attracted here by liberal Regulations. Such men would be a great acquisition to the Colony, and by their enterprise would increase rather than decrease the demand for labour. Similar objections were urged against the increase of the areas allowed for mining, some ten or twelve years ago, in Victoria, but experience has shown how baseless they were; and, step by step, the Mining Boards elected by the miners have extended the areas allowed, until they are more liberal than those we recommend for adoption here. Notwithstanding the prejudices represented by the local elected Mining Boards, the experience gained in practical working gradually overcame the erroneous opinion that it was to the advantage of the miner that he should be restricted to the minimum quantity of ground out of which he could make a bare living by pick and shovel work. If the granting of large areas to the miner has been attended with such advantageous results in Victoria, where the extent of auriferous country is much less, and the mining population much larger than is the case in this Colony, the objections urged against the introduction of a similar system here do not appear to rest on any sound foundation.

Principle upon which the size of areas should be determined.

85. We think that, instead of framing our Regulations on the level of these prejudices, we should start at once from the base afforded by the experience of other Colonies. In considering what should be the minimum areas allowed to miners in New South Wales the gold deposits may be divided into two classes:—

First, the shallow and easily-worked deposits, for which the present area of 80 feet by 80 feet for block claims may be considered sufficient.

Second, the deposits requiring mining in its true sense to work them with efficiency; for instance, quartz claims, river and creek claims, sluicing-claims, hill-tunnelling claims, and alluvial claims presenting more than ordinary difficulties in working, whether from poverty of the ground, water, depth of sinking, or other causes.

On claims of the second class we are unanimously of opinion that such an area should be granted, to any party of miners sufficient in number to open and prove the ground, as would form a mine capable of being worked to the best advantage. After a mine is once opened, it is the obvious interest of the proprietors to work it out in the shortest possible time, to enable them to make the most profit; and this will be sufficient inducement for the employment of as much labour as can beneficially be used.

Areas of quartz claims.

86. In the case of quartz veins, the work is similar in character to the mining carried on in mineral veins producing the baser metals; and in the great mining works of Europe and other places, we have excellent examples of the best style of mining, exactly applicable to the working of our quartz reefs. Guided by this experience there can be no dispute as to what is the best—meaning by the best, the most efficient and profitable system that can be adopted here. To favour the introduction of such a system should be the object of our Regulations; at least, so far as the different conditions attending mining in this country will allow. Where four shafes are used for working an extent of vein that can be worked from one shaft, it is evident that the cost of sinking three shafts, together with the outlay of attending at three shafts, surface men, &c., is so much needless waste of labour to be deducted from the profits of the mine, and which in many cases would afford a good return from ground now considered as too poor to pay for working. But whether the ground is rich or poor, the objection to needless waste of labour is equally valid, and Regulations whose tendency is to encourage and in some cases enforce this are clearly indefensible. Under the present Regulations, the ordinary quartz claims are 30 feet per man, with a limit of 180 feet in length. We have had a series of claims brought under our notice (at Hawkins Hill) where for claims varying from 30 to 120 feet in length shafts of several hundred feet in depth had to be sunk, and some seven or eight shafts were so sunk in an area that could have been better worked from one shaft. Again, these small claims compel the crushing and mining to be carried on as separate businesses, even in the cases where the quartz is in quantity sufficient to keep a crushing plant in full work from a good-sized claim. In consequence, the miner frequently has nearly as much to pay for crushing per ton as the cost of both raising and crushing should amount to under a better system. The proprietor of mineral land, on letting the working of the minerals to a Company on royalty, provides for the efficient mining by stringent clauses in the lease granted, knowing that this is necessary to ensure his obtaining the largest possible return from the mine. The State is somewhat in an analogous position to the private proprietor of mineral property; it is equally to its interest that the deposits should be worked efficiently, and with as little loss and waste as is practicable. For the interest of the Country and the miner himself, it might even be a question whether the working of these small claims, or at any rate the subdivision of claims, should not be prohibited.

Areas proposed.

87. In considering the area that should be allowed in quartz-mining, we think that at least

600 feet on the line of a quartz vein can be worked to the best advantage from one shaft, and that a party of six men would be sufficient to open and prove the mine with reasonable expedition. We would therefore recommend that at least 100 feet per man should be allowed in a quartz reef, with double that size on worked or abandoned ground.

88. At one time the Regulations allowed the quartz-claim holder to follow the reef in its dip, wherever this might strike; but as this was found to lead to disputes, it was altered to a fixed width, formerly 200 yards, but under the present Regulations reduced to 100 yards. Following dip of reef.

89. Although not so specified in the Regulations, the practice has been to allow 50 yards on each side of the base line, or supposed line of reef, on the surface. Hardly anything could more strongly exemplify the want of practical knowledge displayed in the management of the Gold Fields than does the interpretation thus put on this Regulation. Quartz veins strike into the ground in directions varying from the vertical to the horizontal, and the width of 100 yards is given to the claim in order that the whole of the vein, up to such depth as it is likely to be worked, may be included within the claim: but as the dip or underlay of the vein is almost invariably in the same direction throughout the claim, the 50 yards allowed on the other side of the vein, from the underlay, is of no use to the claimholder, while the 50 yards on the underlay side is quite insufficient to secure the whole vein to the miner, in numerous cases, and in consequence, ground is frequently taken up on the underlay side of the claims on the line of reef, with the object of catching the vein when it dips out of these claims. Examples of this may be seen both at Grenfell and Hawkins Hill; and such a mistaken policy only leads to a waste of labour and the robbing of the original claimholders, who, after bearing all the risk of testing the vein, may have to give up the best portion of it to a party who have never risked a shilling in proving the ground. Erroneous practice with regard to division of allowed width.

90. We would recommend that the old width of 200 yards be established, and in addition the claimholder to be allowed to mark out any distance not less than one tenth of the whole width on either side of the reef, and the remainder of the 200 yards on the other side. Width.

91. All gold, whether alluvial or quartz gold, found within the area of a quartz claim should belong to the claim. All gold within area to belong to claim.

92. The Victorian areas for quartz claims (except in one district) vary from 100 to 150 feet per man; but in Sandhurst, the greatest quartz-mining district in Australia, extended quartz areas are granted of 320 yards, on condition of employing two men on the claim for the first six months, and eight men after that time. Average of Victorian areas.

93. *River and creek claims.*—This description of mining is attended with considerable outlay in building dams and cutting races for the diversion of the stream, or in the erection of machinery to pump the water from the river-beds. It is also attended by great risk, from the frequent occurrence of floods, which sweep away the work it may have taken months to prepare, and compel the miner to begin his labours anew. It is necessary to distinguish between mere gullies,—where there is no permanent water,—or where it is in such small quantities as not to impede the work of the miner,—and the river or creek beds,—which may be defined as watercourses having a running stream for six months in the year, presuming an average rainfall has occurred. River and creek claims. Definition of river.

94. We think that 50 yards, with the whole breadth of the river or creek bed, should be allowed per man, without limit as to the number of men in a party. In addition, one claim of 50 yards should be allowed for every £100 expended in cutting races, making dams, erecting machinery, or other preliminary work not being part of the opening and working of the ground. These recommendations are only intended to apply to the river or creek beds: the working of the banks of these streams will generally come under the Regulations affecting sluicing ground. The present Regulations only give thirty feet per man, with a limit of six men's claim, or 180 feet. This is so inadequate for the work to be performed, that it may be fairly considered as prohibitory. In the Victorian districts, where sluicing is carried on to the greatest extent, the areas granted are from 25 to 70 yards per man. Areas proposed.

95. *Sluicing.*—This important branch of our mining industry is not provided for in the present Regulations; for as leases of new alluvial ground are not granted, and only block claims of 80 feet by 80 feet allowed,—this kind of mining, if carried on at all, must be so on sufferance, and any ill-natured miner might ruin a neighbour who had expended his means in bringing water on to the ground, by merely taking up the land adjoining his small claim. In many instances the area allowed for a block claim by the Regulations could be worked out in a week or two, while the preparatory work might have occupied several months. We are of opinion that sluice-mining should be carefully attended to and encouraged, as there are extensive districts in the Colony where nearly all the mining works are of this character, and where a large amount of capital has been invested in it. The area of unoccupied sluicing ground in the Colony is also very great. Sluicing.

96. *Puddling.*—This description of work is usually carried on in old worked ground, where the richest portion of the deposit has been previously taken out, or else in ground too poor to pay for any more expensive mode of operating, but it is still of considerable importance, and it is only by this mode of working we can obtain a large amount of gold left in our older Gold Fields. Puddling.

97. *Hill-tunnelling.*—In some of our gold districts the ancient valleys covered with a rounded drift containing gold, frequently in large quantities, have been filled up with volcanic rock (an overflow of lava), and the old streams have, in consequence, had to seek out new channels. In the instances brought under our notice in New South Wales, these new valleys, being worn out deeper than the ancient valleys, leave the latter high up on the sides of the modern valleys, and protected by a covering of basaltic rock. At Kiandra, the Hanging Rock, Ophir, and a few other places, Hill-tunnelling.

some attempts have been made to work these deposits, but there is a large area of gold-bearing ground of this character left unnoticed, and which is not provided for and cannot be worked under the present Regulations, while it is not open for lease. However neglected at present, this will become an important industry.

98. In the case of sluicing ground, puddling ground, and hill-tunnelling, we would recommend that one acre for every man employed should be granted, with a limit of ten acres, and an allowance of one acre for every £100 expended on tail or water races, reservoirs, tunnels, machinery for pumping or washing, or any preliminary work other than opening or working the claim.

Alluvial ground.

Block claims.

99. *Block claims.*—These are intended for shallow alluvial deposits, and more especially for a rush on new ground. We think for this description of ground the present area of 80 feet by 80 feet per man is sufficient, but there should be no limit to the number of men who can join their claims together to form one united claim and to work them as one block. In the case of these block claims, registration need not be compulsory. In old worked and abandoned ground of the same character, 160 feet by 160 feet to be allowed per man, with no limit as to number of men who can unite their claims,—but in this case registration to be compulsory.

Extended claims.

100. *Extended claims.*—There is a large area of gold country where the ordinary block claims are too small to afford sufficient inducement to the miner to open the ground, and in these cases a system known as extended claims has been found of great advantage; the principle has been adopted in nearly all the Victorian mining districts, and we strongly urge its introduction here. Extended areas should we think be granted in old worked and abandoned ground, or in new ground presenting such difficulties as to require the expenditure of capital to develop it efficiently, in the form of horse, steam, or water power, whether these difficulties arise from water, fine drifts, depth of sinking, or any similar cause. Any party should be allowed to take up 10 acres or any smaller area on condition of employing one man per acre, with an allowance of 1 acre for every £100 expended on machinery or preliminary work necessary to be undertaken before opening and working the claim. Should the whole party not be able to work to advantage while opening the claim,—the Warden to have power to allow such number of men to hold the ground as would keep the opening work going on night and day, where such continuous work was practicable. Notice of intended application for an extended area to be posted on the ground. Application to be made to the Warden, who would hear the applicants and objectors in open Court, and have power to either grant or refuse the application.

Proposed frontage areas.

101. *Frontage claims :—*

Areas allowed—

Under 100 feet sinking	....	....	....	....	40 feet per man
Over 100 „	....	....	....	....	80 „ „

Where the shaft requires slabbing, and the ground is so wet as to require continuous baling, double the above areas.

In all cases the claimholder to have the whole width of the lead.

Prospecting.

Large areas proper inducement to prospectors

102. Your Commissioners are of opinion that the system of giving money rewards for the discovery of new Gold Fields does not work advantageously, and they cannot recommend its adoption. Sufficient inducement can be held out, by giving large areas on reasonable terms to prospectors, to ensure the opening up of our gold deposits. Considering the vast area of auriferous country in New South Wales as compared with the extent opened, this question deserves serious consideration, and every facility should be afforded to prospectors.

Proposed prospecting areas.

103. We would propose the following areas for this work :—

(1.) Where the discovery is more than one mile, but not more than ten miles from the nearest gold working then being carried on, we would give—for

Alluvial—Two acres per man, but no claim to exceed ten acres.

River and creek beds and quartz reefs—Double the ordinary claim per man.

(2.) Exceeding ten miles from any gold workings :—

Alluvial—Four acres per man.

River and creek beds, and quartz reefs—Four ordinary claims per man.

We also think that in the working of prospecting claims the labor conditions might be relaxed with advantage; and where applied for, a lease of the prospecting claim should be granted at a nominal rent.

Registration and survey.

104. *Registration and survey.*—In all the above claims, except in the ordinary block claims in new or old worked ground, survey should be compulsory within a reasonable time of the ground being taken up; and on all the above claims, except the ordinary block claims in new alluvial ground, registration should be compulsory.

Areas.—Memo. by Mr. Baker.

[With some hesitation I am disposed to concur generally in the views of the majority of the Commission as to areas of claims. I must say, however, that I consider 100 feet per man, on the line of reef, as much too large. On new quartz reefs, I should not be inclined to extend the size of the claim much beyond the present area of 30 feet per man,—perhaps

making it 40 per man, not more. I would refer to the article in the Appendix on Mineral Resources of the Colony, where it will be seen that, from six men's ground of 30 feet each, some £45,000 profit has been made in a reef in five years. The adjoining claim, it being also six men's ground of 30 feet each, has produced some twenty-five or thirty thousand pounds profit. I cannot see that it would have been advantageous to the general public to have given the two claims to six men, instead of it being devisable amongst twelve. While the object should undoubtedly be to give so large a claim that the miner may settle down for some time on it, and make himself a home, and also have so much ground that it will be worth his while to work the claim by efficient machinery and appliances,—yet, I think care should be taken that we do not go too far, and prevent population being attracted to the Colony by locking up the auriferous land in too few hands, by the means of such large quartz claims as those recommended by my colleagues.—E.A.B.]

WATER SUPPLY.

Importance of water supply.

105. Without water, the separation of gold from its matrices, or from the "dirt" and "gravel" in which free gold is imbedded, becomes an impossibility; it is therefore of the highest importance to the development of the Gold Fields that a liberal supply of this element be secured to the miner, to enable him successfully to carry on his operations.

Exaggerated notions existing as to facilities for supply.

106. Your Commissioners, while engaged in making their inquiry, occupied a considerable portion of their time in taking evidence on this subject, and in making a personal examination of the districts, so far as the time at their disposal would allow. They found that generally an exaggerated notion prevailed as to the facilities for obtaining a plentiful and permanent supply from reservoirs for the storage of storm-water, or by means of races from rivers or permanent watercourses situate at a height sufficiently elevated to procure a supply therefrom by gravitation.

Australian rivers.

107. New South Wales, in common with all other Australian Colonies, is very badly watered, and, considering its extensive area, remarkable for having so few springs and brooks of running water. Very few streams exist sufficiently large to be called rivers, and in seasons of drought even these cease to run, and not a drop of water is to be seen for miles. An under-current might possibly exist, but certainly not sufficient to supply a Gold Field except in a limited quantity for domestic purposes. In the interior these rivers traverse an almost level country, and consequently have scarcely any fall; now and then all traces of a river disappear, and change into a swampy reed-bed, The water (when there is any), after spreading itself over the swamp, collects again at the lowest level, forms another channel, and moves on sluggishly as before.

Facilities for water supply.

108. In the more elevated mining districts the conformation of the ground is generally favourable to the formation of reservoirs, where water could be conveniently stored in sufficient quantities for quartz-crushing, puddling, and domestic purposes; and we have no doubt companies would be found willing to undertake such works on established Gold Fields, were a code of Regulations in existence that would enable them to dispose of the water so collected at a fair and reasonable rate.

Water for sluicing.

109. Where the water supply is required for sluicing purposes, your commissioners feel confident that no reservoir could be depended on. It is, then, necessary that the water be brought from some permanent source by means of a race, or artificial channel, as the quantity consumed by half a dozen sluice-heads would empty a moderately large reservoir in a few days.

Mr. W. D. Bourke's evidence.

110. A general opinion seems to prevail in many localities, that if scientific knowledge combined with capital were brought to bear, water could be obtained in enormous quantities. Thus Mr. W. D. Bourke, of the Hanging Rock Gold Field, on being questioned as to what he would recommend to procure a permanent supply of water, states:—"By tapping some of the swamps on the table-land, at or about Hanging Rock, and cutting a race along the main ridge through Bowling Alley Point, a never-failing supply would be given to all Bowling Alley Point and Nundle, and would afford motive power for quartz-crushing as well as unearthing alluvial deposit." The same witness says:—"I think the Government ought to undertake the work, as I do not think it would pay the private capitalist to do it, but as a national undertaking it would be worth the Government's while to do it. It would attract population here to the extent of 2,000 or 3,000. It would largely increase the yield of gold and the Revenue, and no doubt a large water-rent would be obtained. We have races eleven miles long, and the longest is that from Bowling Alley Point. The race I would propose should supply thirty sluice-heads at £2 a week."

Quantity of water required for ground sluicing.

111. Great advantages would doubtless accrue were it possible to carry out such works as Mr. Bourke suggests. Its impossibility however is easily shown. A sluice-head with a discharge of 12 ft. by 6 ft., or a sectional area of 72 square inches, and a fall of half an inch per foot, would carry off about 750,000 gallons per day. Thirty such sluice-heads would therefore require some 22,' 00,000 gallons daily; a quantity far in excess of anything likely to be obtained from swamps situate on the summit of the main dividing range, where the watershed necessarily is very limited.

Water supply by gravitation.

112. Where running streams exist and can be diverted from their natural channels so as to supply a Gold Field by gravitation, many and great advantages would be gained by delivering the water to one reservoir, from which the water could be drawn off and rented; the loss from soakage, evaporation, injuries by cattle, and other causes, being proportionately far less for one race sufficiently large to carry all the water that can be obtained than from several small races. It is therefore of considerable consequence that the applicant for a water license should give a guarantee that the necessary works should be satisfactorily performed, as it is not improbable the success or otherwise of the Gold Field will depend on the water being brought on and disposed of in an economical manner.

Extent of Gold Fields in New South Wales.

113. The Gold Fields of New South Wales extend over a vast tract of country, and are very scattered. No comprehensive scheme of water supply such as our Victorian neighbours have partly carried out on the Coliban can therefore apply. The Western District extends from Gulgong to

Lake Cowal, the Southern from the East Coast to Junee, and the Northern from the Denison diggings to the Queensland frontier. Each of the Gold Fields in this expanse of territory must necessarily be supplied from the particular source that will admit of the water being provided in the least expensive manner. Where the gold is obtained from deep leads or from quartz reefs, a supply sufficient to carry on "puddling," or crushing operations, can generally be obtained from storage reservoirs of a comparatively inexpensive character. It is only where the gold is obtained by means of ground sluices, and the water itself converted into labour, that a running stream is indispensably necessary to keep up the supply.

Ground sluicing.

114. The ground-sluice is by far the most economical way of working ground, and indeed the only way that will admit of poor alluvial ground being worked at all with any chance of remuneration. When the elevation of the water is sufficient to give a pressure of three or four atmospheres, the miners use hydraulic hoses for washing the ground from the rock and sweeping it away through a tail-race, leaving the gold behind. Mr. Brough Smyth, in his valuable work on the "Gold Fields of Victoria," says—"The miners in the Buckland District rent from the race-owners what is called '*ground sluice-heads*,' and use all the water they can get. The quantities average from 80 to 150 inches, and the miners pay from £2 to £3 per week. The water is gauged generally in accordance with the Beechworth By-laws, and the smallest quantity used at Buckland is equal to two of the sluice-heads allowed by the By-laws." Mr. Peter Wright, Assistant Engineer for Water Supply, and whom Mr. B. Smyth quotes, says—"A ground-sluice will require at least as much water as six box-sluices." This gentleman found that at Allan's Flat, Yackandandah, where water was sold at one-third of a penny per thousand gallons, a yield of four-fifths of a grain per cubic yard would cover expenses. This will show how absolutely necessary it becomes that the miner should be supplied with water at the lowest possible cost to enable him to work with profit to himself and the State the extensive tracts of poor auriferous alluvial now worthless, but which with capital, energy, and skill, might become centres of activity, and sources of wealth to thousands.

Difficulty of obtaining reliable information.

115. In hurriedly visiting a Gold Field for the purpose of taking evidence, your Commissioners had few opportunities afforded them of collecting any reliable data, or by personal observation and inquiry to examine into the various phases that the question of a water supply would naturally present. They could only hear what witnesses had to say on the subject; and these witnesses could give no positive evidence as to the relative heights of different streams, or the quantity of flow, no levels having ever been taken, or trial sections made, to establish the fact.

Supply only to be depended on during the rainy season,

116. Generally speaking, an abundance of water can be had during the rainy season, while in summer the creeks either wholly or partially dry up, or run a few days only after thunder-storms. The great object to be gained is therefore to find a position on the creek where a dam can be constructed at a reasonable expense that will throw the water back over a large area.

Hanging Rock Gold Field.

117. At the Hanging Rock Gold Field we found the water was brought in from the head of the Barwon River, on the other side of the Main Dividing Range. One of these races was twenty miles in length. In this locality we found the old valleys had been protected by trap rock, and doubtless were water supplied at a moderate cost a large quantity of ground would be found payable. The general conformation of the country is favourable to the construction of storage reservoirs at a sufficient height to admit of the hydraulic process being used with effect, and, from the height of some of the banks, this is not only the most economical, but the only safe way of working. This Gold Field is situated on the western slope, and in close proximity to the main Divide. It is about 3,500 feet above the sea-level. Any water supplied to this Field could, after having done its work here, be made available for sluicing purposes at Nundle, and also at Bowling Alley Point.

Alienated lands on Peel River.

118. As a great portion of payable ground at these latter places, on the Peel River, has been alienated from the Crown, we doubt if the Crown Lands alone would pay for any expensive scheme, unless some arrangement could be made for working the private lands at the same time.

Rocky River Gold Field

119. The Rocky River Diggings are also very near the Dividing Range, and consequently have a limited watershed. A considerable quantity of ground exists at this locality that would pay well for ground sluicing, but as the supply is chiefly obtained from catchwater drains along the hill-sides, intercepting the storm water, works of this character can only be carried on during the wet season. It was considered likely by some of the miners we interrogated on the field, that water could be brought on either from the Puddledock, Tilbuster Ponds, or Saumarez Creeks; and were this possible it would prove of incalculable benefit to the residents of this Gold Field.

Gold Fields the Braidwood District.

120. In the Braidwood District your Commissioners were assured that payable sluicing ground extended over thousands of acres at Major's Creek and at Little River. At the former place it was long considered practicable to bring a supply from the Shoalhaven River. From the best information we could obtain this seems very improbable. Mr. W. E. Larmer, the Government Licensed Surveyor, stationed in the Braidwood District, says in his evidence—"That in or about the year 1859, Mr. Surveyor Rowlands took levels from the township of Elrington, or of Major's Creek, to a point of the Shoalhaven River, at Oranmier, about ten miles in nearly a direct line (*i.e.*, the line taken for obtaining the flying levels); he found the level at Oranmier the same as that of a bench mark below the Catholic Chapel at Elrington; he also found that the fall in the river for several miles below Oranmier averaged nine feet in the mile." A race from this point on the river would have to follow the contour of the country, and would probably be from 15 to 20 miles in length, while the smallest allowable gradient would necessarily be 10 feet per mile. It will therefore be seen the water could only be delivered at from 150 to 200 feet below the bench mark at Major's Creek,

and this spot is fully 200 feet lower than where the water is actually required. At Mongarlowe or Little River the payable ground is also situated at such an elevation above the river that no reasonable prospect exists as to a supply by gravitation from that source. There are however other creeks from which by means of reservoirs to hold the night's water, it is highly probable a fair quantity of water could be obtained. With reference to a supply from the Little River, Mr. Alfred F. Thompson says:—"You want to raise the water 200 feet above the level of the river; if it were raised to that height, there are many thousand acres that would pay for working, that cannot be worked now." He also says—"that many parties have investigated the river with a view to race-cutting, but no works of any extent have been carried out. The inducement might be by large special grants to Water Companies, with secure tenure and freedom from charge."

Tumut and Upper Adelong Gold Field.

121. Probably the largest Field for sluicing operations is in the Tumut and Upper Adelong Districts. The sluicing interest is here most important, and works of an extensive character are already in operation at Reedy Flat. From the evidence we are led to infer, that were an adequate and permanent supply of water obtained, an immense tract of country would be found payable. It is also stated that this supply could be obtained from the Tumut River. Mr. Travers Jones (whose experience is varied and extensive, and whose opinion is entitled to the greatest consideration) says:—"There are many places where, owing to the want of water supply, the ground cannot be efficiently worked. Reedy Flat and Upper Adelong are such places. I have made a general inspection of these localities with a view to this particular question. I am of opinion that the best course the Government could pursue would be to give grants of money or large claims to any individual or Company who would undertake such works.

Evidence of Mr. Travers Jones.

"The Tumut River could be brought on to this Field (Adelong), Reedy Flat, and Upper Adelong. The point of divergence from the Tumut would be the Talbingo Mountain, about 40 or 50 miles higher up. I cannot say at what elevation there the water is above Reedy Flat, but I have satisfied myself that if the Government were to grant unrestricted rights to those who would bring water on, it would be well practicable for a Company to make a payable speculation of it. There is a never-failing and unlimited water supply there for an immense tract of auriferous country 40 or 50 square miles.

"To prevent monopoly I should certainly recommend that the parties bringing on the water should be obliged to sell it at a reasonable rate, to be ascertained, in case of dispute, by arbitration.

The Burrangong Gold Field.

122. The Burrangong Gold Field is also of a character that would be vastly benefited were it possible to obtain a more liberal water supply. This, however, cannot be done very easily, as from physical difficulties the works necessary to the construction of a reservoir would be very expensive. The area of watershed of the Burrangong, Spring and Stony Creeks is comparatively small, the dividing range not being more than five miles from the mines. An impression has long prevailed among the residents that water could be brought on to that place from the Murrumbidgee. Jugiong is the nearest point on the river to Young, and is about 35 miles as the crow flies.

Apparent inaccuracy in present official information.

123. Your Commissioners took considerable trouble to ascertain the relative heights of these places above the sea level, and, as levels had been taken along the Main Southern Road through to Gundagai, they did not apprehend any difficulty. In a communication received from the Surveyor General's Department, we are informed that the altitude of Young Cricket Ground, as determined by barometer, and which is approximate, is 1,500 feet, and the altitude of Narrandera, on the Murrumbidgee, determined by levelling, which is reliable, is 1,740 feet. We applied to the Works Department for further information, in order to fix the altitude of the Murrumbidgee at Jugiong, and after repeated applications found nothing definite could be made out, excepting that the altitude of the Hume River at Yass, was about 1,560 feet. Some of these figures must therefore be inaccurate, unless the Murrumbidgee River has the astonishing peculiarity of running uphill. The length of a race between Jugiong and Young would most likely be 50 or 60 miles, and as there appears to be scarcely if any fall between the two places, a supply from this source would be positively unattainable. Probably better results may be obtained from the Boorowa or the Lachlan.

Wattle Flat and Tambaroora Gold Fields.

124. Wattle Flat and Tambaroora are both situated on very high tableland. From evidence taken at these places, it seems to be considered almost impossible to obtain water from a permanent source, but that a great deal may be done by means of dams.

Gulgong

125. At Gulgong, it has been stated that water might be obtained from the Cudgegong River, and while we do not pronounce the scheme as positively impracticable, from what we observed as to the fall of the Cudgegong River we are not sanguine as to its possibility. The question, however, is, of such importance that we think a survey should at once be made, to determine whether it is really practicable or otherwise.

Trial levels should be made

126. Your Commissioners have no means at their disposal for ascertaining the extent of water-shed of any particular Gold Field, and in the absence of any geological survey, trial levels—in short, of all reliable data absolutely necessary to form a correct opinion—find it impossible to report definitely as to the best mode for securing to each Field a permanent water supply. They would, however, strongly recommend that, on the discovery of any Gold Field, the District Surveyor, or some other duly qualified officer, should be instructed to make a series of trial levels, with a view to a permanent water supply; and that on all Gold Fields such as we have enumerated, at present badly supplied with water, such levels be at once carried out. The expediency of this measure may be inferred on considering the magnitude of the interest involved. To make it more effectual and valuable, we would suggest that the Surveyor should also be instructed to report on the geological features of the country, marking the same on his plan. From correct information such as this would

supply to the miner, were the work performed by a really competent man, much loss and disappointment would be often prevented, and results of a material character might be confidently anticipated.

Exhaustible character of material to be operated upon

127. In the construction of works for the conveyance of water to a Gold Field, it must be borne in mind that the material to be operated on must of necessity at some future period become exhausted. This period will be more or less distant according to the character of the mines. Alluvial diggings admitting of ground sluicing will be washed away in a comparatively short time, while quartz-mining will be of a much more permanent character. The miner in bringing water to his claim simply digs a "*ditch*" or "race" in the earth, where the surface of the ground will permit: and where it will not, he builds rough dry walls to carry the water round precipices, or takes it across the creek or ravine in an aqueduct made of boards, and called a flume. His great aim is to get the largest amount of water, at the greatest altitude, at the least possible expense, and to effect this he well knows his works must be of an inexpensive character. Were canals to be constructed by the Government, they would necessarily be of a more durable nature, and would probably be ten times more costly than what the miners would erect were they doing it for themselves. The interest on money expended in this high-class construction would not allow the water to be sold at a sufficiently moderate rate for mining purposes. As a general rule, it would not pay the ground-sluicer to pay more than one penny for 10,000 gallons of water.

Principle on which legislation should be based.

128. Instead of permission granted by the Commissioner, as at present, licenses should be granted for race-cutting, and for the erection of large and permanent dams. These licenses to be only granted by the Mining Department. The principle we would suggest upon which the granting or refusing these licenses should depend is, that an applicant should be entitled to receive a license for as much water as he can profitably use or dispose of without injury to prior rights. The water brought in under such license to remain the property of the licensee until allowed to run to waste into any natural watercourse. We would recommend that no forfeiture should be allowed so long as the rent was paid, but that for any breach of the Regulations a fine should be imposed.

The construction of water-works to be left to private enterprise, with special Government encouragement.

129. After mature consideration, we are unanimously of opinion that waterworks for a Gold Fields' supply should not be undertaken by the Government, and we think that Companies would be formed to construct such works, were proper inducement given in the facilities afforded them of effecting their object. Extended areas for claims in proportion to the amount of capital expended, security of tenure, and a right to dispose of the water at a price to be determined by the Mining Board, should be offered for the encouragement of private parties to supply the necessary capital. This, we confidently think, would have the desired effect; but without a thoroughly good tenure, and other advantages of the character indicated, it is not likely any Company would be found willing to run such enormous risk in the investment of its capital.

WATER-RACES, DAMS, AND RESERVOIRS.

Inducement—no bonus.

130. Water being an essential element for mining purposes, your Commissioners are of opinion that inducements should be given for cutting races and storing water by means of dams and reservoirs, in the shape of secure tenure, and extra claims awarded according to the amount of capital expended.

Water licenses.

131. We recommend that, in addition to the present system of granting water privileges, water licenses should be issued direct from the Mining Department, giving a better tenure than is now done. These licenses should cover the cutting of water-races, occupation of gathering ground, and construction of reservoirs. The applicant should post notice on the ground wanted of his intention to apply to the Warden for a water license; and in his application state the length, width, and depth of the race, the extent of ground required on each side of it, the source of supply, the position and area of the gathering ground, and the amount of water applied for. In the case of reservoirs, he should state the size of embankment, the quantity of water stored, the area of gathering ground, &c. Copies of this application should be posted at the Offices of the Warden and the Mining Registrar.

Hearing of application.

132. After allowing fourteen days for objections to be lodged, the Warden should hear the applicants and objectors (if any) in Court, and forward the evidence taken, together with his report, to the Mining Department, for the decision of the Minister. The charge for a water license should not be more than £1, and the licensee should be required to register the grant.

Conditions.

133. The owner of every race or reservoir should be compelled to keep it in good order, and prevent leakage or other waste. When he is not using the water in a race, he should (when required to do so by the owner of any subsequent water-right) be obliged to turn out the water at the head of the race. If it can be shown to the satisfaction of the Warden that any race is in bad repair, he should have power to order the water to be turned out at the head of the race until the defective portion was made good.

Right to alter races.

134. The holder of any water privilege should be allowed to extend or alter the course of his race or the position of the head, in any manner he may deem necessary, providing no other existing right is interfered with, without in any way injuring his title to such water privilege. He should also be allowed to increase the supply of water to the full amount the race will carry, by taking up gathering ground, provided he does not interfere with any existing right.

Fines and forfeiture.

135. Disregard of the Regulations respecting water supply should be punished by fine and not by forfeiture,—at least so far as the race or reservoir is concerned. These water privileges should be held independent of any claim, and the holder should be allowed to sell the water. The right to the tail water should be vested in the owner of the race until it reaches a natural channel.

136. The owner of any race, dam, or reservoir should have the right to sue for any sum of money due or owing him for any water sold, in the Warden's Court. Right to sue.

DRAINAGE OF CLAIMS.

137. Tho level below which the water in the rock or drifts does not fall is usually called the waterline of the country, and the height of this water-line depends on the physical character of the country, such as the presence of deep valleys, or the compactness of the rocks and the presence or absence of fissures in them. Where the country is traversed by quartz veins, these veins usually form the drainage channels of the country. It is no unusual thing to find the rock within a few feet of the vein holding water that will only give a slight drip, while the vein itself, when struck, may contain a body of water requiring engine power to keep it down. Drainage.

138. In considering the question of drainage, this fact must be kept in mind,—that the water line of the country is usually the level at which the water will stand in quartz veins, and the depth of this water line varies in each locality. When, therefore, a number of claims are working on a line of reef, the deepest shaft below the water-line will (with the exception hereafter to be pointed out) drain the water from all the other claims. Where the water is in such quantity to require steam or other power to lift it, thereby incurring a large outlay, it is evident that to throw the whole of this burden of draining a long line of reef or alluvial leads, upon the single claimholder who has the deepest workings, where all parties working on the same reef or lead are reaping equal benefit, is a manifest injustice, and will greatly tend to prevent the introduction of pumping machinery without which the ground cannot be worked to any great depth. Necessity for Drainage Law.

139. Under these circumstances, your Commissioners are of opinion that a Drainage Law providing for cases of this description should be introduced. The difficulty hitherto in legislature on this subject in Victoria, has arisen from the widely different character of the drainage areas; for instance, on one line of reef a single pump may drain from half a mile to a mile of the reef, while in other cases it may not drain the adjoining claim. When this occurs, it arises from some break or cross course which interrupts the continuity of the vein, and thus interposes a barrier of impermeable material which acts like a dam in keeping the water back. Matter of local peculiarity.

140. We think, therefore, that the condition under which the drainage of each locality should be carried on, must be settled by some Body likely to be acquainted with the character of the ground requiring to be drained. We are therefore of opinion the best Court to lay down Regulations for Drainage, the area, and the rates to be paid by each claimholder, would be the Warden's Court, assisted by Assessors, who shall have power to hear and determine all matters connected with drainage. Warden, assisted by Assessors, to frame Drainage Regulations.

DELAY IN PROCLAIMING GOLDFIELDS. FREE SELECTION UPON AURIFEROUS LANDS.

141. Great complaints have been made to your Commissioners, during various stages of their investigation, upon the subject of the delay which takes place in proclaiming Gold Fields even after they have been established beyond question as being payably auriferous. The evidence we have received upon this point clearly makes out that not unfrequently prospecters have been watched by knowing and designing persons who intended to profit by the discoveries of others, and to invoke the assistance of the free selection clauses of the Lands Act in furtherance of their purpose. When, then, the prospectors had succeeded in finding payable gold in a new Field, these watchers have at once free selected the land, and have been enabled, in consequence of the delay in the Lands Office in acting upon the prospector's report, to become possessed of a private Gold Field. That these selections have not been for *bona fide* agricultural purposes is only too manifest; indeed, in some instances the selectors have not hesitated to avouch that the gold and not agriculture was their object; so that where the land has really been rich, these easily constituted private proprietors of Gold Fields have reaped a fine harvest, not of wheat or any other grain, but of money paid for licenses to mine on their land; while on the other hand, where the gold yield has soon run out, the deposit has been forfeited and the selection abandoned without even the faintest pretence at agriculture. This flagrant abuse of the right of free selection appears to us to call for immediate remedial legislation. The whole question of mining on private lands will call for the early consideration of the Legislature, and we do not in this part of the Report enter at length into the matter; but while upon the free selection clauses of the Land Act, we may be allowed to point out that, in our opinion, where, under the 14th section, land is selected on a proclaimed Gold Field, the power to enter on the discovery of payable gold should be reserved to the miners, without the cumbrous and dilatory plan of having to apply to the Minister to annul the selection. We think that a miner wishing to work or to test any portion of a free selection under the 14th section should be at liberty to apply to the Warden for that purpose, and that the Warden should thereupon be empowered to authorize such working or testing, the Warden settling the conditions under which it should be carried on, and, with or without Assessors, fixing the amount of compensation to be paid to the selector before the work of testing is begun. Thus, we think that, without for the present expressing any opinion as to the question of land *not* a proclaimed Gold Field, the rights of selectors on the one hand, and of miners on the other, would be fairly respected. Great dissatisfaction with present delay in proclaiming Gold Fields; and consequent abuse of right of free selection.

142. To revert to the question of delay in proclaiming discovered auriferous land as a Gold Field. It has been proposed by several witnesses that the whole Colony should be at once proclaimed as a Gold Field; but your Commissioners, in view of the importance of the great interests of the Colony Proposal for immediate proclamation of

Gold Field on discovery warranting it.

other than gold-mining, and of the course which legislation has hitherto taken with regard to the Crown Lands of the Colony, do not feel themselves justified in recommending the adoption of this proposal. At the same time we think that no harm can be done by, nay, that much good will result from, adopting another suggestion, not of so sweeping a character, which has been made to us. This proposal is, that upon the discovery of payable gold on any Crown Land, that discovery, upon its being notified either to the Mining Department or to the Wardens of the District, and upon its publication in the *Gazette*, by authority either of the Warden or of the Department, shall *ipso facto* proclaim the locality as a Gold Field for a certain prescribed area, say the land within a radius of one mile, taking the spot of discovery as the centre.

CHURCH AND SCHOOL LANDS.

Church and School Lands—impolitic administration with reference to auriferous tracts thereof.

143. We have been requested to bring under the notice of your Excellency and of Parliament the subject of gold-mining upon the Church and School Lands of the Colony. Mr. J. F. Williams and Mr. G. V. Dalton, representing the miners of the Forest Reefs, and Burnt Yards, peculiarly interested in this question, thus express themselves:—"We think that in every particular the Regulations as to gold-mining on Church and School Lands should be on the same footing as the Regulations with regard to Gold Fields on Crown Lands. We do not quite understand what the vested interests are with reference to the Church and School Lands; but if the Government, as Trustees, or in any other capacity, have power to throw those lands open to gold-mining on lease, they ought also to grant it to claimholders under miners' rights. * * * From the Forest Reefs almost to Carcoar, from 10 to 12 miles, the lands are Church and School Lands, and, under the present Regulations, locked up from the holders of miners' rights. Within this tract there is shallow alluvial auriferous ground, only 25 feet deep, which should never be thrown open to lease. It is ground that could be advantageously worked by the individual miner, or small parties of miners, and to lease such land works injustice on the great body of miners." Having regard to the effect of the decision of the Supreme Court in the case of the Attorney-General *v.* Eager, 3 S.C.R., 234, we do not venture to submit any distinct recommendation upon this matter,—but we certainly agree in the opinion expressed by these witnesses that the granting of gold-mining leases of land of this description can hardly be beneficial to the interests of the Trust under which these lands are held, while it is unquestionably unjust to the great body of miners. We trust that Parliament may give this important matter their early consideration.

COMMONAGE.

Fair right of commonage should, where sufficient population, be secured.

144. If it be, as we think it must on all hands be admitted to be, desirable that inducements be held out to the miners collectively and individually to look upon gold-mining as an industry of a settled, staple character,—an industry in the prosecution of which they may fairly hope to spend profitably many years in one locality, and to build up and maintain for themselves comfortable and permanent homes,—some provision, we think, should be made for the pasturage of a limited number of horses and cattle, the property of the miners. We think, then, that where the population of any Gold Field is sufficient to require such accommodation, commonage should be granted, and granted with greater facilities than have hitherto existed. Under the present law,—or, at all events, under the administration of the present law,—although in theory commonage to the miners is conceded as a right, yet practically there are so many difficulties and obstructions in the way, so much delay occurs, either from adverse reports, procrastination in reporting, or from some other insufficient cause, that the commonage privileges are in many cases a mere dead letter. We desire to express our opinion that a reform in this particular is needed by which the very necessary and beneficial provisions for ensuring to the miners commonage shall be secured and practically enjoyed. We refrain from entering upon minute details as to the exact area which should be dedicated to the purpose of commonage upon the various Gold Fields, but we certainly think that in all cases an area adequate to the fair acquirements of the mining population should without delay be set aside and at once efficiently secured as commonage. On the other hand, in order to guard against any possible abuses of the commonage system, we think that some limits should be placed upon the commonage rights of individuals, and that effectual powers should be vested in Trustees to ensure those limits being observed.

MINING PARTNERSHIPS.

Difficulty of subject. Injurious operation of application to mining partnerships of ordinary Common-Law principles.

145. The subject of mining partnerships in its various phases is one of very considerable difficulty, and one which has received the very careful and anxious consideration of your Commissioners. It cannot be questioned but that the application to all co-operative mining associations of the ordinary rule of partnerships—that any one partner is liable for the whole debts of the partnership—has operated most injuriously in checking mining enterprise; for it is obvious that but very few men with anything to lose will embark their capital in a concern exposed to conditions so hazardous. Cupidity, unrestrained by prudence, could alone tempt a man of means to join in such a venture; but this is not the legitimate kind of enterprise which sound legislation should encourage. Some effective plan of limited liability should therefore be a feature of any measure assuming to deal satisfactorily with this difficult subject.

146. The Law of Limited Liability, as existing with us now, under the Acts 24 Victoria No. 21, amended by 34 Victoria No. 16, does not supply the want; for in the first place the system is altogether too cumbrous, too expensive, too complicated, and too dilatory for the circumstances of the great proportion of mining associations, composed as such associations for the most part are, of several "mates" working together, and without either the means or the desire to have all the expensive and elaborate machinery only adapted to Companies formed on a much more extensive scale. Again, the present plan of so-called "limited liability" has been shown to be susceptible of evasion to an alarming extent; and the astute intelligence of unscrupulous speculators has not been slow to perceive and to take advantage of a means of perpetrating a gross fraud upon the spirit of the enactments. This evasion and this fraud are carried into effect by what is known as the system of "dummyism." It may be well, for the general information, to shortly sketch the practical working of this nefarious system. In the "limited liability" enactments, it is provided, as a security to creditors, that a certain proportion of shares must be subscribed before the Company can be registered under the Acts. The names of the shareholders, with the number of shares held, have to be published, a statement of the assets and liabilities of the Company is to be published periodically, and provision is made for winding up the Company on the petition of creditors. Now, before very long a system sprung up (which, there is only too much reason to believe, is of very general adoption), under which many of the subscribers to limited companies took up only a few shares in their own names, the remainder being put in the name of some man of straw, either a mere myth, or, what amounted to the same thing, a man utterly without means, and therefore not worth proceeding against for the recovery of calls. The scrip was issued to these "dummies,"—the real proprietors taking care that for all beneficial purposes the scrip should be theirs, and not the property of the nominal holders. The real proprietors paid the calls on the dummy shares, so long as it was found convenient to do so; but when the trial was found to be likely to end in failure, and the Company, having carried on as long as possible, was in process of winding up, this result followed; the few *bona fide* shareholders paid up their shares in full, the dummies paid nothing, and thus the creditors lost a large proportion of their just claims, while the honest shareholders who had not resorted to the assistance of the shams were mulcted in a loss altogether disproportioned to what should have been their legitimate risk. This is what is known as "dummyism," an evil which is far more easy to point out than effectual to remedy. Nor is it easy to see how,—except by vesting in the Courts charged with the winding up of Companies efficient powers for investigating the real state of affairs, and fixing the number of contributories not by the nominal share list but by the real holders,—this evil is to be remedied, if we adhere to the main features of the present Law of Limited Liability. Moreover, not only is "dummyism" a serious evil incident to our present system, but out of the comfortable assurance that the liability was limited, there arose in shareholders an absence of that lively interest in and strict personal supervision of the business of the Company (obviously so essential to the vigorous and honest prosecution of partnership concerns) which existed and must exist where the liability is unlimited; while the inability to increase their capital very frequently caused the breaking up of Companies before any beneficial result had been attained by large expenditure; all which expenditure in that case was thus merely wasted.

Defects of present Limited Liability Acts.

"Dummyism."

Further defcts ot present system.

147. Enough has, we think, been stated to prove that the present Law of Mining Partnership is not satisfactory. Unlimited liability, under the lax and dangerous system generally obtaining in the constitution of mining partnerships—inasmuch as it may mean ruin to any one of the partners—is quite sufficient to deter an investor from embarking in any such enterprise. When, again, we consider that, notwithstanding the provisions of the Act 30 Victoria No. 14. sec. 1, the storekeeper or other person with money which he may be ready and willing to advance to a party of miners, but for the repayment of which he can only look to the profits of the claim, may be, if he make the advance on the terms of being repaid by a share of the profits, regarded as a partner, and as such may become liable for the whole debts of the concern,—we can easily see that the person with money will, under such circumstances, hold aloof from making any such advance; and the struggling miners will, perhaps for want of a little timely help, otherwise readily forthcoming, be overwhelmed. Surely this thing should not be so. Or, if the miners and the storekeeper may think that they can make a special agreement amongst themselves,—that the storekeeper, though to receive a share of the profits, is not to be considered a partner,—yet, in the day of difficulty and debt the unfortunate storekeeper will awake to the disagreeable knowledge that that special agreement may have been efficacious to prevent his being a partner *inter se*, but was wholly valueless as to third parties. We have, in passing, called attention to the provisions of the 30 Victoria No. 14, sec. 1, whereby it is enacted that an advance made upon a contract that the person making the advance shall receive a share of the profits, shall not of itself render the person making such advance a partner; but we think this wholly fails to meet the case, for that strict interpretation put upon these words renders them in practice almost nugatory; for it very rarely happens that the person making the advance does not, in one way or other, expressly or impliedly interfere in the concern in which he thus has become interested; and the very slightest intermeddling of this kind is held to take the case out of the words of the provision, which merely says that the advance &c. shall not "*of itself*" render the person advancing a partner. We mean no disrespect to the educational attainments of miners and storekeepers on the Gold Fields, when we say they can hardly be expected to keep always before their view the very nice distinctions which exist as to partnerships *inter se* and partnerships as to third persons.

Further defects of Partnership Law.

The Cost-book system.

148. The system which has perhaps best withstood the test of practical working is that known as the Cost-book system; the leading principles of which are thus stated by Mr. Lindley, in his treatise on the Law of Partnership:—"A Cost-book Mining Company is formed by agreement. A number of adventurers who have obtained permission to work a lode, agree to form a capital, to divide that capital into a certain number of shares, and to distribute the shares among themselves. They appoint an agent, commonly called a purser, for the purpose of managing the affairs of the mine, subject to the control of the shareholders. They write in a book, called the Cost-book, the agreement into which they have entered, and in this same book are inserted from time to time the receipts and expenditure of the mine, the names of the shareholders, their respective accounts with the mine and transfers of shares. The shares are transferable, and may be relinquished, and they may also be sold for non-payment of calls." (*See Lindley on Partnership*, vol. ii, p. 111.) All the transactions of the association are for cash, unless under some special circumstances of necessity or usage; and in the ready facility for inspection of the Cost-book afforded to all the shareholders, means are provided for constant and effectual supervision by one and all interested in the adventure, of the actual operations of the association. In all these particulars, and in the facilities for tranferring and relinquishing shares, as well as in the power of enforcing payment of calls, there are great practical benefits; but in the absence of a limit to the liability of shareholders there is, we think, a great and needless risk.

Cost-book system at present one of unlimited liability.

149. That not only is the liability unlimited, but that considerable misapprehension exists upon this very important incident of the Cost-book sytem, is apparent from the following citation from Mr. Lindley. That writer says:—"It is sometimes represented—not certainly by lawyers—that the liability of shareholders in Cost-book Mining Companies is limited; that both their past as well as their future liability is got rid of as soon as they have transferred their shares, and that they are in no case liable for the debts of the mine, if they have paid the calls which may have been made upon their shares. All this is mere delusion; and although it is true that a shareholder can as between himself and co-shareholders get rid of his liability by transferring or relinquishing his shares, there is no authority whatever for saying that the liabilities of the shareholders to creditors are governed by principles in any respect different from those which apply to ordinary partnerships." *i.b., p.* 112. And we think that the soundness of the principle involved in "limited liability" is now too well established to need any advocacy from us.

System recommended by Commission.

150. The system for, at all events, Companies other than the small co-partnerships which are composed of an association of a few mates in a claim, which we recommend for adoption in legislation upon Mining Partnerships, is *one which shall embrace the main features of the Cost-book system, with effectual limited liabilty engrafted upon and incorporated with it.*. We should recommend that all Companies desiring to register under this improved system shall be compelled to publish, for general information, a periodical authoritative statement of the assets and liabilities of the Company; and that, in the event of the winding up of the Company, the Court seised of that duty shall have full power to investigate the whole affairs of the Company, with a view to fixing the liability of contributories, not by the mere nominal share-list, but by the amount of interest really possessed by individuals.

Creditors not to be at liberty to sue one partner alone for entire debt.

151. There should, we think, be some positive provision that a creditor should not be at liberty to single out one or two individual shareholders, to fix them alone with the sole liability, but that the liability should be limited in proportion to the extent of the shareholder's interest; and in this respect, therefore, we adhere to the principle of the Limited Liability Acts.

Registration to be notice of limit of each shareholder's liability.

152. And upon registration in the Office of the District Registrar of the conditions under which the Company or co-partnership is constituted, with a complete list of the shareholders, and the number of their respective shares, we are of opinion that such regisration should, after the expiration of a reasonable time be considered notice to the World of the limit of the shareholder's liability.

Question of the obligations and rights of partners among themselves.

153. Apart altogether from the question of the relations of co-partnerships with the outside World, there are under the present system very many serious defects more particularly affecting the members of a co-partnership among themselves. In the first place, we think that one partner should be able to sue another in the Warden's Court for any just claim,—either for work done, materials supplied, or any money advanced,—notwithstanding that the claim may have arisen out of matters immediately in connection with the partnership.

Effectual restriant upon one obstinate mate in party of miners.

154. We would further recommend that some means should be provided whereby it should no longer be in the power of any one self-willed and obstinate partner (who, either through stupidity, foolish caprice, or from more sinister motives, insists upon running counter to the wishes of all his mates) to obstruct the beneficial working of a claim, and thereby to paralyze the energies of the whole party. We suggest that, in any case where a special written agreement has been entered into by two or more claimholders working together as one party, the Warden shall be empowered to decree specific performance of the terms of that agreement, or to award damages for the non-performance of any of its terms; that the Warden shall, moreover, be empowered to adjudge the forfeiture of the share of any non-complying partner, upon terms fixing the amount, in lieu of his interest, which such outgoing partner shall receive.

155. Where no written agreement shall have been entered into as above, we suggest that, in the Mining Statute, under the head "Mining Partnerships," there shall be fixed some conditions of general application,—to be framed with special regard to the contingencies and requirements we have herein adverted to,—and that compliance with these conditions shall be enforceable in the same way as already specified with respect to special written agreements.

A form of fixed conditions of general application, in absence of special agreement, recommended.

156. Any special agreement modifying, qualifying, or at variance with, the general statutory conditions, must be registered, otherwise the partnership to be considered as under such general conditions and no others; and indeed, in no case would we desire that any exemption from the ordinary Common-Law liabilities and incidents of co-partnerships should be granted, unless on condition of full and complete registration.

Registration absolutely necessary, if any exemption from ordinary liability to be conferred.

MINING ON PRIVATE PROPERTY.

157. On the first discovery of gold in payable quantities in New South Wales, the right of the Crown to the gold on alienated land was asserted and enforced, and continued to be so enforced during the period when any considerable amount of revenue was derived from a direct charge on the miner, in the form of a high license fee. Although this charge for gold-mining on private land has been discontinued for some years, the opinion given by Sir William Manning indicates that no change in the law has been made which would invest the ownership of the gold in the proprietor of private land, or that would prevent the Crown from exercising the right to mine for gold on such land, even without compensation to the owner for any reasonable damage that may result from mining operations. The landowner has purchased his property subject to this liability, and has therefore no just cause of complaint if the Crown exercises its right to mine, or prevents him from taking the mineral deposits belonging to the Crown and using them for his own benefit. In England, where a large proportion of the mineral property is owned by proprietors who have no interest in the land in which the minerals occur, the exercise of this right to mine is not attended with the difficulties and danger presumed to beset it in this Colony. If this system prevails in England, where the rights of property is so strictly conserved, we cannot see that the landed interest needs greater protection or privileges here, or that the exercise of the right to mine on private land need be attended with greater difficulties here than it is in England. It has been pointed out that the Crown has not of late years exercised its rights to the precious metals in England. This, however, is no evidence of its having abandoned the right to the precious metals, seeing that since it was last exercised no gold deposits have been discovered, or are likely to be discovered there of sufficient extent to pay for the cost of collecting the royalties likely to be charged by the Crown. In fact, the action of the Crown when gold was discovered here would point to an opposite couclusion. As a matter of legal or equitable right, we thing the owner of private land has no just claim to work the gold it may contain for his own benefit, or prevent the Crown from mining for it, and that the only question to be decided is the policy in respect to the gold on private lands it would be most beneficial to the general interest of the Colony to follow. For in this case the rights of the Crown have been ceded to the Colony, to be used for the general benefit, and not for the benefit of a class.

Majority of Commission—Messrs. Baker, Thompson, and Frappell recommend the compelling of owners of private land to permit mining thereon.

158. Your Commissioners are unanimously of opinion that this important question has remained in its present uncertain state for too long a period, and that even the sale of the gold would be preferable to the present system.

Commission unanimous in thinking that the existing uncertainty should be put an end to.

159. The Crown Lands now sold by auction are supposed to be sold subject to the rights of the Crown, as regards the gold it may contain, and this is considered a sufficient reply to any complaints as to the alienation of auriferous lands; while frequently the purchaser arranges with the miner for the working of the gold in the land at rates far beyond those charged by the Crown, and which return him an enormous profit on the cost of the land he has purchased. If the land were sold as auriferous, some approach to its real value might be obtained: at present it realises no more than ordinary land. The majority of your Commissioners can see no difficulty in providing for the working of gold on private land without injury to the just rights of the landholder, which we think should be carefully guarded. Although Sir William Manning is of opinion that mining might be carried out on private land without compensation being paid to the owner,—as the right to the minerals confers the right to work them,—we do not think in any case such mining should be permitted without full and ample compensation for any damage caused to the land being first paid to the owner.

Compensation to private proprietor.

160. Where the owner prefers to make arrangements with the miner for the working of the gold on private land we think he should be permitted to do so, subject to the agreement entered into for this purpose,—having the approval of the Mining Department,—to prevent such conditions being imposed as were contrary to public policy and impede the proper and efficient working the gold deposit; but where a proprietor refused to enter into any reasonable arrangement for working the gold in his land, the State should provide some means of preventing the public property from being locked up for an indefinite period. For this purpose, we think a similar plan to that recommended for adoption in the case of land selected under the 14th clause of the Lands Act should be applied to all alienated lands. Mining on private lands should not be prosecuted except under

Proprietors to be allowed to make reasonable arrangements with the miners, but not to be permitted to prevent mining on their land

the authority of a miner's right, and it should be placed under the jurisdiction of the Warden in the same manner as if it were conducted on Crown Lands. We agree with Sir William Manning that it would not be just to allow a rush of diggers on private ground, who would utterly destroy it without the consent of the owner; but we can see no reason why mining on a larger scale, where the damage to the surface would be much less considerable, should not be allowed on paying the owner of the property fair and reasonable compensation. We also hope that improved Mining Laws will encourage the miner to enter on operations on the large scale which, while doing the least injury to the land, is by far the most profitable, both to the minor and to the Country.

Opinion of dissentient minority,—the President and Mr. Combes

[We agree with the majority of the Members of the Commission in the opinion that it is highly desireable that the Legislature should without delay put an end to the uncertainty at present obtaining with regard to the real practical ownership of the auriferous deposits within land unconditionally alienated in fee. It is undoubted law, that unless the Crown has by express words granted away its interest in the royal metals, those metals remain *in theory* the property of the Crown, even though in land unconditionally alienated. But while this theoretical right remains in the Crown,—a right the practical exercise of which is by no means free from difficulty,—the Crown systematically refrains from attempting actively to assert that right, and thus the private proprietor is led to believe that the right is at all events tacitly renounced. We think that when the practice is thus uniformly one way, the theory at variance with it should be abolished, and that by legislative action the theory and practice should be reconciled.

We have in a former part of our Report (*see paragraphs* 142–3) expressed our opinion that all known payably auriferous Crown Lands should at once be proclaimed as a Gold Field within a certain defined area, and, as such, should not be eligible for sale as are other Crown Lands. And we take this opportunity of expressing our opinion that prompt and energetic means (either by official geological explorations, or by great and substantial inducements to private prospectors, or by both) should be taken in order to the discovery without delay of the auriferous lands of the Colony; so that by these means the State may retain the ownership, not only of the gold, but of the gold-bearing land, and set apart those lands specially, or at all events chiefly, for the mining community.

But with regard to lands already or hereafter to be unconditionally alienated in fee, we cannot assent to the proposition which would, if adopted, have the effect of *compelling* the proprietor of such land to permit persons to mine upon it, notwithstanding any objections, however reasonable, he might entertain to such a proceeding. The insertion of even the thin end of the wedge of a policy of confiscation can never be viewed with favour by those who have the permanent well-being of a community at heart; and while recognizing to the full that fundamental principle of public policy, *salus populi suprema lex*, we cannot see, in support of the suggestion to throw open to the public for mining purposes all private land, —no matter upon what terms, under what conditions, or with what fancied safeguards,—that urgent necessity, that high degree of need amounting to a paramount obligation, which alone can justify interferance with private vested rights, on the ground that the public weal demands such interference. We take it as a settled proposition that the wisest policy of a Parliament legislating for a Colony of such a vast territorial extent as this, is to encourage the acquisition of land by an industrious and enterprising class of settlers; and we think that, by shaking the confidence of the community in the safety of landed proprietorship—after all the surest basis of national prosperity—so severe a blow would be dealt to the best interests of the Country that the evils consequent thereupon would far outweigh any advantages that could possibly accrue by the extraction of the comparitively small quantity of gold contained in private land.

Nor is it as though it were proposed that this gold, when extracted from private land, should be lodged in the State coffers to be expended for the general good; *the proposition is, simply, that it should find its way into the pockets of private individuals other than the landowner.*

The dread of the acquisition by individuals of wealth to such an extent as to endanger the safety of Governments is now admitted to be merely chimerical; and the spirit of private enterprise, as well as the obvious self-interest of the private proprietor of auriferous land, will sooner or later effectually prevent the locking up of wealth in the earth when that wealth can beneficially be extracted. To that same spirit of enterprise, and to that same principle of self-interest, may safely be left the gradual diffusion of that wealth; and we are of opinion that if, by an express renunciation of the nominal rights of the Crown, the way were cleared to the making of unquestionably legal arrangements between the private proprietor and the miner, satisfactory and equitable arrangements would speedily be made, with mutual advantage to both parties. But on the other hand, we feel assured that if Parliament were to legalise the arbitrary taking of the so-called royal metals in private land by the licensee of the Crown, a very crushing check would be given to the spirit of enterprise in every industry throughout the Colony; we say every industry throughout the Colony, for assuredly the apprehension of possible interference with vested rights would not be confined to landed proprietors.

In the interests, however, not merely of the few large landed proprietors, nor of the many thousands of poorer settlers who have free selected smaller plots of land and have already converted many hundreds of miles of wilderness into smiling corn-fields and gardens,—in the interests, in fine, not merely of owners of private land, whether in large or in small blocks, but in the interests, of the entire community,—we object to the proposed interference with private rights, on the broad principle that there is not shown to be any adequate paramount public good to be thereby attained. And we close this minute of our expression of dissent from our colleagues with a statement of our conviction that the views entertaind by us will be shared by the great majority of that large section of the mining community themselves who wish to make the Colony their home, and who look forward, either for their own or for their children's sakes, to becoming land-holders.—J.G.L.I., E.C.]

CONCLUSION.

161. Your Commissiooers feel that their thanks are due not only to the miners, for the kindly greeting everywhere accorded by them, but also to the officials of the various districts visited, for their ready offers of assistance in the prosecution of the work of the Commission. To Mr. Henry Osborne Rich our thanks are especially due, for his courtesy in placing at our disposal his private complete copies of successive Gold Fields Acts and Regulations of New South Wales, as well as some of those of the other Colonies: and we desire to record our sense of the service rendered to us by Mr. Brough Smyth, Secretary for Mines in Victoria, not only by his admirable work on the Gold Fields of that Colony, but also by most courteously forwarding to us copies of various Parliamentary Papers and draft Bills upon the subject of Mining Legislation now under discussion in the Victoria Parliament.

162. We would desire to call special attention to a paper, to be found in the Appendix, upon the Mineral Resources of the Colony. That paper was prepared by a member of the Commission, and it has received our united sanction. It was intended to have embodied it in the Report, but the length to which the Report has already attained precludes us from carrying out that intention, and it has been therefore determined to print it separately in the Appendix.

163. Your Commissioners have now the honor to submit this result of their labours to your Excellency. It has of course been impossible within the limits of a Report to touch upon all the details of a comprehensive scheme of legislation, and administration affecting one of the most important interests of the Colony,—but your Commissioners have endeavoured, to the best of their humble ability, to place before your Excellency and Parliament the salient points of that which has formed the subject of their inquiry—the defects of the present system, and the main improvements which, in their opinion, should be adopted. They do not suppose that the system which they have sketched out is perfect or faultless, and by no members of the community more cordially than by your Commissioners will be welcomed any additional suggestions of value, come from what source they may. Your Commissioners do however venture humbly to believe that their labours will not be altogether without benificial result.

Certified under our hands and seals, at Sydney, this thirty-first day of October, A.D., 1871.

(L.S.) J. GEO. LONG INNES, President.

(L.S.) EDWD. COMBES.

(L.S.) E. A. BAKER.

(L.S.) H. A. THOMPSON.

(L.S.) RICHD. FRAPPELL.