

1905.
NEW ZEALAND.

“ THE STATUTES COMPILATION ACT, 1902.”

MEMORANDUM BY THE SOLICITOR-GENERAL ON THE COMPILATION OF THE MINING ACTS

Presented to both Houses of the General Assembly by Act.

MEMORANDUM.

PURSUANT to section 2 of “ The Statutes Compilation Act Amendment Act, 1903,” the Solicitor-General submits the following memorandum directing attention to the consequential and other alterations in, additions to, and omissions from the text of the Acts compiled, with a statement where necessary of the reasons therefor :—

“ The Sunday Labour in Mines Prevention Act, 1897,” No. 7 :—

Section 2 : The words “ within the meaning of ‘ The Mining Act, 1891,’ or ‘ The Coal-mines Act, 1891,’ ” are omitted.

Section 5 : The words “ under this Act ” are omitted.

Section 7, fixing the date of coming into operation of the Act, is omitted.

“ The Mining Act, 1898,” No. 38 :—

Section 1 : The reference to the coming into operation of the Act and the proviso authorising the taking of steps preparatory to the coming into operation are omitted.

Section 2 : The proper references to sections have been made.

Section 5 : Effect has been given to the various amending sections noted in the margin of the section. “ Former Mining Acts ” is made to include the compiled Acts. “ Compiled Acts ” is defined. In this section and elsewhere throughout the compiled Acts, references to “ Her Majesty ” are altered to references to “ His Majesty ” or “ the Crown ” as the case requires.

Section 6 (repeals) is omitted.

Section 7 : A second proviso is inserted to prevent the necessity of surrender and exchange of titles acquired under the compiled Acts.

Section 13 : The reference to business-site licenses is omitted—to give effect to section 6 (2), of the Act of 1899.

Section 43 omitted (repealed by section 4 of the Act of 1904).

Section 59 : Reference to “ lease or license ” inserted to give effect to section 11 of the Act of 1899.

Section 62 : “ Five ” is substituted for “ ten ” in subsection (8), (a), to give effect to section 2 of the Act of 1901. In subsection (2) a proviso is inserted to give effect to section 2 of the Act of 1899.

Section 63 : “ Five ” is substituted for “ ten ” in subsections (1) and (2) to give effect to section 3 of the Act of 1901.

Section 66 : Above this section the heading “ Prospecting Warrants and Prospecting Licenses ” is inserted for clearness.

Section 76 omitted (repealed by section 3 of the Act of 1900).

Section 85 : In subsection (2) a third proviso is inserted to give effect to section 4 of the Act of 1902.

Section 86 : Paragraph (a) is inserted to give effect to section 5 of the Act of 1904 ; in paragraph (b) a proviso is inserted to give effect to section 5 of the Act of 1902 ; in paragraph (c) two provisos are inserted to give effect to section 24 of the Act of 1899.

Section 87 : In paragraph (2) the rent is altered to give effect to section 4 of the Act of 1900.

Section 92 : A proviso is added to this section to give effect to section 5 of “ The Water-power Act, 1903.”

- Section 98 : Owing to the repeal of paragraph (2) by section 4 of the Act of 1899, the words "the following special provisions shall apply" become unnecessary, and are therefore omitted.
- Section 106 : In paragraph (12) the Act of 1901 is substituted for the repealed Act of 1886.
- Section 108 : Words are added at the end of the section to give effect to section 22, (3), of the Act of 1899.
- Section 109 : Subsection (3) is inserted from section 24 of the Act of 1904.
- Section 113 : The Act of 1900 is substituted for the repealed Act of 1894.
- Sections 118 and 120 are altered to give effect to the amendment made by sections 5 and 6 of the Act of 1899.
- Section 127 : "Or any part thereof" is inserted after "surrender the same" in subsection (1), and subsection (4) is inserted, thus giving effect to section 6 of the Act of 1904.
- Section 128 : "Other than any of the compiled Acts" is inserted, to make clear that titles acquired thereunder need not be surrendered for purposes of exchange.
- Section 132 is omitted (repealed by section 5 of the Act of 1900).
- Section 134 : "The Sovereign's birthday" is substituted for "Her Majesty's birthday."
- Section 140 : "Any State of the Commonwealth of Australia" is substituted for "any of the Australian Colonies."
- Section 164 omitted (repealed by section 8 of the Act of 1899).
- Section 165 omitted (repealed by section 18 of the Act of 1899).
- Section 166 : Subsection (3) is inserted to give effect to section 7 of the Act of 1904.
- Section 167 : Subsection (2) is inserted to give effect to section 8 of the Act of 1904.
- Section 171 : In subsection (7), (a) and (b), "thirty" is substituted for "seven" to give effect to section 21 of the Act of 1900.
- Sections 183, 188, 196, and 215 are altered by including dredge-masters, thus giving effect to section 8 of the Act of 1901.
- Section 192 : The Act of 1902 is substituted for the repealed Act of 1882.
- Section 195 : Subsection (2), amending "The Mining Companies Act, 1894," is omitted.
- Section 204 : In paragraph (7) "the last preceding section" is altered to "section 249," to correct a manifest error.
- Section 209 : Paragraph (3) is omitted and (c) inserted to give effect to section 26, (3), of the Act of 1899.
- Sections 216 and 217 are omitted (repealed by section 4 of the Act of 1903).
- Part VII. (sections 232, &c.) : The heading is altered from "Compensation" to "Compensation by the Crown," as the Part deals only with that.
- Section 256 is altered to give effect to section 9 of the Act of 1904.
- Section 278 : A new rule (4) is inserted to give effect to section 19 of the Act of 1900, the original rule (4) is made (5), and rule (5) is made a proviso to new rule (5). In rule (7) (Address for service) effect is given to section 20 of the Act of 1899. In rule 14 (Service) "duplicate" is substituted for "copy" for uniformity of expression, and for a like reason "or adjourned" is inserted in rule 24 after "struck out."
- Section 281 : In the case of the District Court effect is given to section 10 of the Act of 1904. Subsection (2) is inserted to give effect to section 16 of the Act of 1900, and subsection (3) to give effect to section 4 of the Act of 1901.
- Section 283 : New paragraphs (e) and (f) are inserted to give effect to section 18 of the Act of 1900.
- Section 285 : Alterations are made to give effect to section 21 of the Act of 1899.
- Section 290 : To remedy an inconsistency between paragraphs (1) and (5) "except as provided in paragraph (e) of this section" is inserted in the former paragraph after "as it thinks fit, and."
- Section 294 : "Or for the removal of actions into that Court" is inserted after "for the opinion of that Court" in order to give due effect to section 25 of the Act of 1904.
- Section 297 : "Within its district" is omitted to give effect to section 27 of the Act of 1899.
- Section 302 : In paragraph (13) "warrant or" is inserted after "whether under" in order to include prospecting warrants and mineral prospecting warrants.

"The Mining Act Amendment Act, 1899," No. 29 :—

- Section 2 : Effect is given to subsection (1) in clause 64, (b), of the compilation. Subsection (2), validating existing regulations, is omitted as spent.
- Section 3 omitted, being repealed by section 8 of the Act of 1902.
- Section 4 : Effect is given to this section in clause 92 of the compilation.
- Section 5 : Effect is given to this section in paragraphs (a) and (b) of clause 140 and in clause 141 of the compilation.
- Section 6 omitted, effect being given to the repeals in their proper places in the compilation.
- Section 7 : The introductory words of this section have been rearranged in order to give effect to the section in clause 114 of the compilation.
- Section 8 : Effect is given to this section in clause 200 of the compilation.
- Section 10 : "For purposes of exchange" is inserted after "to be surrendered" in line 2, for clearness.
- Section 11 omitted, effect being given to the amendments in their proper places.
- Sections 13 and 14 are omitted, being superseded by sections 9 and 10 of the Act of 1900.

Section 15 (tribute agreements) appears as clause 225 of the compilation, with the addition of paragraph (c) to give effect to section 11 of "The Mining Companies Acts Amendment Act, 1897," fixing the stamp duty on such agreements.

Section 18 : Effect is given to this section in clause 204 of the compilation.

Section 19 : In subsection (3) the date of the Act is inserted (see clause 205 of the compilation).

Section 20 : Effect is given to this section by inserting in clause 331 of the compilation (rule 7) the words "in the district" after the words "address for service."

Section 21 : Effect is given to this section in clause 338 of the compilation.

Section 22 : Effect is given to paragraph (3) in clause 126 of the compilation ; the remainder of the section appears as clause 135.

Section 24 : This section appears as paragraph (d) of clause 99 of the compilation, "aforesaid" being inserted before "labour conditions" for uniformity of expression.

Section 25 : This appears as clause 169 of the compilation, with the necessary verbal alterations.

Section 26 : This appears as clause 258, (c), with the necessary verbal alterations.

Section 27 omitted, effect being given to the amendment in the proper place.

Section 29 : This appears as clause 175 of the compilation, with the insertion of the dates of the Acts referred to.

Section 34 (Inspection of quartz-mine by workmen) omitted, as being impliedly superseded by section 8 of the Act of 1900, which gives similar but wider powers of inspection in the case of every mine.

Section 36 (modifying the principal Act where inconsistent) is omitted.

"The Mining Act Amendment Act, 1900," No. 64.—

Section 2 : This section (clause 123 of the compilation) has been altered to give due effect to the amendments made by section 11 of the Act of 1901 and section 6 of the Act of 1903. Paragraph (6) is omitted as spent.

Section 3 : Subsection (2) (Repeal) is omitted.

Section 4 : Effect is given to paragraph (1) in clause 100, (b), of the compilation. Paragraph (2) is omitted as spent.

Section 6 (repeal) is omitted.

Section 13 : Subsection (2), validating certain regulations, is omitted as spent.

Section 16 : This appears as clause 334, (2), of the compilation, with the necessary verbal alterations.

Section 19 : Effect is given to this section in clause 331, (4), of the compilation, with the necessary verbal alterations.

Section 21 omitted, the amendments being made in their proper places.

"The Miners' Rights Fee Reduction Act, 1901," No. 22 :—

Sections 2 and 3 : Effect is given to section 2 in clause 64, (h), and to section 3 in clause 65 of the compilation, with the necessary verbal alterations.

"The Mining Act Amendment Act, 1901," No. 60 :—

Section 2 : Effect is given to this section in clause 263, (1), of the compilation, with the necessary verbal alterations.

Section 3 omitted, being repealed by section 8 of the Act of 1902.

Section 5 omitted, being repealed by section 9 of the Act of 1902.

Section 6 : Effect is given to this section in clause 59 of the compilation, with the necessary verbal alterations.

Sections 7 and 11 omitted, the amendments being inserted in their proper places.

Section 8 : "From and after the thirtieth day of June, one thousand nine hundred and two" is omitted. Subsection (2) is omitted, effect being given thereto in clause 233 of the compilation. Subsection (4) is also omitted as spent, but these service certificates are saved with the others by clause 232.

"The Mining Act Amendment Act, 1902," No. 22 :—

Section 2 : This section appears, with the necessary verbal alterations, as clause 104 of the compilation. In subsection (4) "lessor" (an obvious misprint) has been altered to "lessee."

Section 3 : With the necessary verbal alterations, subsection (1) appears as clause 201, and effect is given to subsection (2) in clause 5 of the compilation. Subsection (3) is omitted as spent.

Sections 4 and 5 : The provisos are inserted in their proper places, and the introductory words are omitted as unnecessary. Subsection (2) of section 5 is also omitted as unnecessary.

Sections 6 and 7 are omitted as spent.

Section 8 : With the necessary verbal alterations, this section appears as clause 166 of the compilation.

Section 9 : With the necessary verbal alterations (including the date of the Mining Act referred to), this section appears as clause 248 of the compilation. The Mining Act mentioned in this section is the Act of 1902, but there the words are "now or hereafter," and the words underlined are repealed by section 3 of the Act of 1903. The effect of this is to make the word "now" refer to the Act of 1903. Hence the Act of 1903 is substituted for the Act of 1902 in clause 248. Subsection (3) is omitted, being repealed by section 3 of the Act of 1903.

“The Water-power Act, 1903,” No. 26 :—

The proviso to section 5 appears as a proviso to clause 106 of the compilation.

“The Mining Act Amendment Act, 1903,” No. 81 :—

Sections 2 and 3 are given effect to in clause 248 of the compilation, with the necessary verbal alterations.

Section 6 : Effect is given to subsection (1) by inserting in clause 123, (c), of the compilation after the words “one year” the words “or without reference to any specified term of years.” Subsection (2) is omitted as spent.

“The Mining Act Amendment Act, 1904,” No. 33 :—

Section 2 : This section appears as clause 27 of the compilation, with the necessary verbal alterations.

Section 3 : This section appears as clause 28 of the compilation, the words “this Act or any former Mining Act” being substituted for “the principal Act” to give effect to the manifest intention.

Section 4 : This section appears as clause 44 of the compilation, with the necessary verbal alterations.

Section 5 : The preliminary reference to the principal Act and to the Act of 1899 is omitted, and the section, thus altered, appears as clause 99, (a), of the compilation.

Section 6 : Effect is given to subsection (1) of this section in clause 154, (1), of the compilation by inserting the words “or any part thereof” after the words “surrender the same.” Subsection (2) appears as clause 4.

Section 7 : This section, with the necessary verbal alterations, appears as clause 206, (3), of the compilation.

Section 8 : Effect is given to this section in subclause (2) of clause 207 of the compilation. A reference to the section which provides for the mode of assessing compensation is inserted for clearness.

Sections 9 and 10 : These amendments are inserted in their proper places.

Sections 12 to 21 : In order to distinguish the prospecting warrants and mineral leases under this Act from those under the principal Act, the expressions “mineral prospecting warrants” and “mineral leases” have been used throughout. Effect is thereby given to section 23, which is consequently dropped.

Section 22 : Effect is given to this section in clause 5 of the compilation.

Section 24 : The amendment is inserted in its proper place.

General as to all the Acts compiled :—

Proper cross-references have been made throughout the compilation.

The Long and Short Titles of the compilation take the place of the corresponding titles to the Acts compiled, and a reference to such Acts is made in subclause (2) of clause 1 of the compilation.

In every case where an Act quoted has been repealed by a later Act, the later Act is substituted.

To save the mine-manager's and other certificates issued or deemed to be issued under the Acts of 1898 and 1901 (including service certificates, the power to issue which has expired by lapse of time) a new clause—No. 232—is inserted.

A schedule is attached hereto showing how each section of the Acts compiled is disposed of in the compilation.

Subject to the alterations above referred to, I hereby certify that the annexed compilation, intituled “The Mining Act, 1905” is a true and correct compilation of the respective Acts specified in the First Schedule thereto.

FRED. FITCHETT, Solicitor-General.

Crown Law Offices, Wellington, 14th August, 1905.

MINING ACTS COMPILATION.

SCHEDULE SHOWING HOW THE SECTIONS OF THE COMPILED ACTS ARE DISPOSED OF IN THE COMPILATION.

1897, No. 7.—“ The Sunday Labour in Mines Prevention Act, 1897 ” :—

Repealed Act.	Compiled Act.	Repealed Act.	Compiled Act.
Section 1	(a)	Section 5	Section 246
„ 2	Section 243	„ 6	„ 247
„ 3	„ 244	„ 7	(a)
„ 4	„ 245		

1897, No. 18.—“ The Mining Companies Acts Amendment Act, 1897,” Section 11 :—

Repealed Act.	Compiled Act.
Section 11	Section 225 (f)

1898, No. 38.—“ The Mining Act, 1898 ” :—

Repealed Act.	Compiled Act.	Repealed Act.	Compiled Act.
Section 1	Section 1	Section 48	Section 49
„ 2	„ 2	„ 49	„ 50
„ 3	„ 3	„ 50	„ 51
„ 4	„ 4	„ 51	„ 52
„ 5	„ 5	„ 52	„ 53
„ 6	(a)	„ 53	„ 54
„ 7	Section 6	„ 54	„ 55
„ 8	„ 7	„ 55	„ 56
„ 9	„ 8	„ 56	„ 57
„ 10	„ 9	„ 57	„ 58
„ 11	„ 10	„ 58	„ 59
„ 12	„ 11	„ 59	„ 60
„ 13	„ 12	„ 60	„ 61
„ 14	„ 13	„ 61	„ 63
„ 15	„ 14	„ 62	„ 64
„ 16	„ 15	„ 63	„ 65
„ 17	„ 16	„ 64	„ 66
„ 18	„ 17	„ 65	„ 67
„ 19	„ 18 (1)	„ 66	„ 68
„ 20	„ 19	„ 67	„ 69
„ 21	„ 20	„ 68	„ 70
„ 22	„ 21	„ 69	„ 71
„ 23	„ 22	„ 70	„ 72
„ 24	„ 23	„ 71	„ 73
„ 25	„ 24	„ 72	„ 74
„ 26	„ 25	„ 73	„ 75
„ 27	„ 26	„ 74	„ 76
„ 28	„ 29	„ 75	„ 87
„ 29	„ 30	„ 76	(c)
„ 30	„ 31	„ 77	Section 89
„ 31	„ 32	„ 78	„ 90
„ 32	„ 33	„ 79	„ 91
„ 33	„ 34	„ 80	„ 93
„ 34	„ 35	„ 81	„ 94
„ 35	„ 36	„ 82	„ 95
„ 36	„ 37	„ 83	„ 96
„ 37	„ 38	„ 84	„ 97
„ 38	„ 39	„ 85	„ 98
„ 39	„ 40	„ 86	„ 99
„ 40	„ 41	„ 87	„ 100
„ 41	„ 42	„ 88	„ 101
„ 42	„ 43	„ 89	„ 102
„ 43	(b)	„ 90	„ 103
„ 44	Section 45	„ 91	„ 105
„ 45	„ 46	„ 92	„ 106
„ 46	„ 47	„ 93	„ 107
„ 47	„ 48	„ 94	„ 108

1898, No. 38.—“The Mining Act, 1898”—*continued*.

Repealed Act. Section	95	Compiled Act. Section	109	Repealed Act. Section	163	Compiled Act. Section	198
“	96	“	110	“	164, 165	“	(d)
“	97	“	111	“	166	Section	206
“	98	“	112	“	167	“	207
“	99	“	113	“	168	“	210
“	100	“	115	“	169	“	211
“	101	“	116	“	170	“	212
“	102	“	117	“	171	“	213
“	103	“	120	“	172	“	214
“	104	“	121	“	173	“	215
“	105	“	122	“	174	“	216
“	106	“	124	“	175	“	217
“	107	“	125	“	176	“	218
“	108	“	126	“	177	“	219
“	109	“	127	“	178	“	220
“	110	“	128	“	179	“	221
“	111	“	129	“	180	“	222
“	112	“	130	“	181	“	223
“	113	“	131	“	182	“	224
“	114	“	132	“	183	“	226
“	115	“	133	“	184	“	227
“	116	“	134	“	185	“	228
“	117	“	137	“	186	“	229
“	118	“	138	“	187	“	230
“	119	“	139	“	188	“	233 (1)
“	120	“	140	“	189	“	233 (2)
“	121	“	142	“	190	“	234
“	122	“	143	“	191	“	235
“	123	“	144	“	192	“	236
“	124	“	145	“	193	“	237
“	125	“	146	“	194	“	238
“	126	“	153	“	195	“	361
“	127	“	154	“	196	“	239
“	128	“	155	“	197	“	240
“	129	“	158	“	198	“	241
“	130	“	159	“	199	“	242
“	131	“	160	“	200	“	249
“	132	“	(c)	“	201	“	250
“	133	Section	162	“	202	“	251
“	134	“	163	“	203	“	252
“	135	“	164	“	204	“	253
“	136	“	165	“	205	“	254
“	137	“	167	“	206	“	255
“	138	“	170	“	207	“	256
“	139	“	171	“	208	“	257
“	140	“	172	“	209	“	258
“	141	“	173	“	210	“	259
“	142	“	176	“	211	“	260
“	143	“	177	“	212	“	261
“	144	“	178	“	213	“	262
“	145	“	179	“	214	“	264
“	146	“	180	“	215	“	265
“	147	“	181	“	216, 217	“	(e)
“	148	“	182	“	218	Section	268
“	149	“	183	“	219	“	269
“	150	“	184	“	220	“	270
“	151	“	185	“	221	“	271
“	152	“	187	“	222	“	272
“	153	“	188	“	223	“	273
“	154	“	189	“	224	“	274
“	155	“	190	“	225	“	275
“	156	“	191	“	226	“	276
“	157	“	192	“	227	“	277
“	158	“	193	“	228	“	278
“	159	“	194	“	229	“	279
“	160	“	195	“	230	“	280
“	161	“	196	“	231	“	281
“	162	“	197	“	232	“	282

1898, No. 38.—“The Mining Act, 1898”—*continued*.

Repealed Act.	Compiled Act.	Repealed Act.	Compiled Act.
Section 233	Section 283	Section 277	Section 330
” 234	” 284, 285	” 278	” 331
” 235	” 286	” 279	” 332
” 236	” 287	” 280	” 333
” 237	” 288	” 281	” 334
” 238	” 289	” 282	” 335
” 239	” 290	” 283	” 336
” 240	” 291	” 284	” 337
” 241	” 292	” 285	” 338
” 242	” 293	” 286	” 339
” 243	” 294	” 287	” 340
” 244	” 295	” 288	” 341
” 245	” 296	” 289	” 342
” 246	” 297	” 290	” 344
” 247	” 298	” 291	” 345
” 248	” 299	” 292	” 348
” 249	” 300	” 293	” 349
” 250	” 301	” 294	” 350
” 251	” 302	” 295	” 351
” 252	” 303	” 296	” 352
” 253	” 304	” 297	” 353
” 254	” 305	” 298	” 354
” 255	” 308	” 299	” 355
” 256	” 309	” 300	” 356
” 257	” 310	” 301	” 357
” 258	” 311	” 302	” 358
” 259	” 312	” 303	” 359
” 260	” 313	” 304	” 360
” 261	” 314	” 305	” 362
” 262	” 315	” 306	” 363
” 263	” 316	” 307	” 364
” 264	” 317	” 308	” 365
” 265	” 318	” 309	” 366
” 266	” 319	” 310	” 367
” 267	” 320	” 311	” 368
” 268	” 321	” 312	” 369
” 269	” 322	” 313	” 370
” 270	” 323	” 314	” 371
” 271	” 324	” 315	” 373
” 272	” 325	” 316	” 374
” 273	” 326	” 317	” 375
” 274	” 327	” 318	” 376
” 275	” 328	” 319	” 377
” 276	” 329		

1899, No. 29.—“The Mining Act Amendment Act, 1899”—

Repealed Act.	Compiled Act.	Repealed Act.	Compiled Act.
Section 1	(a)	Section 19	Section 205
” 2	Section 64	” 20	” 331
” 3	(g)	” 21	” 338
” 4	Section 92, 112	” 22	” 126, 135
” 5	” 138, 140,	” 23	” 199
	141	” 24	” 99
” 6	” 5, 12,	” 25	” 169
	138, 140	” 26	” 258
” 7	” 114	” 27	” 353
” 8	” 200	” 28	” 174
” 9	” 156	” 29	” 175
” 10	” 157	” 30	” 119
” 11	” 60	” 31	” 208 (1)
” 12	” 62	” 32	” 208 (2)
” 13, 14	(h)	” 33	” 209
” 15	Section 225	” 34	(i)
” 16	” 202	” 35	Section 18 (2)
” 17	” 203	” 36	(a)
” 18	” 204		

1900, No. 64.—“ The Mining Act Amendment Act, 1900 ” :—

Repealed Act.	Compiled Act.	Repealed Act.	Compiled Act.
Section 1	(a)	Section 12	Section 150
„ 2	Section 123	„ 13	„ 152
„ 3	„ 88	„ 14	„ 306
„ 4	„ 100	„ 15	„ 307
„ 5	„ 161	„ 16	„ 334
„ 6	(a)	„ 17	„ 343
„ 7	Section 186	„ 18	„ 336
„ 8	„ 263	„ 19	„ 331
„ 9	„ 147	„ 20	„ 168
„ 10	„ 148	„ 21	„ 213
„ 11	„ 159		

1901, No. 22.—“ The Miners’ Rights Fee Reduction Act, 1901 ” :—

Repealed Act.	Compiled Act.	Repealed Act.	Compiled Act.
Section 1	(a)	Section 3	Section 65
„ 2	Section 64		

1901, No. 60.—“ The Mining Act Amendment Act, 1901 ” :—

Repealed Act.	Compiled Act.	Repealed Act.	Compiled Act.
Section 1	(a)	Section 7	Section 331
„ 2	Section 263	„ 8	„ 231
„ 3	(g)	„ 9	„ 151
„ 4	Section 334	„ 10	„ 136
„ 5	(g)	„ 11	„ 123
„ 6	Section 59		

1902, No. 22.—“ The Mining Act Amendment Act, 1902 ” :—

Repealed Act.	Compiled Act.	Repealed Act.	Compiled Act.
Section 1	(a)	Section 5	Section 99
„ 2	Section 104	„ 6, 7	(f)
„ 3	„ 5, 201	„ 8	Section 166
„ 4	„ 98	„ 9	„ 248

1903, No. 26.—“ The Water-power Act, 1903,” Section 5 :—

Repealed Act.	Compiled Act.
Section 5	Section 106 (proviso)

1903, No. 81.—“ The Mining Act Amendment Act, 1903 ” :—

Repealed Act.	Compiled Act.	Repealed Act.	Compiled Act.
Section 1	(a)	Section 5	Section 118
„ 2, 3	Section 248	„ 6	„ 123
„ 4	„ 266, 267		

1904, No. 33.—“ The Mining Act Amendment Act, 1904 ” :—

Repealed Act.	Compiled Act.	Repealed Act.	Compiled Act.
Section 1	(a)	Section 14	Section 79
„ 2	Section 27	„ 15	„ 80
„ 3	„ 28	„ 16	„ 81
„ 4	„ 44	„ 17	„ 82
„ 5	„ 99	„ 18	„ 83
„ 6	„ 154	„ 19	„ 84
„ 7	„ 206 (3)	„ 20	„ 85
„ 8	„ 207 (2)	„ 21	„ 86
„ 9	„ 309	„ 22	„ 5
„ 10	„ 334	„ 23	(a)
„ 11	„ 372	„ 24	Section 127 (2)
„ 12	„ 77	„ 25	„ 346
„ 13	„ 78	„ 26	„ 347

(a) Omitted; not necessary. (b) Repealed; 1904, No. 33. (c) Repealed; 1900, No. 64. (d) Repealed; 1899, No. 29. (e) Repealed; 1900, No. 43. (f) Omitted; exhausted. (g) Repealed; 1902, No. 22. (h) Superseded by 1900, No. 64, sections 9, 10. (i) Superseded by 1900, No. 64, section 8.

[Compiled by the Solicitor-General, under the provisions of "The Statutes Compilation Act, 1902," pursuant to the resolution of both Houses of the General Assembly dated the 5th day of November, 1904.]

A.—5B.

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Title.

AN ACT to compile certain Acts relating to Mines and Mining.
BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows :—

Short Title.

1. (1.) The Short Title of this Act is "The Mining Act, 1905."
(2.) This Act is a compilation of the Acts mentioned in the First Schedule hereto.

2. This Act is divided into Parts, as follows :—

PART I.—Preliminary. (Sections 3 to 8.)

PART II.—Districts and Appointments. (Sections 9 to 16.)

PART III.—Lands subject to this Act, and Lands exempted therefrom. (Sections 17 to 63.)

PART IV.—Mining Privileges. (Sections 64 to 225.)

PART V.—Working, Regulation, and Inspection of Mines. (Sections 226 to 274.)

PART VI.—Registration of Appliances and Processes for Treating Ores and Metals. (Sections 275 to 281.)

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PART X.—Miscellaneous Provisions. (Sections 353 to 377.)

Act divided into Parts.

1898, No. 38, sec. 2

PART I.

PRELIMINARY.

3. Except where hereinafter otherwise specially provided, nothing in this Act contained shall apply to coal or to mining or searching for coal.

Act not to apply to coal or coal-mining.

Ibid, sec. 3

4. The Governor, by Order in Council gazetted, may from time to time declare that any of the provisions of this Act shall apply to mining for diamonds and any other specified precious stones, and may also from time to time define the districts wherein any such Order in Council shall take effect.

Application to diamonds and other precious stones.

Ibid, sec. 4

5. In this Act, if not inconsistent with the context,—

Interpretation.

“Act,” as a statutory enactment, includes all regulations made thereunder :

Ibid, sec. 5

1899, No. 29, sec. 6

“Claim” means a parcel of land lawfully taken up and occupied under this Act or any former Mining Act for the purpose of mining for gold thereon ; but does not include land taken up, used, or enjoyed for the purpose of facilitating mining operations on a claim :

(1)

1902, No. 22, sec. 3

(2)

1904, No. 33, sec. 22

“Clerk” means Clerk of the Warden’s Court :

“Compiled Acts” means the Acts mentioned in the First Schedule hereto :

“Crown lands” means all lands whatsoever the title whereto in fee-simple is vested in His Majesty, whether by virtue of his prerogative or by operation of law, or by any deed or instrument, whether such lands are unalienated or are alienated by way of lease or license for depasturing purposes, or as a small grazing-run, under any Act providing for the disposition of lands of the Crown ; and includes Native ceded lands, and all other lands whatsoever over which His Majesty, or the Governor or the Minister on his behalf, by cession, agreement, or otherwise, possesses the right to authorise the carrying-on of mining operations ; but, except where otherwise specially provided, does not include—

(a.) Lands held by His Majesty on any trust, express or implied, in favour of any person ; nor

(b.) Lands held by His Majesty but dedicated to any public purpose ; nor

(c.) Public reserves and endowments within the meaning of this Act :

- “Dam” includes any natural as well as any artificial depository of water :
- “District” and “mining district” mean a mining district constituted under this Act :
- “Endowment” means any land set apart under any Act by way of endowment for any public body or local authority, in whomsoever the fee-simple of such land is vested : 5
- “Former Mining Act” means any Mining Act in force at any time prior to the commencement of this Act, and includes the compiled Acts : 10
- “Gold” includes any substance containing gold or silver, or having gold or silver mixed therein, or set apart for the purpose of extracting gold or silver therefrom :
- “Inspector of Mines” or “Inspector” means an Inspector of Mines appointed under this Act, and includes an Assistant Inspector : 15
- “Land” includes water :
- “Local authority” means a Borough or County Council, a Town or Road Board, or a Harbour Board :
- “Machinery” includes all mechanical appliances of whatsoever kind used for any mining purpose : 20
- “Magistrate” means a Stipendiary Magistrate :
- “Metal” includes gold :
- “Mine,” as a noun, includes every parcel of land in, on, or under which any mining operations are carried on, whether such mine is occupied under any title or not; and includes also all machinery used in such operations : 25
- “Mine,” as a verb, includes any mode or method of working a mine :
- “Miner’s right” includes also a consolidated miner’s right : 30
- “Mineral” means any metal or mineral other than precious metals, precious stones, and coal; and includes petroleum and other mineral oils :
- “Mining” means mining operations, and includes prospecting :
- “Mining Act” means any Act relating to mining for gold or any other metal or mineral : 35
- “Mine-manager” means the person having the actual control and working of any mine :
- “Mining operations” and “mining purposes” mean mining for gold or any other metal or mineral; and include— 40
- (a.) The stacking, storing, and treatment of any substance supposed to contain gold or any other metal or mineral;
- (b.) The erection, maintenance, and use of machinery, and the construction or use of races, dams, channels, batteries, dredges, buildings, and other works connected with any such operations or purposes ; 45
- (c.) The deposit or discharge of tailings, *debris*, refuse, and waste water produced from or consequent on any such operations or purposes ; 50
- (d.) The lawful use of land, watercourses, and water, and the doing of all lawful acts incident or conducive to any such operations or purposes :

5 “Mining privilege” means any license, right, title, or privilege relating to mining lawfully granted or acquired under this Act or any former Mining Act, and includes the specific parcel of land in respect whereof such license, right, title, or privilege is so granted or acquired; it also includes a timber-cutting right, a water-right not relating to mining, and also a business license, or a business, residence, or special site, but not an agricultural lease nor an occupation license:

10 “Mining Registrar” or “Registrar” means a Mining Registrar appointed under this Act:

“Minister” means the Minister of Mines, and includes any member of the Executive Council (being a responsible Minister of the Crown) acting for or, if the office is vacant, in the place of such Minister, and also his successors in such office:

15 “Native” means an aboriginal native of New Zealand, and includes half-castes and their descendants:

“Native ceded land” means Native land over which his Majesty, or the Governor or the Minister on his behalf, by cession, agreement, or otherwise, possesses the right to authorise the carrying-on of mining operations:

20 “Native land” means land owned by Natives and acquired otherwise than by purchase from the Crown or from any person (other than a Native) deriving title from the Crown, whether the title to such Native land has or has not been ascertained by the Native Land Court or other duly constituted authority:

25 “Native reserves” includes all lands set aside for the use, support, or education of Natives, whether out of Crown lands or on or in connection with the sale by Natives of lands to the Crown:

30 “Occupier” of land includes every person in actual occupation of land under any lawful title granted by or derived from the owner of the fee-simple thereof:

35 “Owner,” for the purposes of Part V. of this Act, relating to the working, regulation, and inspection of mines, means the immediate proprietor, or lessee, or licensee, or occupier of any mine or any part thereof; and, in the case of an incorporated or registered company, includes the mine-manager of such company, and in any other case includes the mine-manager of any mine; but “owner” does not include a person who merely receives a royalty, rent, tribute, or fine from a mine, or is merely the proprietor of a mine which is being worked by another person pursuant to any lease, grant, or license for the working thereof: Any contractor or tributer for the working of any mine or any part thereof, or for doing any specific work therein, shall be subject to this Act in like manner as if he were an owner, but so nevertheless as not to exempt the owner from any liability:

40 “Person” includes mining partnerships, local authorities, and incorporated or registered companies:

45 “Prescribed” means prescribed by this Act or by any regulations made thereunder:

50 2—A. 5B.

- “Private lands” means lands owned in fee-simple under title from His Majesty, and includes land held under license or lease from His Majesty with the right of acquiring the fee-simple thereof :
- “Public reserve” means any land set apart for any of the purposes mentioned in the First Schedule to “The Public Reserves Act, 1881,” whether or not the same is vested in His Majesty or is vested in or under the control of trustees as hereinafter defined; and includes any land set apart under this Act or any former Mining Act as a public reserve, but does not include such Crown lands within hundreds or elsewhere as are declared to be commonage lands : 5
- “Race” means any artificial channel or ditch for the conveyance of water or water and refuse, or into which water or water and refuse may be diverted or conveyed, for any purpose authorised by this Act, and includes the right to the water named in the grant of such race : 10
- “Receiver” means a Receiver of Gold Revenue appointed under this Act :
- “Sea” extends to low-water mark on the shore of such sea : 15
- “Sluice-head” means a stream of water capable of discharging sixty cubic feet of water per minute :
- “Stream” includes creek, river, and every tributary thereof, whether water flows therein permanently or not :
- “Transfer” of a mining privilege includes sale, lease, transmission, mortgage, lien, encumbrance, or other disposition thereof or of any part thereof : 20
- “Transmission” of a mining privilege means the acquisition of title to a mining privilege by death, will, intestacy, bankruptcy, or marriage, or by appointment or succession to any office, or as trustee : 25
- “Tributer” means any person who, pursuant to an agreement with the holder of any mine, has the right to mine therein upon the terms of paying to such holder a percentage or portion of the earnings or proceeds of such mine : 30
- “Trustees,” in relation to a public reserve or endowment, or Native reserve, means the persons in whom such reserve or endowment is vested, or under whose control it is; and, in respect to reserves or endowments vested in His Majesty, means the Governor : 35
- “Unalienated Crown land” includes all Crown lands comprised in any mining privilege under this Act or any former Mining Act, or held under any lease or license for depasturing purposes or any occupation license : 40
- “Warden” means any person appointed to be a Warden under this Act : 45
- “Watercourse” means and includes any stream, pool, lake, or other natural channel or depository of water, whether containing water or not, and includes the water therein and the tributaries thereof : 50
- “Workman” includes every person employed in working for wages, or on contract, or in connection with any mining privilege other than a business-site or residence-site ;

Words in this Act referring to a particular Court, office, Warden, or other officer shall be construed as referring to the Court or office in the district, or to the Warden or other officer having jurisdiction or exercising his functions within the district, wherein arose the matter in relation to which the reference is made ; or, if such matter did not arise within a district, then to the Court or office in, or to the Warden or other officer having jurisdiction or exercising his functions within, the nearest district.

- 5 6. All questions arising in relation to any former Mining Act, or in relation to any right, title, interest, or privileges acquired or any liability incurred thereunder respectively, shall, unless where otherwise is specially provided, be determined under such Act, notwithstanding the repeal thereof, and every such Act shall, for the purposes of this section, and of continuing and perfecting any matter or thing commenced or in progress thereunder, be deemed to be unrepealed :

Matters arising under repealed Acts to be determined thereunder.
1898, No. 38, sec. 7

10 Provided that all applications in respect of mining privileges pending at the coming into operation of this Act shall be proceeded with and be disposed of under this Act, and for that purpose shall (when necessary) be deemed to relate to the corresponding mining privileges under this Act :

15 Provided further that all mining privileges granted or acquired under any of the compiled Acts shall be deemed to be granted or acquired under this Act, and consequently the provisions of section one hundred and fifty-five hereof, relating to surrender and exchange, shall not apply to such mining privileges.

20 7. All Orders in Council, Proclamations, appointments, awards, orders, rules, and regulations which, having been made under any former Mining Act, are in force at the commencement of this Act shall, save in so far as they are inconsistent with this Act, continue in force until altered or revoked under this Act.

Proclamations, &c., to continue in force.
Ibid, sec. 8

25 8. Every Proclamation, Order in Council, order, rule, regulation, or *Gazette* notice made under this Act by the Governor or the Minister may be made from time to time, and so as to apply in any manner, partially or generally, in relation to matter, person, time, or place ; and may from time to time in a similar manner be altered, revoked, or cancelled.

Proclamations, &c., may be applied partially or generally.
Ibid, sec. 9

PART II.

DISTRICTS AND APPOINTMENTS.

9. The Governor may from time to time, as he thinks fit, by Proclamation,—

40 (a.) Constitute and appoint any portion of the colony to be a mining district, and assign a name and boundaries to such district ; and also

Governor may constitute districts, alter boundaries, or withdraw Crown lands from.
Ibid, sec. 10

(b.) Alter the name or boundaries of any mining district, or abolish any mining district ; and also

45 (c.) Withdraw any Crown lands from any mining district :

Provided that such alteration, abolition, or withdrawal shall not affect any mining privilege or other right, title, or interest lawfully acquired and existing within the area to which such alteration, abolition, or withdrawal relates at the time when the Proclamation effecting the same is made.

Constitution of
Wardens' Courts and
appointment of
Wardens.

1898, No. 38, sec. 11

10. The Governor may from time to time, as he thinks fit, by Order in Council,—

(a.) Constitute and appoint in and for any one or more districts or portions thereof such Wardens' Courts as he deems necessary ; and also

(b.) Abolish any such Court ; and also

(c.) Appoint fit persons to be Wardens, each of whom shall hold office during the Governor's pleasure, and for the purposes of this Act shall have jurisdiction throughout the colony, but shall exercise his jurisdiction and perform his duties and functions in such districts or localities as the Minister from time to time directs :

Provided that the fact of any Warden exercising jurisdiction or performing any duty or function in any Court, district, or locality shall be conclusive evidence of his authority so to do.

Appointment of
Mining Registrars,
Receivers of Gold
Revenue, Clerks,
and bailiffs.

Ibid, sec. 12

11. (1.) The Governor may from time to time, in such manner and on such terms as he thinks fit, appoint for any one or more districts or portions thereof such fit persons to be Mining Registrars, Receivers of Gold Revenue, Clerks, bailiffs, assistant clerks, assistant bailiffs, and other officers of Wardens' Courts therein as he deems necessary, all of whom shall hold office during the Governor's pleasure.

(2.) If and as often as any such officer is incapacitated by illness, absence, or other sufficient cause from performing his duties, the Warden may appoint a fit person to act as deputy, who, whilst so acting, shall have all the functions and duties of the officer for whom he is the deputy.

(3.) An entry of every such appointment shall be made by the Warden in the minute-book of the Court.

Appointment of
Inspectors of Mines*
and post-offices for
payments.

Ibid, sec. 13

1899, No. 29, sec. 6
(2)

12. The Governor may from time to time, in such manner and on such terms as he thinks fit,—

(a.) Appoint fit persons to be Inspectors of Mines ; and also

(b.) Appoint any Receiver of Land Revenue to be at the same time Receiver of Gold Revenue ; and also

(c.) Appoint post-offices at which miners' rights may be issued by, and rents, royalties, fees, and other moneys receivable under this Act may be paid to, the Postmaster or chief officer in charge of any such post-office :

And may also prescribe the mining districts or portions thereof in and for which each such appointment is made.

Existing districts
and Courts
continued.

1898, No. 38, sec. 14

13. All mining districts and Wardens' Courts which, having been constituted under any former Mining Act, are in existence at the commencement of this Act shall be deemed to be constituted under this Act.

Persons continued
in office.

Ibid, sec. 15

14. Every person who, having been appointed to any office under any former Mining Act, holds that office at the commencement of this Act shall be deemed to be duly appointed to the same office under this Act.

Officers not to have
personal interest.

Ibid, sec. 16

15. (1.) It shall not be lawful for any person appointed or employed by or under the Crown in any capacity in the administration of this Act to hold, directly or indirectly, any pecuniary interest whatever in any mining privilege in the district in which he performs his duties :

Provided that this section shall not apply to surveyors, or to Post-masters or officers in charge of post-offices.

(2.) It shall not be lawful for any officer of a Warden's Court to knowingly do anything in any way connected with the administration of this Act otherwise than in the exercise of his functions and duties as such officer.

(3.) If any person commits any breach of any of the provisions of this section he is liable to a penalty not exceeding one hundred pounds.

16. If any Warden knowingly adjudicates on any matter wherein he has, directly or indirectly, any pecuniary interest, then, in addition to any other penalty to which he thereby exposes himself, he is liable on conviction upon indictment in any competent Court to imprisonment, with or without hard labour, for any term not exceeding two years, or to a penalty not exceeding two hundred pounds.

Penalty on Warden for acting if interested.
1898, No. 38, sec. 17

15

PART III.

LANDS SUBJECT TO THIS ACT, AND LANDS EXEMPTED THEREFROM.

Mining on Crown Lands.

17. Subject to the limitations and provisions hereinafter contained, all Crown lands within any mining district are hereby declared to be open for mining under the provisions of this Act.

Crown lands in mining districts open for mining.
Ibid, sec. 18

18. (1.) The land comprised in any lease in perpetuity, or other lease or license, granted on or at any time after the sixth day of October, one thousand eight hundred and ninety-three, under "The Land Act, 1892," whether as an original lease or license, or in exchange for a pastoral or other lease or license of any kind, or for a small grazing-run, shall, if such land is situate in a mining district at the time of such grant, be deemed to be Crown lands within the meaning of this Act, anything in "The Land Act, 1892," or any other Act to the contrary notwithstanding.

Leased lands in mining districts deemed Crown lands
Ibid, sec. 19

(2.) All lands acquired under "The Land for Settlements Consolidation Act, 1900," are hereby declared to be Crown lands within the meaning of this Act :

Land-for-settlements lands deemed Crown lands for mining purposes.
1899, No. 29, sec. 35

Provided that all rents, royalties, and other fees payable in respect of mining privileges on such lands shall not be deemed to be goldfields revenue, but shall be paid into the Land for Settlements Account.

19. (1.) The Governor may from time to time, by notice in the *Gazette*,—

Crown lands may be set apart for mining or exempted therefrom.

(a.) Set apart for mining purposes exclusively, or for any specified mining purpose exclusively, any unoccupied Crown lands within a mining district or outside thereof ; and also

1898, No. 38, sec. 20

(b.) Exempt any Crown lands from mining, or from any specified mining purpose, or from this Act or any specified provisions of this Act.

(2.) The lands to which any such *Gazette* notice relates shall be specified therein by words of particular description.

(3.) So long as any such lands are set apart for mining purposes exclusively, or for any specified mining purpose exclusively, pursuant to any such *Gazette* notice they shall not be available for any other purposes.

(4.) So long as any such lands are exempted from mining, or from any specified mining purpose, or from this Act or any specified provisions of this Act, pursuant to any such *Gazette* notice, they shall, to the extent of such exemption, cease to be subject to the operation of this Act.

Warden may temporarily reserve or exempt lands.
1898, No. 38, sec. 21

20. (1.) The Warden may from time to time, in the prescribed manner, and until the assent of the Governor is ascertained,—

(a.) Reserve for any public use or purpose any unoccupied Crown lands within his district; and also

(b.) Exempt from mining or from any specified mining purpose any Crown lands within his district. 5

(2.) So long as any such reservation continues in force, the lands thereby reserved shall be deemed to be public reserves within the meaning of this Act.

(3.) So long as any such exemption continues in force the provisions of subsection *four* of the last preceding section hereof shall apply to the exempted lands. 10

State forests subject to Act.

Ibid, sec. 22

21. Notwithstanding anything contained in "The New Zealand State Forests Act, 1885," all Crown lands set apart thereunder for forest lands shall nevertheless be subject to the provisions of this Act relating to mining on Crown lands: 15

Saving as to timber.

Provided that nothing contained in this section shall be construed to authorise the felling or removing of any timber upon or from such forest lands within a mining district for other than mining purposes except under the provisions of the Act first aforesaid. 20

Public Reserves, Endowments, and Native Reserves.

Public reserves may be made in mining district.

Ibid, sec. 23

22. The Governor may from time to time, by notice in the *Gazette*, set apart any unoccupied Crown lands in a mining district as a public reserve for any specified public use or purpose, subject to such conditions and regulations as he thinks fit to prescribe. 25

Reserves and endowments exempt from Act.

Ibid, sec. 24

23. Subject to the provisions hereinafter contained, all public reserves and all endowments and Native reserves are hereby declared to be exempt from the operation of this Act:

Provided that all public reserves, endowments, and Native reserves which at the commencement of this Act were within the operation of any former Mining Act shall to the same extent be subject to the operation of this Act. 30

Public reserves, endowments, or Native reserves may be brought under Act.

Ibid, sec. 25

24. With respect to the lands comprised in any public reserve or endowment, or Native reserve, and situate within any mining district, the following provisions shall apply:— 35

(a.) The Governor may from time to time, by notice in the *Gazette*, bring such lands or any specified portion thereof within the operations of this Act or of any specified provisions of this Act.

(b.) So long as such *Gazette* notice continues in force the provisions specified therein shall, according to the tenor thereof, apply to the land comprised therein as fully as if such lands were Crown lands open for mining, subject nevertheless to such conditions, modifications, and restrictions (if any) as the Governor by regulations or otherwise thinks fit to prescribe. 40

(c.) All fees, rents, royalties, and other moneys received under this Act in respect of such lands shall be paid into the Public Account, and such portion thereof as would be payable to local authorities as goldfields revenue, if the lands were Crown lands open for mining, shall be payable to the trustees or, in the case of Native reserves not vested in trustees, to the Native owners who for the time being are entitled to receive the revenue derived from such lands. 50

(d.) The portion so payable shall, where necessary, be determined by the Minister, whose decision shall be final.

(e.) The powers by this section conferred upon the Governor may, in the case of Native reserves, be exercised by him in respect to specified Native reserves only, or to specified classes of Native reserves, or to all Native reserves generally, as he thinks fit, and subject in every case to such conditions and restrictions as he from time to time prescribes by regulations or otherwise.

25. Nothing in the last preceding section hereof contained—

(a.) Shall empower any person to interfere in any way whatsoever with any works already constructed, or that may be hereafter constructed, upon any public reserve or endowment or Native reserve by the trustees thereof, or, in the case of Native reserves not vested in trustees, by the Native owners thereof, or by any person with the previous consent of such trustees or owners; nor

(b.) Shall detrimentally affect any rights in respect to mining heretofore granted by the Warden upon any such reserve or endowment, all which rights, in so far as they exist at the coming into operation of this Act, and are not in any way injurious to any such works as aforesaid, and are exercised in accordance with regulations under this Act, shall be deemed to have been granted under this Act; nor

(c.) Shall detrimentally affect the title of the trustees of such reserve or endowment, or any power or authority in respect thereof, so far as the same does not conflict with any of the provisions of this Act within whose operation such reserve or endowment is brought; nor

(d.) Shall affect any of the provisions of "The Kumara Education Reserve Act, 1879," all of which shall continue in force as if this Act had not been passed.

26. (1.) Notwithstanding any express or implied power contained in or conferred by any Act, it is hereby declared that, except with the previous consent of the Governor, no trustees of any public reserve or endowment shall hereafter have any power to make any disposition thereof, whether by way of sale, mortgage, charge, lease, license, or otherwise, whilst the same is subject to the operation of any of the provisions of this Act.

(2.) Any such disposition heretofore lawfully made may be brought by the Governor under any special regulations made by him under this Act.

27. (1.) Notwithstanding anything in section twenty-three hereof, the Governor may from time to time, by notice in the *Gazette*, declare that any lands now or hereafter set apart as a public reserve or endowment, or Native reserve, or any specified part thereof, shall be available for mining at a depth below fifty feet from the surface; and thereupon such lands may be dealt with accordingly under this Act.

(2.) The provisions of paragraphs (b) to (e) of section twenty-four hereof, shall, *mutatis mutandis*, extend and apply to all lands specified in such notice.

Protection of constructed works and saving of title of trustees.
1898. No. 38, sec. 26

Restriction of special power of alienation.
Ibid, sec. 27

Reserves under Mining Act to be of surface only.
1904, No. 33, sec. 2

(3.) The Warden, with the consent of the Minister, may, on application by the holder of any claim, grant the right to use any part of the surface of any such reserve or endowment for the purpose of constructing ventilating-shafts, pumping-shafts, or for other special purposes required for working the claim.

Occupied Crown lands may be reserved with consent of occupier. 1904, No. 33, sec. 3

28. (1.) Any Crown lands now or hereafter lawfully held or occupied under this Act or any former Mining Act by any person may, with the consent in writing of such person, be set apart as a reserve for any public use or purpose.

(2.) Such reservation may, in accordance with the tenor of the consent, be of the whole of the land, or of the surface and any specified depth from the surface.

(3.) Every such consent shall be registered in the office of the Warden.

Native Lands.

Native Land Court may declare Native land open for prospecting or ceded for mining purposes. 1898, No. 38, sec. 28

29. (1.) On the investigation of the title to or on the partition of any block of Native land, or at any time after such investigation or partition (whether made before or after the commencement of this Act), the Native Land Court may, on application by or on behalf of the Governor, and with the written or verbal consent of a majority of the Native owners, by order declare the whole or any portion of such land—

- (a.) To be open for prospecting, in which case such land shall be open for prospecting under the provisions of this Act without the consent of the owners or occupiers; or
- (b.) To be ceded to His Majesty for mining purposes, on such conditions as are specified in the order as having been agreed upon between the Governor and a majority of the Native owners; in which case such land shall be deemed to be Native ceded land.

(2.) Due notice of every such application made after investigation of title or partition of Native land shall be given in the *Kahiti*, and also in such other manner as the rules of the Native Land Court prescribe.

Native reserves available for mining purposes in certain cases. Ibid, sec. 29

30. Whereas in many cases Natives, when ceding blocks of land to the Crown for mining purposes, have reserved or may reserve therefrom certain areas used or intended to be used by them as sites for residences, cultivations, burial-grounds, or otherwise, and it is expedient that such areas should be available for mining purposes, provided the use for which they were so reserved is not thereby prejudicially affected: Be it therefore enacted that, notwithstanding anything to the contrary in this or any other Act contained, such areas shall be open for mining purposes in like manner in all respects as if they were Native ceded lands, and in every such case (but so long only as such reservation continues) the provisions of section one hundred and two hereof shall, *mutatis mutandis*, apply.

Native ceded lands open for mining. Ibid, sec. 30

31. All Native ceded lands are hereby declared to be open for mining under the provisions of this Act in the same manner as Crown lands, subject in every case to the special provisions of this Act relating to Native ceded lands, and subject also to the terms and conditions of the particular agreement under which such land was ceded:

Provided, however, that all provisions of this Act which conflict with the terms of any such agreement shall be deemed to be superseded by such agreement so long as such agreement continues in force.

32. Until the freehold of Native ceded land is acquired by His Majesty, all fees, royalties, and rents received under this Act in respect of such lands shall, in the prescribed manner, be payable to the Native owners.

Fees in respect of Native ceded lands. 1898, No. 38, sec. 31

33. Notwithstanding anything elsewhere contained in this Act, the following special provisions shall apply, with respect to business-sites and residence-sites on Native ceded land, in every case where, pursuant to the agreement for cession made with the Native owners, a specified scale of payment is prescribed in respect of such sites :—

Business and residence sites on Native ceded land. Ibid, sec. 32

(a.) If the scale is higher than the license fees payable under this Act, the scale shall supersede the Act.

(b.) If the license fees payable under this Act are higher than the scale, the license fees shall be payable; and, after allocating to the Native owners so much thereof as is equal to the scale, the surplus shall be payable to the local bodies who would be entitled to the goldfields revenue if the land were other than Native ceded land.

34. If any person carries on mining operations—

(a.) On any Native ceded land without being duly authorised under this Act so to do; or

(b.) On any Native land without being duly authorised under this Act or by the Native owners so to do,—

Penalty for mining on Native land without authority. Ibid, sec. 33

he commits an offence, and is liable to a penalty of not more than fifty pounds.

35. Nothing in this Act contained shall be deemed to affect “The Auckland Goldfields Proclamations Validation Act, 1869,” or any of the provisions of the several agreements therein recited; and that Act, and also “The Ohinemuri Goldfield Agricultural Leases Validation Act, 1876” (excepting sections six, seven, and eight thereof), shall continue in full force as if this Act had not been passed, subject, however, to the following provisions, that is to say :—

Saving of Acts relating to Native lands in Auckland District. Ibid, sec. 34

(a.) All rents arising in respect of land described in the first four Schedules of “The Auckland Goldfields Proclamations Validation Act, 1869,” and occupied under licenses or leases issued under any Act for the time being in force authorising the same, shall, for the purposes of the said agreements and until the freehold of such land is acquired by the Crown, be deemed to be money arising from miners’ rights.

(b.) Any person who, on or before the first day of January, one thousand eight hundred and ninety-two, was the lawful holder of an agricultural lease under “The Ohinemuri Goldfield Agricultural Leases Validation Act, 1876,” of any land within the Ohinemuri Block may, at any time whilst he continues to hold the same, purchase without competition the freehold of the land comprised therein at the same price as the upset price at which Crown lands of the same class in the same district would be open for sale :

Provided nevertheless as follows, that is to say :—

3—A. 5B.

(i.) That at the time of application for the purchase of such land the freehold thereof has been acquired by the Crown ; and also

(ii.) That the Warden, after investigation, reports to the Minister that the land is not auriferous or argentiferous, and is not required for mining purposes ; and also

(iii.) That there shall be excluded from such purchase all land situate within sixty-six feet of the bank of any water-course in the said block.

Rights under Ohinemuri deed of cession not to abate on extinguishment of Native title.
1898, No. 38, sec. 35

36. The rights acquired by the Governor on behalf of the Crown under the deed of cession of the Ohinemuri Block, dated the eighteenth day of February, one thousand eight hundred and seventy-five, as published in the Auckland Provincial Government *Gazette* of the eighth day of July, one thousand eight hundred and seventy-five, shall not abate or be prejudicially affected by reason of the extinguishment of the Native title to or the issue of a Crown grant or other instrument of title for the land comprised therein or any portion hereof ; and the said deed of cession shall from the date thereof be deemed to have been and to be valid and binding on all persons whatsoever according to the true intent and meaning of the same.

Mining rights over Native lands when Native title extinguished.
Ibid, sec. 36

37. All mining rights which, on and after the first day of January, one thousand eight hundred and ninety, have been acquired, or which at any time hereafter may be acquired, by or on behalf of His Majesty in respect of any Native land shall inure to His Majesty and remain unaffected notwithstanding the extinguishment of the Native title to or the issue of a Crown grant or other instrument of title for such lands or any portion thereof at any time subsequent to the acquisition of such rights.

Sale and Occupation of Crown Lands.

Land Act not to apply except in certain cases.
Ibid, sec. 37

38. Subject to the provisions of this Act, no Crown lands within any mining district shall be sold, leased, or otherwise disposed of under any provisions of any Act for the time being in force in such district regulating the sale, lease, occupation, or disposal of lands of the Crown, except in so far as such last-mentioned provisions specially authorise the sale, lease, occupation, or disposal of Crown lands within a mining district, or relate to—

(a.) The making of reserves : or to

(b.) The exchange of agricultural leases under any former Mining Act for leases or licenses under “ The Land Act, 1892 ” : or to

(c.) The occupation of land held under any lease or license granted before the first day of February, one thousand eight hundred and ninety-nine (being the date of the commencement of “ The Mining Act, 1898 ”), in the case of a mining district existing at the time of such commencement, and in any other case before the issue of the Proclamation constituting the mining district : or to

(d.) Land reserved for any public use or purpose : or to

(e.) The issue of leases or licenses for any of the following purposes :—

Depasturing ;

Removal of clay for bricks or pottery ;

Removal of sand, gravel, or stone ;

Working of quarries ;

50

Sites for ferries, sawmills, flour-mills, tanneries, fell-mongers' yards, slaughter-yards, potteries, brick or lime kilns ; and

Cutting, growing, or dressing flax :

5 Provided that in no case shall the Land Board or Commissioner of Crown Lands dispose in any way of any Crown lands in a mining district without first referring the proposed disposition to the Warden and receiving his report thereon, nor grant any mining or mineral lease or prospecting license in any mining district :

10 Provided further that nothing in this Act shall affect the provisions of "The Mining Districts Land Occupation Act, 1894."

39. The Governor may from time to time make regulations under this Act or "The Land Act, 1892," for all or any of the purposes mentioned in the last preceding section hereof.

Special regulations
in such cases.
1898, No. 38, sec. 38

15 40. (1.) The Governor may from time to time, by *Gazette* notice, declare any unalienated Crown lands within any district to be open for sale or lease, on such dates and in areas of such size and form as he determines :

Lands may be
declared open for
sale.
Ibid, sec. 39

20 Provided that all lands within sixty-six feet from the bank and along the entire course of any watercourse shall be and be deemed to be excluded from any such sale or lease :

Provided further that before acting under this section the Governor shall in each case refer the matter to the Warden for his report.

25 (2.) The lands so open for sale or lease may be disposed of at the same price and subject to the same terms and conditions, or as near thereto as may be, as in the case of Crown lands of the same class not within a district ; and it shall not be necessary to withdraw lands from the district for the purposes of this section.

30 41. In any case where land is about to be sold or leased as aforesaid, and there exist thereon buildings or other *bona fide* improvements erected or made by any person in lawful occupation of such land under miner's right or business license, or license for a business, residence, or special site, he shall be entitled to valuation for such buildings and improvements in the manner and to the extent following, that is to say :—

Valuation for
buildings and
improvements.
Ibid, sec. 40

35 (a.) The amount of such valuation shall be ascertained in the prescribed manner, and shall be added to the upset price of the land without such buildings or improvements ; and the land shall be put up for sale or lease weighted with such amount accordingly.

40 (b.) Such person shall be entitled to deduct the amount of such valuation from his purchase-money, if he is the highest bidder for and becomes the purchaser of the land, or to receive such amount from the purchase-money of any other person who is such highest bidder and purchaser.

45 (c.) No right to valuation shall exist if, at the time when the buildings were erected or the improvements were made, the land was subject to or was reserved for survey or sale, and in no case shall any right to valuation exist as against the Crown.

50 (d.) Upon the purchase being completed and the amount of the valuation (if any) being duly paid or accounted for to the person in occupation as aforesaid, his right to occupy under such miner's right or business license, or license for a business,

residence, or special site, shall cease and determine, and the purchaser shall be entitled to possession of the land under the title acquired by his purchase.

Extension to persons
in occupation
without title.
1898, No. 38, sec. 41

42. The Governor in his discretion, and with such modifications as he thinks fit, may extend the provisions of the last preceding section hereof to cases where, before the commencement of "The Mining Act, 1898," buildings or other improvements have been erected or made on unalienated Crown lands by persons in occupation thereof without title. 5

Rights acquired
protected whether
reserved in Crown
grant or not.
Ibid, sec. 42

43. (1.) No Crown grant or conveyance, nor any license for a mining privilege, shall have the effect of revoking or injuriously affecting any mining privilege or easement or tenement lawfully acquired and held under this Act or any former mining Act, whether any reservation or exception thereof is contained in such grant, conveyance, or license or not. 10

(2.) Every such grant, conveyance, or license shall be construed as if it contained an express reservation of the right to hold, occupy, and use such mining privilege or easement or tenement, with all necessary and reasonable means of access to work, cleanse, repair, and efficiently use the same. 15

(3.) The provisions of this section shall be deemed to be and to have been in force within every goldfield proclaimed under "The Goldfields Act, 1866," and gold-mining district constituted under "The Gold Mining Districts Act, 1873," from the date of the original Proclamation of such goldfield or constitution of such district; and every such grant, conveyance, or license issued or to be issued in respect of land within any such district shall be construed accordingly. 20 25

Leases in mining
townships.
1904, No. 33, sec. 4

44. The Warden, under regulations to be made in that behalf, and with the consent in writing of the Minister, may from time to time grant to any person a lease of the surface of any section in any township within a mining district, for any term not exceeding twenty-one years, at such rent and under such restrictions as may be prescribed by such regulations; and with respect to every such lease, whether granted under this Act or in renewal of any lease heretofore granted by the Governor under the corresponding provisions of any former Mining or Land Act, the following provisions shall apply:— 30 35

(a.) Such lease shall entitle the lessee to all the rights and privileges enjoyed by holders of business-site licenses under this Act.

(b.) If at any time during the currency or at the termination of any such lease the land comprised therein is proved to the satisfaction of the Governor to be neither auriferous nor argentiferous, nor to be required for any mining purpose, such land may be sold by public auction, subject to valuation for building and improvements, in the manner and to the extent provided for in section forty-one hereof. 40

(c.) At the end of the lease, unless the land is proved to be auriferous or argentiferous, the lessee shall be entitled to a renewal of the lease for a further period of twenty-one years, at such rent and under such terms and restrictions as may be prescribed by regulations to be made in that behalf. 45

(d.) The rents arising from all such leases shall be goldfields revenue, and payable to the Receiver of Gold Revenue of the district in which the land is situated. 50

45. With respect to the lands comprised in the First, Second, and Third Schedules to "The Westland and Nelson Coalfields Administration Act, 1877," the following provisions shall apply :—

Provisions as to
lands in West Coast
coalfields.
1898, No. 38, sec. 44

5 (a.) All the powers and functions by section eight of that Act conferred on the Minister of Lands, or the Land Board, or the Commissioner of Crown Lands for the disposal of such lands are hereby transferred to and shall be exercised by the Minister and the Warden respectively.

10 (b.) Such lands are hereby declared to be subject to the provisions of this Act in the same manner as Crown lands within a mining district and open for mining :

15 Provided that every application for any mining privilege shall be referred either to the Greymouth Harbour Board or, as the case may be, the Westport Harbour Board, whichever is entitled to receive the rents and profits of the land to which the application relates, for the report of such Board thereon, and that all rents, royalties, and license fees received in respect of any such mining privilege shall be paid over to such Board.

20 (c.) With the consent of the Minister, the Warden shall have all the powers of a Land Board to grant licenses in respect of such lands for all or any of the purposes mentioned in section two hundred and twenty-two of "The Land Act, 1892," excepting the power to grant licenses for sites for inns and accommodation-houses.

25 (d.) The Governor may from time to time make regulations prescribing the mode of granting such licenses, the forms thereof, and whatever else he deems necessary in order to give full effect to this section.

30 (e.) Nothing in this section contained shall affect the provisions of section three of "The Coal-mines Act, 1891."

35 46. (1.) With the approval of the Minister the Warden may cause any unalienated Crown land in a district to be surveyed into townships and laid off in sections not exceeding one-quarter of an acre each ; and also may cause Crown lands adjoining or in the neighbourhood of such townships to be laid off in suburban sections not exceeding five acres each ; and, with respect to the lands so laid off, the following provisions shall apply :—

Mining townships
and suburban
sections may be laid
off.
Ibid, sec. 45

40 (a.) They shall be offered by public auction on lease for the term of not more than ninety-nine years at an upset rental to be fixed by the Warden.

(b.) The auction shall be conducted by such person and at such time and place as with the approval of the Minister the Warden directs.

45 (c.) The lease shall entitle the lessee to the surface only of the ground, and shall not confer on him any right to prevent mining operations being carried on by other persons beneath the surface, subject to provisions to insure the safety of buildings and erections, and to prevent injury to the surface.

50 (d.) No fine, premium, or foregift shall be taken in respect of any lease.

Term of leases.

(e.) The provisions of section forty-one hereof relating to valuation and possession shall, *mutatis mutandis*, apply.

(f.) The rent of all such leases shall be goldfields revenue, and shall be payable to the Receiver accordingly.

(2.) With the consent of either the Greymouth Harbour Board or, as the case may be, the Westport Harbour Board, whichever is entitled to receive the rents and profits of the lands, the provisions of this section shall apply to the lands comprised in the First, Second, and Third Schedules to "The Westland and Nelson Coalfields Administration Act, 1877":

Provided that the upset rental of the leases shall be fixed on the recommendation of the Harbour Board concerned, and also that all revenue derived from the disposal of such lands under this subsection shall be paid over to the Harbour Board concerned.

(3.) The Governor may from time to time make regulations prescribing the mode of laying off townships and sections, and of leasing such sections, the forms, terms, and conditions of such leases, and whatever else he deems necessary in order to give full effect to this section.

"The Westland and Nelson Coalfields Administration Act, 1877," not affected. 1898, No. 38, sec. 46

47. Nothing in either of the two last preceding sections hereof contained shall affect "The Westland and Nelson Coalfields Administration Act, 1877," otherwise than is by those sections expressly provided.

Illegal Occupation of Crown Lands.

Persons in illegal occupation may be rated as occupiers. Ibid, sec. 47

48. For the purposes of "The Rating Act, 1894," and "The Rating on Unimproved Value Act, 1896," respectively, but for no other purpose, every person who is in the illegal occupation of any Crown lands within a mining district shall be deemed to be an "occupier" within the meaning of those Acts, and shall be liable to pay rates in respect of the land illegally occupied by him in the same manner as if he were in lawful occupation thereof:

Provided that nothing in this section contained shall be construed to give any validity to such illegal occupation.

Penalty for depasturing cattle without consent of lessee. Ibid, sec. 48

49. In any case where, without the consent of the lessee or licensee of the land, any person depastures any horses, cattle, sheep, goats, or other animals upon any Crown land occupied by virtue of any lease or license within a mining district, such person is liable to pay to such lessee or licensee, by way of damages, any sum not exceeding five shillings per head for every animal so depastured, and such damages may be recovered by suit in the Warden's Court.

Penalty for depasturing cattle on Crown lands without license. Ibid, sec. 49

50. In any case where any person depastures upon any Crown land within a mining district any horses, cattle, sheep, goats, or other animals without a license in that behalf, or a greater number of animals than he is authorised to depasture under any such license, such person is liable to a penalty not exceeding five shillings for every animal so depastured, and such penalty may be recovered by complaint in the Warden's Court.

Lands open to Prospecting and Lands liable to Resumption.

Alienated Crown or Native lands open for prospecting, and may be resumed. Ibid, sec. 50

51. Subject to the provisions hereinafter contained, it is hereby declared that all lands whatsoever that heretofore have been or hereafter may be alienated from the Crown, or, in the case of Native land, from the Native owners thereof to any other person than the Crown,

whether by way of absolute sale or for any lesser estate or interest, shall be open for prospecting for gold and any other metal or mineral, and shall also be liable to be resumed by His Majesty for mining purposes: Provided—

- 5 (a.) That the consent of the owners or occupiers shall be necessary in the case of such of the aforesaid lands as, having been alienated as aforesaid from the Crown prior to the twenty-ninth day of September, one thousand eight hundred and seventy-three, or from the Native owners thereof prior to the thirtieth day of August, one thousand eight hundred and eighty-eight, were not comprised within any mining district on the seventeenth day of October, one thousand eight hundred and ninety-six; and also
- 10 (b.) That, in so far as relates to prospecting for other than gold, the consent of the owners or occupiers shall be necessary in the case of lands alienated as mentioned in the next preceding paragraph hereof, whether such lands were or were not comprised within any mining district on the date mentioned in that paragraph; and also
- 15 (c.) That nothing in this section contained shall be construed to limit or affect the provisions of this Act relating to prospecting or mining on Crown lands, or the rights of His Majesty in respect of any lands over which the right to authorise mining operations has been, is, or may hereafter be possessed, reserved, or acquired by or ceded to His Majesty.
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As to Resumption.

52. The resumption for mining purposes of any land liable to be resumed as aforesaid shall be deemed to be the taking of land for a public work within the meaning of "The Public Works Act, 1894," and shall be effected subject to the provisions hereinafter contained.

Resumption as if taken for a public work.
1898, No. 38, sec. 51

53. Any person may make application in writing to the Minister for the resumption of any such land as aforesaid for mining purposes, and shall forward with such application the sum of twenty-five pounds by way of deposit, whereupon the following provisions shall apply:—

Application for resumption, and deposit.
Ibid, sec. 52

- 35 (a.) The Minister shall refer such application to the Warden, and shall inform the applicant thereof.
- (b.) The Warden shall inquire into the matter of such application, and make report thereon to the Minister.
- 40 (c.) Such report shall state the reasonable costs (if any) properly incurred in connection with the inquiry (including any reasonable costs properly incurred by any owner or occupier of the land), and also what proportion thereof (if any) the applicant ought to pay.
- 45 (d.) The aforesaid deposit shall be applied in paying such proportion of costs as aforesaid, and the balance (if any) of the deposit shall be returned to the applicant.
- (e.) If the deposit is not sufficient to pay such proportion as aforesaid, the deficiency or, if the report states that no costs should be paid by the applicant, the total amount thereof shall be paid,

charged, and recouped in the same manner as the compensation payable in the event of the land being resumed, or, if the land is not resumed, shall be paid out of moneys to be appropriated by Parliament.

Minister to determine whether land to be resumed.

1898, No. 38, sec. 53

Exceptions.

54. Upon receipt of such report the Minister shall determine in his discretion whether the land should or should not be resumed in whole or in part, and the land to be resumed shall be taken on behalf of His Majesty in manner prescribed by "The Public Works Act, 1894":

Provided that, except with the consent in writing of the owner and occupier, no land shall be resumed—

- (a.) Which is actually used as a garden, orchard, vineyard, nursery, plantation, or ornamental pleasure-ground; nor
- (b.) Which, being situate within any town or borough, is of less area than a quarter of an acre; nor
- (c.) Which is the site of or situate within one hundred feet of the site of any house, factory, hospital, asylum, church, public building, cemetery, or waterworks; nor
- (d.) Which cannot lawfully be resumed without the consent of the owner and occupier; nor
- (e.) Which is being mined for gold by or pursuant to the lawful authority of the owner or occupier in areas marked out in the same manner as is prescribed by this Act in the case of a claim, no one of which exceeds the maximum area of a special claim, and on all of which the mining operations are conducted in accordance with the provisions of this Act in like manner, *mutatis mutandis*, as if each such area had been duly taken up as a claim on Crown land; nor
- (f.) Which is being prospected for gold as vigorously and continuously as would be required in the case of a licensee under a prospecting license; nor
- (g.) Which, having been alienated from the Crown prior to the twenty-ninth day of September, one thousand eight hundred and seventy-three, or, in the case of Native land, by the Native owner to any person other than the Crown prior to the thirtieth day of August, one thousand eight hundred and eighty-eight, was comprised in any mining district on the seventeenth day of October, one thousand eight hundred and ninety-six, if the owner or occupier thereof satisfies the Warden that the land is being prospected with reasonable diligence, and that an average sum of not less than one pound per acre is being expended in so doing; nor
- (h.) Which, in the case of private land, is being prospected or mined by the owner or occupier, or forms part of a block that is being so prospected or mined, unless the applicant for resumption pays to the owner or occupier a sum bearing the same proportion to the net balance of the total amount expended since the first day of December, one thousand eight hundred and ninety-six, in prospecting and mining as aforesaid (after making due allowance for all receipts and recoveries) as the acreage of the land to be resumed bears to the acreage of the whole block:

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Provided that the sum paid under this section by the applicant for resumption shall not exceed the rate of two pounds per acre of the land resumed, and also that the sum so paid shall not be taken into account in assessing the compensation payable in respect of the resumption.

- 5 55. If the Minister determines that the land should not be re-
sumed, either in whole or in part, he shall inform the applicant thereof; and no further application for resumption of that land shall, unless by
10 his special direction, be entertained for a period of twelve months thereafter.
56. (1.) All claims for compensation in respect of the land so resumed shall be assessed and settled in manner and to the extent provided in Part VII. of this Act.
- 15 (2.) In every case where any land is resumed before the same has been actually granted by the Crown in fee-simple, there shall be deducted from the compensation payable to any person in respect of such resumption the amount of all unpaid license fees, rents, purchase-money, or other money payable by him in respect of such land, computed up to the date of such resumption.
- 20 57. Notwithstanding anything hereinbefore contained, the following special provisions shall apply in the case of all lands whatsoever in the colony other than Crown lands open for mining :—
- (a.) The owner of any such land, or any person with the written consent of the owner and occupier (if any), may, in the prescribed manner, apply to the Warden for any description of mining privilege authorised by this Act in the case of Crown lands in a mining district, and the Warden, in his discretion, may grant a license for the same.
- 25 (b.) Every license so granted shall be deemed to be granted and shall be held subject to this Act, and subject also to any agreement made between the grantee and the owner or occupier, in so far as such agreement is not inconsistent with this Act.
- 30 (c.) So long as such license continues in force the land comprised therein shall not be resumed for mining purposes, nor shall any prospecting license be granted in respect thereof.
- 35 58. In lieu of resuming land for mining purposes, the Minister may agree in writing with the owner thereof that such land shall be available for mining purposes in like manner as if it were Crown land, and in every such case the provisions of paragraphs (d), (e), and (f) of section eighty-nine hereof, and also the Second Schedule hereto, shall, *mutatis mutandis*, apply.
- 40 59. In every case where land is made available for mining purposes under the provisions of either of the two last preceding sections hereof the owner of the land shall, whilst the same is so available, be entitled to all rents, royalties, and license fees derived from mining in respect of such land, and the same shall be paid to him accordingly as and when received by the Receiver :

Limitation of subsequent application if not resumed.
1898, No. 38, sec. 54

Assessment of compensation.
Ibid, sec. 55

Arrears of fees, &c., to be deducted from compensation.

Special provisions in case of lands other than Crown lands.
Ibid, sec. 56

Agreement with owner for mining purposes in lieu of resumption.
Ibid, sec. 57

Owner entitled to rents, royalties, and fees.
Ibid, sec. 58
1901, No. 60, sec. 6

50 Provided that the provisions of this section shall not apply where the owner of the land has, by writing under his hand addressed to and filed with the Receiver, intimated that no such rents, royalties, or license fees are payable to him in respect of a license granted under section

fifty-seven hereof, and thereafter such license shall not be liable to be declared forfeited or abandoned by non-payment of such rents, royalties, or license fees.

Surrender or Determination of Outstanding Leases or Licenses granted by Native or other Owners prior to Acquisition of Land by the Crown. 5

Provisions subject to which Governor may accept surrender of outstanding leases of Native or other lands.
1898, No. 38, sec. 59
1899, No. 29, sec. 1

60. In any case where land at any time acquired by the Crown from the Native or other owners thereof is subject to any valid estate or interest lawfully created therein by lease or license from such owners at any time prior to such acquisition, and by reason thereof the land is not Crown land open for mining, the following provisions shall apply :— 10

- (a.) The Governor, on behalf of His Majesty, may at any time, and upon such terms as to compensation as may be agreed on, accept the surrender of any such lease or license as to either the whole or any part of the land comprised therein, and, in the case of surrender as to part, may make such reduction as he deems equitable in the rent (if any) thereafter payable in respect of the residue. 15
- (b.) Such surrender may be made by memorandum under the hands of the Governor and the lessee or licensee. 20
- (c.) Such memorandum may be by indorsement on the lease or license, or by separate instrument, and, in the case of surrender as to part, shall set forth the part surrendered, and the terms and conditions upon which the surrender is made.
- (d.) For the purposes of registration such memorandum shall, as the circumstances require, be deemed to be a deed within the meaning of "The Deeds Registration Act, 1868," or an instrument within the meaning of "The Land Transfer Act, 1885," and may be registered accordingly. 25
- (e.) If the surrender is as to part of the land, the lease or license shall thereafter be read and construed subject to the terms and conditions contained in the memorandum of surrender, and the District Land Registrar or Registrar of Deeds, as the case may be, shall, without fee, make all such entries in his register as are necessary in order to record the same. 30
- (f.) The land surrendered shall be deemed to have been thereby resumed by His Majesty for mining purposes, and in every such case the provisions of section eighty-nine hereof, and also the Second Schedule hereto, shall, *mutatis mutandis*, apply. 35

Determination of lease by resumption of land for mining.
1898, No. 38, sec. 60

61. Any such lease or license may, whenever the Governor thinks fit, be determined for mining purposes as to either the whole or any part of the land comprised therein, and for that purpose the following provisions shall apply :— 40

- (a.) Such determination shall be effected by resuming the land for mining purposes, and all the provisions of this Act relating to resumption shall, *mutatis mutandis*, apply accordingly. 45
- b.) If only part of the land is resumed, the lessee or licensee may surrender the lease or license as to the residue, under the provisions for surrender hereinbefore contained ; 50

Provided that in every case where any person possesses timber rights in respect to kauri timber growing on land near to or leading into the land proposed to be resumed, resumption shall not take place if the Warden, after inquiry, reports to the Minister that the resumption would prejudicially affect the reasonable exercise of such rights; and for the purpose of such inquiry and report the Warden, if requested so to do, shall appoint some skilled person to inspect both the land proposed to be resumed and the land in respect of which such rights exist.

Saving as to timber rights.

62. The provisions of the two last preceding sections hereof are hereby extended to cases where the land (whether the same is or is not Crown land open for mining) is situate in a mining district, and is, in the opinion of the Governor, required for township purposes or any other purpose of public utility, as specified by the Governor :

Provisions as to determination of leases or licenses when land required for township or public utility.

1899, No. 29, sec. 12

Provided that in every such case those sections shall be construed subject to the following special modifications, that is to say :—

(a.) The determination of the lease or license as to the whole or any part of the land comprised therein shall be effected by resuming the land for the purposes specified by the Governor.

(b.) Such resumption shall be deemed to be the taking of the land for a public work within the meaning of “ The Public Works Act, 1894 ” ; and the provisions of that Act shall accordingly, *mutatis mutandis*, apply, subject nevertheless to the provisions of this Act.

(c.) Such resumption may, if and in so far as the Governor thinks fit, be effected without affecting the rights of persons holding under subleases or sublicenses from the original lessees or licensees ; and in such case those persons shall thereafter be deemed to hold from the Crown, subject to the conditions of their subleases or sublicenses.

(d.) In satisfaction in whole or in part of the compensation payable to the lessee or licensee in respect of the surrender or resumption, the Governor may grant to him for an estate in fee-simple such portion of the land as may be agreed on.

(e.) Subject to the provisions of this Act, the compensation payable in respect of such resumption shall be assessed and settled in the manner and to the extent provided in Part VII. of this Act, and shall be payable out of moneys appropriated by Parliament.

(f.) Subject to the rights of the persons (if any) holding from the Crown as aforesaid, the land as to which the lease or license is surrendered or determined shall be held and disposed of by sale, lease, reservation, or otherwise, in such manner, for such purposes, at such prices or rents, and on such terms and conditions in all things as the Governor from time to time prescribes.

(g.) All moneys received by or on behalf of the Crown in respect of such land or the disposal thereof shall be paid into the Public Account as part of the fund or account out of which the compensation has been appropriated and paid until the full amount thereof has been thereby recouped to that

fund or account, and thereafter all such moneys (other than the proceeds of any sale in fee-simple) shall be deemed to be goldfields revenue, and the proceeds of every sale in fee simple shall be paid into the Public Works Fund.

Application to lease
of Tairua lands.
1898, No. 38, sec. 61

63. The provisions of sections *sixty* and *sixty-one* hereof shall apply to any extension of lease or new lease granted under "The Tairua Land Act, 1893": 5

Provided that nothing in this Act contained shall in any way affect the operation of subsections three and four of section three of that Act.

PART IV.

10

MINING PRIVILEGES.

As to Miners' Rights.

Miners' rights

Ibid, sec. 62
1899, No. 29, sec. 2
1901, No. 22, sec. 2

64. On the application of any person not under the age of fourteen years there shall be issued to him a document called a "miner's right"; and with respect to every miner's right the following provisions shall apply:— 15

(a.) It shall be in the prescribed form, and shall be signed and issued by any Warden or Mining Registrar, or by any duly authorised Postmaster:

(b.) It shall continue in force for twelve months from the date thereof, but no longer, and shall be dated on the day of its issue: 20

Provided that the Governor, by regulations under this Act, may provide for the issue of antedated miners' rights in such cases and on such terms as to fees and otherwise as he thinks fit; and every such miner's right shall, for the purposes of this Act or any former Mining Act, operate and take effect as on and from the antedate: 25

(c.) It may be issued to a person who already holds one or more miners' rights, and any number may be issued to any person: 30

(d.) It shall not be transferable:

(e.) It shall specify the place and district in which it is issued, the full name and address of the person to whom it is issued, and the block of Native ceded land (if any) to which it relates. 35

(f.) The rights by this Act hereinafter conferred upon the holder of a miner's right may, subject to the provisions of this Act, be exercised by him in respect of all lands to which the miner's right relates, meaning thereby—

(i.) All lands throughout the colony that are open for mining, except Native ceded lands; or 40

(ii.) All such lands as aforesaid, with the addition of any such one block of Native ceded land as is specified in the miner's right at the time of the issue thereof.

(g.) For the purposes of this section "block" means the block ceded by any single group of Native owners who, under the term of the cession, are entitled to all fees received for the issue of miners' rights relating to the block. 45

(h.) There shall be payable upon the issue of the miner's right—

(i.) A fee of five shillings where it does not relate to Native ceded lands; 50

Annual fee.

(ii.) When it does so relate, a fee of twenty shillings, or such other sum, if any (being in no case less than ten nor more than twenty shillings), as has been agreed to be paid on behalf of His Majesty to the Native owners of the specified block of Native ceded land to which the miner's right relates, as the consideration for the right to authorise mining operations thereon.

65. With respect to miners' rights that relate to any specified block of Native ceded land, the following special provisions shall apply in every case where the prescribed fee exceeds ten shillings, that is to say :—

Special provision as to miners' rights relating to Native land.

1898, No. 38, sec. 63
1901, No. 22, sec. 3

(a.) The Councils of all the respective boroughs and counties entitled to any goldfields revenue of the mining district wherein such block is situate may, by resolution, request that the prescribed fee be fixed at five shillings, and that the difference between that sum and the actual amount of the prescribed fee then in force be deducted from the said goldfields revenue.

(b.) Upon receiving from every such Council a copy of such resolution, certified as correct under the hand of the Mayor or Chairman of the Council that passed it, the Colonial Treasurer shall, by notice in the *Gazette*, fix the prescribed fee at five shillings ; and on and after the date of such notification the prescribed fee shall be five shillings accordingly.

(c.) The Colonial Treasurer shall in each year deduct the aforesaid difference from the goldfields revenue before any apportionment thereof is made amongst the boroughs and counties entitled thereto.

(d.) The amount so deducted shall be paid by the Colonial Treasurer to the Warden, who shall distribute the same amongst the Native owners entitled thereto.

66. A miner's right shall not be deemed to be an element of title to any mining privilege, but shall operate as a personal qualification authorising the holder thereof, whilst it continues in force, to do from time to time all or any of the following things, under and subject to the provisions of this Act, that is to say :—

Rights acquired under a miner's right.

1898, No. 38, sec. 64

(a.) To prospect for any metal or mineral on Crown lands open to prospecting ;

(b.) To take up and hold, without application to or license from the Warden, one ordinary alluvial claim for each miner's right ;

(c.) To make any application under this Act to the Warden or the Warden's Court ;

(d.) To commence any civil suit or proceeding before the Warden or the Warden's Court ;

(e.) To become the transferee of any mining privilege other than a miner's right ;

(f.) Subject to regulations under this Act, to cut timber for his own use from unalienated Crown land open for mining, and, with the consent of the Warden, and on such terms and conditions as are prescribed, to make tramways or roads for that purpose ;

(g.) To do such other things as by this Act or the regulations thereunder the holder of a miner's right is by virtue thereof authorised to do :

And, except where otherwise specially provided by this Act or the regulations thereunder, no person shall be authorised or entitled to do any of the aforesaid things unless he possesses the qualification of a miner's right :

Provided that in every case where the thing to be done relates to land situate in any specified block of Native ceded land the qualification shall be a miner's right relating to such block, and the subsequent provisions of this Act shall be construed accordingly :

Provided further that the qualification of a miner's right shall not be necessary in the case of a person defending any suit or other proceeding, or objecting to any application, under this Act :

Provided further that in no case shall any person's title to any mining privilege or other property be prejudicially affected by the fact that the person from or through whom such title was acquired or derived did not possess the qualification of a miner's right.

Consolidated Miners' Rights.

Consolidated
miners' rights.
1898, No. 38, sec. 65

67. On application by or on behalf of any person, a document called a "consolidated miner's right" shall be issued to the applicant as beneficial holder thereof, or (as the case may be) to any specified person as nominated holder thereof, on behalf of the applicant as beneficial holder ; and with respect to every consolidated miner's right the provisions of sections sixty-four to sixty-six hereof shall, *mutatis mutandis*, apply, as also shall the provisions following, that is to say :—

Fee, form, and
effect thereof

- (a.) It may comprise any number of miners' rights, and the fee payable on the issue thereof shall be a sum equal to the aggregate of the prescribed fees of all the miners' rights comprised therein :
- (b.) It shall specify the name or style of the beneficial holder ; and also, in the case of a mining partnership, the full name of each member thereof at the date of issue :
- (c.) So long as it continues in force the beneficial holder shall be deemed to be the holder of all the miners' rights comprised therein ; and, in the case of a mining partnership, all persons who from time to time are members of the partnership shall, whilst members, be deemed to be jointly the holders of all the miners' rights ; and when any person ceases to be a member he shall cease to be a joint holder :
- (d.) The benefit of all the miners' rights comprised therein shall inure to the beneficial holder, without it being necessary in the case of a company for any shareholder therein, or in the case of a mining partnership for any member thereof, to be individually the holder of a miner's right.

As to Prospecting.

Prospecting Warrants and Prospecting Licenses.

Prospecting only
on open lands.
Ibid, sec. 66

68. The provisions hereinafter contained relating to prospecting shall apply only to Crown lands and to such other lands as are open for prospecting under this Act.

69. Subject to the provisions of this Act, the holder of a miner's right shall, whilst it continues in force, be entitled by virtue thereof to enter and prospect for gold and any other metal or mineral on any Crown land.

Holder of miner's right may prospect on Crown lands. 1898, No. 38, sec. 67

5 70. The Governor in respect of Native land, and the Warden in respect of any land other than Native land, may in his discretion grant to any person a prospecting warrant or a prospecting license under this Act, whether such land is inside or outside a mining district.

Prospecting license in respect of Native or other land. Ibid, sec. 68

10 71. Subject to the provisions of this Act, the holder of a prospecting warrant or a prospecting license shall, whilst it continues in force, be entitled by virtue thereof to enter and prospect on the land to which it relates for gold and any other metal or mineral :

Holder of warrant or license may enter and prospect. Ibid, sec. 69

15 Provided that the right conferred by this section shall in the case of a prospecting warrant be a non-exclusive right, and in the case of a prospecting license an exclusive right, to prospect on the land to which it relates.

72. (1.) Prospecting licenses may be of two classes—to wit, ordinary prospecting licenses and tunnel prospecting licenses.

Prospecting licenses, two classes. Ibid, sec. 70

20 (2.) The former class shall apply to prospecting generally, and the latter to prospecting on or near the line of any tunnel which the licensee is constructing or proposes to construct.

73. With respect to prospecting warrants, prospecting licenses, and the applications therefor, the following provisions shall apply :—

Provisions in respect thereto. Ibid, sec. 71

25 (a.) The application shall in each case be made in the prescribed manner, and shall relate only to such block or blocks of land as are specified therein.

30 (b.) In the case of a prospecting warrant the applicant shall not be required to mark out the land, nor shall any survey be necessary, but the land shall be identified with reasonable particularity by reference to its area, situation, and ownership.

(c.) In the case of a prospecting license, the applicant shall mark out the land in the prescribed manner, but no survey shall be necessary :

35 Provided that in the case of two or more applications for adjoining land, or of any question or dispute as to the actual land comprised in the application, the Governor or, as the case may be, the Warden to whom the application is made may, at the cost of the applicant, direct such survey to be made as he deems necessary.

40 (d.) The application shall, in the prescribed manner, be notified to the owners or occupiers of the land to which it relates, and to all other persons whose interests may be obviously affected.

45 (e.) In every case where the consent of the owners or occupiers of the land is required by law, the application shall not be granted until the Governor or, as the case may be, the Warden to whom the application is made is satisfied that such consent has been duly given.

50 (f.) The area of the land to which a prospecting license relates shall not exceed, in the case of a tunnel prospecting license, one hundred and fifty yards measured on each side of the middle

line of the tunnel along the whole length thereof, and in the case of an ordinary prospecting license one hundred acres :

Provided that in no case shall the land comprised in a tunnel prospecting license include any river or river-bed.

- (g.) A prospecting warrant or ordinary prospecting license shall 5
continue in force for one year, and shall not be renewed ;
but if on the expiry thereof the holder so desires he may
make a fresh application.
- (h.) A tunnel prospecting license shall continue in force for two 10
years, and may be renewed from year to year on such con-
ditions as are prescribed.
- (i.) There shall be payable in respect of a prospecting warrant a
fee of one pound, and in the case of a prospecting license
a fee computed at the rate of one shilling for every acre of
land to which the license relates, such fee being, however, in 15
no case less than one pound.
- (j.) Such fees shall, in the case of a prospecting warrant or an
ordinary prospecting license, be payable in advance ; and,
in the case of a tunnel prospecting license, shall be payable
annually in advance whilst the license or its renewal con- 20
tinues in force.
- (k.) The holder of a prospecting license shall, in such manner and
subject to such conditions as are prescribed, have the right
in priority to any other person of obtaining a license for any
mining privilege in respect of the land to which his prospect- 25
ing license relates :

Provided that, in the case of Native land, such right shall not be exercisable unless and until such land is acquired by His Majesty or becomes Native ceded land :

Provided further that in every case such right shall be 30
subject to the provisions of section eighty-nine hereof.

74. The conditions subject to which any prospecting warrant or license is issued shall in every case be deemed to include due provisions for—

- (a.) The vigorous and continuous prosecution of prospecting opera- 35
tions to the satisfaction of the Governor or, as the case may
be, the Warden by whom the warrant or license was issued,
and the prompt reporting to him of all mineral discoveries ;
and also
- (b.) Except in the case of unalienated Crown land, the filling-up 40
of all holes made whilst prospecting, and the prevention of
damage to standing bush by fire, or to live-stock by dogs
or otherwise, consequent on the prospecting operations ; and
also
- (c.) In the case of private land or land held under lease in per- 45
petuity, the lodging of sufficient security to the satisfaction
of the Governor or Warden as aforesaid for the fulfilment
of the conditions referred to in the last preceding paragraph
hereof.

75. With respect to every prospecting warrant or license, the fol- 50
lowing provisions shall apply :—

Conditions to
which issue of
prospecting warrant
or license subject.
1898, No. 38, sec. 72

Compensation to be
paid to owner for
damage.
Ibid, sec. 73

- (a.) The holder thereof shall pay to the owner and occupier of the land comprised therein, not being unalienated Crown lands, full compensation (according to their respective interests) for all damage that may be done to such land by the holder in prospecting pursuant to the warrant or license.
- (b.) The Warden shall, when necessary, assess from time to time the amount of such compensation in such manner as he deems just, and shall have jurisdiction to hear, determine, and enforce all claims in respect thereof.
- (c.) No prospecting warrant or license shall be granted unless and until the applicant therefor either has actually paid the afore-said compensation to the owner or occupier entitled thereto, or has entered into an agreement with such owner or occupier as to such compensation and the payment thereof, or has given security to the satisfaction of the Warden for payment of all claims for compensation as they arise and are determined.

76. Nothing contained in this Act, or in any prospecting warrant or license, shall authorise any person by virtue of a miner's right or any such warrant or license to enter upon—

Lands excepted from prospecting.
1898, No. 38, sec. 74

- (a.) Any land actually and lawfully used as a garden, orchard, vineyard, nursery, plantation, or ornamental pleasure-ground, or used or set apart as a cemetery; nor upon
- (b.) Any land whilst actually and lawfully under cereal or root crop; nor upon
- (c.) Any land situated within one hundred feet of any spring, artificial reservoir, dam, waterworks, or building; nor upon
- (d.) Any private land the owner or occupier whereof satisfies the Warden that the same is being prospected as vigorously and continuously as would be required in the case of a licensee under a prospecting license; nor upon
- (e.) Any private land which is being mined in manner hereinbefore provided in paragraph (e) of section fifty-four hereof; nor upon
- (f.) Any land which is being prospected in manner hereinbefore provided in paragraph (g) of section fifty-four hereof; nor upon
- (g.) Any land which is not open for prospecting without the consent of the owner or occupier,—
- unless in each case the written consent of the owner and occupier of such land is given.

Mineral Prospecting Warrants and Mineral Leases.

77. (1.) With the consent in writing of the Minister, the Warden within a mining district, or the Commissioner of Crown Lands outside a mining district, may grant to any person a warrant (hereinafter referred to as "a mineral prospecting warrant") authorising the holder to prospect for any one specified mineral over any Crown lands specified in the warrant not exceeding an area of ten thousand acres.

Mineral prospecting warrant.
1904, No. 33, sec. 12

(2.) Every application for a mineral prospecting warrant shall be accompanied by a deposit of fifty pounds for the first one thousand

acres applied for, with an addition of twenty-five pounds for every one thousand acres or part thereof applied for in excess of one thousand acres.

Duration of
warrant.
1904, No. 33, sec. 13

78. A mineral prospecting warrant shall, unless previously cancelled under section *eighty* hereof, continue in force for a period of five years from the date on which it was granted. 5

Rights of holder.
Ibid, sec. 14

79. The holder of any such warrant shall, while it continues in force, have the exclusive right to prospect for the mineral specified in the warrant on the land to which the warrant refers, and may enter upon such land for that purpose. 10

Conditions
of warrant.
Ibid, sec. 15

80. Every mineral prospecting warrant shall be held under such conditions as to employment of labour and development of the mine as may from time to time be prescribed by regulations, and may at any time be cancelled for the non-observance on the part of the holder of any such conditions. 15

Right of holder
of warrant to
select on lease.
Ibid, sec. 16

81. (1.) At any time while a mineral prospecting warrant is in force the holder shall, on complying with the provisions of this Act, have the right to a mineral lease of such part of the land to which the warrant relates not exceeding one thousand acres, and in one continuous block, as he may select. 20

(2.) Every application for a mineral lease shall be accompanied by a deposit of one pound for every acre of land applied for, not exceeding in the whole a deposit of one thousand pounds.

(3.) The mineral lease shall be for a term not exceeding sixty-three years, and shall be subject to the payment of such rent and to the observance of such conditions as may from time to time be prescribed by regulations. 25

Regulations.
Ibid, sec. 17

82. The Governor may from time to time, by Order in Council gazetted, make regulations—

(a.) Prescribing the rent and royalty payable, and the labour and other conditions under which any mineral prospecting warrant or mineral lease shall be granted; 30

(b.) Providing for the refund from time to time of sums (not exceeding in the whole the amount deposited, whether on application for the warrant or the lease) in proportion to the amount spent in complying with any such labour or other conditions; and 35

(c.) Prescribing the terms and conditions on which licenses or warrants may be issued under the next succeeding section hereof, and the amount that shall be expended each year in prospecting under any such license or warrant. 40

Provision if land
proves auriferous.
Ibid, sec. 18

83. (1.) Paragraph (i) of section one hundred and *three* hereof shall not apply to a mineral lease granted under section *eighty-one* hereof in so far as that, in the event of the land in respect of which such lease is granted, or any part thereof, being proved to be auriferous or to contain any mineral other than that specified in the lease, the lease shall not on that account be cancelled. 45

(2.) The Warden may from time to time, if it appears to him that the working of the land comprised in such lease for the purpose specified in the lease is not thereby prejudiced, grant licenses or warrants for prospecting for gold or other metal or mineral, or any other mining privilege, over any part of the land comprised in such lease: 50

Provided that, if at any time it appears to the Warden that the exercise of any such mining privilege is prejudicial to the working of the land by the lessee, the Warden may forthwith cancel such mining privilege, and the holder thereof shall have no right to compensation in respect of such cancellation either against the Crown or the lessee :

Provided further that the Warden may, if he thinks fit, grant to the holder of such mining privilege a fresh mining privilege over such part of the land comprised in the lease as will not be prejudicial to the working of the land by the lessee.

(3.) Nothing in this section shall authorise the inclusion in any such lease of any area in respect of which any mining privilege has been granted prior to the fifth day of November, one thousand nine hundred and four (being the date of the commencement of "The Mining Act Amendment Act, 1904"), and is now in force.

84. Nothing in this Act shall prevent the holder of a mineral prospecting warrant or of a mineral lease from applying for and obtaining any mining privilege for gold or any other metal or mineral over any part of the land specified in the warrant or lease, and such application shall have priority as if such holder were the discoverer within the meaning of the Second Schedule to this Act.

Holder of lease, &c., may apply for mining privilege. 1904, No. 33, sec. 19

85. Subject to the provisions of sections seventy-seven to eighty-six hereof, the provisions of this Act relating to prospecting warrants or licenses and to mineral licenses shall, so far as applicable, apply to mineral prospecting warrants and mineral leases.

Certain provisions of principal Act to apply. Ibid, sec. 20

86. The powers conferred under sections seventy-seven to eighty-five hereof on a Warden or Commissioner of Crown Lands may be exercised by the Governor in respect of Native lands.

Extension to Native lands. Ibid, sec. 21

As to Claims generally.

87. Subject to the provisions of this Act, all Crown lands which are situate in a mining district and are open for mining may, in the prescribed manner and subject to the prescribed conditions, be taken up for mining purposes in claims of any of the following classes, that is to say :—

Classes of claims. 1898, No. 38, sec. 75

Ordinary claims ;

Extended claims ;

Special claims.

88. (1.) In no case shall a claim of any description extend along or comprise more than one mile of the course of a stream or the foreshore of the sea-beach, such mile being measured in the case of the stream along the centre of the bed of the stream, and in the case of the foreshore along the foreshore at high-water mark :

Extent of claim along stream or foreshore. 1900, No. 64, sec. 3

Provided that, in the case of a dredging claim, the limit imposed by this section may, with the consent of the Minister, be extended to a total of not more than two miles where he is satisfied that with the original limit the area available for dredging is too small to justify the expense of acquiring a suitable dredge, and that the total area of the claim does not exceed fifty acres.

Special as to dredges.

(2.) The provisions of this section shall extend to amalgamated claims.

Priority of Right to take up Claims and other Mining Privileges in certain Cases.

Land resumed or
ceded to be available
after twenty-eight
days' notice in
Gazette.
1898, No. 38, sec. 77

89. In any of the following cases, that is to say,—
- (a.) Where land is resumed for mining purposes under this Act ; 5
or
 - (b.) Where Native or private land is ceded to His Majesty for mining
purposes ; or
 - (c.) Where gold is discovered on Crown land not within a mining
district, and in consequence of such discovery the land is
brought within a mining district,— 10
- the following provisions shall apply :—
- (d.) If the land is then within a mining district, it shall be available
for mining purposes under the provisions of this Act on and
after a day to be named by the Governor by notice published 15
in the *Gazette*, being not sooner than twenty-eight days after
the first publication of such notice in the *Gazette*.
 - (e.) If the land is not then within a mining district, the provisions
of the last preceding paragraph shall apply, subject to the
modification that the therein-mentioned *Gazette* notice shall 20
be published simultaneously with the Proclamation con-
stituting the mining district.
 - (f.) During the period between the first publication of the aforesaid
Gazette notice and the day on which the land becomes available 25
for mining purposes as aforesaid, claims and other mining
privileges as specified in the Second Schedule hereto may
be taken up and obtained on the land by the persons, in
the order of priority, and subject to the provisions in that
Schedule set forth.

Second Schedule.

Taking up Claims and other Mining Privileges.

Mode of taking up
ordinary alluvial
claim.
Ibid, sec. 78

90. Any person who desires to take up an ordinary alluvial claim 30
shall mark it out in the prescribed manner, and thereupon the claim
shall be deemed to be taken up if he possesses the qualification of a
miner's right :

Provided that if he so desires he may, either in the first instance
or at any time after taking up such claim, obtain a license therefor 35
under the next succeeding section hereof.

Claim to be marked
out and application
made.
Ibid, sec. 79

91. Subject to the provisions of the last preceding section hereof,
any person who desires to take up any claim or other mining privilege
shall, in the prescribed manner, mark it out and specify it, and make ap-
plication to the Warden for a license therefor, and the claim or other 40
mining privilege comprising the area specified in the license shall be
deemed to be taken up on the day named in the license, being the day
on which the license is granted.

Provisions as to
marking out mining
privileges.
1899, No. 29, sec. 4

92. In every case where the application is for a claim or other
mining privilege requiring to be marked out, the following provisions shall 45
apply :—

- (a.) The applicant shall mark out the land before filing the appli-
cation.
- (b.) For the purpose of marking out the land, surveying the same,
and posting notices thereon in connection with the applica- 50

tion, he may, by himself, his agents or workmen, enter on the land without the consent of the owner or occupier, and there do whatever is reasonably necessary for such purpose :

Provided nevertheless as follows :—

(i.) He shall do no damage that can possibly be avoided, and shall be liable for all damage actually done.

(ii.) In the case of private land he shall not enter without the consent previous of the Warden (who, before giving such consent, shall be satisfied that the owner or occupier has received at least twenty-four hours' previous notice in writing of the intention to apply therefor), nor (having obtained such consent) shall he enter unless he gives to the owner or occupier at least twenty-four hours' previous notice in writing of intention so to do, and enters within seven days after giving such notice.

(iii.) In any case where the Warden is satisfied that after the service of the notice referred to in the last preceding subparagraph, and before the applicant could with reasonable diligence have marked out the land and filed his application, some other person has anticipated him by filing an application in respect of the same subject-matter, then the Warden, if he thinks it equitable so to do, may, for the purpose of determining the respective priorities of the applications (but for no other purpose), treat the first-mentioned application as if it had been duly filed at the time of the service of the aforesaid notice, and pursuant to a previous marking-out.

(c.) Except with the consent of the owner or occupier, nothing in this section contained shall be construed to authorise the entry on land which is not open for prospecting or mining without such consent.

93. With respect to claims under the sea or on or under the foreshore, the following provisions shall apply :—

Claims under the sea or on the foreshore.
1898, No. 38, sec. 80

(a.) The license for any such claim may be granted whether the land comprised therein or any part thereof is within a mining district or outside the same, and for the purposes of this Act every such claim which is outside a district shall be deemed to be within the boundaries of the district the Warden whereof grants the license.

(b.) The area of the claim may extend seawards for such distance as the Warden thinks fit, and in the case of a special claim extending seawards the area may exceed one hundred acres.

(c.) The holder of such claim shall be liable to pay all rents, royalties, rates, and taxes in the same manner as though the whole area were above high-water mark and within a district as defined by "The Gold Duty Abolition and Mining Property Rating Act, 1890."

(d.) The license for any such claim may, if the Warden thinks fit, be granted subject to the condition, *inter alia*, that the licensee will not carry on mining operations within fifty feet of the surface of the ground.

(e.) If the claim in respect whereof the license is applied for comprises any land on or under such part of any foreshore as is

under the control of any Harbour Board, the license shall not be granted until the proposed conditions thereof have been submitted to such Harbour Board.

Boundaries of claim to be fixed and kept marked.

1898, No. 38, sec. 81

94. (1.) The dimensions and boundaries of every claim shall be finally fixed at the time when it is taken up; and it shall be the duty of the holder thereof, at all times thereafter whilst he continues to be such holder, to keep such boundaries marked in such distinctive manner as circumstances permit or regulations prescribe, and to point them out to any holder of a miner's right as soon as possible (in no case exceeding forty-eight hours) after being personally served with a notice in writing so to do. 5

Penalty in case of default.

(2.) If default is made in duly complying with any of the provisions of this section, the defaulter is liable to a penalty of five pounds; and, in the case of an ordinary alluvial claim held otherwise than under license, the holder of such miner's right may assume the claim to be unmarked, and may mark out and take up the same or any part thereof. 15

Any number of claims may be taken up.

Ibid, sec. 82

95. Any number of claims may be taken up by the same person or persons, either separately or conjointly :

Provided nevertheless as follows, that is to say :—

(a.) In respect of each such claim the prescribed conditions shall be duly fulfilled. 20

(b.) The total area of all such claims shall not exceed in the case of ordinary claims six acres, nor in the case of extended claims one hundred acres.

(c.) For each such claim, being an ordinary alluvial claim taken up otherwise than under license, a miner's right shall be held by each person taking up or at any time holding the same. 25

Rights and Liabilities of the Holders of Claims and other Mining Privileges.

Who to be deemed holder of claim, and until when.

Ibid, sec. 83

96. Every person by whom any claim or other mining privilege is lawfully taken up, and every person lawfully deriving through him, shall, according to his share and interest therein, be deemed to be the holder thereof until, in the case of an ordinary alluvial claim held otherwise than under license, it is forfeited or abandoned, or, in the case of any claim or other mining privilege held under license, the license therefor is determined by effluxion of time or by earlier surrender, or forfeiture, or abandonment, under the respective provisions in that behalf herein-after contained. 30

Holder entitled to exclusive occupation, and to privileges thereof.

Ibid, sec. 84

97. Subject to the provisions of this Act, every holder of a claim shall, whilst he continues to be the holder thereof, be entitled, according to his share and interest therein, to the exclusive occupation thereof for mining purposes, and also to all gold within the boundaries thereof, and also to such other privileges in respect thereof as are prescribed : 40

Provided that in no case shall he, as such holder,—

(a.) Be entitled to any metal or mineral other than gold therein, or to mine for or remove the same; nor 45

(b.) Have any riparian rights in respect of any watercourse on or adjoining such claim.

Labour conditions.

Ibid, sec. 85

98. Every claim shall be deemed to be taken up and shall be held subject to the labour conditions following, that is to say :— 50

(a.) That the holder thereof will *bona fide* and continuously work the same by carrying on mining operations for gold thereon with reasonable diligence and skill, and will commence such operations,—

(i.) In the case of an ordinary alluvial claim, within forty-eight hours after the day on which it is taken up; and

(ii.) In the case of an ordinary claim other than an ordinary alluvial claim, within such number of days, not exceeding seven, as the Warden fixes when granting the license; and

(iii.) In the case of an extended claim, within such number of days, not exceeding fourteen, as the Warden fixes when granting the license; and

(iv.) In the case of a special claim, within such time as the Warden fixes when granting the license :

Provided that in cases (ii.), (iii.), and (iv.) the holder shall, by himself or some person on his behalf, remain in actual and effective occupation of the claim between the time of the taking-up thereof and the commencement of operations thereon; and that in the case of a special claim for dredging the holder shall commence and prosecute the construction or acquisition of a dredge for working the claim (but not necessarily on the claim) within such time or extended time as the Warden fixes at the time of granting the license or at any subsequent time.

(b.) That he will at all times employ in such operations such number of workmen as is prescribed by regulations in that behalf :

Provided that on application in that behalf the Warden in his discretion may from time to time reduce the prescribed number of workmen to such extent and for such period as he thinks fit, where he is satisfied that the prescribed number cannot be reasonably and advantageously employed :

Provided further that when such period exceeds six months the previous consent of the Minister shall be necessary :

Provided further that the reduced number of workmen shall in every case be wages-men. 1902, No. 22, sec. 4

99. The last preceding section hereof shall be construed subject to the following provisions :—

(a.) The Warden, in the case of a machine-site or other mining privilege to be used in working a claim, may from time to time, on application in that behalf, extend the date of the commencement of works on such mining privilege for such period as he thinks fit, having regard to the nature and extent of the operations on the claim.

(b.) In every case where two or more claims or other mining privileges contiguous to one another, or worked in conjunction with one another, are held by the same person or by co-partners in mining, it shall be a sufficient compliance with the aforesaid labour conditions if the total number of workmen employed on any one or more of such claims or other mining privileges, taken collectively, is not less than the total number prescribed for all such claims taken separately :

Provisoes.

1898, No. 38, sec. 86

Protection of machine-sites, &c.

1904, No. 33, sec. 5

As to contiguous claims held by same person.

1902, No. 22, sec. 5

Number of workmen on dredging claims.

1898, No. 38, sec. 80

Labour conditions as to dredging claims.

1899, No. 29, sec. 24

Labour conditions, certain works included.

1898, No. 38, sec. 86

Proportion of workmen to expenditure of capital.

Rent of extended and special claims.

1898, No. 38, sec. 87

1900, No. 64, sec. 4

Number of miners' rights when area is Native ceded land.

Provided that where the total area of such claims exceeds four hundred acres the number of workmen to be employed for every acre in excess of four hundred acres shall be such as is prescribed by regulations.

(c.) In the case of a dredging claim the number of workmen required to be employed in any day shall not exceed the proportion of seven workmen for each dredge : 5

(d.) For the purpose of complying with the aforesaid labour conditions in the case of a dredging claim, it shall not be necessary to use more than one dredge, except where the Warden otherwise orders, having regard to the area of the claim and the facilities for working it : 10

Provided that no order shall be made under this paragraph save on the report of an Inspector, and after the holder of the claim has had an opportunity of showing cause against the order. 15

(e.) For the purpose of compliance with the aforesaid labour conditions there shall be included all work done in the construction or erection of machinery, or in preparations indispensable to the actual commencement of mining operations, whether such work is done on or in connection with the claim itself or on or in connection with any special site or race or dam held by the claimholder for the purpose of facilitating mining operations on such claim. 20

(f.) To the extent of one-half of the number of workmen which should otherwise be employed, the expenditure of capital shall be equivalent to the employment of workmen in the proportion of one man for every thousand pounds of capital which, to the satisfaction of the Warden, has been expended by the holder of the mining privilege in plant or permanent works for the purposes of such privilege. 25

100. With respect to every extended or special claim, the following provisions shall apply :—

(a.) The licensee of such claim shall, during the term of the license, pay the rent next hereinafter mentioned. 35

(b.) In respect of so much of the area as is other than Native ceded land, such rent shall, for every acre or fraction of an acre, be at the rate of—

(i.) Two shillings and sixpence per year for the period elapsing between the date of the license and the last day of June or December first ensuing after the expiration of one year from the date of the license ; 40

(ii.) Five shillings for the next succeeding year, and seven shillings and sixpence for each subsequent year during the term of the license. 45

(c.) In respect of so much of the area as is Native ceded land the rent shall be at the rate of one shilling per annum for every acre or fraction of one acre, and the licensee shall also take out in his own name and hold a miner's right relating to the Native ceded land in respect of every person employed in mining on such area, whether on wages or as a tributer or a contractor : 50

Provided nevertheless as follows :—

(i.) It shall be sufficient if the total number of miners' rights so taken out and held is at no time less than the total number of persons for the time being so employed.

(ii.) The owners of such Native ceded land or a majority of them may, by memorandum in writing lodged in the Warden's Court, certify their consent that, for the purpose of determining the amount to be paid by the licensee, such land shall be deemed to be other than Native ceded land, and from and after the lodging of such memorandum the foregoing provisions as to rent and miners' rights shall cease to apply to such land, and in lieu thereof the same rent shall be payable as in the case of other than Native ceded land.

101. In every case where a claim comprises land over which any person possesses any validly created right to cut, remove, or float timber, the following special provisions shall apply :—

Special provisions
as to mining on
timber lands.

1838, No. 38, sec. 88

(a.) Such claim shall be deemed to be taken up and shall be held subject to the condition that the holder thereof, and all persons deriving title through him, will so carry on mining operations as not to prevent the reasonable exercise of any of the aforesaid rights.

(b.) If any question or dispute arises under the last preceding paragraph as to what is the reasonable exercise of the aforesaid rights, the Warden shall decide.

(c.) In deciding such question or dispute the Warden, if he deems it equitable so to do, may authorise the mining operations to be carried on in such manner and subject to such conditions as he prescribes, having regard to the special circumstances of the case and the nature of the aforesaid rights.

(d.) The Governor may from time to time make such regulations as he deems necessary for the purpose of giving effect to this section, and of enabling the mining and timber industries to co-exist on the same land.

102. (1.) When granting a license for a claim or other mining privilege, or at any time thereafter during the currency of the license, or, in the case of an ordinary alluvial claim held otherwise than under license, at any time whilst it is held, the Warden may impose on the licensee or holder such conditions as he thinks fit in order to prevent injury to the surface of the land comprised in the claim or other mining privilege, or to anything thereon, in any of the following cases, that is to say :—

Warden may impose
conditions to prevent
injury to surface of
land.

Ibid, sec. 89

(a.) If the land is in a borough ; or

(b.) If buildings are erected or likely to be erected on the land ;

or

(c.) If the land is *bona fide* used or is likely to be so used for a yard, garden, orchard, cultivated field, water-race, dam, burial-ground, or reserve.

(2.) Such conditions may include the condition that the licensee or holder will not, without the previous approval in writing of the Warden and consent in writing of the person in lawful occupation of the surface, carry on mining operations within such distance of the surface, as the Warden thinks fit to prescribe, such distance being not less than fifty

feet in the case of buildings, races, and dams, and not less than thirty feet in any other case.

(3.) All such conditions heretofore imposed by a Warden are hereby declared to have been validly imposed.

Mineral Licenses.

5

Licenses for mining other minerals than gold, subject to subsisting prospecting licenses.

1898, No. 38, sec. 90

103. Subject to the provisions of this Act, and on application in that behalf, the Warden may grant mineral licenses authorising the licensees to occupy any Crown land within or outside a mining district for the purpose of mining for any specified metal or mineral other than gold; and, with respect to every such license, the following special provisions shall apply :—

10

(a.) If any portion of the land applied for is comprised in any subsisting prospecting license, and the applicant is other than the holder thereof, the application shall not be granted as to the portion aforesaid unless and until such holder has, in the prescribed manner, been afforded an opportunity of applying for and obtaining a mineral license in respect of such portion. 15

(b.) If he does so apply, his application shall have priority; if he declines or neglects so to do, or fails to duly take up the mineral license when granted, his prospecting license shall be deemed to be cancelled as to the portion aforesaid. 20

Area.

(c.) The area of the land comprised in the mineral license shall not exceed three hundred and twenty acres.

Rent.

(d.) The licensee shall for every year of the term of the license pay rent at the rate of two shillings and sixpence for every acre or fraction of an acre of the area comprised in the license. 25

Royalty.

(e.) The licensee shall also pay, in respect of all the specified metals and minerals raised pursuant to the license, such royalty as is specified therein, being not less than one hundredth nor more than one twenty-fifth of their value at the pit's mouth. 30

(f.) The royalty shall be computed in such manner and paid at such times as are prescribed, and all sums paid in respect of royalty during any period shall, to the extent of the rent payable for the same period, be deemed to be in or towards satisfaction of such rent. 35

(g.) All rent and royalties received in respect of the license shall be deemed to be goldfields revenue or land revenue, according as the land comprised therein is situate within or outside of a mining district, and in any case where the license comprises both land within and land outside of a mining district the rent and royalties shall be apportioned between goldfields revenue and land revenue in such manner as is prescribed. 40

(h.) The licensee shall not be entitled to any gold, nor to any other metal or mineral than that specified in the license, nor shall he mine for or remove the same. 45

Cancellation if land auriferous.

(i.) The license shall be deemed to be granted subject to the condition that if and as often as it is found to the satisfaction of the Warden that any portion of the land comprised therein is auriferous, or contains any other metal or mineral than 50

that specified therein, such portion may, in his discretion, be made available for mining purposes, either by cancelling the license as to such portion, or otherwise as the Warden thinks fit, or as regulations prescribe :

5 Provided that with respect to the portion to be made available as aforesaid the provisions of section eighty-nine hereof, and the Second Schedule hereto, shall, *mutatis mutandis*, apply, subject nevertheless to the following modifications, that is to say :—

10 (i.) The licensee shall be deemed to be the proprietor ;

(ii.) The person on whose application the land is made available as aforesaid shall be deemed to be the applicant ;

15 (iii.) Where the land is made available for mineral leases in respect of any specified mineral, the right of priority conferred by the said Schedule shall be deemed to relate to a mineral lease in respect of such mineral ;

(iv.) Such other modifications as are prescribed for the purpose of giving full effect to this paragraph.

20 (j.) The license shall contain due provisions—

Conditions of
license.

For securing the payment of all rent and royalty ;

For insuring the regular, proper, and efficient carrying on of mining operations, and for the inspection of the mine and workings ;

25 For cancelling the license on breach of any condition to be performed or observed by the licensee ; and

For insuring compliance with any other conditions the Warden may deem it necessary to impose.

104. (1.) Notwithstanding anything in paragraph (c) of the last preceding section, the Warden may grant a mineral lease authorising the lessee to occupy any part of the land described in the Third Schedule hereto, not exceeding one thousand acres and in one continuous block, for the purpose of mining for any specified metal or mineral other than gold.

Mineral lease may
be granted in Nelson
Land District.
1902, No. 22, sec. 2

35 (2.) The Warden shall not grant the lease unless and until the Minister has consented thereto and notified such consent in writing on the instrument of lease. Any lease granted shall contain a provision that the State may purchase at a fair value, to be ascertained in the manner set forth therein.

40 (3.) Paragraph (2) of the last preceding section shall not apply to a lease granted under this section, so that, in the event of the land in respect of which a lease under this section is granted, or any part thereof, being proved to be auriferous or to contain any metal or mineral other than that specified in the lease, the lease shall not on that account be cancelled.

45 (4.) The Warden may from time to time, if it appears to him that the working of the land comprised in such lease for the purpose specified in the lease is not thereby prejudiced, grant any mining privilege over any part of the land comprised in such lease :

50 Provided that, if at any time it appears to the Warden that the exercise of any such mining privilege is prejudicial to the working of the land by the lessee, the Warden may forthwith cancel such mining privilege, and the holder thereof shall have no right to compensation in respect of such cancellation either against the Crown or the lessee.

(5.) Nothing in this section shall authorise the inclusion in any such lease of lands held in freehold by any person, or any area in respect of which any mining privilege has been heretofore granted and is now in force.

Races and other Mining Privileges in respect of Water.

5

Classes of licenses
in respect of water.
1898, No. 38, sec. 91

105. Subject to the provisions of this Act and of Part XI. of "The Public Works Act, 1894" (which said Part XI. is hereby incorporated herewith), the Warden, on application in that behalf, may, in respect of Crown lands, Native lands, or private lands, grant mining privileges of any of the following descriptions in respect of water :—

10

Water-race licenses ;

Tail-race licenses ;

Main tail-race licenses ;

Dam licenses ;

Drainage-area licenses ;

15

Such other descriptions of licenses as are prescribed.

Water-race license.
Ibid, sec. 92

106. A water-race license shall, during its currency, entitle the licensee to cut, construct, and maintain a water-race, or use as a water-race any natural channel, on the land specified in the license ; and also, by means of such race, to take, divert, and use a specified number of sluice-heads of water from any watercourse on or running through or adjoining such land, in order to supply, sell, or dispose of such water for any of the purposes following, that is to say :—

20

Purposes for which
water may be used.

(a.) Mining operations ;

(b.) Domestic purposes ;

25

(c.) Irrigation ;

(d.) Any industrial pursuit ;

(e.) Feeding or driving machinery, whether used for mining purposes or not ;

(f.) Constructing, maintaining, and supplying any tank, reservoir, railway, or tramway, or any houses or works connected therewith ;

30

(g.) Any other purposes authorised by regulations or by the Warden :

1903, No. 26, sec. 5

Provided that no application to a Warden for the use of more than forty heads of water shall be granted except with the consent in writing of the Minister.

35

Tail-race license.
1898, No. 38, sec. 93

107. A tail-race license shall, during its currency, entitle the licensee to cut, construct, maintain, and use a race in order to carry off water, tailings, sludge, and other refuse from mining operations, or to serve as a ground sluice or race for saving gold :

40

Provided that the licensee shall not be entitled to treat any portion of such tail-race as a ground sluice or race for saving gold excepting such portion as is distinguished for that purpose with reasonable particularity both in the application and the license.

Main tail-race
license.
Ibid, sec. 94

108. A main tail-race license shall, during its currency, entitle the licensee to cut, construct, and maintain a race in order to carry off from such claims or tail-races as are specified in the license any water, tailings, sludge, or other refuse from mining operations.

45

Dam license.
Ibid, sec. 95

109. A dam license shall, during its currency, entitle the licensee to excavate, construct, maintain, and use a dam for the storage of water for any of the purposes for which a water-race license may be granted :

50

Provided that, except in a mining district, no such dam shall be constructed across a stream.

110. A drainage-area license shall, during its currency, entitle the licensee to the exclusive right to collect and store the water that naturally lies within, or falls upon, or percolates through the area of land specified in the license (hereinafter referred to as "drainage-area").

Drainage-area license.
1898, No. 38, sec. 96

111. (1.) For the purposes of the construction, maintenance, and improvement of the race or dam for which any such license as aforesaid is granted, and the deposit of soil and other matter removed therefrom, such license shall, during the currency thereof, entitle the licensee to occupy the land forming the course of such race or, as the case may be, the site of such dam, and also such other land as is specified in that behalf in the license.

Power to occupy land forming course of race or site of dam.
Ibid, sec. 97

(2.) The area of such other land shall not exceed,—

15 (a.) In the case of a race, a strip twenty feet wide along the entire length of the course of the race, and measured either wholly on one side of its course or partly on one side and partly on the other, but so nevertheless that at no point in the course shall the total width measured on both sides exceed
20 twenty feet, or such greater width as the Warden may prescribe; and

(b.) In the case of a dam, a strip twenty feet wide measured on each outer face of the dam.

112. In every case where the application for any such license relates to private land the applicant shall publish a copy of the application twice in a newspaper circulating in the district, and once in the *Gazette*, the publication in the *Gazette*, and also the first publication in the newspaper, being made not later than fourteen clear days before the day of hearing.

Mode of application when license relates to private land.
Ibid, sec. 98
1899, No. 29, sec. 4

30 113. In every case where any such application relates to private land, or where any person's interests may be affected by the grant of the proposed license, or the exercise by the proposed licensee of the rights to be conferred on him by such license, the following special provisions shall apply:—

Special provisions as to applications.
1898, No. 38, sec. 99

35 (a.) Any owner or occupier of such private land, or any person whose interests are affected as aforesaid, may, in the prescribed manner and within the prescribed period, object to the grant of the license.

Objections.

40 (b.) In such case the Warden in his discretion may postpone the application until he has received from a surveyor, or other competent person appointed by the Warden in that behalf, a report as to the applicant's compliance with the prescribed conditions, and also as to the reasonableness of the objections.

Report on application.

45 (c.) The costs of and incident to such report shall in the first instance be paid by the applicant, but if after considering the report the Warden is of opinion that the objections were frivolous he may order the costs to be paid in whole or in part by the objector, and the same shall be payable accordingly in terms of such order. The Warden may require the applicant to
50 deposit security for such costs before they are incurred.

Cost thereof.

Compensation.

(d.) Every owner or occupier of such private land shall be entitled to full compensation from the licensee for all actual and prospective loss or damage suffered by reason of the grant of the license or the exercise by the licensee of the rights thereby conferred on him.

5

(e.) Such compensation shall be payable by the licensee before he proceeds to act in any way under his license, and the amount thereof shall in each case be determined in such manner as is agreed on between the licensee and the claimant :

Provided that if such amount is not determined as aforesaid within one month after the issue of the license, the Warden, at the request of any of the parties concerned, may, with two Assessors, one to be appointed by each of the parties, proceed to determine the same in such manner as they think fit, and such determination shall be final and conclusive.

10

15

(f.) For the purposes of this section the owner or occupier shall not require the qualification of a miner's right.

Procedure when
compensation to be
determined by
Warden and
Assessors.

1899, No. 29, sec. 7

114. In every case where the amount of such compensation is to be determined by the Warden and two Assessors, the following special provisions shall apply :—

20

(a.) If any party fails or neglects to appoint an Assessor within seven days after being requested by the Warden so to do, the Warden may appoint an Assessor in his stead.

(b.) If the Assessor appointed by any party or by the Warden dies or resigns, or refuses to act, or becomes incapable of acting, the party or Warden who appointed him may appoint an Assessor in his stead.

25

(c.) The Warden shall fix and direct the procedure for determining the amount of the compensation, and shall also fix the reasonable costs of the proceedings (including Assessors' fees), and direct how and by whom the same shall be paid.

30

(d.) The amount of the compensation shall be determined by the Warden and Assessors, or by a majority of them, and such determination shall be final and conclusive :

35

Provided that if a majority cannot agree, then the Warden shall notify the parties to that effect, whereupon the Assessors shall be deemed to be discharged, and each party shall appoint a fresh Assessor.

(e.) The fresh Assessors, with the Warden, shall proceed to determine the amount of the compensation in the same manner and subject to the same provisions as in the case of the original Assessors.

40

(f.) The provisions of this section shall apply to claims for compensation pending or not finally disposed of at the time of the commencement of this Act.

45

Conditions of grant
of drainage-area
license.

1898, No. 38, sec. 100

115. With respect to every drainage-area and the license therefor, the following provisions shall apply :—

(a.) The drainage-area comprised in the license shall in no case include any stream.

50

(b.) The license shall in no case be granted except to the holder of a license for a water-race or dam, and for the purpose of supplying water to such race or dam :

Provided that in the case of applications for both descriptions of licenses they shall be dealt with simultaneously, and for that purpose one application may be postponed until the other is ready to be dealt with.

- 5 (c.) Notwithstanding the existence of a drainage-area license, the drainage-area comprised therein shall continue to be available for mining, leasing, occupation, and all other the purposes and privileges of this Act, in the same manner and to the same extent in all respects as if no such license had been
10 granted :

Provided that the previous consent of the Warden shall in each case be necessary, and that in granting such consent he shall impose such terms and conditions as he deems expedient in order to preserve to the licensee of the drainage-area the reasonable exercise of the rights conferred by his
15 license.

116. Every license for any mining privilege in respect of water shall be deemed to be granted and shall be held subject to the provisions following, so far as they are applicable thereto, that is to say :—

Conditions of license
in respect of water.
1898, No. 38, sec. 101

- 20 (a.) In any case where the licensee of any race desires to alter or extend the course of the race the same steps shall be taken and the same provisions shall apply as in the case of an original application for a license :

Alterations and
extensions.

- 25 Provided that, in lieu of issuing a fresh license in respect of such alteration or extension, the Warden, if he thinks fit so to do, may indorse the particulars thereof on the original license : such indorsement shall be registered, and shall thereupon have the same effect as if it formed part of the original license :

- 30 Provided further that for the purposes of this paragraph the grant of a right to an increased supply of water shall not be deemed to be an alteration or extension of the course of the race.

- 35 (b.) The licensee of any race shall at all times during the term of his license keep such race in good repair, and also erect and maintain to the satisfaction of the Warden a sufficient bridge at every point where any road in ordinary use at the time of the construction of such race crosses such race, or where, in the opinion of the Warden, a bridge is reasonably
40 required for public or private convenience.

Bridges.

- 45 (c.) In any case where the water flowing in any watercourse is insufficient to fully supply all the races lawfully connected therewith, the owner of any water-right in respect of such watercourse shall, on receipt of a written notice from the owner of a superior water-right stating that the supply of water in respect of such superior right is less than he is
50 entitled to, forthwith cease to use the water or so much thereof as is required in order to make up the full supply in respect of such superior right, and if he fails or neglects so to do he shall be deemed to be wrongfully using such water, in which case the owner of such superior right shall be entitled to recover damages for loss of water, and also

Priority of right.

	to restrain by injunction the owner wrongfully using the same.	
Reservation.	(d.) No license shall be deemed to confer any right to the use of water as against any person requiring a reasonable quantity for his own domestic use ; and if any question arises as to what is a reasonable quantity the Warden shall decide.	5
Commencement of work.	(e.) Subject to the provisions as to protection hereinafter contained, the construction of a race or dam shall be commenced within two months after the issue of the license therefor, and shall thereafter be continued with reasonable diligence until the work is completed :	10
Warden may extend date of commencement of work.	Provided that, in the case of a race or dam which is to be used for working a claim, the Warden may from time to time, on application in that behalf, extend the date of the commencement of its construction for such period as he thinks fit, having regard to the nature and extent of the operations on the claim.	15
Limiting use as to quantity, or for certain months.	(f.) The license for a water-race or dam may be granted subject to the condition that the water therein shall be used only in such quantities or during such months in each year as are specified in the license, and in such case non-user in terms of such conditions shall not be ground of forfeiture or evidence of abandonment :	20
In certain cases Warden may authorise greater use of water.	Provided that the Warden in his discretion may from time to time, on application on that behalf, but subject in every instance to all existing priorities and rights of other persons, authorise the licensee to use the water in greater quantity or at other times than those specified in the license.	25
Persons may use surplus of water on certain terms.	(g.) In any case where the water available under any mining privilege granted under this Act in respect of water exceeds the quantity reasonably required by the person entitled thereto, the surplus shall be available for use by any other person on such terms as to price and otherwise as are agreed on between such person and the persons entitled, or as, in the absence of agreement, are fixed by the Warden on the application of any of the persons concerned.	30 35
License may be revoked.	(h.) In any case where the Governor is satisfied that the water diverted or used under any license is required by <i>bona fide</i> settlers, or for any public use or purpose, he may revoke such license and cause such water to be restored to its natural channel.	40
Compensation.	(i.) In such case the licensee of the license so revoked, and also every person, including such licensee, whose mining or other lawful operations are injuriously affected by such revocation, shall be entitled to full compensation from His Majesty for all loss or damage thereby sustained.	45
Fixed quantity of water to be allowed to flow in natural bed for public use.	117. In any case where any race or dam is fed by a watercourse, the following provisions shall apply :—	
1898, No. 38, sec. 102	(a.) On the application of any person being the owner or lawful occupier of any land on, through, adjoining, or within three chains of which such watercourse exists or runs, the Warden	50

may order that any specified quantity of water, not exceeding one sluice-head, shall be allowed to flow in the natural channel or bed of such watercourse for public use.

(b.) The licensee or holder of such race or dam shall obey such order forthwith upon being served therewith or with a duplicate thereof.

(c.) Such order shall be subject to appeal at the instance of the licensee, holder, or any other person aggrieved thereby.

Other Provisions relating to Mining Privileges in respect of Water.

118. On application duly made to him on that behalf in manner provided by section one hundred and sixty-five hereof, the Warden may change the purposes for which any water-race license is held for any other specified purpose or purposes for which such license may have been granted under this Act, subject to the proviso contained in paragraph (h) of section one hundred and fifty-five hereof, and subject also in every case to the approval of the Minister :

Water-race license may be granted temporarily for other purposes.

1903, No. 81, sec. 5

Provided that all such grants shall be subject to the condition that the right granted may at any time, if the water is required for mining purposes in the district, be revoked and restored to its original position.

119. In every case where a watercourse is, in whole or in part, situate within or on the boundary of any mining privilege, howsoever or whensoever acquired, the holder of such mining privilege shall not as such holder—

Discharge of tailings into water course.

1899, No. 29, sec. 30

(a.) Be entitled to prevent the holder of any other mining privilege, howsoever or whensoever acquired, from discharging into such watercourse any tailings, *débris*, or waste waters resulting from his mining operations in connection with such other mining privilege ; nor

(b.) Have any right of action against the holder of such other mining privilege by reason of such tailings, *débris*, or waste water being so discharged.

120. In any case where a water-race acquired under this or any former Mining Act is connected with or fed by any watercourse in a district other than the Hauraki District, the following provisions shall apply :—

No claim for discharge of tailings into watercourse above race.

1898, No. 38, sec. 103

(a.) Tailings and other *débris* or waste water from mining operations may be discharged into such watercourse at a distance of not less than five chains above the head of such race, but so nevertheless as not to prevent the flow of water therein or therefrom, nor to directly injure such race otherwise than by polluting the water.

(b.) The licensee or holder of such race shall have no claim to damages or compensation by reason of tailings being discharged as aforesaid, nor by reason of the water in such race or watercourse being polluted by any such mining operations.

121. Notwithstanding anything hereinbefore contained, it is hereby declared as follows :—

Water-supply of city or town not to be polluted.

Ibid, sec. 104

(a.) It shall not be lawful to pollute the water in any water-race, or in any watercourse with which such race is connected or

by which it is fed, if such race is held by a local authority for the purpose of supplying water to the inhabitants of any city, town, or township.

- (b.) The last preceding paragraph shall not apply in the case of any watercourse duly proclaimed a watercourse into which tailings, mining *débris*, or waste water might be discharged, nor in the case of any tail-race discharging into any watercourse below the point at which any water-race is connected with or fed by such watercourse. 5
- (c.) In any case where the Warden is of opinion that it would be against the public interest to grant a license for a tail-race discharging into any watercourse, he may, in his discretion, refuse to grant the same, whether the application therefor is opposed or not. 10
- (d.) On the recommendation of the Warden the Minister may, by notice in the *Gazette*, withdraw any watercourse from the operation of this or the last preceding section hereof. 15

Tailings not to be discharged into river within five chains of bridge.

1898, No. 38, sec. 105

122. (1.) Notwithstanding anything to the contrary contained in this or any other Act, or in any Proclamation or Order in Council issued thereunder respectively, it shall not be lawful for any person to discharge or cause to be discharged any tailings, mining *débris*, or waste waters into any watercourse at any point or place within five chains from any bridge (or such shorter distance as in special instances may be authorised in writing by the Minister for Public Works or the local authority, as the case may be, having the control of such bridge) in such manner as to directly injure any such bridge. 20 25

(2.) For the purposes of this section "bridge" means any bridge, or the approaches thereto, open to the public or used for any railway or public tramway, or in connection with any public work whatsoever.

(3.) Every person committing a breach of any of the provisions of this section is liable as for committing an injury to a public work, and may be proceeded against accordingly. 30

Water-race Licenses under former Mining Acts.

Special provisions saving water-race licenses issued under former Mining Acts.

1900, No. 64, sec. 2
1901, No. 60, sec. 11
1903, No. 81, sec. 6

123. Every water-race license granted under any former Mining Act, and validly subsisting on the first day of February, one thousand eight hundred and ninety-nine (being the date of the commencement of "The Mining Act, 1898"), shall (if still subsisting at the date of the commencement of this Act) be deemed to have been lawfully granted under this Act, and the provisions hereof shall accordingly apply, subject, however, to the following special modifications:— 35 40

- (a.) The licensee's priorities and other rights in respect of the race and the water (including his right to use, sell, or otherwise dispose of the water) shall continue as they were immediately prior to the date first aforesaid.
- (b.) If the license was granted for a specified term of years with provisions for renewal, those provisions shall continue to apply. 45
- (c.) If the license was granted for the term of one year, or without reference to any specified term of years, but in either case with provisions for annual renewal by renewal of registration, or otherwise, those provisions shall not continue to 50

apply, but, in lieu thereof, the license shall be deemed to have been granted for a term of years commencing on the date of the original grant and expiring on the first day of February, one thousand nine hundred and forty-one (being forty-two years from the date first aforesaid).

- (d.) The provisions of this Act relating to exchange of title shall apply.
- (e.) It shall not be necessary to renew the registration or to hold a miner's right.

Water-races belonging to Local Authorities.

124. Without in any way affecting the provisions of "The Public Works Act, 1894," relative to water-races, the following provisions shall apply in the case of any local authority:—

Local authority may hold water-race.
1898, No. 38, sec. 106

- (a.) In any mining district the local authority may, by purchase, application, or otherwise, acquire and hold, or having heretofore acquired (whether in its own name or in the name of any person as trustee for the local authority) may hold, any license or any mining privilege in respect of water for any purpose authorised under this Act, or for the purpose of enabling such authority to more effectually exercise all such rights to the use of water, or the construction of works connected therewith, as have been or may hereafter be vested in such authority by virtue of any Act or Order in Council.

- (b.) Subject to the modifications in this section hereinafter contained, every such license shall confer upon the local authority the same rights, powers, and remedies, and impose upon it the same liabilities, as in the case of a private person.

Rights and liabilities.

- (c.) The local authority may, by resolution, delegate to a committee of not less than five nor more than seven persons all or any of the powers conferred upon such local authority by this Act or by any such license:

Delegation of powers to committee.

- (d.) A notification in the *Gazette*, purporting to be signed by the Chairman or Mayor of such local authority, shall be sufficient evidence of the appointment of such committee and of the powers conferred upon it.

- (e.) Subject to prescribed regulations, such committee may regulate its own procedure.

- (f.) It shall not be necessary for the local authority or any such committee to take out or hold any miner's right in order to enable it to avail itself of the provisions of this section.

- (g.) Every such license, whilst held by the local authority or any such committee, shall be exempt from the provisions of this Act relating to the payment of fees and the liability to forfeiture or abandonment.

- (h.) It shall not be necessary to renew any such license, but it shall continue in force (notwithstanding the expiration of the nominal term thereof) until the local authority by resolution relinquishes the same or, on the recommendation of the Warden, the Minister, by notice in the *Gazette*, declares the license to be cancelled.

Renewal of license unnecessary.

Appropriation of
receipts.

Price of water.

Alienation
forbidden.

Water-race vested
in local body or
county may be
revested in Crown.
1898, No. 38, sec. 107

- (i.) The local authority shall have authority and control over the entire length of any water-race held by it, notwithstanding such race may extend beyond the limits of the district within which such local authority has jurisdiction.
- (j.) The local authority shall cause a separate account to be kept of the receipts and expenditure of any mining privilege in respect of water; and the net surplus receipts shall be appropriated exclusively for the maintenance or extension of the mining privilege from which they are derived, or for acquiring, constructing, or maintaining other mining privileges in respect of water within the same mining district, or for the development of the mining industry therein.
- (k.) The local authority shall, in respect of any mining privilege in respect of water held by it, fix by special resolution the price payable for water supplied therefrom. Such price shall be fixed with the approval of the Governor, and shall not be altered without his consent; and all moneys payable in respect thereof may be recovered by the local authority as a debt by suit in the Warden's Court.
- (l.) Except in the case of security for loans under Part II. of "The Local Bodies' Loans Act, 1901," it shall not be lawful for the local authority holding any mining privilege in respect of water to in any way encumber or transfer the same; and every encumbrance or transfer in breach of this section shall be absolutely void.
125. (1.) In any case where at any time the Governor,—
By Order in Council made under section six of "The Local Bodies' Finance and Powers Act, 1885," has vested any water-race in any local body or in any number of local bodies united for that purpose; or
By Proclamation made under section two hundred and seventy-four of "The Public Works Act, 1894," or any Act by that Act repealed, has vested any water-race in the Corporation of any county, or jointly in the Corporation of two or more counties,—
he may at any time in like manner, but in every case with the consent of the local bodies or Corporations concerned, revest such water-race in the Crown.
- (2.) From the date of the gazetting of the revesting Order in Council or Proclamation made in that behalf the water-race therein mentioned shall revest in the Crown; and at any time thereafter the Governor may, by Order in Council, dispose of the same by public tender, as provided by "The Local Bodies' Finance and Powers Act, 1885."
- (3.) No compensation shall be payable in respect of the revesting of any water-race in the Crown under the provisions of this section.

As to setting apart Watercourses for Discharge of Tailings.

Watercourse may
be set apart for
discharge of tailings.
Ibid, sec. 108
1899, No. 29, sec. 22
(3)

126. On application made to him in that behalf by any person, the Governor in his discretion may from time to time, by Proclamation, constitute and set apart the whole or any part of any watercourse, whether the same is within or outside of any district, to be a water-course into which may be discharged any tailings, *débris*, and waste

water produced by or resulting from mining operations carried on under this Act, and in which, or on the banks of which, mining operations may be lawfully carried on.

127. (1.) On receipt of such application the Governor, if he considers that it may prove expedient to make the Proclamation, shall, by notice published in the *Gazette*, and also in some newspaper circulating in the locality of the watercourse,—

Notice of application therefor.
1898, No. 38, sec. 109

(a.) Specify the fact of the application having been made, and the name, locality, and description of the watercourse to which it relates; and also

(b.) Require every person who objects to such Proclamation being made, or whose land or riparian or other rights in respect of such land will be damaged or injuriously affected by the operation thereof, to serve on the Minister, within the period of ninety days after the publication of such notice in the *Gazette*, full particulars of such objection, and also a claim in the prescribed form, setting forth full particulars of all compensation that will be claimed by him in the event of such Proclamation being made; and also

Objectors to forward claims to compensation.

(c.) State that no person will be entitled to any compensation for damage or injury consequent on the operation of such Proclamation unless his claim is duly served in the manner and within the period aforesaid.

(2.) For the purpose of insuring further publicity the Minister shall cause a copy of such notice to be affixed in some conspicuous part of each post-office in the locality of the watercourse, and shall also cause a copy to be posted by registered letter to each person, as far as known, whose land is likely to be injuriously affected by the operation of the proposed Proclamation:

Notice to be posted.
1904, No. 33, sec. 24

Provided that no person shall have any right or claim by reason merely of the fact that this subsection has not been complied with.

(3.) No further or other claim shall be made or served than the claim which, as required by the aforesaid notice, is duly served in the manner and within the period aforesaid.

128. In such notice, and also in such Proclamation, the watercourse may be described in general terms; and if at any time any question arises as to whether any specified watercourse or portion thereof is comprised in such notice or Proclamation, the Governor in Council shall decide, and such decision, notified in the *Gazette*, shall be final and conclusive.

Watercourse may be described in general terms.
1898, No. 38, sec. 110

129. Such Proclamation, if made, shall not be made sooner than three months nor later than eighteen months after the date of the gazetting of the aforesaid notice, nor until all objections and claims duly served as aforesaid have been laid before the Governor in Council; and it shall take effect on and from a day to be named therein, being not sooner than the thirtieth nor later than the ninetieth day after the gazetting thereof.

When Proclamation may be made.
Ibid, sec. 111

130. Every person who at the date of the gazetting of such Proclamation is the owner of any estate or interest in land on which such watercourse exists, or through or past which it runs, and whose land or riparian or other rights as such owner may be damaged or injuriously affected by reason of the operation of such Proclamation, after the date of the gazetting thereof shall be entitled to full compensation from His Majesty for such damage or injury:

Owner of land injuriously affected entitled to full compensation.
Ibid, sec. 112

Provided nevertheless as follows, that is to say :—

- (a.) That no person shall be entitled to compensation unless he either duly serves his claim on the Minister in the manner and within the period specified in the aforesaid notice,⁵ or derives title from a person who duly did so ; and also
- (b.) That the compensation payable shall in no case exceed the amount specified in such claim ; and also
- (c.) That for the purposes of this section the holder of a mining privilege shall not by virtue of such mining privilege be deemed to have any estate or interest in the land comprised therein. 10

Compensation not to exceed improved value of land.
1898, No. 38, sec. 113

131. With respect to every claim for compensation for any such damage or injury, the following special provisions shall apply :—

- (a.) In no case shall the total amount payable in respect of any such claim exceed the amount of the improved value of the claimant's estate or interest in the land, according to the valuation thereof in force for the purposes of "The Government Valuation of Land Act, 1896," at the date of the gazetting of such Proclamation ; or, if the Minister or the claimant desires, then according to a valuation as at that date to be made under that Act. 15 20
- (b.) In the event of the Minister and the claimant being unable to agree as to the amount of compensation, the Minister, if he thinks fit so to do, may cause the whole or any portion of the land for all the claimant's estate and interest therein to be taken compulsorily on behalf of His Majesty, under "The Public Works Act, 1894," as land required for a public work. 25
- (c.) The compensation for the land so taken, or, as the case may be, for all such damage and injury as aforesaid, shall be payable under this Act : 30

Provided that if only a portion of the claimant's land is so taken, and the value of the residue is thereby depreciated by severance or otherwise, he compensation to which he is entitled shall include compensation for such depreciation, anything hereinbefore contained to the contrary notwithstanding. 35

Amount payable.

Disposal of land.

- (d.) The Minister may cause the whole or any part of the land so taken to be disposed of under any of the provisions of "The Land Act, 1892," or to be paid for out of the Land for Settlements Account and disposed of under "The Land for Settlements Consolidation Act, 1900" : 40

Provided that the total amount which may be expended out of the Land for Settlements Account in respect of land under this section shall not exceed ten thousand pounds in any one financial year. 45

Deficiency.

- (e.) If the land so disposed of or paid for does not thereby realise the full amount of the compensation hereinbefore provided for, the deficiency shall be paid as the Minister recommends, either wholly out of the Consolidated Fund or in equal portions out of that fund and the goldfields revenue of the district wherein the land is situate. 50

(f.) Not later than twenty days after the commencement of each session of Parliament there shall be laid before both Houses a detailed statement showing the respective amounts expended out of the Consolidated Fund and the Land^{*} for Settlements Account under this section during the then last preceding financial year.

Statement of amounts expended.

132. Notwithstanding anything hereinbefore contained, the following special provisions shall apply in the case of land heretofore or hereafter alienated from the Crown, whether by way of absolute sale or for any lesser estate or interest :—

No compensation or riparian rights as to certain alienated lands.
1898, No. 38, sec. 114

(a.) In the case of land so alienated on or at any time after the twenty-first day of October, one thousand eight hundred and seventy-five, no person shall be deemed to have any right or title to the flow of any watercourse constituted and set apart as aforesaid by Proclamation under this Act or any former Mining Act which would interfere with or prejudice the right of the holder of any mining privilege to discharge into such watercourse any tailings, mining *débris*, or waste water produced^{*} or used in or upon such mining privilege.

(b.) In the case of land so alienated on or at any time after the twenty-third day of December, one thousand eight hundred and eighty-seven, such alienation shall be deemed to be and to have been made subject to the full and free right of any person, lawfully engaged in mining operations under this Act or any former Mining Act, to discharge into any watercourse existing on or running through or past such land, whilst and whenever such land is situate in a district, any tailings, mining *débris*, or waste water produced by or resulting from such mining operations.

(c.) In the case of land so alienated at any time after the first day of February, one thousand eight hundred and ninety-nine (being the date of the commencement of "The Mining Act, 1898"), such alienation shall be deemed to be made subject to the reservation in favour of His Majesty of all riparian rights in respect of such land whilst and whenever such land is situate in a district.

133. Subject to the foregoing provisions of this Act, all claims for compensation against His Majesty arising by reason of the operation of any such Proclamation as aforesaid shall be assessed and disposed of in manner provided by Part VII. of this Act.

Compensation to be assessed under Part VII.
Ibid, sec. 115

134. In every case where the amount of the compensation has been duly assessed or arrived at, the payment or tender thereof shall absolutely bar the claimant, and all persons deriving title through him to the land to which the claim relates, from all further or other claims or remedies of any kind whatsoever for any damage or injury (past, present, or future) arising in any manner to such land, or to any riparian or other right in respect thereof, by reason of the operation of such Proclamation or of any subsequent Proclamation relating to the same watercourse.

Further claims barred.
Ibid, sec. 116

135. With respect to watercourses which by Proclamation under this Act or any former Mining Act are constituted and set apart as watercourses for the discharge of tailings, *débris*, and waste waters produced

Provisions as to watercourses for the discharge of tailings, &c.
1899, No. 29, sec. 22

by or resulting from mining operations, the following provisions shall apply :—

- (a.) In the case of every watercourse heretofore or hereafter constituted and set apart as aforesaid, such mining operations shall be deemed to include and to have included those carried on in the watercourse as well as those carried on outside the same. 5
- (b.) In the case of every watercourse hereafter constituted and set apart as aforesaid, it shall be deemed to be also constituted and set apart for the carrying-on of mining operations, and the Proclamation shall accordingly operate to confer upon the holder of any mining privilege which is situate wholly or in part in the watercourse or on its bank full and free right and liberty to carry on his mining operations as such holder, notwithstanding that they are carried on in the watercourse or on its bank. 10 15

Auld's Creek excepted as a tailings watercourse.
1901, No. 60, sec. 10

136. It is hereby declared that the Proclamation dated the twenty-fifth day of July, one thousand nine hundred and one, constituting and setting apart the river known as the Inangahua River, together with all its tributaries, excepting Pattinson's and Phillips's Creeks, to be watercourses into which may be discharged tailings, *débris*, and waste water resulting from mining operations, shall hereafter be read and construed as if Auld's Creek had been excepted from the operation of such Proclamation. 20

Business-sites and other Mining Privileges in respect of Land. 25

Business, residence, and special sites.
1898, No. 38, sec. 117

137. The Warden, on application in that behalf, may grant mining privileges of any of the following descriptions in respect of unalienated Crown lands in a mining district, that is to say :—

- Business-site licenses ;
Residence-site licenses ; 30
Special-site licenses :

Provided that no such license shall be granted in respect of any site that in the opinion of the Warden is required for mining purposes, or if in the opinion of the Warden the grant would interfere prejudicially with mining operations. 35

Purposes of licenses to be specified therein.
Ibid, sec. 118
1899, No. 29, secs. 5, 6.

138. Every such license shall, during its currency, entitle the licensee to the exclusive occupation of the surface of the land comprised therein for the purpose specified in the license, and such purpose shall be,—

- (a.) In the case of a business-site, to carry on there any business ; 40
(b.) In the case of a residence-site, to reside thereon and use and cultivate the same as a home ;
(c.) In the case of a special site, to facilitate mining operations on a claim in such manner, whether by using the site as a battery-site, a machine-site, a site for the deposit or treatment of gold or tailings, or otherwise as is specified in the license 45

139. The area and dimensions of the land comprised in such licenses shall be such as the Warden thinks fit, but such area shall not exceed,—

Area and dimensions.
1893, No. 38, sec. 119

In the case of a business-site, one-quarter of an acre ;

In the case of a residence-site, one acre ;

5 In the case of a special site, five acres.

140. With respect to business-sites and the licenses therefor, the following provisions shall apply :—

Conditions of business-site licenses.
Ibid, sec. 120
1899, No. 29, secs. 5, 6

(a.) The applicant for the license shall mark out the land before filing his application.

10 (b.) The license shall in every case be granted with reference to the site specified therein at the time of the grant.

(c.) In no case shall the license comprise more than one business-site.

15 (d.) The licensee shall pay in respect of the license a license fee at the rate of three pounds for every year of the term.

141. Any person may lawfully carry on business in a mining district without being the holder of a business-site license.

Business may be carried on in mining district without a license.

142. With respect to residence-sites and the licenses therefor, the following provisions shall apply :—

Ibid, sec. 5 (4)

20 (a.) The licensee shall pay in respect of the license a license fee for every year of the term at the same rate as in the case of a miner's right :

Conditions of residence-site licenses.
1898, No. 38, sec. 121

Provided that the licensee shall not be liable to pay the license fee for any period during which he is the holder of a miner's right.

25 (b.) Subject to the provisions hereinafter contained as to claim-holders, no person shall, except with the consent of the Warden, hold more than one such site at any one time.

30 (c.) In any case where two or more residence-sites adjoin one another, and the licensees thereof so desire, such sites may, if the Warden so orders, be deemed to be one amalgamated residence-site, nevertheless for the purposes only of compliance with the prescribed conditions as to occupation and for the period only during which all the licensees reside on such amalgamated site.

35 143. With respect to business-sites and residence-sites, and the respective licenses therefor, the following provisions shall apply :—

Business and residence sites, if unsurveyed, held on sufferance.

40 (a.) If the site comprised in the license has not been surveyed, it shall be held on sufferance, subject to survey under the provisions in that behalf contained in section one hundred and forty-five hereof; and the whole or any part of the site may, without compensation, be taken for streets or reserves, if so required for public convenience, on such survey being made.

Ibid, sec. 122

45 (b.) The holder of a business-site or residence-site under this Act or any former Mining Act shall be deemed to be an occupier within the meaning of "The Rating Act, 1894," and "The Rating on Unimproved Value Act, 1896," and shall be liable to pay rates in respect of such site accordingly.

Holder liable for rates.

50 144. For the purpose of providing homes for the workmen employed in a claim, the following special provisions shall apply :—

Residence-sites for workmen's homes
Ibid, sec. 123

- (a.) The Warden may grant to the holder of any such claim as many residence-site licenses as the Warden thinks reasonable, having regard to the number of such workmen.
- (b.) Such licenses shall be held by the claimholder, and the land comprised therein shall be available as residence-sites for his workmen, subject to such terms and conditions as are specially prescribed. 5

Warden may set apart lands for business and residence sites. 1898, No. 38, sec. 124

145. The Warden may from time to time as he thinks fit set apart land for business-sites and residence-sites respectively, and cause the same to be surveyed and laid out into such allotments, reserves, streets, and rights-of-way as in his opinion public convenience requires ; and with respect to such allotments the following provisions shall apply :— 10

- (a.) In no case shall the area of any such allotment exceed the maximum area hereinbefore prescribed.
- (b.) All such allotments shall be numbered and marked as business-sites or residence-sites, as the case may be, and shall be open for application accordingly on and after a day to be appointed and publicly notified by the Warden. 15
- (c.) For the purposes of such application it shall be sufficient if the allotment applied for is identified by its number, situation, and area, without marking out the ground. 20
- (d.) In any case where the Warden is of opinion that any allotment set aside as a business-site or residence-site is not required for that purpose he may withdraw it, and in such case it shall cease to be subject to the foregoing provisions of this section. 25

Certain towns excepted. Ibid, sec. 125

146. The provisions of this Act relating to business-sites, residence-sites, and special sites shall not apply within the limits of the Towns of Shortland, Grahamstown, and Tararu, as such limits are defined in a Proclamation gazetted on the sixth day of January, one thousand eight hundred and seventy-two. 30

Timber-cutting Rights.

Warden's and Land Board's timber-areas. 1900, No. 64, sec. 9

147. Subject to regulations under this Act, the Governor may from time to time define and specify in any mining district areas (hereinafter referred to as "Warden's timber-areas") within which timber licenses and other timber-cutting rights may be granted under this Act exclusively, and other areas (hereinafter referred to as "Land Board's timber-areas") within which timber licenses and other timber-cutting rights may be granted under sections two hundred and twenty-two and two hundred and twenty-seven of "The Land Act, 1892," exclusively. 35 40

Application of rents, fees, and royalties. Ibid, sec. 10

148. All rents, royalties, and fees received in respect of timber-cutting rights shall be deemed to be goldfields revenue in the case of rights granted within the Warden's timber-areas, and territorial revenue in the case of rights granted within the Land Board's timber-areas : 45

Provided nevertheless as follows :—

- (a.) In the case of timber-cutting rights granted in respect of land which, pursuant to the contract between Her late Majesty and the New Zealand Midland Railway Company (Limited), was set apart as reserves for mining purposes, the rents,

royalties, and fees shall be deemed to be goldfields revenue, notwithstanding that the land may be within the Land Board's timber-areas.

(b.) In every case where, under any provision of this Act or any other Act, any Harbour Board or person is entitled to the rents, royalties, and fees received for mining privileges in respect of any land, such Board or person shall also be entitled to the rents, royalties, and fees received for timber-cutting rights granted in respect of such land; and the same shall, in the prescribed manner, be paid over to such Board or person accordingly, and shall not be deemed to be territorial revenue.

149. In any case where the Governor is of opinion that applications for timber-cutting rights within a Land Board's timber-area may be dealt with by the Warden more conveniently than by the Land Board, he may authorise and direct the Warden to deal with and dispose of the same on behalf of the Land Board, and in such case the following provisions shall apply, anything hereinbefore contained to the contrary notwithstanding:—

Warden may deal with applications on behalf of Land Board in certain cases.
1900, No. 64, sec. 11

(a.) The application shall be made and disposed of in the same manner in all respects as if the area were a Warden's timber-area, save that the ultimate disposition of the rents, royalties, and fees shall not be affected, and that the Warden, when signing any license, warrant, or other document relating to the grant of any timber-cutting right, shall state on the document that he does so on behalf of the Land Board.

(b.) Subject to the foregoing modifications, the timber-cutting rights granted by the Warden on behalf of the Land Board shall operate and have effect as timber-cutting rights granted under this Act, and the provisions of this Act and the regulations hereunder shall apply accordingly.

(c.) The Land Board shall not grant any timber-cutting rights within the area.

150. The Receiver to whom the rents, royalties, and fees in respect of timber-cutting rights are paid shall keep separate accounts for the respective funds to which the rents, royalties, and fees belong.

Separate accounts to be kept.
Ibid, sec. 12

151. (1.) A license for a tramway for the purpose of conveying timber from the bush in which it is felled may be granted by the Warden or the Land Board, as the case may be, to any person who holds a license for cutting timber.

Tramway licenses for timber.
1901, No. 60, sec. 9

(2.) Such license shall be in such form and subject to such conditions as are prescribed by the regulations for tramways for mining purposes.

152. The Governor may from time to time make regulations for the purpose of giving full effect to the foregoing provisions relating to timber-cutting rights.

Regulations.
1900, No. 64, sec. 13

Other Mining Privileges.

153. (1.) In addition to the mining privileges elsewhere specifically provided for by this Act, there may be granted under this Act licenses for tramways and such other descriptions of mining privileges as are specified by regulations under this Act.

Licenses for tramways and other mining privileges.
1898, No. 38, sec. 126

(2.) All such additional mining privileges shall be granted upon such terms and conditions, not inconsistent with this Act, as are prescribed by regulations.

(3.) Nothing in "The Tramways Act, 1894," shall apply to licenses for tramways under this Act.

5

As to Surrender, Exchange, and Amalgamation of Mining Privileges.

Mining privileges
may be surrendered.
1898, No. 38, sec. 127
1904, No. 33, sec. 6

154. (1.) The holder of any mining privilege granted or acquired under either this Act or any former Mining Act may, in the prescribed manner, surrender the same or any part thereof, provided that such surrender shall not in any way release him from liability for all sums owing in respect of rent, fees, royalties, penalties, and otherwise under any such Act in respect of such mining privilege up to the date of such surrender.

10

Apportionment of
rent in case of
surrender.

(2.) In every case where such surrender is absolute and not for purposes of exchange of title, the liability for rent or fees shall be apportioned up to the date of the surrender, and the surrendering licensee shall be entitled to a refund of so much thereof as, having been paid in advance, covers any period subsequent to the date of the surrender.

15

Moneys refunded,
how payable.

(3.) All sums refunded as aforesaid shall be payable out of moneys to be appropriated by Parliament, and shall be deducted from any goldfields revenue thereafter payable to the local authorities or persons to whom the rent or fees were paid.

20

(4.) The surrender of part only of a mining privilege shall be indorsed by the Warden on the license, and thereafter the rental payable in respect of the mining privilege shall be proportionately reduced.

25

Mode of substitution
of titles under this
Act for titles under
former Act without
loss of priority.
1898, No. 38, sec. 128

155. In order to facilitate the extinguishment of titles acquired under any former Mining Act (other than any of the compiled Acts), and the substitution therefor of titles under this Act, the following special provisions shall apply, anything elsewhere in this Act to the contrary notwithstanding:—

30

(a.) On application to the Warden, and with his consent, the holder of any mining privilege granted or acquired under any former Mining Act may surrender the same, and obtain in exchange therefor a license under this Act for a mining privilege corresponding in area and subject-matter to the mining privilege so surrendered.

35

(b.) In the case of a licensed holding or business license respectively under any former Mining Act, the respective corresponding mining privilege under this Act shall be a special-claim or a business-site license.

40

(c.) Such application shall be made in the prescribed manner, and shall specify or identify the area, dimensions, situation, and name of the existing mining privilege to be surrendered, and the nature of the title under which it is held, and also the name of the proposed corresponding mining privilege.

45

(d.) The ground, if already marked out or surveyed for the purposes of the existing mining privilege, shall be deemed to be marked out or surveyed for the purposes of the application:

Provided that the Warden may direct a fresh marking-out or survey to be made if he thinks fit.

50

(e.) Before granting such application the Warden shall be satisfied, *inter alia*,—

(i.) That the mining privilege to be surrendered is validly subsisting, and is neither abandoned by operation of law nor liable to forfeiture; and also

(ii.) That no proceedings are pending in respect of such abandonment or forfeiture; and also

(iii.) That all sums in respect of rent, fees, royalties, penalties, and otherwise owing thereunder to His Majesty are fully paid up to the date of the surrender.

(f.) Such application may, if the Warden thinks fit, be granted, although it appears that the applicant is entitled to such existing mining privilege at law only or in equity only.

(g.) The license granted under this Act for such corresponding mining privilege shall be in such form as is specially prescribed, and simultaneously with the grant thereof the mining privilege for which it is exchanged shall be deemed to be surrendered.

(h.) Such license shall confer the same priority of rights and be subject to the same encumbrances, liens, and interests as the surrendered mining privilege conferred and was subject to. All such priorities, encumbrances, liens, and interests shall be specified in or indorsed on such license, and be registered; and such specification or indorsement shall, subject to the right of appeal, be final and conclusive for all purposes:

Provided that in every case where the surrendered mining privilege is a water-race for mining purposes, and the corresponding mining privilege is a water-race for other than mining purposes, such license shall be subject to the condition that one-half of the total quantity of water for the time being available shall be at the disposal (but solely for mining purposes) of the persons holding inferior rights for mining purposes, and in the order of their priority *inter se*, on the payment of such fees to the licensee as the Warden prescribes.

(i.) All references to such surrendered mining privilege in any document executed prior to such surrender shall, for the purpose of giving full effect to the provisions of the last preceding paragraph, be deemed to be references to such corresponding mining privilege and the license therefor.

(j.) Subject as aforesaid, such license shall be granted for the same term and subject to the same fees, rent, royalty, and other payments, and to the same provisions and conditions, as in the case of a license granted under this Act pursuant to original application:

Provided that a due apportionment of rent or license fee paid under the surrendered license shall be made up to the date of the surrender, and so much thereof as embraces any part of the term of the new license shall be considered and allowed to the licensee in or towards satisfaction of his liability in respect of rent or license fee under the new license.

When area of
exchanged land may
exceed limit.
1899, No. 29, sec. 9

Provisions where
roads excluded from
surrendered area.
Ibid, sec. 10

Amalgamation of
claims.
1898, No. 38, sec. 129

156. In every case where the area of the land comprised in the mining privilege to be surrendered for purposes of exchange exceeds the limit of area as fixed by this Act, the area of the land comprised in the corresponding mining privilege may to the same extent exceed such limit.

5

157. In every case where, in the computation of the area of the land comprised in the mining privilege to be surrendered for purposes of exchange, the roads existing thereon have been excluded, the following special provisions shall apply:—

- (a.) The area of the land in the corresponding mining privilege shall include the estimated area of the roads, notwithstanding that the total area thus computed may exceed the area specified in the surrendered mining privilege or the limit of area as fixed by this Act. 10
- (b.) The license for the corresponding mining privilege shall specify the area of the land in the surrendered mining privilege, the estimated area of the roads, and the total area of the land in the corresponding mining privilege. 15
- (c.) It shall not be necessary to make any survey for the purpose of estimating the area of the roads, but the Warden shall estimate the same in such manner as he thinks fit. 20
- (d.) The license for the corresponding mining privilege shall be deemed to be granted and shall be held subject to the provisions of section two hundred and five hereof.

158. For the purpose of facilitating the working of adjoining claims of any description granted or acquired under this Act or any former Mining Act, or of simplifying the title thereto, the following provisions shall apply:— 25

- (a.) On application to the Warden, and with his consent, any such claims that are duly registered may, in the prescribed manner and subject to the prescribed conditions, be amalgamated into one claim: 30

Provided that the total area of the amalgamated claim shall not exceed the maximum area prescribed for a special claim of the same description. 35

- (b.) Before granting the amalgamation the Warden shall be satisfied that the amalgamation will facilitate the working of the claims to which the application relates or simplify the title thereto, and also that there has been expended in mining operations on each of the claims not less than such sum as is prescribed. 40
- (c.) The amalgamation shall be effected by surrendering the titles to the separate claims and obtaining in exchange therefor a license under this Act for the amalgamated claim.
- (d.) With respect to every such surrender and exchange the provisions of section one hundred and fifty-five hereof shall, *mutatis mutandis*, apply. 45
- (e.) With the consent in each case of the Minister, the foregoing provisions of this section shall apply to non-adjoining alluvial or dredging claims: 50

Provided that no such claim shall be amalgamated with another unless the nearest boundaries of both are within one

mile of each other in the case of dredging claims, or within half a mile of each other in the case of any other description of alluvial claim.

As to Protection of Mining Privileges.

5 159. Any duly registered mining privilege, or any specified portion thereof, which is protected under the provisions in that behalf hereinafter contained shall, during the period of protection, be deemed to be relieved from liability to abandonment or forfeiture for any cause arising during such period other than intentional abandonment, or default in payment of royalty, rent, or license fees, or in maintenance of marks.

No liability during period of protection. 1898, No. 38, sec. 130

160. On application in that behalf by the holder of any duly registered mining privilege, the Warden may by certificate grant protection of such mining privilege or specified portion thereof; and with respect to every such application and certificate, the following provisions shall apply:—

Warden may grant protection of mining privilege. Ibid, sec. 131

- (a.) The application shall be in the prescribed form, and shall specify the mining privilege or portion thereof to which it relates, the period during which protection is required, and the reasons for which the application is made.
- (b.) If the period applied for does not exceed fourteen days, the Warden in his discretion may dispose of the application *ex parte* in a summary way without requiring it to be notified.
- (c.) If the period applied for exceeds fourteen days, the application shall be notified and disposed of under section one hundred and sixty-five hereof.
- (d.) If the period applied for does not exceed six months, the Warden may grant or refuse the application in his discretion.
- (e.) If the period applied for exceeds six months, the Warden, after hearing the application and all objections thereto, shall forward the same, and his report and recommendations thereon, to the Minister, and the application shall not be granted by the Warden unless the Minister signifies in writing on the proposed certificate that he consents thereto.
- (f.) The application may be granted for the whole of the period applied for, or for such less period as the Warden or, as the case may be, the Warden with the consent of the Minister thinks reasonable, having regard to all the circumstances.
- (g.) The period applied for or granted shall in no case exceed twelve months.
- (h.) The period of protection shall in every case commence on the date on which the application is granted, or on such earlier date, being in no case earlier than the date fixed for the original hearing of the application, as the Warden thinks equitable.
- (i.) The certificate of protection shall be in the prescribed form, and when duly signed by the Warden and, when necessary, by the Minister, shall be transmitted by the Warden to the Registrar, who, having first registered it, shall issue it to the person entitled to receive it.

(j.) In no case shall a certificate of protection be renewed.

(k.) In no case shall a certificate of protection be granted unless the applicant satisfies the Warden that all wages due to workmen in the mining privilege, and all rents, royalties, license fees, and other moneys payable under this Act have been fully paid or satisfactorily provided for up to the date of the application. 5

Special provisions
as to grant of
further protection.
1900, No. 64, sec. 5

161. In every case where a certificate of protection has been granted and further protection is subsequently desired, a fresh application may be made; and with respect to every such fresh application the following special provisions shall apply:— 10

(a.) Except in the cases and subject to the limitations specified in paragraphs (c) and (d) hereof, the application shall not be granted unless the prescribed interval of time has elapsed between the filing thereof and the expiration of the period last granted, nor unless during the whole of such interval the mining privilege for which protection is sought has been duly worked and used as required by law. 15

(b.) Such prescribed interval shall be one month where the period last granted did not exceed fourteen days, and three months in every other case. 20

(c.) The requirements of the preceding paragraphs of this section may be waived in any case where the Warden, in respect of any application within his discretion, or the Minister in respect of any application subject to his consent, is satisfied,— 25

(i.) In the case of two or more mining privileges held by the applicant, and to be worked or used together, that the mining privilege to be protected cannot be advantageously worked or used until the operations on another of the mining privileges are further developed, and that such other mining privilege is either protected or is being worked and used as required by law; 30

(ii.) In the case of a special dredging claim, that the applicant is using all reasonable diligence in procuring a dredge, but by reason of pressure of work in the foundries, or other good and sufficient cause (not imputable to his want of capital), it will not be available until the lapse of a specified time; and also 35

(iii.) In the case of every mining privilege, that, having regard to all the circumstances, it is reasonable that such requirements should be waived. 40

(d.) The power of waiver exercisable under the last preceding paragraph hereof shall be so exercised as that the total period of protection granted without the intervention of the prescribed interval shall not exceed six months in the case of applications within the discretion of the Warden, and two years in the case of applications subject to the Minister's consent. 45

Protection where
mining privilege at
high altitude.
1898, No. 38, sec. 133

162. (1.) In every case where the land comprised in any mining privilege is situate at more than the prescribed altitude above the sea-level, such mining privilege shall, without application, be deemed to be protected for the prescribed period in each year, such period being in no 50

case longer than from the first day of May to the thirty-first day of October inclusive.

(2.) For the purposes of this section a certificate in writing by a District Surveyor as to the altitude of any land, or a map purporting to be issued by the Surveyor-General or under his authority showing such altitude, shall be sufficient evidence thereof.

163. Every mining privilege and every share or interest therein shall, without application, be deemed to be protected on each of the following days, that is to say :—

Days on which all mining privileges protected.
1898, No. 38, sec. 134

- 10 (a.) On the polling-day of every election of a member of the House of Representatives or of any public body ;
- (b.) On each day during which he is absent from his mining privilege for the purpose of attending the proceedings in any Court of justice or before the Warden, whether as party, witness,
- 15 assessor, or otherwise in the performance of his duty or the necessary protection of his interests ;
- (c.) From Good Friday to Easter Monday, inclusive ;
- (d.) On the Sovereign's Birthday ;
- (e.) From the twenty-second day of December to the fifth day of
- 20 January, inclusive ;
- (f.) On any public holiday.

164. In the event of the bankruptcy, lunacy, or death of the holder of any mining privilege, or of any share or interest therein, the same shall, without application, be deemed to be protected for such

25 period not exceeding two months, computed from the date of the happening of that event, as the Warden thinks reasonable, having regard to the special circumstances of the case.

Protection in case of bankruptcy, lunacy, or death.
Ibid, sec. 135

As to the Procedure on Applications to the Warden in respect of Mining Privileges.

30 165. Subject to the specific provisions elsewhere contained in this Act with respect to specific applications, the following general rules shall apply with respect to every application to the Warden for the grant, surrender, exchange, amalgamation, or protection of mining privileges, or, in the case of a claim, for authority to employ less than the

35 prescribed number of workmen :—

General rules as to all applications to Warden.
Ibid, sec. 136

- (a.) The application shall be made in the prescribed manner and form, and shall be filed in the office of the Registrar, or, if there are more such offices than one in the district, then in the office situate nearest by practicable route to the mining privilege to which the application relates :
- 40

Provided that the application shall not be invalidated by reason merely of being filed in the wrong office, but in such case the Warden may either treat it as if duly filed or order it to be transferred to another office, on such terms as he thinks proper, having regard to the convenience of the parties and the circumstances of the case.

45

- (b.) When filing the application, or on the same day, the applicant shall lodge with the Receiver, to abide the disposal of the application, such sums in respect of rent, survey fees, license fees, and otherwise as are prescribed.
- 50

- (c.) The precise time of the filing of the application shall be recorded thereon by the Registrar or other officer receiving the same, and applications in respect of the same subject-matter shall have priority according to the priority of time of filing, as evidenced by the aforesaid record thereof. 5
- (d.) In the event of it appearing from such record that two or more such applications were filed simultaneously, their respective priorities shall be decided by lot in such manner as the Warden thinks fit.
- (e.) Every application shall retain its priority until such application is finally disposed of by being granted, refused, or, by leave of the Warden, withdrawn. 10
- (f.) In every case where the application relates to land it shall not be lawful for any person not theretofore in lawful occupation of the land to enter or mine thereon whilst such priority continues. 15
- (g.) If he does so enter or mine, then, in addition to any other penalty he thereby incurs, he shall be deemed a trespasser, and, moreover, all gold found by him whilst so mining shall, if the application is granted, be the property of the applicant; and in the meantime the Warden may, on application in that behalf by the applicant for the mining privilege, order all such gold to be deposited with such person as is named in that behalf in the order to abide the result of the application. 20 25
- (h.) The application shall be heard at such time and place as the Warden appoints, and the hearing shall in every case be open to the public.
- (i.) The application shall be notified in such manner, within such time, and to such persons as are prescribed, including in every case all persons whose interests will be obviously affected: 30
- Provided that in every case where the application is for a license for any mining privilege in respect of land or water outside a mining district the Commissioner of Crown Lands of the land district shall be notified, and the application shall not be granted until he has reported thereon to the Warden. 35
- (j.) Any person desiring to object to the application shall, in the prescribed manner and within the prescribed time, give to the Warden and also to the applicant notice in writing of the nature of such objection, and (subject to the succeeding provisions of this section) no person shall be entitled to appear and object unless he has duly given such notice. 40
- (k.) The Warden in his discretion may, at any time before the application is finally disposed of, direct notice thereof or of any objection thereto to be given to any person, or any survey to be made, or other act to be performed. 45
- (l.) The Warden may, of his own motion and without notice, take any objection he thinks fit, and shall not grant the application if he is satisfied that any valid objection thereto exists. 50

- 5 (m.) If any question or dispute arises as to whether the prescribed provisions relating to marking out the land or notifying the application have been sufficiently complied with, the Warden shall decide. In so deciding the Warden shall have regard to the spirit and intention of those provisions, and it shall be sufficient if he is of opinion that they have been substantially complied with, and that no person has been deceived or misled.
- 10 (n.) The Warden may adjourn the application from time to time or from place to place, in such manner and on such terms as he thinks fit.
- 15 (o.) On the hearing of the application the applicant and every objector shall appear in person or by solicitor or registered agent.
- (p.) If, however, the applicant does not desire to appear, he may, at any time before the hearing, file in the office of the Registrar a statutory declaration of compliance with this Act.
- 20 (q.) Such declaration shall be exempt from stamp duty, and shall be in the prescribed form, and shall certify—
- (i.) That all the statements contained in the application are true ; and also
- (ii.) That all prescribed provisions as to marking out the ground, posting notices thereon, serving notices on all persons affected, and otherwise, have been duly observed in so far as is required by law ; and also
- 25 (iii.) That the ground applied for does not cross any road or street ; and also
- (iv.) That the applicant believes himself entitled to the grant of the application, and knows of no valid objection thereto ; and also
- 30 (v.) That, so far as the applicant is aware, no public or private rights will be prejudicially affected by the grant of the application ; and
- (vi.) Such other particulars as are prescribed.
- 35 (r.) The Warden, if satisfied with such declaration, may accept it as evidence in support of the application, and grant the application without requiring the applicant to appear.
- (s.) If, however, he is not satisfied with the declaration, or if any objection arises which in his opinion requires to be met, he shall adjourn the hearing, and notify the applicant to appear.
- 40 (t.) If, on hearing of the application, any person appears and objects, the Warden may award to or against the applicant or the objector such costs and expenses as he thinks fit :
- 45 Provided that no costs or expenses shall be awarded against any objector whose objections are based wholly and *bona fide* on purely public grounds.
- (u.) In awarding such costs and expenses the Warden shall, as far as practicable, follow the scale for the time being in use in the Warden's Court, and they shall be recoverable in the same manner as if they were a judgment of that Court.
- 50

- (v.) For the purpose of hearing and disposing of the application, and of generally giving full effect to the provisions of this section, the Warden shall have all the powers of a Warden exercising jurisdiction in a Warden's Court, and the practice and procedure of that Court (including the practice as to rehearings) shall apply, with such modifications, additions, and exceptions as are prescribed. 5
- (v.) The application may be granted in respect of either the whole of the land to which it relates or to such portion thereof (not exceeding the prescribed maximum) as the Warden thinks fit, notwithstanding that in the case of a claim the claim granted may not be of the same class as the claim applied for. 10
- (x.) In any of the following cases, that is to say,—
- (i.) If the land to which the application relates is outside a mining district ; or 15
- (ii.) If the application is for a license for a special claim whose area exceeds thirty acres, or for a license for any mining privilege (whatever its area) under the sea or on the foreshore,— 20
- the Warden shall not grant the license unless and until the Minister has consented thereto, and notified such consent in writing on the instrument of license.
- (y.) Except in the cases referred to in the last preceding paragraph, the application may be granted or refused by the Warden in his discretion. 25

Powers of
Commissioners of
Crown Lands
1902, No. 22, sec. 8

166. (1.) The powers and functions conferred by this Act upon the Warden and Registrar respectively for receiving and disposing of applications for the mining privileges hereinafter mentioned—that is to say, prospecting warrants, prospecting licenses, or licenses for mining privileges in respect of water—shall, where the land is outside a mining district, be exercisable by the Commissioner of Crown Lands ; and for that purpose, as also for the purpose of appealing against the decision of the Commissioner, all the provisions of this Act shall apply as if the land was within a mining district and the Commissioner was a Warden and Registrar, and the Commissioner's office was a Warden's Court in a constituted mining district : 30

Provided that this subsection shall not apply in the case of Native land or of land partly within and partly outside a mining district.

(2.) With respect to mining privileges duly granted by the Commissioner, the land shall, for the purposes of any matter arising subsequent to the granting thereof, be deemed to be situate in the nearest mining district, and the mining privileges to have been granted by the Warden of that district. 40

(3.) The two preceding subsections of this section shall apply to all mining privileges heretofore granted by any Commissioner of Crown Lands and to all pending applications for the same. 45

(4.) The Governor may from time to time make regulations prescribing the mode of transferring the records of any mining privilege granted by the Commissioner, and generally anything required to give effect to this section. 50

As to Survey.

167. In every case where the area of the land to which the application relates exceeds twenty acres the land shall be surveyed in the prescribed manner; and with respect to every survey the following provisions shall apply:—

When area exceeds twenty acres land to be surveyed.
1898, No. 38, sec. 137

(a.) Where at the time of the filing of the application the land is already duly surveyed, and the plans thereof are deposited in the Warden's office, the applicant may refer to them in his application; or, if they are not then so deposited, he may deposit them there at any time prior to the hearing of the application, and in any such case no fresh survey shall be necessary unless the Warden so directs:

Provisions relating thereto, and to preliminary inquiry.

Provided that, in lieu of or prior to directing such fresh survey, the Warden may, at the cost of the applicant, require a surveyor to inspect the land and report to the Warden as to whether the boundaries marked out by the applicant are coterminous with those shown by the plans.

(b.) Where the survey is to be made after the filing of the application, the Warden may in his discretion, prior to the survey being made, hold a preliminary inquiry for the purpose of enabling it to be ascertained as far as practicable whether the expense of survey should be incurred.

(c.) The time and place of such preliminary inquiry shall be appointed and notified by the Warden, and the costs thereof and the procedure thereon shall, so far as applicable, be the same as in the case of an ordinary application.

(d.) If on the holding of such preliminary inquiry the Warden is of opinion that the application should not be granted, he may dismiss it; if, however, no valid objection then appears to exist to the granting of the application, the survey shall be proceeded with, and in the meantime the hearing of the original application shall be postponed.

(e.) On such postponed hearing no objection (except objections either arising out of the survey or based on purely public grounds) shall be entertained unless the objector—

(i.) Deposits the sum of five pounds as security for costs; and also

(ii.) Files in the Warden's office and serves on the applicant written notice of such objection at least two days prior to the day of hearing; and also

(iii.) Satisfies the Warden that owing to non-service of notice, subsequent discovery of facts, or other sufficient cause such objection could not reasonably have been raised at the holding of the preliminary inquiry.

(f.) The survey shall be made by a surveyor to be nominated by the applicant and approved by the Warden, or, in the absence of such nomination, to be appointed by the Survey Department on report from the Warden.

(g.) The cost and charges of the survey, and of every such inspection and report as aforesaid, shall not exceed the prescribed scale, and the same may be taxed by the Warden. Such

costs and charges, when taxed as aforesaid, shall be deemed to be a debt payable to the surveyor by the applicant.

(h.) Prior to any such survey or inspection and report being made, the Warden may require the applicant to deposit in the Warden's Court such sum as the Warden thinks reasonable as security for such costs and charges; and such deposit shall, on the order of the Warden, be applied in or towards payment thereof. 5

(i.) The survey shall be completed, and the plans relating thereto shall be lodged in the Warden's office, within the period of three months after the prescribed date, or within such extended period (not exceeding an additional three months in the North Island or six months in the Middle or South Island) as the Warden in his discretion thinks fit to grant on application made in that behalf before the expiration of the first-mentioned period: 10 15

Provided that, on application made in that behalf, the Warden in his discretion may further extend the same for any period not exceeding three months at any one time in any case where he is satisfied that the non-completion of the survey is caused by delay on the part of the Survey Department of the Government. 20

(j.) Such prescribed date shall be,—

(i.) In cases where a preliminary inquiry is held as aforesaid, the date of the conclusion of such inquiry; 25

(ii.) In cases where the Warden directs the survey to be made, the date of such direction being given; and

(iii.) In all other cases, the date of the filing of the application for the land.

(k.) If default is made in duly completing such survey and lodging such plans within such period or extended period as aforesaid, the application for the land shall be deemed to be void. 30

No survey required
in certain cases.
1900, No. 64, sec. 20

168. Where the land in respect of which an application is made comprises the whole of the land granted by or included in any original Crown grant or any certificate of title under "The Land Transfer Act, 1885," no survey of such land in consequence of any such application shall be necessary or be required, unless the Warden specially orders the survey to be made: 35

Proviso.

Provided that nothing in this section shall operate to dispense with the necessity of the surveyor's report to the Warden, or of a plan where the plan is required in order to illustrate the report, and the costs of the report and plan shall in each case be fixed by the Warden. 40

Drainage-areas
exempt from survey.
1899, No. 29, sec. 25

169. Section one hundred and sixty-seven hereof shall not apply in the case of drainage-areas, except in so far as in special circumstances the Warden otherwise directs. 45

As to the Form, Term, Renewal, and Conditions of Licenses for Mining Privileges.

General provisions
as to licenses.
1898, No. 38, sec. 138

170. Subject to the specific provisions elsewhere contained in this Act with respect to specific licenses, the following general provisions shall apply with respect to all licenses granted under this Act for mining privileges:— 50

or warrant, or otherwise disposed of as fully as a chattel interest in land, subject nevertheless to the provisions of this Act.

Transfers to be
registered.
1898, No. 38, sec. 140

172. No instrument of transfer of any mining privilege shall be deemed to pass the title to the transferee until such instrument is duly registered under this Act; and with respect to every such instrument the following provisions shall apply:— 5

Provisions relating
thereto.

(a.) The transferor when executing the instrument, or, if there are more transferors than one, the transferor who last executes it, shall insert therein the place and date of such execution; and such date shall be deemed to be the date of the instrument. 10

(b.) The transferee shall, within the prescribed period after the aforesaid date of execution, deposit the instrument with the Registrar for registration, and the Registrar shall register the same as on the hour and date of the same being so deposited. 15

(c.) Such prescribed period shall be thirty days if the place of execution is in the colony, sixty days if such place is in any State of the Commonwealth of Australia, and one hundred and twenty days if such place is elsewhere. 20

(d.) The Registrar shall not register the instrument after the expiration of such prescribed period without the authority in writing of the Warden.

(e.) On reasonable cause being shown why the instrument was not deposited within the prescribed period the Warden may grant such authority upon such terms and conditions, and upon the payment of such fine not exceeding five pounds, as he thinks fit. 25

(f.) If any person fails or neglects to faithfully observe any of the provisions of this section, in so far as they relate to himself, he is liable to a penalty not exceeding ten pounds. 30

(g.) The instrument shall, so far as concerns the mining privilege thereby purporting to be disposed of, be void as against any person claiming *bona fide* and for valuable consideration under any subsequent instrument duly registered prior to the registration of the first-mentioned instrument. 35

License or renewal
to be sent to
Registrar for
registration or
indorsement.
Ibid, sec. 141

173. In every case where the Warden grants or renews any license he shall transmit the instrument of license or renewal to the Registrar for registration and issue, and the Registrar, having first registered the same in the prescribed manner, and indorsed thereon a memorial of every registered instrument affecting the same, shall issue it to the person entitled to receive it. 40

Annual renewal of
water-race licenses
abolished.

1899, No. 29, sec. 28

In certain cases
annual license fee
and annual renewal
of registration
abolished.

Ibid, sec. 29

174. The annual renewal of the registration of water-race licenses issued under any former Mining Act shall hereafter not be necessary.

175. In every case where, by virtue of any regulations made under "The Mining Act, 1898," prior to the twenty-fourth day of October, one thousand eight hundred and ninety-nine (being the date of the commencement of "The Mining Act Amendment Act, 1899") any license is subject to the payment of an annual license fee, or, in the case of a water-race license, to the annual renewal of the registration of the license, such annual license fee shall henceforth not be payable and such annual renewal shall henceforth not be necessary. 50

- (a.) The license shall be in the prescribed form, and shall be signed Form.
by the Warden granting the same, and sealed with the seal of
his Court.
- 5 (b.) The Warden may at any time amend any error or misdescription Errors.
in the license, provided that the rights of other parties are not
thereby prejudicially affected.
- (c.) The term of the license shall be any period not exceeding forty- Term.
two years.
- 10 (d.) The term of the license shall be deemed to commence on the day Commencement.
of the grant thereof by the Warden.
- (e.) On the expiration of the term of any license by effluxion of Renewal.
time the licensee shall have the right to a renewal thereof
for any term not exceeding the maximum prescribed in the
case of the original term :
- 15 Provided that within the prescribed period before such
expiration he files in the office of the Registrar a notice in the
prescribed form that such renewal will be required.
- 20 (f.) During the term of such renewal the license shall be subject
to the same rent, royalties, fees, and other payments, and
the same terms, conditions, reservations, and provisions,
as would apply if the license were granted at the commence-
ment of such term pursuant to original application in that
behalf.
- 25 (g.) The foregoing provisions for the renewal of the original term
shall apply to every renewed term.
- (h.) Every renewal shall be in the prescribed form, and the right to
the renewal shall not be affected by the repeal of this Act.
- 30 (i.) The license shall be deemed to be granted and shall be held Conditions.
subject to such rent, royalty, and license fees, terms, con-
ditions, reservations, and provisions as are prescribed by
this Act or by regulations hereunder, and subject also to
such additional terms, conditions, reservations, and pro-
visions, not inconsistent with this Act or the regulations
hereunder, as the Warden thinks fit to specify in the license,
35 for the purpose of protecting public and private interests
and defining the rights and duties of the licensee :
- Provided that every term, condition, or provision
imposed by the Warden which is inconsistent with this
Act or the regulations hereunder shall be void.
- 40 (j.) The rent or license fee shall in every case be payable in advance
by the following instalments, that is to say :—
- 45 (i.) The first instalment (being for the period elapsing
between the date of the license and the last day of June or
December next following such date) shall be due and pay-
able on the date of the license, and shall be paid before the
issue thereof ;
- (ii.) The subsequent instalments shall be due and payable
half-yearly in advance, computed from the last day of June or
December next following the date of the license.

50 *As to the Transfer and Registration of Mining Privileges.*

171. Every mining privilege shall be deemed to be a chattel interest,
and may be sold, encumbered, transmitted, seized under writ of execution

Mining privilege to
be deemed a chattel
interest.

1898, No. 98, sec. 139

176. There may also be registered under this Act, in the prescribed manner,—

Other interests which may be registered.
1898, No. 38, sec. 142

- (a.) Any mining privilege acquired under any former Mining Act ;
- (b.) Any ordinary alluvial claim held under this Act otherwise than by license ;
- (c.) Any share or interest lawfully created in any duly registered mining privilege :

Provided that no transfer of an unregistered mining privilege; or of any share or interest therein, shall be registered.

177. Two or more mining privileges may be comprised in the same instrument for the purpose of transferring or otherwise disposing of them all in the same way and between the same parties.

Several rights may be transferred in same instrument.
Ibid, sec. 143

178. In any case where any person has in good faith and for valuable consideration duly taken a transfer of any mining privilege, and duly registered the instrument of transfer, such registration shall be an absolute bar to all proceedings for the forfeiture or abandonment of such mining privilege on any grounds existing prior to the date of such registration, unless such proceedings are actually commenced within six months after that date.

Limit of time for taking proceedings for cancellation of deeds.
Ibid, sec. 144

179. There shall be payable in respect of the registration of each instrument such fee as is prescribed.

Registration fee.
Ibid, sec. 145

180. All registers under any former Mining Act shall be deemed to be registers under this Act, and any register may, during the prescribed hours, be searched by any person on payment of the prescribed fee in respect of each title to which the search relates.

Registers under former Act continued.
Ibid, sec. 146

As to the Forfeiture of Mining Privileges by Decree of the Court.

181. Subject to the provisions hereinbefore contained relating to protection, and also to registration by transferee in good faith, and without in any way affecting the provisions hereinafter contained relating to abandonment by operation of law, a mining privilege shall be liable to forfeiture by decree of the Warden's Court in any of the following events, that is to say :—

When mining privilege liable to forfeiture by decree of Warden's Court.
Ibid, sec. 147

(a.) If the title thereto was originally obtained by fraudulent misrepresentation ;

(b.) If, in the case of a business-site or a residence-site, it is entirely unused for its proper purpose, or unoccupied, or neglected for any continuous period of three months ;

(c.) If, in the case of any mining privilege other than a claim, or a race or dam held exclusively for other than mining purposes, or a business-site or a residence-site, the land comprised therein has been entirely unused for its proper purpose, or unoccupied, or neglected for any continuous period of fourteen days in the case of a mining privilege on which machinery, buildings, erections, or works adapted for the efficient *bonâ fide* working or use thereof do not exist or are not in *bonâ fide* course of erection or construction, or one month in any other case ;

(d.) If, in the case of a claim, default is made in the faithful observance of any of the labour conditions prescribed under section

ninety-eight hereof, and such default is continued for any period of forty-eight hours in the case of an ordinary claim or seven days in any other case ;

- (e.) If, in the case of any mining privilege in respect whereof any periodical payment of rent, royalty, or license fees is prescribed, default for sixty days is made in duly and punctually making any such payment ; 5
- (f.) If, in the case of any mining privilege, default for sixty days is made in the faithful performance or observance of any other of the provisions or conditions subject to which the same is held : 10

Provided that, except in cases where the cause of action is fraudulent misrepresentation, and the defendant is the holder of the mining privilege the title whereto was obtained thereby, no mining privilege shall be liable to forfeiture for any cause of action arising more than six months before the commencement of the suit. 15

Bonâ fide purchaser not liable for preceding defaults other than payment of rent.
1898, No. 38, sec. 148

182. In any suit for the forfeiture of a mining privilege, where the cause of action is other than fraudulent misrepresentation or a continuing default in payment of rent, royalty, or license fees, it shall be a sufficient defence if the defendant satisfies the Court— 20

- (a.) That such cause of action arose before he purchased the mining privilege, and has not continued since such purchase ; and also
- (b.) That he purchased it *bonâ fide* for valuable consideration, and without notice or knowledge of the existence of such cause of action ; and also 25
- (c.) That before purchasing it he took all reasonable precautions to ascertain whether any liability to forfeiture existed.

Forfeiture of surplus ground exceeding area allowed.
Ibid, sec. 149

183. In any case where the ground comprised in or held under any mining privilege exceeds the area which the holder is entitled to, the surplus ground shall be liable to forfeiture by decree of the Warden's Court ; and, except where such special circumstances exist as, in the opinion of the Court decreeing the forfeiture, entitle such holder to fix the dimensions, area, and situation of the forfeited surplus ground, the first applicant shall have the right to fix the same by marking off such ground from any two of the original corner pegs or marks along the boundaries of the mining privilege, or in such other manner as the Court directs : 30 35

Provided that if he exercises such right, and obtains the ground, he shall pay to the former holder such reasonable compensation as the Court directs for any shaft, face, or other mining-works then existing thereon. 40

Procedure in forfeiture suits.
Ibid, sec. 150

184. With respect to suits in the Warden's Court for forfeiture of a mining privilege or surplus ground, the following provisions shall apply :— 45

Plaintiff.

- (a.) If the cause of action is default in punctual payment of rent, royalty, or license fees, the plaintiff shall in every case be the Registrar, Inspector, or some other officer acting in the administration of this Act.
- (b.) If the cause of action is other than such default as aforesaid, the plaintiff may be any such officer as aforesaid, or any holder of a miner's right. 50

(c.) Where any such officer as aforesaid is plaintiff, costs shall not be given against him.

(d.) In lieu of decreeing a forfeiture, the Court, having regard to the special circumstances of the case, may in its discretion inflict a penalty of not more than one hundred pounds, with costs of suit; and, if the costs so awarded do not cover the reasonable expenses actually incurred by the complainant in the suit, the Court may, out of such penalty, allow to him such sum as it thinks reasonable.

Fine instead of forfeiture

(e.) The decree of forfeiture may be made notwithstanding that the evidence establishes abandonment by operation of law.

As to Abandonment of Mining Privileges by Operation of Law.

185. Subject to the provisions hereinbefore contained relating to protection, and also to registration by transferee in good faith, a mining privilege shall be deemed to be abandoned by operation of law in any of the following events, that is to say:—

When mining privilege deemed abandoned by operation of law. 1898, No. 38, sec. 151

(a.) If it is intentionally abandoned; or

(b.) If the land comprised therein has been entirely unused for its proper purpose, or unoccupied, or neglected, for any continuous period of one month in the case of a mining privilege on which machinery, buildings, erections, or works adapted for the efficient *bonâ fide* working or use thereof do not exist or are not in *bonâ fide* course of erection or construction, or three months in any other case:

Provided that this paragraph shall not apply in the case of any race or dam held exclusively for other than mining purposes, nor in the case of a business-site or a residence-site; or

(c.) If, in the case of a race or dam held exclusively for other than mining purposes, it is entirely unused for its proper purpose for any continuous period of twelve months; or

(d.) If, in the case of a business-site or a residence-site, it is entirely unused for its proper purpose, or unoccupied, or neglected for any continuous period of six months; or

(e.) If, in the case of any mining privilege, default for twelve months is made in the due and punctual payment of any prescribed rent, royalty, or license fee.

186. Irrespective of the cases of intentional abandonment specified in the last preceding section, a dredging claim shall be deemed to be abandoned by operation of law if for any continuous period of more than two years, whether protected or not, a suitable dredge is not working or in course of construction on the claim or in the vicinity thereof.

When dredging claim deemed abandoned. 1900, No. 64, sec. 7

187. Except in the case of a water-race used exclusively for other than mining purposes, a race shall be deemed to be intentionally abandoned in any of the following events, that is to say:—

When water-race deemed intentionally abandoned. 1898, No. 38, sec. 152

(a.) If, in the case of a race constructed for the continuous flow of water, the water fails to flow continuously therein during any continuous period of not less than seven days, or during any continuous period of not less than three months such race is not used for its proper purpose; or

(b.) If, in the case of a race constructed for any other purpose than the continuous flow of water, such race is not used for its proper purpose during any continuous period of not less than six months ; or

(c.) If, in the case of any race, it is so damaged or out of repair as to be unfit for its proper use, and so continues for not less than two consecutive months without steps being *bona fide* taken to repair the damage and render the race fit for its proper use with the least possible delay. 5

Abandonment from incapacity of race.
1898, No. 38, sec. 15

188. In any case where the licensee of a race fails or neglects to construct within the period prescribed in that behalf a race of sufficient capacity to carry the number of sluice-heads registered, then forthwith on the expiration of such period all sluice-heads in excess of the number which the race is then capable of carrying shall be deemed to be intentionally abandoned. 10

Abandonment from acts and conduct.
Ibid, sec. 154

189. Irrespective of any of the foregoing provisions of this Act, a mining privilege shall be deemed to be intentionally abandoned whenever from the acts or conduct of the holder an intention to abandon may be conclusively inferred : 15

Provided that a mere declaration of intention not to abandon shall be no evidence of such intention, unless such declaration is accompanied by unambiguous acts or conduct in support thereof. 20

Certificate by Warden of abandonment.
Ibid, sec. 155

190. Upon being satisfied that any mining privilege has been abandoned by operation of law the Warden shall certify in writing that such abandonment has been established, and also the date on or before which it occurred. 25

Procedure for obtaining such certificate.
Ibid, sec. 156

191. With respect to every such certificate of abandonment, the following provisions shall apply :—

(a.) Such certificate may be given by the Warden either in the course of disposing of any application for any mining privilege in respect of the whole or any part of the land, or, in the absence of such application, upon summons to the alleged abandoning holder to show cause why the certificate should not be given. 30

(b.) Such summons shall be returnable not less than ten nor more than twenty-one days after service thereof, and may be issued by the Warden either of his own motion or on the report of the Registrar or any Inspector that the mining privilege is believed to be abandoned by operation of law. 35

(c.) Such certificate shall not be given in the course of disposing of any such application as aforesaid until such holder has had an opportunity of appearing and showing cause. 40

(d.) For such purpose there shall be advertised by and at the expense of the applicant a copy of such application, with a notification thereon that upon the hearing of such application a certificate of abandonment may be given, unless cause to the contrary is shown. 45

(e.) Not later than ten days before the day of hearing, the applicant shall serve on such holder, and also affix on the land or race to which the application relates, a copy of such advertisement. 50

(f.) Such notification may form part of the original application.

General Provisions as to Forfeiture and Abandonment.

192. No mining privilege shall be liable to forfeiture, or be deemed to be abandoned by operation of law, in any case where the acts, defaults, or events relied on to establish such liability or abandonment were
 5 caused by reason only of—
 (a.) The sickness or unavoidable absence of any person ; or
 (b.) The act or default of any workman, lessee, tributer, or other person to which the holder of the mining privilege was neither party nor privy, and which he could not reasonably have
 10 provided against or prevented ; or
 (c.) The failure of water ; or
 (d.) The occurrence of any accident or natural contingency which could not reasonably have been provided against or prevented.
- 15 193. The mere maintenance of marks, or holding of miners' rights, or renewal of license, or registration of title, or, excepting in forfeiture suits for default in payment of rent, royalty, or license fees, the absence of such default, shall be no evidence against either liability to forfeiture or abandonment by operation of law.
- 20 194. In every case where the decree of forfeiture or certificate of abandonment relates to a registered mining privilege, such decree or certificate shall be registered.
- 25 195. In every case where any such decree or certificate relates to portion only of a mining privilege, the following provisions shall apply :—
 (a.) Such mining privilege shall be deemed to be surrendered, and in exchange therefor the Warden shall grant a license under this Act for a corresponding mining privilege comprising the unforfeited or unabandoned portion of the surrendered mining privilege.
- 30 (b.) Such surrender and exchange shall have the same operation as if effected under section one hundred and fifty-five hereof, and accordingly the provisions of that section shall, *mutatis mutandis*, apply.
- 35 196. A decree of forfeiture or certificate of abandonment, unless reversed on appeal, shall take effect forthwith upon its being made or given ; or, in case of abandonment, upon such earlier date as is specified in the certificate.
- 40 197. Forthwith upon the taking-effect of a decree of forfeiture or certificate of abandonment, the following provisions shall apply :—
 (a.) The license or other instrument under which the forfeited or abandoned mining privilege was held shall be void, and the former holder thereof, and all persons holding under or deriving title through him, shall cease to have any right or interest therein, and the forfeited or abandoned land shall be open for
 45 application for mining privileges in the same manner and to the same extent as if it had never been taken up or held by him or them :
- 50 Provided that the forfeiture or abandonment shall not relieve such holder from liability for payment of any rent, royalty, or license fees due or accruing due up to the date of the taking-effect of the decree or certificate.

When mining privilege not liable to forfeiture nor deemed abandoned.
 1898, No. 38, sec. 157

What shall not be evidence.
 Ibid, sec. 158

Decree or certificate to be registered.
 Ibid, sec. 159

Where decree or certificate relates to portion of mining privilege.
 Ibid, sec. 160

Decree or certificate to take effect forthwith.
 Ibid, sec. 161

Forfeited land to be open for application.
 Ibid, sec. 162

Priority.

- (b.) Where the decree is made on the application of the holder of a miner's right he shall, unless the Warden, having regard to all the circumstances, otherwise orders, be deemed to be the first applicant for any mining privilege in respect thereof if his application is duly made and filed not later than seven days after the day on which such decree takes effect. 5

Removal of persons.

- (c.) The Warden may, by warrant addressed to the bailiff of his Court or the officer in charge of the police, remove from the land any person who is in unlawful possession or occupation thereof. 10

Construction of provisions as to forfeiture and abandonment.

1898, No. 38, sec. 163

Procedure when application includes a surveyed forfeited claim.

1899, No. 29, sec. 23

198. The respective provisions of this Act relating to liability to forfeiture and abandonment by operation of law shall apply to the whole or any specified portion of a mining privilege, and those provisions shall be construed accordingly.

199. In any case where a duly surveyed claim has been forfeited, abandoned, or absolutely surrendered, and any person desires to take up the whole of the land as a claim, the following special provisions shall apply, anything in section one hundred and sixty-seven hereof to the contrary notwithstanding :— 15

- (a.) No fresh survey shall be necessary unless the Warden so directs : 20

Provided that in lieu of or prior to directing such fresh survey the Warden may, at the cost of the applicant, require a surveyor to inspect the land and report to the Warden as to whether the boundaries marked out by the applicant are coterminous with those shown by the old plans. 25

- (b.) Where in the computation of the area of the abandoned, forfeited, or surrendered claim, as shown by the survey plans thereof, the area of roads has been excluded, the provisions of section one hundred and fifty-seven hereof shall, *mutatis mutandis*, apply, notwithstanding that the area of the fresh claim may thereby exceed the prescribed limit. 30

As to Certificates of Easement.

Grant of easements to holder of mining privilege over other mining privileges, and rights thereunder. Ibid, sec. 8

200. For the purpose of facilitating mining operations under this Act, the following special provisions shall apply in the case of every mining privilege :— 35

- (a.) Subject to regulations under this Act, the Warden, on application in that behalf, may, by certificate of easement in the prescribed form, grant to any person, being the holder of a mining privilege, the right to enter upon, occupy, and use any specified portion of the land comprised in any other mining privilege for any of the following purposes :— 40

(i.) To cut, make, dredge, or otherwise construct and maintain, and use, upon, over, or under such specified portion of land any road, tramway, bridge, race, tunnel, drive, ditch, channel, or other mining-work ; 45

(ii.) To convey over or discharge upon such specified portion of land any tailings, *débris*, or waste waters resulting from such mining operations, including therein any operation authorised under this section ;

(iii.) Such other purposes as are prescribed. 50

(b.) The application shall be made, notified, and disposed of in manner prescribed by section one hundred and sixty-five hereof.

(c.) The application, if granted, may be granted on such terms and conditions as the Warden thinks fit, and shall in every case be deemed to be granted subject to the condition that the grantee in acting under the grant will not interfere with the reasonable and lawful use of such other mining privilege by the holder thereof, or with his lawful mining operations thereon, except in so far as is reasonably necessary in order to give effect to the grant.

(d.) All gold obtained from such specified portion of land by the grantee as the result of any operation authorised by the grant shall be the property of such holder, and shall be delivered to him by the grantee accordingly.

(e.) Before acting under the grant the grantee shall pay compensation to such holder for all actual or prospective loss or damage that may be suffered by him by reason of the grant or the exercise by the grantee of the rights thereby conferred upon him.

(f.) If within one month after the issue of the certificate the amount of the compensation is not agreed on between the parties, the same shall be determined by the Warden and Assessors in manner provided by section one hundred and fourteen of this Act, the provisions whereof shall accordingly apply.

(g.) The certificate shall be registered against the mining privilege over which the rights thereby granted are exercisable.

201. The provisions of the last preceding section shall extend and apply to timber-cutting, and the operation of sawmill licenses and the holders thereof, and the land held under such licenses, in the like manner as in the case of mining privileges and mining operations.

Extension to sawmilling licenses. 1902, No. 22, sec. 3

Protection of Bridges and Railways.

202. In every case where a public or private bridge exists, or where land is reserved as a site for a public bridge, the following special provisions shall apply :—

(a.) It shall not be lawful for any person, being the holder of a mining privilege, howsoever or whensoever acquired, to carry on mining operations as such holder by sluicing, dredging, tunnelling, or driving within five chains of such public bridge or site, or three chains of such private bridge, except with the written consent, in the case of the public bridge or site, of the local or other authority having control thereof, and in the case of the private bridge, of the owner thereof, nor in any case except in accordance with the terms and conditions subject to which the consent is given :

Provided that in the case of a private bridge the Warden, on application in that behalf, may negative, modify, or vary as he thinks fit any term or condition which the owner has imposed otherwise than for the *bonâ fide* purpose of insuring the safety of the bridge.

Provisions for protection of bridges, and sites therefor, from damage.

1899, No. 29, sec. 16

- (b.) The powers by this section conferred upon the local authority may be exercised either by resolution of the local authority or by writing under the hands of the Chairman or Mayor and any two other members thereof appointed either generally or specially in that behalf by resolution of the local authority. 5
- (c.) In the case of bridges constructed or sites reserved after the twenty-fourth day of October, one thousand eight hundred and ninety-nine (being the date of the commencement of "The Mining Act Amendment Act, 1899"), this section shall extend and apply as from the date on which the construction is commenced or the reservation made. 10
- (d.) For the purposes of this section—
- (i.) "Public bridge" means any bridge intended for public use or for use in connection with any public work within the meaning of "The Public Works Act, 1894," and under the control of the Government or any local authority; and 15
- (ii.) "Private bridge" means any bridge (other than a footbridge) intended for use in connection with the business of any person or company, and owned by any person or company. 20
- (e.) If the holder of the mining privilege, by himself, his agents or workmen, commits any breach of any of the provisions of this section, or of the terms or conditions subject to which the aforesaid consent is given, he shall be civilly liable for all damage thereby done, and in addition thereto his mining privilege shall be liable to forfeiture; and, if the breach is committed in respect of a public bridge or site, he shall also be liable as for committing an injury to a public work. 30

Provisions for
protection of
railways.
1899, No. 29, sec. 17

203. The provisions of the last preceding section hereof, relating to public bridges and the sites therefor, shall, *mutatis mutandis*, apply in the case of a railway as defined by section one hundred and sixty-five of "The Public Works Act, 1894."

As to Public Roads and Public Streets.

35

204. The following provisions shall apply with respect to every public road and public street :—

- (a.) The license for a mining privilege, being a claim, race, or tramway, or a prospecting or mineral area, may be applied for and granted notwithstanding that any public road or public street exists on the land comprised in the application. 40
- (b.) It shall not be necessary to separately mark off the road or street for the purposes of the application.
- (c.) The road or street shall be included in the area of the land comprised in the license. 45
- (d.) The license, if granted, shall be deemed to be granted and shall be held subject to the provisions of the next succeeding section hereof.

Procedure when
mining privilege
includes road or
street.

Ibid, sec. 18

Rights of holder as
to such road or
street restricted.
Ibid, sec. 19

205. (1.) It shall not be lawful for any person, being the holder of a mining privilege (howsoever or whensoever acquired), to exercise 50

upon, over, or under any public road or public street any of his rights as such holder, or to carry on mining operations by dredging or sluicing within one chain of such road or street (whether situate within or outside the limits of the land comprised in his mining privilege), except with the
 5 written consent of the local or other authority having the control of such road or street, nor except in accordance with the terms and conditions subject to which such consent is given.

(2.) The powers by this section conferred upon the local authority may be exercised in manner provided in section two hundred and two
 10 hereof.

(3.) In the case of public roads or public streets constituted after the twenty-fourth day of October, one thousand eight hundred and ninety-nine (being the date of the commencement of "The Mining Act Amendment Act, 1899"), this section shall extend and apply as from the date
 15 of constitution.

(4.) If such holder, by himself, his agents or workmen, commits any breach of any of the provisions of this section, or of the terms or conditions subject to which such consent is given, he shall be civilly liable for all damage done, and in addition thereto his mining privilege shall
 20 be liable to forfeiture; and, if the breach is in respect of a Government road or street, he shall also be liable as for committing an injury to a public work.

General Provisions as to Mining Privileges.

206. (1.) Except in cases where the Warden by order otherwise
 25 directs, no mining privilege shall entitle the holder thereof to take possession of or interfere with any Crown land which is being lawfully and *bonâ fide* used as a yard, garden, orchard, cultivated field, race, or dam, or on which any house or other building is lawfully standing and in actual use or occupation.

House, garden, &c., not to be interfered with unless Warden orders and compensation paid. 1898, No. 38, sec. 166

(2.) Such order shall not be granted unless the Warden is satisfied that the land is *bonâ fide* required for mining purposes, nor until compensation for improvements (but not for the value of the land), to be assessed in the prescribed manner, has been either paid by such holder to the person entitled or has been secured to the satisfaction of the
 35 Warden.

(3.) No order made by the Warden under this section shall have effect for a longer period than three months after its date, unless in the meantime the holder of the mining privilege on whose application the order was made proceeds to exercise the rights in respect of which the
 40 claim for compensation arose.

1904, No. 33, sec. 7

207. (1.) Except where otherwise provided by this Act, every person who by reason of his mining operations causes damage to land shall be liable to pay compensation for such damage to the owner and occupier of such land.

Compensation for damage to land. 1898, No. 38, sec. 167

(2.) Such compensation shall be assessed in the manner prescribed by section one hundred and *fourteen* of this Act, and the amount thereof when so assessed shall be recoverable as a debt.

1904, No. 33, sec. 8

208. (1.) With respect to land which is comprised in any lease in perpetuity or other lease or license under "The Land Act, 1892" (not

Extension of compensation in

certain cases.
1899, No. 29, sec. 31

being a lease or license for depasturing purposes), and which is by section *eighteen* hereof declared to be Crown land, the following special provisions shall apply in every case where a mining privilege exists on the land :—

(a.) The compensation which the lessee or licensee is entitled to receive from the holder of the mining privilege shall not be limited to the cases provided for by section two hundred and *six* hereof, but shall extend to and include compensation for all damage suffered by the lessee or licensee in consequence of the exercise by the holder of the mining privilege of any of the rights conferred upon him as such holder. 5

(b.) Such compensation shall be assessed in the prescribed manner, and shall be paid to the lessee or licensee, or be secured to the satisfaction of the Warden before the holder of the mining privilege proceeds to exercise the rights in respect whereof the claim for compensation arises. 10 15

Compensation in respect of lands acquired under the Land for Settlements Act. Ibid, sec. 32.

In assessment of compensation, prior compensation to be included. Ibid, sec. 33

(2.) The foregoing provisions of this section shall, *mutatis mutandis*, apply in every case where a mining privilege exists on Crown lands acquired under "The Land for Settlements Consolidation Act, 1900," whensoever the land was leased or otherwise disposed of.

209. In assessing the compensation payable by the holder of a mining privilege to any person, whether as the holder of a mining privilege or as the owner or occupier of land, compensation already received shall be taken into account, so that the claimant shall in no case be entitled to compensation more than once in respect of the same matter. 20 25

Casual damage to mining privilege. 1898, No. 38, sec. 168

210. In every case where a mining privilege comprises land which is owned or lawfully occupied by any other person than the holder of such mining privilege, such person shall not be liable for any casual damage done by horses, sheep, cattle, or other stock to such mining privilege or the holder's works thereon. 30

Action for trespass. Ibid, sec. 169

211. No action shall lie for any trespass on any land, tenement, or easement held or acquired under this Act or any former Mining Act, unless at the time of the alleged trespass such land, tenement, or easement was visibly occupied or used by the person alleging the trespass, or was by visible boundary-marks appropriated to him. 35

Removal of buildings, &c., on expiry of lease, and compensation for improvements. Ibid, sec. 170

212. With respect to buildings, machinery, and other structural or non-structural improvements made by the holder of a mining privilege on the land comprised therein, the following provisions shall apply :—

(a.) Except where otherwise expressly provided by this Act, he shall in no case have any right to valuation or compensation from His Majesty in respect of any such improvements. 40

(b.) At any time before the expiration of the prescribed period after he ceases to be holder he may remove or otherwise dispose of all structural improvements belonging to him and being on the land : 45

Provided that such right of removal shall not exist in the case of timber and other materials actually used and applied in the construction or support of any shaft, drive, gallery, adit, tunnel, race, dam, or other mining-work existing on the land ; and if he removes any such timber or other materials in breach of this paragraph, he is liable to a penalty not exceeding one hundred pounds. 50

(c.) Such prescribed period shall be thirty days after he ceases to be such holder, whether by surrender, expiration, abandon-

ment, or forfeiture, or such longer time as the Warden on application in that behalf directs.

- (d.) The outgoing holder of a business or residence site shall in such cases, to such extent and subject to such conditions as are prescribed, be entitled to compensation from the incoming holder for all improvements then existing on the land.
- (e.) Except as by this section hereinbefore provided, no person shall have any right or title to any improvements on the land comprised in any mining privilege after he ceases to be the holder thereof.

As to Workmen and other Persons employed in Mining Privileges.

213. Every person who is employed by or under the holder of any mining privilege (other than a business-site or residence-site) to work thereon on wages or on contract shall, by force of this Act, have a lien on such mining privilege (and also on any other mining privilege held and worked in connection therewith by the same holder) for wages or contract-moneys owing to him by reason of such employment, and such lien shall extend and operate in manner following, that is to say :—

Lien for wages or contract-moneys.
Ibid, sec. 171
1900, No. 64, sec. 21

- (a.) The lien shall extend to three months' wages in the case of a wages-man, and to one hundred pounds in the case of a contractor or sub-contractor.
- (b.) Where the lien is in respect of wages owing by a contractor, it shall operate only to the extent of the amount owing under the contract to the contractor by the holder of the mining privilege.
- (c.) Where the lien is in respect of wages owing by a sub-contractor, or in respect of contract-moneys owing to a sub-contractor, it shall operate only to the extent to which the amount owing by the contractor to the sub-contractor is also owing to the contractor by the holder of the mining privilege.
- (d.) All moneys paid under either of the two last preceding paragraphs by the holder of the mining privilege may by him be deducted from moneys owing by him to the contractor, and in the case of moneys paid under the last preceding paragraph may by the contractor be deducted from moneys owing by him to the sub-contractor.
- (e.) As between wages-men and contractors, the lien of a wages-man shall have priority.
- (f.) As between contractors and sub-contractors, the lien of a sub-contractor shall have priority.
- (g.) The lien may, in the prescribed manner, be registered in the Warden's Court, and shall be void unless it is registered,—
- (i.) In the case of a wages-man, within thirty days after he ceases his employment or the three months' wages become due, whichever event is the earlier ; and
- (ii.) In the case of a contractor or sub-contractor, within thirty days after the contract or sub-contract is completed or otherwise determined, or the one hundred pounds become due, whichever event is the earlier.
- (h.) On the day on which the lien is registered the Clerk of the Court shall, by registered letter, post notice thereof in the prescribed form to the holder of the mining privilege to which the lien relates.

(i.) As between wages-men, contractors, and sub-contractors *inter se*, their respective liens shall have priority according to the date of registration; but as between lienees of the same class all registered liens shall rank equally and alike in respect of such portion of the amounts to which the liens relate as was earned during one and the same period of time. 5

Lien to have priority.
1898, No. 38, sec. 172

214. A duly registered lien under the last preceding section of this Act or the corresponding provisions of any former Mining Act shall have priority over all other then existing or subsequently created encumbrances, liens, or interests whatsoever affecting the mining privilege to which such registered lien relates. 10

Warden to determine all questions relating to liens.
Ibid, sec. 173

215. The Warden shall have jurisdiction to determine all questions and claims relating to such liens, including all questions and claims relating to the amounts payable under such liens, their order of priority, and the mode of satisfying and discharging the same. 15

Mining privileges may be sold to satisfy lien.
Ibid, sec. 174

216. For the purpose of satisfying and discharging any such lien the Warden may, by order made on the application of the lienee, cause the mining privileges to which the lien relates to be sold by public auction at such time and place and on such terms and conditions as he thinks fit. 20

How proceeds of sale to be applied.
Ibid, sec. 175

217. The moneys produced by any such sale shall be applied, first, in or towards defraying the costs and expenses of the sale; secondly, in or towards defraying the costs and expenses of the proceedings in which the order for sale was made; thirdly, in or towards satisfying and discharging, according to their respective priorities, all registered liens; and the surplus, if any, shall be payable to the person entitled thereto. 25

Warden may execute transfer of sale.
Ibid, sec. 176

218. (1.) For the purpose of completing the title of the purchaser at any such sale the Warden, in his official name and under his official seal, may, at the cost in all things of the purchaser, execute all such instruments of transfer or other assurance as are necessary; and every instrument so executed shall vest the purchased property in the purchaser freed from all encumbrances whatsoever other than those (if any) subject to which the sale was expressed to be made. 30

(2.) The Warden shall incur no personal or other liability by reason of executing any such instrument. 35

Mortgagee may satisfy liens.
Ibid, sec. 177

219. Any mortgagee of the mining privilege ordered to be sold as aforesaid may, at any time before the sale, apply to the Warden for leave to pay into Court whatever sum is necessary in order to satisfy the liens with costs and expenses, and thereby avoid the necessity of the sale; and, upon the sum as fixed by the Warden being paid into Court, the Warden may by order stop the sale. 40

Moneys so expended to be added to mortgage.
Ibid, sec. 178

220. The sum so paid into Court shall be applied in like manner as in the case of the proceeds of a sale, and all moneys (including costs and expenses) expended or incurred under this section by the mortgagee shall, by force of this Act, be deemed to be added to and to form part of the principal moneys owing under his mortgage, and shall be covered by the security thereof accordingly. 45

Mining privilege includes plant and machinery.
Ibid, sec. 179

221. For the purposes of the eight last preceding sections hereof the expression "mining privilege" includes all plant and machinery situate on or worked in connection with the mining privilege and belonging to the holder thereof. 50

222. Except in so far as is prescribed by regulations under this Act, neither "The Contractors' and Workmen's Lien Act, 1892," nor "The Workmen's Wages Act, 1893," shall apply to any such lien as aforesaid.

Exceptions.
1898, No. 38, sec. 180

223. With respect to tributers in any claim, but irrespective of their rights under the aforesaid Acts, the following special provisions shall apply :—

Lien of tributers
on earnings of
claim.

Ibid, sec. 181

(a.) As against the holder of such claim, and all persons claiming under or through him (hereinafter called "such holder"), every such tributer shall, in respect of his labour in such claim, have a lien upon all earnings the result of such labour :

Provided that the amount of such lien shall not exceed at any one time four weeks' wages, computed at half the rate current in the district, such rate being in no case deemed to be more than two pounds per week.

(b.) If such earnings are in the possession of the party of tributers, it shall be lawful for them to deduct therefrom the amount of every such lien before delivering up any such earnings to such holder.

(c.) If whilst any such lien is unsatisfied such earnings are in possession of such holder, it shall be his duty to apply the same in or towards equal satisfaction of all such liens ; and if he fails or neglects so to do within two days after receipt by him, his manager or agent, of demand in writing in that behalf from any such tributer, then, without affecting the validity of any such lien, the amount thereof shall, to the extent of the total value of such earnings, but not further or otherwise, be deemed to be a debt due from him to the tributer entitled to such lien, and may be recovered accordingly.

(d.) So long as the lien of a tributer remains unsatisfied to the extent of more than two weeks' wages computed as aforesaid, and such holder has in his possession earnings available but unapplied in or towards satisfaction thereof, such holder shall not be entitled to count such tributer as a workman for the purposes of compliance with the prescribed labour conditions.

(e.) If any question at any time arises as to the amount of such earnings as aforesaid, or as to the mode of computing the same, or as to the amount of any lien, or as to the mode of enforcing and satisfying the same, the Warden shall decide, and his decision shall be final.

224. If any person is employed for hire or reward to work in a claim, or to prospect, the right to all metals and minerals found by him in the course of such employment, and also the right to take up or hold any claim or other mining privilege on the land on which he is so employed, shall, as between him and his employer, vest in the employer and not in the person so employed, and for the purposes of such employment it shall not be necessary for such person to himself hold a miner's right.

Right to metals and
minerals found to
vest in employer.
Ibid, sec. 182

As to Tribute Agreements.

Provisions as to
agreements for
working claims
on tribute.

1899, No. 29, sec. 15

225. With respect to every agreement entered into after the commencement of this Act for the working of a claim on tribute, the following provisions shall apply :—

- (a.) The agreement shall be in writing, signed by or on behalf of the parties, and shall have no force or effect unless and until, by memorandum thereon under his hand, the Warden certifies that the terms and conditions are reasonable and proper in so far as concerns the interests of the tributers. 5
- (b.) Notwithstanding anything to the contrary in the agreement, no provision contained therein for the forfeiture or cancellation thereof or of the tributer's rights thereunder shall operate or be enforceable by the claimholder or his successor in title without the consent in writing of the Warden. 10
- (c.) Notice of the intended application for such consent shall be given to the tributers, or to at least one of them, by the applicant. 15
- (d.) On the hearing of the application the Warden shall have regard to the equities of the case, and, after hearing the parties, may grant or refuse the application, or relieve from forfeiture or cancellation, on such terms as he thinks equitable, or make such other order in the premises as he thinks equitable ; and every such order shall be binding on the parties. 20
- (e.) Nothing in this section or in any such agreement shall operate to limit the rights of tributers under section two hundred and twenty-three hereof. 25
- (f.) The stamp duty payable on any instrument of agreement to work as a tributer in any claim, special claim, or licensed holding shall be one shilling.

1897, No. 18, sec. 11

PART V.

30

WORKING, REGULATION, AND INSPECTION OF MINES.

As to Certificated Mine-managers, Battery Superintendents, Engine-drivers, and Dredgemasters.

Board of Examiners.
1898, No. 38, sec. 183

226. For the purpose of conducting the examination of applicants for certificates as mine-managers, battery superintendents, or dredgemasters under this Act, and issuing such certificates, there is hereby constituted a Board of Examiners (hereinafter called "the Board"), consisting of— 35

The Director of the Geological Survey of New Zealand ;

The Surveyor-General ;

The Inspecting Engineer of Mines ; and

Four other persons to be appointed by the Governor, all of whom shall be holders of first-class mine-managers' certificates. 40

Appointment of
Chairman,
examinations and
procedure, and
alteration of
constitution.
Ibid, sec. 184

227. With respect to the Board, the following provisions shall apply :— 45

- (a.) The Governor shall appoint one of the members of the Board to be its Chairman, and may also appoint a fit person to be its secretary.

(b.) All examinations shall be conducted and certificates shall be issued by the Board according to regulations under this Act; and, subject to such regulations, the Board may, by by-laws or otherwise, prescribe its own procedure.

5 (c.) The Governor may from time to time alter the constitution of the Board by appointing as members thereof other persons in lieu of those hereinbefore mentioned; or may authorise and direct any School of Mines, or any persons other than the Board, to conduct examinations, grant certificates, and
10 generally exercise all the powers and functions by this Act conferred on the Board.

228. (1.) Every person employed or acting in the capacity of a mine-manager of any mine shall be the holder of a mine-manager's certificate of the first or second class under this Act. Mine-manager to be holder of certificate. 1898, No. 38, sec. 185

15 (2.) If such mine is worked from a shaft or inclined plane where winding or pumping machinery is used, such certificate shall be a first-class certificate.

(3.) If such mine is worked from an adit level where no winding or pumping machinery is used, such certificate need only be a second-class certificate.

20 229. Every person employed or acting in any mine in charge of the machinery and appliances used therein for the purpose of treating any ore, metal, or mineral by the cyanide-of-potassium process, or such other process as the Governor from time to time declares to be a
25 chemical process within the meaning of this Act, shall be the holder of a battery superintendent's certificate under this Act. Battery superintendent's certificate. Ibid, sec. 186

230. Every person employed or acting in any mine in the capacity of an engine-driver in charge of any engine or winding machinery by means whereof persons are drawn up, down, or along any shaft, pit,
30 plane, or level shall be the holder of an engine-driver's certificate under "The Inspection of Machinery Act, 1902." Engine-driver to have certificate. Ibid, sec. 187

231. (1.) The master or other person in charge of every dredge employed in any deep or swift-flowing stream shall be the holder of a dredgemaster's certificate issued by the Board. Dredgemasters to hold certificate. 1901, No. 60, sec. 6

35 (2.) The examination shall be in such special subjects as are prescribed by regulations.

232. All certificates issued by the Board of Examiners under any former Mining Act, and in force at the commencement of this Act, shall be deemed to have been issued under this Act. Certificates issued under former Mining Acts saved.

40 *Certificates by Examination.*

233. (1.) Every person desiring to obtain by examination a certificate as mine-manager, battery superintendent, or dredgemaster under this Act shall make application to the Board to be examined, and shall forward with his application the fee of one pound: Application to be examined. Fee. 1898, No. 30, sec. 188

45 Provided that if the candidate fails to pass such examination he may be examined again at the end of three months without the payment of any further fee.

(2.) The examination shall be such as to satisfy the Board that the candidate possesses,— Subjects of examination. Ibid, sec. 189

50 (a.) In the case of a mine-manager's certificate, such knowledge and practical experience of the working of a mine as entitles him to a certificate of the first or second class, as the case may be; and

- (b.) In the case of a battery superintendent's certificate, such knowledge and practical experience of the machinery and appliances used in working the process employed as entitles him to such certificate.

Candidate to supply
proof of experience.
1898, No. 38, sec. 190

234. The candidate shall supply to the Board evidence in writing from his previous employers in proof of the nature and extent of his practical experience; such experience being in the case of a candidate for a mine-manager's certificate not less than five years' actual employment in the underground workings of a mine, and in any other case actual employment of such nature and for such period as are prescribed.

Certificates without Examination.

Certificates from
beyond colony
recognised.
Ibid, sec. 191

235. On payment of a fee of ten shillings the Board may, without examination, grant any of the certificates aforesaid to any person of good repute who satisfies the Board that he is the holder of a corresponding certificate of equal status granted after examination by any duly constituted and recognised authority outside the colony.

Employment and Disqualification of Certificate-holders.

Disqualification.
Ibid, sec. 192

236. Whenever it appears to the Board that the holder of any certificate under this Act, or any engine-driver's certificate under "The Inspection of Machinery Act, 1902," is guilty of any offence or misconduct which would render him unfit to be trusted to efficiently perform his duties as such holder, the following provisions shall apply:—

- (a.) The Board may call upon him to show cause why he should not be disqualified.
- (b.) If he fails to show cause, the Board shall report the matter to the Minister, who, by notice in the *Gazette*, may disqualify him for such period as he thinks fit; and during the period of disqualification he shall, for all the purposes of this Act, be deemed not to be the holder of such certificate.

When unlawful to
work without
manager,
superintendent, or
engine-driver.
Ibid. sec. 193

237. It shall not be lawful—

- (a.) To carry on mining operations in any mine where more than twelve men are employed unless such mine and operations are under the management and charge of a duly certificated mine-manager:

Provided that this paragraph shall not apply in the case of a sluicing or dredging claim; nor

- (b.) To use the cyanide-of-potassium process, or any other chemical process within the meaning of this Act, in or in connection with any mine unless such process and the machinery and appliances connected therewith are under the management and charge of a duly certificated battery superintendent; nor
- (c.) To use in or in connection with any mine any engine or winding machinery by means whereof persons are drawn up, down, or along any shaft, pit, plane, or level unless such engine or machinery is under the charge of a duly certificated engine-driver.

238. The owner of any mine wherein a mine-manager or battery superintendent is employed shall, by notification in writing, furnish to the Inspector, and also to the Minister, the name of such manager or superintendent, together with the number and class of his certificate; and shall also at all times cause such name to be kept posted in some conspicuous place at the entrance of the mine.

Name of mine-manager or battery superintendent to be furnished.
1898, No. 38, sec. 194

239. Every person employed or acting as a mine-manager, battery superintendent, or engine-driver in connection with any mine other than a sluicing or dredging claim, or as dredgemaster on any dredge, shall produce his certificate to the Warden or any Inspector of Mines or Inspector of Machinery whenever required by the Warden or any such Inspector so to do.

Certificate to be produced to Warden or Inspector.
Ibid, sec. 196

As to the Employment of Persons in Mines.

240. With respect to persons in charge of machinery used in connection with any mine, or with the treatment of the products of any mine, the following provisions shall apply :—

Limit of hours of employment in mines.
Ibid, sec. 197

(a.) Except in cases of breakage, or other special emergency, no such person shall be employed for a longer period than eight consecutive hours at any one time; and between each such period and the next there shall be an interval of at least four hours.

(b.) Such period of eight hours shall be exclusive of meal-times, and also of the time (if any) occupied in raising or exhausting steam or drawing fires in connection with the machinery in his charge.

(c.) Such person shall be entitled to holidays at the rate of not less than one whole holiday or two half-holidays for every eight weeks (whether consecutive or not) during which he is employed in charge of such machinery on seven consecutive days in each such week.

(d.) Such person commits an offence if, whilst in charge of such machinery, property is damaged or destroyed in consequence of his negligence.

241. No female person of any age, and no male person under the age of fourteen years, shall be employed for hire in any capacity in or about a mine :

Who may not work in mine
Ibid, sec. 198

Provided that this shall not apply in the case of clerical employment.

242. No person under the age of eighteen years shall at any time be employed as lander or bracedman over any shaft; nor, except in cases of breakage or other special emergency, shall he be employed in any capacity in or about a mine for more than forty-eight hours in any week, or for more than eight hours in any consecutive period of twenty-four hours, exclusive nevertheless of meal-times.

Limit of employment of persons under eighteen.
Ibid, sec. 199

243. Except in cases where the previous authority in writing of an Inspector of Mines has been obtained, it shall not be lawful for any person or company to directly or indirectly employ any workman on Sunday for hire or reward to do any skilled or unskilled manual labour in or about any mine.

Employment of manual labour in mines on Sunday prohibited.
1897, No. 7, sec. 2

Cases in which
Inspector may
grant permission.
1897, No. 7, sec. 3

244. No Inspector of Mines shall give any such authority as aforesaid, except in cases where he is satisfied that the labour cannot be suspended on Sunday without risk of injury to the mine or its operations; and, when giving such authority, he shall in each case state in writing his reasons for granting such authority, and shall specify the number of workmen that may be employed and the nature of their employment, and the period during which such authority shall extend. 5

Right of appeal.
Ibid, sec. 4

245. There shall be the right of appeal to the Warden of the mining district from the decision of any Inspector of Mines in respect of the granting or refusing of an authority under the two last preceding sections. 10

Penalty for breach
of Act.
Ibid, sec. 5

246. If any workman is employed in breach of section two hundred and forty-three, the person or company employing him, and also, where the employer is a company, the mine-manager and every director thereof, are severally liable to a penalty not exceeding five pounds :

What a sufficient
defence.

Provided that it shall be a sufficient defence to a prosecution if the Court is satisfied that the employment was rendered necessary by reason of breakage or other special emergency involving danger to life or damage to property. 15

Not to affect other
provision.
Ibid, sec. 6

247. Nothing in sections two hundred and forty-three to two hundred and forty-six hereof shall be construed to affect the operation of section sixteen of "The Police Offences Act, 1884" : 20

Provided that no person shall be punished twice for the same offence.

Overtime and hours
for working under-
ground.
1902, No. 22, sec. 9
1903, No. 81, secs. 2,
3

248. Subject to the provisions of any award in force under "The Industrial Conciliation and Arbitration Act, 1900," on the twenty-third day of November, one thousand nine hundred and three (being the date of the commencement of "The Mining Act Amendment Act, 1903"), every workman employed underground in a mine shall be entitled to be paid overtime when he is employed underground for more than eight hours in any day, counting from the time he enters the underground workings of the mine to the time he leaves the same. 25 30

As to Drainage of Mines.

Owners of mines to
contribute to cost of
raising water by
machinery.
1898, No. 38, sec. 200

249. In any case where any person employs efficient machinery in raising or draining water from any mine he shall be entitled to receive reasonable contribution towards the expense thereby incurred from the owner of every adjacent mine which is thereby benefited, or which by reason of its mode of working adds to the quantity of water to be thereby raised or drained. 35

Not liable for
accidental stoppage
of machinery.
Ibid, sec. 201

250. Such person shall not be liable for any damage or injury caused to any such contributing mine by reason of the stoppage of his draining operations if such stoppage is caused by accident to his machinery or any other cause beyond his control : 40

Provided that he exercises all due diligence in repairing his machinery and resuming his draining operations.

Liable for other
discontinuance
unless notice given.
Ibid, sec. 202

251. Excepting as aforesaid, such person shall be liable for all damage or injury caused to any such contributing mine by reason of the discontinuance of his draining operations, unless he gives to the owner of such mine not less than three months' previous notice in writing of his intention to discontinue such operations. 45

252. The Council of any county or borough may from time to time contribute out of the County or Borough Fund such sums as it thinks fit towards the expenses incurred by any such person in draining mines within or adjacent to the county or borough.

Council may contribute to expenses of draining.
1898, No. 38, sec. 203

5 253. The Governor may from time to time, as he thinks fit, by regulations or otherwise,—

Governor may by regulations fix drainage-areas, constitute Drainage Boards, and prescribe their functions, &c.
Ibid, sec. 204

(a.) Fix drainage-areas ;

(b.) Constitute and appoint for each drainage-area one or more Drainage Boards ;

10 (c.) Prescribe with respect to each such Board its powers and functions, the number of its members, their tenure of office, and the mode of their election or appointment ;

(d.) Prescribe the mode in which and the extent to which such Boards may assess drainage rates on lands within their drainage-areas ;

15 (e.) Prescribe the mode in which such assessment may be appealed against, and the procedure on such appeals ;

(f.) Prescribe the mode in which such rates may be levied, collected, and recovered ;

20 (g.) Prescribe the mode in which contributions under section two hundred and forty-nine hereof may be made, assessed, fixed, and recovered ;

(h.) Prescribe whatever else he deems necessary in order to provide for the effective drainage of mines at the common expense of the holders thereof.

25 (i.) Alter or abolish the Thames Drainage Board and drainage-area.

254. Except in so far as may be otherwise provided by the Governor under the last preceding section hereof, nothing in this Act contained shall be construed to repeal the Order in Council dated the nineteenth day of January, one thousand eight hundred and eighty-six, or the regulations made thereunder, or to prejudicially affect the Thames Drainage Board as constituted or the drainage-area as fixed by those regulations, or the powers and functions thereby conferred upon that Board.

Thames Drainage Board deemed duly constituted
Ibid, sec. 205

As to the Working of Mines, and the Safety of Life and Property therein.

255. The following general rules shall, so far as practicable, be observed in every mine :—

General rules.
Ibid, sec. 206

40 (1.) Ventilation to such extent as is prescribed shall be constantly produced in every mine, to the intent that the shafts, winzes, sumps, levels, and working-places of such mine, and the travelling-roads to and from such working-places, may at all times be in a fit state for working and passing therein ; and, in particular,—

Ventilation.

45 (a.) In every case where quartz or other substances are crushed in a dry state, or where rock-drills are used, there shall at all times be used in and about the battery or place where such crushing or drilling is done such appliances as in the opinion of the Inspector will effectually keep the air
50 pure and prevent the accumulation of dust.

Gunpowder and
blasting.

(b.) For the purpose of insuring full ventilation in underground workings the Inspector may require any level to be connected with the next higher level by an uprise or winze.

(2.) Gunpowder or other explosive or inflammable substance shall only be used in a mine as hereunder provided, that is to say,— 5

(a.) It shall not be stored on the surface of or adjacent to the mine unless in such magazine and in such quantities as may in writing be approved by the Inspector. 10

(b.) It shall not be stored in the mine in any quantity exceeding what would be required for use during six working-days for the purpose of the mine; and, whilst so stored, it shall be kept in a drive or chamber separated by a door fixed across such drive or chamber at least thirty feet from any travelling-road. 15

(c.) It shall not be taken for use into the workings of the mine except in quantities actually required during the shift, nor except in a securely covered case or canister containing not more than eight pounds of gunpowder, nor more than five pounds of nitro-glycerine compounds. 20

(d.) A workman shall not have in use at one time in any one place more than one of such cases or canisters.

(e.) Detonators for blasting shall be kept stored on the surface of the ground in a covered box placed in the powder-magazine. 25

(f.) Not more than one hundred detonators shall be kept for service in any mine at one time, and these shall be kept in a covered box in the drive or chamber set apart for the purpose, and shall be only taken out in such quantities as are required for immediate use. Detonators shall not, on any pretence whatsoever, be placed near any travelling-road, pass, or working-face. 30

(g.) No person shall enter with a naked light a powder-magazine, or any excavation in a mine where powder or other explosive or inflammable substance is stored. 35

(h.) No iron or steel pricker shall be used in blasting, and no iron or steel tool shall be used in tamping or ramming, and no iron or steel pricker or tamping-bar shall be taken into any mine. 40

(i.) The holder of the mine shall provide copper prickers.

(j.) A charge which has missed fire may be drawn by a copper pricker, but shall not be visited until three hours have elapsed from the time of lighting the fuse of such charge. In no case shall an iron or steel drill be used for the purpose of drawing or drilling out such charge, nor shall any charge be drawn where nitro-glycerine compounds or detonators have been used. 45

Provided that this paragraph shall not apply to charges fired by an electric current. 50

(k.) No person under the age of eighteen years shall be allowed to charge a hole with explosives or to fire any charge.

(l.) No drill-hole shall be bored within a distance of three feet directly below or within one foot in any other direction from the site of a previously exploded charge of any nitro-glycerine compound, and no drill-hole shall be bored in any remaining portion of a hole in which a charge of nitro-glycerine compound has been previously exploded.

(m.) In all cases where the fumes arising from the explosion of any nitro-glycerine compound cannot be effectively dispersed by ventilation or spray of water from the mine, such fumes shall be neutralised or rendered innocuous by the person in charge of the blasting operations by the use of a spray of solution of sulphate of iron before the miners are permitted to return to the sites of such blasting operations.

(n.) Miners employed in blasting with nitro-glycerine compounds shall be supplied by their employer with the means of thawing such compounds, and with the means of producing sulphate-of-iron spray.

(3.) Every underground plane on which persons travel, and which is self-acting or worked by an engine, windlass, or gin, shall be provided (if exceeding thirty yards in length) with some proper means of signalling between the stopping-places and the ends of the plane, and shall be provided in every case (at intervals of not more than twenty yards) with sufficient manholes for places of refuge.

Manholes in self-acting or engine planes.

(4.) Every road on which persons travel underground, where the produce of the mine in transit exceeds ten tons in any one hour over any part thereof, and where the load is drawn by a horse or other animal, shall be provided (at intervals of not more than one hundred yards) with sufficient spaces for places of refuge, each of which spaces shall be of sufficient length and of at least three feet in width between the wagons running on the tramroad and the side of the road.

Spaces in horse-roads.

(5.) Every manhole and space for a place of refuge shall be constantly kept clear, and no person shall place anything in such manhole or space as to prevent access thereto.

Keeping spaces clear.

(6.) The top and all entrances between the top and bottom of every working or pumping shaft shall be properly and securely fenced or securely covered, but this provision shall not be taken to forbid the temporary removal of any fence or cover for the purpose of repairs or other operations if proper precautions are used.

Fencing off entrance to shafts.

(7.) Every abandoned or disused shaft shall be fenced or securely covered in, and its position indicated on the surface by a post or cairn of stones, or such other permanent distinguishing-mark as an Inspector thinks sufficient.

Abandoned or disused shaft.

(8.) When a fence or cover has been temporarily removed from any entrance to a shaft to admit of the performance of ordinary mining operations, a strong horizontal bar shall be securely fixed across such entrance, not less than three nor more than four feet from the floor of the brace chamber or drive, as the case may be.

Horizontal bar when fence or cover temporarily removed.

Securing of shafts.

- (9.) Where, in the opinion of the Inspector, the natural strata are not safe every working or pumping shaft shall be securely cased, lined, or otherwise made secure ; for which purpose an ample supply of sound good timber shall be kept on the ground ready for immediate use.

Protection of drives.

- (10.) Every drive and every excavation of any kind in connection with the working of a mine shall be securely protected and made safe for persons employed therein, and a light shall be kept burning in the chamber of every level whilst any person is working there.

Division of shafts

- (11.) Where one portion of the shaft is used for the ascent and descent of persons by ladders or a man-engine, and another portion of the same shaft is used for raising material, the first-mentioned portion shall be cased or otherwise securely fenced off separate from the last-mentioned portion.

Signalling.

- (12.) Every working-shaft in which a cage is used, and every division of such shaft in which persons are raised and lowered, and every shaft in which appliances worked by steam or other machinery are used, shall be provided with guides and some proper means of communicating distinct and definite signals from the bottom of the shaft and from every entrance for the time being in work between the top and the bottom of the shaft to the top, and thence to the engine-room, and from the engine-room and top to the bottom of the shaft and to every entrance for the time being in work between the top and the bottom of the shaft ; and no verbal signals or communications shall be made up or down a shaft exceeding fifty yards in depth, in which cages are used, except through speaking-tubes or telephones in the pump-compartment of such shaft.

Knowledge of signals.

- (13.) Every person employed in a mine shall make himself acquainted with the system of signals used in such mine, and a line or some other appliance shall be provided in each shaft to admit of danger-signals being communicated to the engine-driver from any portion of such shaft.

Clear view for engine-driver.

- (14.) A clear view shall be kept for the engine-driver between his station and the shaft at the surface brace.

All modes of signalling to be clear and distinct.

- (15.) All methods of signalling in mines to indicate that men or material are to be raised or lowered in shafts shall be clear and distinct, and shall be posted in a clear and legible form on framed boards, one of which shall be placed at the chamber at the bottom of the workings in the shaft, and the other at the brace at or near the top of the shaft.

Such methods shall be subject to the approval of the Inspector, and shall also be subject to such alterations and amendments as may from time to time be indicated by the Minister on the report of the Inspector.

Signalling along drives in alluvial mines.

- (16.) Whenever any underground work is being performed in alluvial mines at greater distances than two hundred feet from the shafts, proper means shall be provided for communicating along the lower drives of such mines distinct and definite signals to and from the plats at the bottom of the shafts, and to and from all places in which men are at work.

- 5 (17.) Every cage shall have a sufficient cover overhead when used for lowering or raising persons in any working-shaft. Such cage-cover shall be constructed of iron not less than one quarter of an inch thick, and shall be securely hung on hinges and fitted with sloping sides, so as to be readily lifted upwards by persons within the cage. Wherever practicable, all persons working in shafts shall be protected, by means of a roof or other suitable appliance overhead, from the fall of material down such shafts. Cover overhead.
- 10 (18.) The maximum number of persons that may lawfully be lowered or raised in one cage shall not exceed four, or such greater number as the Inspector, having regard to the size and strength of the cage, gear, and machinery, specially authorises by writing under his hand; and no person shall be permitted to get off or on a cage until it has settled on the beams on the surface of the mine, or reached the bottom or level where it is intended to stop. Regulating descent of persons in cages.
- 15 (19.) No timber, tools, rails, sprags, or other material, except for repairing the shaft, shall be placed in the same cage in which men are being lowered or raised. Materials not to be sent with men.
- 20 (20.) Every brace shall be properly covered to protect the workmen from the inclemency of the weather. Braces to be covered.
- 25 (21.) In every shaft in which a whim, whip, or windlass is used, and in every working pit or shaft where no machinery is used, a proper ladder or footway shall be provided for the use of persons employed therein. Proper ladder or footway.
- 30 (22.) A single-linked chain shall not be used for lowering or raising persons in any working shaft or plane, except in the case of short coupling-chains attached to the cage or load, and in such case two single-linked chains of uniform size shall be used to each coupling. Chains.
- 35 (23.) Before any rope or chain is used in the shaft it shall be tested and proved to be equal to carrying twice the weight of the ordinary load; and in mines where men are lowered or raised in shafts the ropes and chains shall periodically, at intervals of not more than three months, be tested and proved to be equal to carrying twice the weight of the ordinary load. Ropes and chains to be tested.
- 40 (24.) There shall be on the drum of every machine used for lowering or raising persons such flanges or horns, and also, if the drum is conical, such other appliances, as may be sufficient to prevent the rope from slipping. Slipping of rope on drum.
- 45 (25.) There shall be attached to every machine worked by steam, water, electrical, or mechanical power, and used for lowering or raising persons, an adequate brake, and also a proper indicator (in addition to any mark on the rope) to show to the person who works the machine the position of the cage or load in the shaft. Brake.
- 50 (26.) Every cage shall be fitted with special and suitable appliances to prevent its sudden fall down a shaft, and also to prevent its coming into contact with the poppet-heads. Before any such cage is first used it shall be tested in the presence of an Inspector, and it shall not be used unless and until Appliances to prevent sudden fall of cage.

- he gives a certificate in writing that it is fitted with such appliances as aforesaid and is in fit working-order.
- (27.) Spring catches or automatic or self-acting doors or tumblers of a suitable kind shall be affixed to the skids or guides below the poppet-heads of every shaft in which a cage is used, to prevent the fall of such cage down the shaft when detached from the rope or chain by overwinding or otherwise. 5
- (28.) In any shaft exceeding twenty feet in depth, in which cages are not used, no person shall descend or ascend by the aid of machinery unless (in addition to the use of the loop, cross-bar, or other appliance) he is securely stayed to the rope employed for lowering or raising in such shaft by a strap or other fastening passing round the body under the arms, and such method of staying shall be used by every person who finds it necessary, in the execution of his duty, to descend or ascend a shaft on top of the cage-covers. 10 15
- (29.) A ladder permanently used for the ascent or descent of persons shall not be fixed in a vertical or overhanging position, except in shafts used exclusively for pumping, but every such ladder shall be inclined at the most convenient angle which the space in which the ladder is fixed allows; and every ladder, whether vertical, overhanging, or inclined, shall have substantial platforms at intervals of not more than thirty feet, and a suitable fixture for a hand-grip shall be placed above such ladder for the use of persons ascending or descending. In no case shall new vertical or overhanging ladders be constructed, either in substitution for old ones or otherwise. 20 25
- (30.) If more than four persons are employed in the mine below ground in one shift, sufficient accommodation shall, if ordered by the Inspector, be provided above ground near the principal entrance of the mine, and not in the engine-house or boiler-house, for enabling the persons employed in the mine to conveniently dry and change their dresses, and in no case shall men be allowed to change their dresses upon a boiler. 30 35
- (31.) No person under the age of twenty-one years shall be placed in charge of or have the control of any steam engine or boiler.
- (32.) No person in charge of machinery shall, under any pretext whatever, unless relieved by a competent person for that purpose, absent himself or cease to have continual supervision of such machinery during the time it is in use. 40
- (33.) All machinery in which steam, water, electricity, or air, or any two or more of them, are used as motive power shall be subject to the provisions of "The Inspection of Machinery Act, 1902," so far as the same shall reasonably apply, and no such machinery, erected or fitted up, shall be employed until it has been examined by an Inspector appointed under that Act, and certified by him to be in proper and fit working-condition. 45 50
- Spring catches or tumblers to be affixed to skids.
- Protection to person descending shaft by rope.
- Inclination of ladders.
- Dressing-rooms.
- Control of steam-engine.
- Absence from machinery in use.
- Machinery to be examined.

- (34.) All boilers, compressors, engines, gearing, and all other parts of machinery, when used for any mining purpose, or for the treatment of ores, or for the treatment of the products of any mine, shall be kept in a fit state and condition. Machinery to be kept in good order.
- 5 (35.) Every fly-wheel, and all exposed or dangerous parts of the machinery, and every tramway constructed on an elevated platform other than a tramway worked by ropes, shall be kept securely and safely fenced. Fencing machinery.
- 10 (36.) Every steam-boiler shall be provided with a proper steam-gauge and water-gauge, to show respectively the pressure of steam and the height of water in the boiler, and also with a proper safety valve; and at least once in every six months, or oftener if required, every boiler shall be thoroughly cleansed; and once in every twelve months every such boiler shall be subjected to an hydraulic test, and the date and full description of every such test and cleansing shall be entered in a book to be kept by the mine-manager or other person in charge of the mine, and the entries in such book shall on demand be open to the perusal of any Inspector under this Act or under "The Inspection of Machinery Act, 1902." Gauges to boiler and safety valve.
- 15
- 20 (37.) The smoke from every boiler for generating steam, and from every furnace used in any part of the underground workings of a mine, shall not be allowed to escape into any part of such workings, nor in any manner other than by means of an airtight flue conducting such smoke directly from the boiler or furnace into a vertical shaft cut in the rock up to the surface of the ground to the open air, or built up to the surface as aforesaid with bricks and cement in such manner as to be completely airtight. Smoke not to be allowed to escape.
- 25
- 30 (38.) No person shall wilfully damage, or without proper authority remove or render useless, any fencing, casing, lining, guide, means of signalling, signal, cover, chain, flange, horn, brake, indicator, ladder, platform, steam-gauge, water-gauge, safety valve, or other appliance or thing provided in any mine in compliance with this Act. Wilful damage.
- 35
- 40 (39.) Except with the consent of the Minister, no person shall, after any shaft or underground workings have become disused for mining purposes, wilfully damage or render useless such shaft or workings by the removal of any fencing, covering, casing, lining, ladder, platform, or other appliance therein. Abandoned shafts not to be damaged.
- 45 (40.) In every working in a mine approaching a place likely to contain a dangerous accumulation of water, boring-rods shall be kept and used for the purpose of perforating the ground twenty feet in advance of or near or at any angle from such working; and no drive, gallery, or other excavation shall be made within what, in the opinion of the Inspector, is a dangerous distance of such accumulation of water. Boring-rods to be used.
- 50 (41.) In every mine which in the opinion of an Inspector is liable to an inundation or inburst of water, such additional rises, chambers, drives, and other workings shall be constructed as are necessary and as are prescribed by the Minister Mines liable to flood to have escape-drives.

- Ladders to be provided in each rise.
- (42.) Ladders (and, when necessary, convenient platforms connected therewith) shall be provided in each rise, jump-up, or passage giving access to workings at a higher level in a mine, and a notice shall be posted at the foot of each such rise, jump-up, or passage stating the height of such rise, jump-up, or passage to the chamber or drive above. 5
- Mine-manager to examine safety appliances, buildings, &c.
- (43.) The mine-manager of the mine, or other competent person appointed for such purpose, shall once at least in every twenty-four hours examine the state of all safety appliances or gear connected with the cages, winding-ropes, or shafts, and shall once in each week carefully examine the buildings, machinery, shafts, levels, planes, and all places used in the working of such mine, and shall record in writing, in a book to be kept for that purpose, his opinion as to their condition and safety, and as to any alterations or repairs required to insure greater safety to the persons employed in the working of such mine. 10 15 20
- Condemned appliances to be removed.
- (44.) Such book shall, on demand, be open to the inspection and perusal of any Inspector of Mines or Inspector of Machinery; and every such safety appliance or gear, if condemned by any such Inspector, shall be forthwith removed or made fit to his satisfaction. 25
- Books and copy of Act to be kept at mine
- (45.) Such book, or a copy thereof, and a copy of this Act and of the regulations thereunder, shall be kept at the office at the mine, or, if there is no office, at some convenient place near the mine, and any Inspector and any person employed in the mine may at all reasonable times inspect and take copies thereof or extracts therefrom. 30
- Offence by mine-manager
- (46.) Any mine-manager, or any person in charge of or giving orders or directions relating to the carrying-on of any mining operations in or about a mine, who contravenes or does not comply with any of the general rules in this section commits an offence, unless he proves that he had taken all reasonable means to prevent such contravention or non-compliance. 35
- Copy of this section to be publicly posted.
- (47.) A printed copy of this section shall be posted in the office and on some building or board in a conspicuous place in connection with every mine. 40

As to Plans and Inspection of Mines.

Plans of underground workings of mine to be kept.
1898, No. 38, sec. 207

256. The owner of every mine where more than twelve men are employed—

- (a.) Shall keep at the office at the mine a full and accurate plan of the underground workings of such mine, made to a scale of not less than one inch to two chains by a duly certificated mine-manager, or a duly qualified mining engineer, or a duly authorised surveyor, and showing the longitudinal sections of such workings on the different lodes and levels; and also 45 50

(b.) Shall at all reasonable times produce such plan to and permit the same to be copied or examined by an Inspector, or by any other person whom any Inspector or Warden authorises in that behalf; and also

5 (c.) Shall, whenever requested by such Inspector or other person so to do, accurately mark on such plan the progress of the workings of the mine up to the time of such request, and shall allow such Inspector or person to examine and take a copy or tracing thereof; and also

10 (d.) Shall forward to the Inspector, once in every six months, a copy or tracing of such plan, with the workings of the mine up to one month previously marked accurately thereon.

257. (1.) If default is made in duly keeping or producing or marking or forwarding such plan as aforesaid, the Inspector may, by notice in
15 writing delivered at the office of the mine or otherwise (whether a penalty for such default has or has not been inflicted), require the owner to cause such plan to be made, produced, marked, or forwarded, as the case may be, to him within a reasonable time, and it shall be the duty of such owner to comply with such request at his own expense.

20 (2.) If default is made in duly complying with such request, or if the Inspector has reason to think that any plan produced or forwarded to him is incorrect, he shall report the fact to the Minister, who, if he thinks fit, may cause a check survey to be made; and, unless the plan produced or forwarded as aforesaid proves to be correct in every material
25 respect, the owner shall be liable to pay all costs and charges for making such check survey or in connection therewith, and such costs and charges may be recovered as a debt due to the Crown.

258. If in the opinion of the Minister any mine contains or is likely at any time to contain dangerous accumulations of water, the following
30 provisions shall apply:—

(a.) The Minister may, by notice in writing addressed in general terms to the person in charge of such mine, and delivered at the mine, order that an accurate plan and sections of the shafts, drives, levels, and all other underground workings of such mine be made by the owner to such scale as
35 aforesaid, and a copy or tracing thereof deposited by him in the office of the Warden nearest to such mine within one month from the date of such order, or such extended time as in special circumstances the Warden may authorise.

40 (b.) It shall be the duty of the owner and mine-manager of such mine to duly comply with such order, and also with the succeeding provisions of this section.

(c.) All additions of any kind to the underground workings of such mine made after the date of such order shall, at such
45 periodical intervals as on the report of the Inspector the Warden from time to time prescribes, be correctly marked upon the original plan and sections, and also upon the copy or tracing deposited in the Warden's office:

50 Provided that such periodical intervals shall in no case be longer than two months or shorter than one week.

(d.) Any person, with the sanction in writing of the Minister or the Warden, shall be allowed at any time to inspect the deposited copy or tracing of such plan and sections; and

Penalty if in default, or plan incorrect.
1898, No. 38, sec. 208

Further plans to be kept in mines liable to be flooded.
Ibid, sec. 209
1899, No. 29, sec. 28

Provision for
protecting mines at
Thames from
flooding.
1898, No. 38, sec. 210

any Inspector under this Act shall be permitted at any time to examine the plan and sections of the underground workings of the mine.

259. In order to prevent damage being done to the mining industry on the Thames Goldfield by the flooding of claims with water consequent on the reckless prosecution of mining operations seawards, the following provisions shall apply :— 5

- (a.) It shall not be lawful for any person to in any way carry on mining operations under the sea on the Thames Goldfield, or, in carrying on mining operations, to in any way cut into what is known as “ the seaward slide,” between Shell-back Creek and the Kauaeranga River, on the Thames Goldfield, unless in each instance before beginning such operations he submits to the Inspector a plan thereof and obtains his consent thereto in writing. 10 15
- (b.) Such consent may be given on such terms and conditions as the Inspector thinks fit to impose, and shall be deemed to be subject to the special condition that he may withdraw such consent at any stage of such operations.
- (c.) It shall be the duty of the Inspector to withdraw such consent whenever, in his opinion, the further prosecution of any such operations may lead to an influx of water, whether from the sea or otherwise. 20
- (d.) If the Inspector is at any time of opinion that any person’s mining operations are being prosecuted so near to the said slide as to be likely to lead to an influx of water, whether from the sea or otherwise, he may, by notice in writing, require such person to stop such operations, and it shall be the duty of such person to forthwith stop the same accordingly. 25 30
- (e.) If any person carries on such operations without such consent, or in breach of any of the terms or conditions subject to which such consent was given, or continues to prosecute any such operations after the withdrawal of such consent or after receiving notice from the Inspector to stop the same, he commits an offence, and is liable to a penalty not exceeding five hundred pounds, and is also civilly liable for all damage done to any person’s claim by the influx of water consequent on the committal of such offence. 35

Inspector to give
notice of dangerous
or defective matters
not provided for.
Ibid, sec. 211

260. In any case where any Inspector finds any mine or any part thereof, or any machine, plant, matter, thing, or practice in or connected therewith, to be dangerous or defective, so as in his opinion to threaten or tend to the bodily injury of any person, and the case is not elsewhere sufficiently provided for by any express provision of this Act, the following special provisions shall apply :— 40 45

- (a.) The Inspector shall, by requisition in writing addressed in general terms to the person in charge of the mine, and delivered at the mine, report to the owner thereof the nature of such danger or defect, together with his reason for holding that the same exists, and require that the matter complained of be forthwith remedied. He shall also report the same to the Minister and to the Warden. 50

(b.) If the owner objects to comply with such requisition he may, Objections.
 within seven days after the delivery thereof as aforesaid,
 send his objections in writing, stating the grounds of his
 objections, to the Warden, and shall also send a copy of the
 same to the Inspector, who shall report on the same to the
 Warden, and thereupon the matter shall be determined by
 arbitration in the prescribed manner.

(c.) For the purposes of such arbitration the date of the receipt by
 the Warden of such objection shall be deemed to be the date
 of the reference.

(d.) If the owner fails to comply with the requisition, or, in the
 event of objection and arbitration, with the award made
 on arbitration, and such failure continues for fourteen days
 after the expiration of the time for objection or the date of
 the award, as the case may be, he commits an offence, and
 the requisition or award, as the case may be, shall be deemed
 to be written notice of such offence.

(e.) In any proceedings for a penalty in respect of such offence,
 the Court, if satisfied that the owner has taken active measures
 for complying with the requisition or award, but has not
 with reasonable diligence been able to complete the works,
 may adjourn such proceedings, and if the works are com-
 pleted within a reasonable time no penalty shall be inflicted.

(f.) No person shall be deemed to be precluded by any contract or
 agreement from doing such acts as may be necessary to
 comply with any of the provisions of this section, or be liable
 under any contract or agreement to any penalty or forfeiture
 for doing such acts.

261. For the purpose of preventing accidents in mines, the follow-
 ing provisions shall apply:—

(a.) Every person employed in or about any mine shall (before
 commencing work and whilst at work) satisfy himself of
 the safety of any tubs, chains, tackle, windlass, ropes, or
 other appliances he may have to use, and shall refrain from
 using anything which is unsafe.

(b.) Every such person who witnesses or becomes aware of any
 matter which may be likely to produce danger of any kind
 in the mine shall forthwith notify the same to the person
 (if any) under whose immediate directions or control he may
 be; or, if there is no such person, then to the person in charge
 of the mine.

(c.) Every person in sub-charge of and employed in mining opera-
 tions in any part of the mine shall, on changing his shift,
 inform the person appointed to relieve him of the state of
 the workings in the part of the mine in which he has been
 employed.

262. Immediately upon any person employed in a mine making
 a complaint under this Part of this Act to any Inspector, it shall be
 the duty of such Inspector to make inquiry into the matter of such
 complaint, and to take such other steps as he deems necessary to in-
 vestigate the same, and the name of the informant shall not be divulged
 by the Inspector.

Employees to report
 unsafe appliances
 or dangerous
 matters.

1898, No. 38, sec. 212

Inspector to make
 inquiry into
 complaints.
 Ibid, sec. 213

Inspection of mine
by workmen.
1900, No. 64, sec. 8
1901, No. 60, sec. 2

263. (1.) Where workmen are employed in a mine, or any of the workmen employed in a mine are members of a society formed in connection with the mining industry and registered under "The Industrial Conciliation and Arbitration Act, 1900," as an industrial union of workers, such workmen or society may, at their own cost, appoint two persons (whether employed in the mine to be inspected or not) to inspect the mine : 5

Provided that where the men so appointed to inspect the mine are not employed therein they shall produce, prior to each inspection, a certificate from a Magistrate or Justice of the Peace that he is satisfied with the *bona fides* of the application for inspection. 10

(2.) With respect to such inspection the following provisions shall apply :—

(a.) The inspecting workmen shall have full liberty to visit and inspect every part of the mine, its machinery and workings, once at least in every month. 15

(b.) The mine-owner and mine-manager may accompany the inspecting workmen in their inspection, and shall give them full and free facilities for the inspection.

(c.) The inspecting workmen shall make a full and faithful report in writing of the result of the inspection. 20

(d.) Such report shall be signed by the inspecting workmen, and they shall furnish a copy thereof to the owner or manager of the mine, who shall cause the same to be recorded in a book kept at the mine. 25

(e.) Such book shall be kept at the office at the mine, and any Inspector under this Act, or workman employed in the mine, or officer of the aforesaid society may at all reasonable times inspect such book, and take copies of or extracts from the reports recorded therein. 30

As to Accidents in Mines.

What is an offence
against Act.
1898, No. 38, sec. 214
Certificates may be
cancelled for
negligence.
Ibid, sec. 215

264. Every person who, by himself, his agent or servant, is guilty of negligence by which any person is injured or killed commits an offence.

265. If the mine-manager, battery superintendent, dredgemaster, or engine-driver of a mine is shown to have been guilty of negligence, then, in addition to any penalty incurred under the last preceding section hereof, the Minister may either cancel his certificate or suspend it for such time as he thinks fit. 35

Presumption of
negligence of owner.
1903, No. 81, sec. 4

266. Any accident occurring in a mine shall be *prima facie* evidence that such accident occurred through some negligence on the part of the owner. 40

Compensation
recoverable in case
of accidents.
Ibid, sec. 4

267. (1.) If any person employed in or about any mine suffers any injury in person, or is killed, owing to the non-observance in such mine of any of the provisions of this Act, such non-observance not being solely due to the negligence of the person so injured or killed, or owing in any way to the negligence of the owner of such mine, his agents or servants, the person so injured, or his personal representatives, or the personal representatives of the person so killed, may recover from the owner compensation by way of damages as for a tort committed by such owner ; 45

and the amount of such compensation, with the costs of recovering the same when determined, shall constitute a charge on the mine and mining plant in or about which such person was so employed, and all charges arising under the provisions of this section shall, as between themselves, be paid rateably.

(2.) Such compensation may be recovered under the provisions of "The Workers' Compensation for Accidents Act, 1900," or "The Deaths by Accidents Compensation Act, 1880," or "The Employers' Liability Act, 1882," which shall respectively be applicable, according to the circumstances of each particular case; subject, however, that notice of injury having been sustained may be given under the last-mentioned Act at any time within three months from the occurrence of the accident causing the injury, instead of within six weeks as in the said Act mentioned.

(3.) Nothing in this section shall take away from any person any right to take proceedings in respect of a claim for compensation for injury or death by accident which he may have under any Act other than this, if he prefers to proceed under such Act, but in such case he shall forfeit any right he may have to take proceedings under this section.

268. In every case where an accident occurs in a mine the following provisions shall apply:—

When accident occurs mine not to be interfered with.
1898, No. 38, sec. 218

(a.) Except for the sole purpose of saving life or preventing further injury, no portion of the mine shall be interfered with after such accident until inspected by the Coroner's jury or the Inspector, or some other person appointed by the Minister.

(b.) If any person is seriously injured, the mine-manager shall forthwith give a written notice thereof to the Inspector, and a telegraphic notice thereof to the Minister and the Warden.

Notice.

(c.) The Warden, or, in his absence, the Registrar or Clerk, may appoint some competent person, in the absence of the Inspector, to examine the place where such accident occurred, and to report to him on the state and condition of such mine.

Report.

(d.) A copy of such report shall be forwarded forthwith to the Minister; and any examination of a mine made as in this section prescribed shall be deemed to be an examination made by an Inspector.

269. With respect to every Coroner's inquest on the body of any person whose death may have been caused by any accident in a mine, the following provisions shall apply:—

Coroners' inquests on deaths from accidents in mines.
Ibid, sec. 219

(a.) No person having a personal interest in or employed in or in the management of the mine in which the accident occurred shall be qualified to serve on the jury empanelled on the inquest.

(b.) It shall be the duty of the constable or other officer summoning the jury not to summon any person disqualified under this provision, and it shall be the duty of the Coroner not to allow any such person to be sworn or sit on the jury.

(c.) Whenever practicable, one-half of the jurymen shall be miners.

General Provisions as to Inspection.

Inspectors to inspect
mines and see Act
carried out.
Powers hereunder.
1898, No. 38, sec. 220

270. Without in any way affecting any of the specific provisions hereinbefore contained, it is hereby declared as follows :—

- (a.) It shall be the duty of the Inspector generally to see that the provisions of this Act are complied with, and from time to time to visit and inspect mines and all machinery used therein other than steam engines and boilers; and, for the purpose of enabling him to more effectually perform his duties and functions under this Act, he shall have all the powers of an Inspector of Machinery under "The Inspection of Machinery Act, 1902," and that Act shall be construed accordingly. 5
- (b.) In the performance of his duties and functions under this Act the Inspector, or any person appointed by him in writing, shall at all convenient times have full and free access to any such mine or machinery, and may use all convenient means and appliances belonging thereto or connected therewith; and it shall be the duty of the owner of such mine or machinery, and all persons in any way employed in or about the same, to afford such assistance as is reasonably required for facilitating such inspection. 10 15 20
- (c.) Every person commits an offence who refuses to permit the use of such means and appliances, or to render such assistance, or who obstructs the Inspector or the person so appointed by him as aforesaid in making any such visit or inspection. 25
- (d.) All costs incurred by the Inspector, or which may be awarded against him in any proceedings under this Act, shall be charged upon and be paid out of the goldfields revenue receivable in the district in which the subject-matter of the proceedings is situate or arises, to whomsoever such revenue may be payable; and in no case shall the Inspector be personally liable for such costs. 30
- (e.) The Minister may from time to time empower any Government Geologist, or other officer of the Mines Department, to enter and inspect any mine, and every such officer whilst so empowered shall have all the authority of an Inspector. 35

Powers of Inspectors
of Machinery not
affected.
Ibid, sec. 221

271. Nothing in this Act contained shall be deemed to abridge any of the provisions of "The Inspection of Machinery Act, 1902," or any of the duties, functions, or powers of Inspectors under that Act in relation to the inspection in mines of machinery and boilers which are subject to the operation of that Act. 40

Right of shareholder
to enter mine and
inspect workings.
Ibid, sec. 222

272. (1.) Any person owning any share or interest in any mine, or in any mining company owning or working any mine, shall be entitled at any time between the hours of noon and one o'clock in the afternoon of any working-day to enter such mine, with or without an expert, and to inspect the same and all the workings and mining operations therein, and for such purpose the said person and expert shall have at all times free ingress, egress, and regress in respect of such mine. 45

(2.) Every manager of a mine, or director or manager of any company as aforesaid, commits an offence if in any way directly or indirectly 50

he prevents, obstructs, or delays any person or expert as aforesaid from exercising the rights conferred upon him by this section.

As to Penalties.

273. Every person who in any way contravenes or fails to duly
5 comply with any of the provisions of this Part of this Act commits an offence, and is liable— Penalty for offences.
1898, No. 38, sec. 223

10 (a.) To a penalty not exceeding fifty pounds if he is convicted in the capacity of owner of any mine, or mine-manager, underground manager, battery superintendent, or person in charge of or giving orders or directions relating to the carrying-on of any mining operations in any mine, and the burden of proving that he does not hold that capacity shall rest upon him; and

15 (b.) To a penalty not exceeding ten pounds if he is convicted in any other capacity than as aforesaid.

20 274. If such penalty is in respect of an offence by reason whereof any person is injured or killed, the whole or any part of such penalty may, by the convicting Court, be awarded to such person or, as the case may be, to his personal representatives, and such award shall be in addition to any right of action such person or personal representatives may have under this Part of this Act or otherwise. Payment of penalty
to person injured.
Ibid, sec. 224

PART VI.

REGISTRATION OF APPLIANCES AND PROCESSES FOR TREATING ORES
AND METALS.

25 275. In this Part of this Act, if not inconsistent with the con- Interpretation.
Ibid, sec. 225
text,—

30 “Licensee” means the person to whom, as owner or proprietor of any machine, a license is issued; and includes also a battery superintendent and any other person who for the time being is in charge of any such machine:

35 “Machine” means and includes every mechanical, chemical, or other process or appliance of whatsoever nature or kind, and howsoever worked or applied, which is used in “treating” any metal, meaning thereby in extracting any metal from any ore, or in submitting any ore to any process for the purpose of extracting any metal therefrom, or in submitting any metal to any process for the purpose of re-torting or refining it after its extraction:

40 “Machine premises” means and includes the ground, buildings, and premises on or in connection with which any machine is used or intended to be used for the purpose of treating any metal:

“Metal” includes all metals and minerals except what is commonly known as “alluvial gold”:

45 “Ore” means and includes any earth, clay, quartz, mineral, or other substance containing or having mixed therewith any metal.

Register of
machines, and
license to work
same.

1898, No. 38, sec. 226

276. Any person who as owner or proprietor of any machine desires to work the same for the purpose of treating any metal may, in the prescribed manner, register such machine with the Registrar of the district wherein the machine premises are situate, and obtain from the Registrar a license to work the same; and with respect to every such license the following provisions shall apply:—

- (a.) The license shall be in the prescribed form, and whilst in force shall entitle the person named therein, by himself or his workmen, to work the machine specified therein on the machine premises specified therein for the purpose of treating any metal for himself or any other person.
- (b.) The license shall continue in force until the thirty-first day of December next ensuing after the issue thereof, and may thereafter be renewed annually in such manner and subject to such conditions as are prescribed.
- (c.) A fee of one shilling shall be payable on the issue of the license, and on each annual renewal thereof.
- (d.) The license may comprise more machines than one, provided they are all situate in the same machine premises.

Penalty for having
unregistered
machine.
Ibid, sec. 227

277. If an unregistered machine is found on any machine premises, every person owning or having any interest in such machine or premises, or being in charge of such machine, is liable to a penalty not exceeding fifty pounds.

Metals to be treated
by registered
machine, worked by
licensee.
Ibid, sec. 228

278. With respect to the treatment of metals by machines, the following provisions shall apply:—

- (a.) No metal shall be treated by means of an unregistered machine.
- (b.) No metal shall be treated by means of a registered machine unless the same is worked at the machine premises specified in his license, and by the licensee or his workmen or some other person authorised by him.
- (c.) If any person treats any metal, or delivers any ore or metal for treatment, in breach of this section he is liable to a penalty not exceeding one hundred pounds.

Rules as to register,
account, and returns
of all ore and metals
treated.
Ibid, sec. 229

279. With respect to every registered machine and the licensee thereof, the following provisions shall apply:—

- (a.) Every licensee shall at all times keep a book called a "Machine Register-book," wherein he shall enter from day to day true and correct accounts of all ore or metal received for treatment by his machine, and of the result of such treatment, together with such other particulars as are prescribed.
- (b.) Such Register-book shall be in the prescribed form.
- (c.) Each entry therein of ore or metal received for treatment shall be made forthwith upon receipt thereof, and each entry therein of the result of the treatment of any ore or metal shall be made forthwith upon such result being ascertained.
- (d.) If any licensee neglects or delays to keep such book or to make any entry therein forthwith as aforesaid he is liable to a penalty not exceeding five pounds.
- (e.) If any licensee wilfully omits any entry from his Machine Register-book, or knowingly makes any false entry therein,

he is liable to a penalty not exceeding two hundred pounds, and on a second conviction his license may also be cancelled.

5 (f.) Every person who delivers any ore or metal to a licensee for treatment by his machine shall at the same time furnish to such licensee a true account of the respective names and addresses of himself and of the owner of such ore or metal, and also of the mine or locality from which the same was obtained.

10 (g.) Every person who sells to any bank or other buyer the gold extracted or treated by any machine shall at the same time furnish to such buyer a true account of his own name and address as seller, and of such machine.

15 (h.) If any such person refuses to or neglects to furnish any such account, or furnishes any account which is wilfully false in any particular, he is liable to a penalty not exceeding one hundred pounds.

20 (i.) In any case where any ore or metal is delivered as aforesaid without such account, or with an account which the licensee or buyer believes to be false, he shall impound and detain such ore or metal until a true account is furnished, and forthwith inform the police of such impounding and detention.

(j.) If any licensee or buyer fails or neglects to faithfully perform any of the provisions of the last preceding paragraph he is liable to a penalty not exceeding fifty pounds.

25 (k.) Every licensee shall, before the expiration of the fifth day of each month, furnish to the Inspector a true and correct return in the prescribed form, made up to the end of the then last preceding month, and showing particulars of all ore or metal received and treated during such month, the result of such treatment, and the quantity remaining untreated at the end of the month.

30 (l.) If any licensee fails or neglects to duly furnish such return he is liable to a penalty not exceeding five pounds for every day during which such failure or neglect continues.

35 (m.) If to the knowledge of the licensee such return is untrue or incomplete in any particular he is liable to a penalty not exceeding one hundred pounds, and on a second conviction his license may also be cancelled.

40 (n.) The Inspector may, in his discretion, require any such return to be verified by the statutory declaration of the person by whom the return was made; and if such person fails or neglects to duly make such declaration when requested so to do he is liable to a penalty not exceeding five pounds.

45 (o.) The Inspector shall at all times have full and free access to every machine premises, and every machine thereon, and also to every license and Machine Register-book, for the purpose of inspecting the same.

(p.) He may also make extracts from such Register-book, and with the Warden's authority in writing may seize and remove such Register-book.

50 (q.) Every person who delays or refuses to produce any such license or Register-book to the Inspector when requested so to do

is liable to a penalty not exceeding twenty pounds for the first offence, and not exceeding fifty pounds for every subsequent offence.

Machines for analytical and other scientific purposes. excepted. 1898, No. 38, sec. 230

280. (1.) The provisions of the last preceding section hereof shall not apply in the case of any machine which is to be used only for analytical or other scientific purposes; but in such case the Registrar, when registering such machine and issuing the license, shall note in the register and on the face of the license a memorandum that the machine is to be used only for analytical or other scientific purposes, and such memorandum shall be conclusive evidence of the matters stated therein. 5 10

(2.) If any such machine is used for other than analytical or scientific purposes the licensee is liable to a penalty not exceeding one hundred pounds, and the license may also be cancelled.

Inspector to institute proceedings. Ibid, sec. 231

281. All proceedings for any penalty under this Part of this Act shall be instituted by an Inspector. 15

PART VII.

COMPENSATION BY THE CROWN.

Mode of determining claims for compensation against the Crown. Ibid, sec. 232

282. (1.) Subject to the provisions hereinbefore contained, all claims against His Majesty for compensation in respect of any matter for which such compensation is expressly provided by this Act, whether for the value of improvements, the taking of land, the injury to land, or to riparian rights or otherwise, shall be made in the manner provided in Part III. of "The Public Works Act, 1894," and the Second and Third Schedules thereto, as modified by this Act; which said Part III. and the said Schedules shall be deemed to be incorporated with this Act, but for the purposes of such incorporation shall be read and construed subject to the provisions of this Act. 20 25

(2.) The word "Minister" in the said Part III. shall, for the purposes of this Act, mean the Minister of Mines, and not the Minister for Public Works. 30

Court before which claims to be heard. Ibid, sec. 233

283. (1.) If any such claim for compensation is not settled by agreement between the claimant and the Minister, the same shall be heard and determined by a Judge of the Supreme Court if it exceeds two hundred and fifty pounds, and by the Magistrate exercising jurisdiction in the locality where the claim arose if it does not exceed two hundred and fifty pounds: 35

Delegation of Judge's powers.

Provided that, on application in this behalf by either of the parties, the functions by this subsection conferred upon the Judge of the Supreme Court may by him be delegated to a Judge of the District Court.

(2.) Subject to the provisions of the said Part III. relating to Assessors, the Judge or Magistrate, as the case may be, shall be deemed to be a Compensation Court thereunder. 40

(3.) In every such claim the Minister shall be the respondent.

Form of claims, and time within which same to be served. Ibid, sec. 234

284. Every claim for compensation shall be made in writing, addressed to the Minister, and, except where by this Act otherwise provided, shall be served on him within the period of twelve months from the date when the same arose, or within such extended period as a Judge of the Supreme Court by order may allow. 45

Judge may by order allow extended period. Ibid, sec. 234

285. For the purposes of such order the following provisions shall apply:—

(a.) The application for such order shall be made by motion on behalf of the claimant, and such motion shall be served on the respondent before the expiration of the said period of twelve months.

5 (b.) The order shall not be made unless the Judge is satisfied that in consequence of the death of the claimant, or his absence from the colony, or other sufficient cause not imputable to his negligence, reasonable opportunity of making or serving the claim within the said period has not been afforded.

10 (c.) If satisfied as aforesaid, the Judge may by order extend the said period for such further time, not exceeding six months, and upon such terms and conditions as he deems just.

286. No claim for compensation shall be allowed unless it is made and served in the manner and within the period or extended period prescribed by this Act. Claims not so served to be disallowed. 1898, No. 38, sec. 235

15 287. In any case where the Public Trustee is the owner or has the administration and control of any land in respect of which any claim for compensation arises under this Act, he may make any such agreement with the Minister as to compensation, or the value of any Settlement of claim where Public Trustee is owner. Ibid, sec. 236

20 land affected, taken, or injured, as the Public Trustee thinks reasonable, and every such agreement shall be binding on every person or interest represented by him.

288. The compensation payable by His Majesty in respect of any claim for compensation under this Act shall be paid by the Colonial How compensation to be paid. Ibid, sec. 237

25 Treasurer out of moneys to be appropriated by Parliament for that purpose, and shall be charged upon and deducted from the goldfields revenue derived from the mining district wherein the claim arose, until out of such revenue all moneys paid in respect of such compensation and costs have been fully recouped to the Treasury:

30 Provided that if such mining district embraces the districts of two or more local authorities entitled to such revenue, then such charge and deduction shall be apportioned between them as the Minister thinks just:

35 Provided further that in special cases, and on the recommendation of the Minister, one moiety only, or no portion whatsoever, of the moneys paid in respect of such compensation shall be so charged and deducted as aforesaid.

289. Subject to the provisions of the next succeeding section hereof, compensation shall in no case be payable in respect of the auriferous Compensation only payable in cases provided for. Ibid, sec. 238

40 or argentiferous value of any land to which the claim for compensation relates; and no person shall have any right or claim to compensation against His Majesty in respect of any matter arising under this Act except in cases for which compensation is expressly provided by this Act.

290. Whereas it has been suggested that in some cases the owner Compensation for auriferous or argentiferous value of land if title to deposits established. Ibid, sec. 239

45 or occupier of land may, as against His Majesty, be entitled in law to the deposits of gold and silver on or in such land, and it is just that in any such case his claim to compensation in respect thereof should not be prejudicially affected by any of the provisions of this Act: Be it therefore enacted as follows:—

50 (a.) If any such person establishes his title as aforesaid to such deposits by judgment of the Supreme Court or on appeal, then, in the event of such land being resumed for mining

purposes, the compensation payable to him in respect thereof shall include the auriferous and argentiferous value of the land, anything in this Act to the contrary notwithstanding :

Provided the proceedings to establish such title as aforesaid are commenced either before the gazetting of the Proclamation declaring the lands to be taken on behalf of His Majesty or not later than six months thereafter. 5

- (b.) Nothing hereinbefore contained shall be construed to in any way create or recognise the existence of any right or title of any nature or kind whatsoever to such deposits as aforesaid in any person as against His Majesty. 10

Notice that claims settled or barred. 1898, No. 38, sec. 240

291. A notification signed by the Minister and published in the *Gazette*, that any claim for compensation under this Act has been settled, and that all further claims and remedies in respect of the land or matter specified in such notification are barred, shall be conclusive evidence of all matters mentioned therein. 15

Regulations as to claims for compensation. Ibid, sec. 241

292. The Governor may from time to time make regulations—

- (a.) For the production of all instruments of title to any land to which any claim for compensation under this Act relates ;
 (b.) For recording thereon the fact of any such claim having been duly settled under this Act ; 20
 (c.) For the registration of such record under any Act providing for the registration of deeds or instruments affecting title to land ;
 (d.) For any other purposes he deems necessary in order to give full effect to the provisions of this Act relating to claims for compensation and the disposal thereof. 25

PART VIII.

MINING PARTNERSHIPS.

This Part of Act not to apply to mining companies. Ibid, sec. 242

293. This Part of this Act shall not apply to any company or association incorporated or registered under any charter granted by the Crown, or under any Act of the Imperial Parliament or of the General Assembly, nor to any business carried on by virtue of a business-site license under this Act or a business license under any former Mining Act. 30

What constitutes a mining partnership. Ibid, sec. 243

294. (1.) Whenever two or more persons acquire any mining privilege, or engage in lawfully working or using it, or jointly employ others to do so for them, a mining partnership shall be deemed to exist between such persons in respect of such mining privilege, whether there is or is not any express agreement to become partners. 35

2.) A mortgagee in possession shall be deemed to be a partner. 40

Partnership property. Ibid, sec. 244

295. Every mining privilege owned by partners in mining, or worked or used by or for them, whether purchased with partnership funds or not, shall be deemed to be partnership property.

296. A member of a mining partnership shall share in the profits and losses thereof in the proportion which his share or interest in the partnership mining privilege bears to the whole of the shares or interests therein.

Proportionate shares of profits and losses. 1898, No. 38, sec. 24 *b*

5 297. Each member of a mining partnership shall be deemed to have, as against every other member, a lien on the partnership property for all partnership debts paid by him, and for money advanced by him for its use; and such lien may, in the prescribed manner, be registered, enforced, and discharged:

Lien of member or partnership debts paid by him. Ibid, sec. 246

10 Provided that such registered lien shall be subject to review by the Warden on the application of any person aggrieved, and for that purpose the Warden may by order confirm or cancel the registration, or amend the lien in such respect as he deems equitable.

15 298. A partner's interest in the mining partnership may be sold or assigned without dissolving the partnership, and without the consent of the other members, and from the date of such sale or assignment the purchaser or assignee shall be deemed to be a member of the partnership:

Purchaser becomes partner from date of purchase. Ibid, sec. 247

20 Provided that he shall be deemed to take such interest subject to all such liens existing in favour of the partners as are registered, but not further.

299. The decision of the members owning a majority of the shares or interests in a mining partnership shall bind it in the conduct of its business.

Decision of majority binding as to business.

25 300. It shall be a ground for dissolution of a mining partnership if any member,—

Ibid, sec. 248

30 (a.) Where it is his duty to pay or satisfy any assessment of the partnership liabilities, neglects or refuses so to do for thirty days after being personally served with notice so to do from any other member; or

Grounds for dissolution.

Ibid, sec. 248

(b.) Neglects, when notified in writing by any other partner so to do, to perform any labour or discharge any liability which it is his duty to perform or discharge, or to represent his share or interest in any partnership mining privilege.

35 301. In any case where any member of a mining partnership whose duty it is to occupy or represent his interest or share in any partnership mining privilege fails or neglects so to do for thirty days at any one time, the other members may institute proceedings in the Court to be put in possession of such share or interest as though such member
40 had never been a partner, and the Court may decree accordingly, or make such other order as it deems equitable.

Partners may sue to be put in possession of unrepresented share.

Ibid, sec. 250

302. If at any time any interest or share in any partnership mining privilege is unrepresented for forty-eight hours, and such non-representation prevents the proper and profitable working or use thereof, the
45 following provisions shall apply:—

Wages-man may be put on for unrepresented share

Ibid, sec. 251

(a.) Any member of such partnership, or any person in charge of such mining privilege, may employ any person or persons at current rate of wages to represent and work such share or interest.

50 (b.) Every person so employed shall have a lien for his wages upon such share or interest:

- (c.) Any such member or person in charge as aforesaid may, out of any profits accruing to such share or interest, pay such wages.
- (d.) In case there are no such profits, or the profits are insufficient to pay such wages, such member or person in charge may himself pay the same, and, to the extent of the moneys so paid, shall have a lien on such share or interest. 5
- (e.) Where practicable, the member or person in charge who employs any person as aforesaid shall, within seven days thereafter, give notice in writing thereof to the absent member or his agent. 10
- (f.) Any such lien for wages may be registered, enforced, and discharged under and subject to the provisions hereinbefore provided in the case of members of a mining partnership.

Partnership suits.

1898, No. 38, sec. 252

303. Whenever in any suit for the dissolution of a mining partnership the Court might order a sale of the partnership property but does not deem it expedient so to do, the following provisions shall apply, with the view of avoiding the necessity of such sale :— 15

- (a.) The Court may cause the accounts of the partnership to be taken, and the share and interest of each partner to be valued ; and may authorise any one partner to buy out any other at the price ascertained by such valuation. 20
- (b.) If the buying and selling partners cannot be determined by agreement between themselves, the Court may, as between such of the partners as are willing to buy, determine by lot who shall buy, and from whom. 25
- (c.) The Court may direct all proper persons to execute such instruments and do such things as it deems necessary for the purpose of fully effectuating every such sale and purchase.

PART IX.

30

ADMINISTRATION OF JUSTICE.

As to the Warden's Court.

304. With respect to the Warden's Court, the following provisions shall apply :—

- (a.) The Court may be held at such times and in such convenient places, whether within or outside its district, as the Warden thereof from time to time appoints. 35
- (b.) The Court may be held before a single Warden, although more Wardens than one are appointed for the district.
- (c.) In the absence for any reason of the Warden usually presiding in a Court, any other Warden may preside in his place and otherwise act in his stead, and the fact of any Warden so presiding or acting shall be conclusive evidence of his authority so to do. 40
- (d.) Every power, authority, function, or discretion by the Act vested in a Warden's Court may be exercised by the Warden. 45
- (e.) For every Court there shall be a seal, a fac-simile whereof shall be kept by the Clerk at every place where the Court is held.

Sittings of Court,
and seal.

Ibid, sec. 253

- (f. All summonses, warrants, orders, and other process issued out of the Court shall be signed by the Warden or the Clerk, and be sealed with the seal of the Court. If the seal cannot conveniently be affixed before such issue it may be affixed afterwards.

Jurisdiction of the Court.

305. The Warden's Court shall have jurisdiction to hear and determine all such actions, suits, and other proceedings cognisable by Courts of civil or criminal jurisdiction as arise within the district concerning the following matters, that is to say :—
- (a.) Area, dimensions, and boundaries of mining privileges ;
- (b.) Forfeiture of mining privileges, or of surplus ground ;
- (c.) Title to and ownership or possession of mining privileges or the products of mining operations ;
- (d.) Questions or disputes relating to water or water-rights ;
- (e.) Encroachment upon, infringement of, or injuries to mining privileges ;
- (f.) Specific performance of contracts relating to mining privileges or operations ;
- (g.) Transfers and other dispositions of mining privileges ;
- (h.) Trusts relating to mining privileges or operations ;
- (i.) Mining partnerships, the formation and dissolution thereof, the taking of accounts connected therewith, and the determination of all questions arising between the partners ;
- (j.) Encroachment upon or injury to land by reason of mining operations, whether held under the provisions of this Act or otherwise howsoever ;
- (k.) Breaches of this Act or of the regulations thereunder punishable by summary conviction ;
- (l.) Encroachments upon, injuries to, and the determination of all questions concerning roads, tramways, railroads, or fences constructed, held, or occupied under this Act or any former Mining Act ;
- (m.) And generally concerning all contracts, torts, questions, or disputes of any kind relating to mining privileges or operations, or to any matter in respect whereof jurisdiction is elsewhere by this Act conferred upon the Court or the Warden, whether the parties thereto are or are not engaged in mining operations ;
- (n.) All such matters as aforesaid, or matters corresponding thereto, arising in respect of leases, licenses, and coal-mining operations under "The Coal-mines Act, 1891," within a mining district.

Matters in respect of which Warden's Court to have jurisdiction.
1898, No. 38, sec. 254

306. Where an action which should have been commenced in the Warden's Court is commenced in another Court other than the Warden's Court, or an action which should have been commenced in the Warden's Court in one district is commenced in the Warden's Court in another district, the following provisions shall apply :—

Procedure when action not commenced in appropriate Warden's Court.
1900, No. 64, sec. 14

- (a.) At any stage of the proceedings, of its own motion or on the application of any of the parties, and on such terms as to

costs and otherwise as it thinks fit, the Court in which the action is commenced may by order remove it into the appropriate Warden's Court.

- (b.) The Registrar or Clerk of the Court by which the order is made shall transmit the papers filed in that Court to the Clerk of the appropriate Warden's Court, who shall file the same, whereupon the action shall be heard and disposed of in that Court, in like manner as if it had been duly commenced therein on the day on which the papers are filed by the Clerk as aforesaid:

Provided that the day of trial, unless fixed in the aforesaid order, shall be fixed by the Warden, or, with the consent of all the parties, by the Clerk of the appropriate Warden's Court.

- (c.) The Governor may from time to time make such regulations as he thinks fit in order to give effect to this section, and prescribe the practice as to the removal of actions.

Decisions outside district.

1900, No. 64, sec. 15

307. Where the Warden gives or heretofore has given a decision outside a district, such decision shall for all the purposes of this Act be deemed to be given in the district in which he usually exercises jurisdiction.

Recovery of penalties.

1898, No. 38, sec. 255

308. Wherever by this Act or the regulations thereunder a penalty is imposed for any breach thereof (not being a penalty in lieu of the forfeiture of a mining privilege), the proceedings for the recovery of such penalty shall be taken in a summary way in the Warden's Court before the Warden alone, and according to the provisions of "The Justices of the Peace Act, 1882," relating to summary proceedings, which provisions (other than those relating to appeals) shall, *mutatis mutandis*, apply in like manner as if the Warden were sitting as a Justice under that Act.

As to Assessors.

List of resident miners to be compiled.

Ibid, sec. 256

1904, No. 33, sec. 9

309. During the first fourteen days of the months of January and July in each year the Clerk of the Warden's Court at each place where such Court is usually held, whether within or beyond the mining district, shall make a list of the names, occupations, and addresses of fifty reputable persons, or as near fifty as may be, each of whom is or has been engaged in gold-mining operations and resides within twenty miles of such place.

To be Assessors' roll.

1898, No. 38, sec. 257

Assessors to be taken from roll.

Ibid, sec. 258

310. Each such list shall be the Assessors' roll for such district, and shall continue in force until the next roll is duly made.

311. From the Assessors' roll for the time being in force nearest to each place where the Court is usually held shall be taken the names of the Assessors before whom any civil trial in that Court is to be had, as hereinafter provided.

As to Parties, Proceedings, and Mode of Trial.

Persons over fourteen may sue and be sued.

Ibid, sec. 259

312. Any person not under the age of fourteen years may sue and be sued in the Warden's Court in its civil jurisdiction in the same manner in all respects as if he were of the full age of twenty-one years:

Provided that, except where otherwise provided by this Act, no person shall be entitled to commence a suit unless he is the holder of a miner's right or of a license for any mining privilege.

313. Except where otherwise prescribed, every action, suit, or other proceeding in the Warden's Court in its civil jurisdiction shall be commenced by statement of claim in the prescribed form, and such claim shall be tried either before the Warden alone or before the Warden and a jury of five Assessors.

Mode of commencing action. 1898, No. 38, sec. 260

314. A statement of claim may be tried by the Warden and Assessors—

When complaint to be tried by Warden and Assessors. Ibid, sec. 261

(a.) If the relief claimed or the value of the property involved in the claim exceeds fifty pounds, and any of the parties thereto, by memorandum in the prescribed form filed in the Court not later than seventy-two hours before the time appointed for the trial, demands that it be so tried; or

(b.) If on the application of any of the parties to the claim the Warden orders that it be so tried; or

(c.) If in the absence of any such application the Warden is of opinion that the claim can be more conveniently so tried, and makes order accordingly.

315. Except as aforesaid, every statement of claim in the Warden's Court shall be heard and tried before the Warden alone.

Otherwise before Warden alone. Ibid, sec. 262

316. With respect to statements of claim to be tried before the Warden and five Assessors, the following provisions shall apply:—

Provisions as to ballot for Assessors, their fees, and expenses, challenges to, and their powers in Court. Ibid, sec. 263

(a.) As soon as conveniently may be after the Assessors are duly demanded by any party or ordered by the Warden, the Clerk shall place in a ballot-box as many equally sized and shaped pieces of paper as there are Assessors on the roll, each paper bearing the name, occupation, and address of an Assessor, and no two papers bearing the name of the same Assessor, and shall then and there, in the presence of any of the parties or of any Justice of the Peace, draw out of the ballot-box ten of the papers, one after the other.

(b.) The Clerk shall then summon the Assessors whose names appear on the said ten papers to attend at the time and place appointed for the trial:

Provided that before summoning them the sum of eight pounds in respect of Assessors' fees and expenses shall be paid to him by the party who in the first instance is liable therefor, being the party demanding the Assessors, or, if they are ordered by the Warden, then the party named in such order.

(c.) Each Assessor who attends on his summons but does not sit on the trial shall, in respect of such attendance, be entitled to a fee of eight shillings, and also to his reasonable travelling-expenses, to be fixed by the Warden, not exceeding one shilling for every mile beyond two miles of distance (counted one way) between his place of residence and the place of trial.

(d.) Each Assessor who sits on the trial shall for the first day be entitled to a fee of ten shillings in respect of such day's sitting, and also to his reasonable travelling-expenses, ascertained as aforesaid.

- (e.) As often as the trial is adjourned to a future day the party liable as aforesaid shall, before the commencement of each such day's proceedings, pay to the Clerk such further sum as is required in order to provide a fee of ten shillings for each Assessor, and each Assessor shall be entitled to such fee accordingly. 5
- (f.) The Assessors' fees and expenses shall be costs in the cause, and shall be ultimately payable by such party as the Warden on the conclusion of the trial directs.
- (g.) Before the Assessors are sworn, either party may challenge any number not exceeding two without assigning cause, and any additional number on assigning cause. The truth of any cause so assigned shall be forthwith inquired into and determined by the Warden, whose decision shall be final. 10 15
- (h.) If by reason of non-attendance, challenge, or otherwise the number of Assessors is reduced to less than five, the Clerk shall make up the required number by orally summoning a sufficient number of indifferent persons then present in the Court or its vicinity to sit and act as Assessors on the trial. 20
- (i.) Before taking his seat on the trial each Assessor shall make oath before the Warden to give a true verdict according to the evidence.
- (j.) All questions of law arising on the trial shall be determined by the Warden, and all questions of fact by the Assessors. 25
- (k.) The decision of the Assessors, or of a majority of them, shall be the decision of the Court, and the Court shall give judgment accordingly :

Provided that if, after consulting for two hours, the Assessors intimate that a majority of them cannot agree upon a verdict, the Warden shall discharge the Assessors and himself decide the claim in the like manner as if the trial were before himself alone. 30

Procedure, mode of trial, and costs.
1898, No. 38, sec. 264

317. With respect to all suits in the Warden's Court in its civil jurisdiction, the following provisions shall apply :—

- (a.) The Warden may administer an oath.
- (b.) Every witness shall be examined on oath.
- (c.) If any person, being duly summoned to attend, whether as Assessor or witness, fails to duly attend at the time and place named in the summons, or, attending, refuses to be sworn as Assessor or witness, or to serve as Assessor, or to answer any lawful question put to him as a witness, the Court may forthwith inflict on him any penalty not exceeding five pounds unless reasonable cause for such failure or refusal is made to appear to the Court. 40 45
- (d.) Every suit shall be heard in open Court at the time and place appointed in that behalf :

Provided that if for any reason the Court cannot be held at the time or place appointed, the Clerk may adjourn it to such other time or place as the Warden or, in the absence of the Warden, as the Clerk appoints in that behalf. 50

- (e.) The trial may be adjourned by the Court from time to time or from place to place, in such manner and on such terms as to costs or otherwise as the Court thinks fit.
- 5 (f.) The Court, upon such terms as to costs or otherwise as it thinks fit, may by order grant time to any party for any purpose, add or strike out parties, and generally do whatever it deems expedient for the purpose of effectively disposing of the matter before it according to the substantial merits of the case.
- 10 (g.) The costs shall be in the discretion of the Warden, and he shall fix them.

As to Powers of the Court.

318. In any matter within its jurisdiction, and at any stage of the proceedings, the Court, of its own motion, or on the application
 15 of any of the parties, and upon such terms as to costs and otherwise as it thinks fit, may exercise any of the following powers, that is to say :—
- (a.) It may order any person having the possession, custody, or
 20 control of any gold, metal, mineral, or other chattels to deposit the same with such person, within such time, and in such place as are named in the order, there to abide the further order of the Court. Powers of Court. 1898, No. 38, sec. 265
- (b.) It may cause all or any such chattels to be valued.
- 25 (c.) It may order all or any such chattels to be delivered up to or to be rateably apportioned amongst the persons found by the Court to be entitled thereto. Order for deposit of gold, &c.
- (d.) It may order such chattels, or a sufficient part thereof, according to their value ascertained as aforesaid, belonging to any party against whom an order has been made by the Court for the
 30 payment of money to any other party, to be delivered to such other party in or towards satisfaction of such order. **I**
- (e.) It may order money deposited with the Receiver or Clerk to be held to abide the further order of the Court or the Warden.
- 35 (f.) If default is made in duly complying with any such order for the deposit, valuation, or delivery of chattels the Court may cause them to be seized and held by the bailiff or any constable until the further order of the Court.
- 40 (g.) It may order operations on any mining privilege to be suspended until the further order of the Court, or to be carried on by or under the direction and control of a person appointed by the Court. Delivery to person entitled.
- (h.) If any order under paragraph (f) hereof is made on the application of any party to the proceedings, such party may be
 45 subsequently ordered to pay such reasonable compensation (if any) as the Court directs to any other party who suffers damage by the operation of such order. Suspension of operations.
- (i.) It may order a survey, plan, or measurement of any land,
 50 mine, or mining privilege, or any part thereof, to be made by any party or other person. Order for survey.

Inspection by
Assessors.

(j.) It may inspect any land, mine, or mining privilege, or order the same to be inspected by the Assessors (if any) before whom the proceedings are being heard.

(k.) It shall make such order for inspection by the Assessors whenever requested so to do by a majority of them. 5

(l.) The Court or the Assessors making any such inspection may take judicial notice of anything observed in the course of such inspection.

Expenses of orders.

(m.) When making any order under this section the Court may require such one or more of the parties as it names in that behalf to deposit with the Clerk such sum as the Court thinks reasonable in respect of the expenses of and incident to the carrying-out of such order. 10

(n.) Such expenses shall be fixed by the Court, and shall ultimately be payable by such parties and in such manner as the Court directs. 15

Powers in respect to
encroachment suits.
1898, No. 38, sec. 266

319. With respect to encroachment suits, the following provisions shall apply:—

(a.) At any stage of the proceedings the Court, of its own motion or on the application of any of the parties, and upon such terms as to costs and otherwise as it thinks fit, may by order authorise any person to enter on any land, mine, or mining privilege for the purpose of ascertaining whether any encroachment exists. 20

(b.) For such purpose every person named in such order shall be entitled to enter on any land, descend any mine, and examine and make such surveys, sections, plans, and measurements thereof, and of any workings therein, as he deems necessary. 25

(c.) In the exercise of the powers conferred upon him by this section every such person may avail himself of the machinery and appliances in use in the ordinary operations of the mine. 30

(d.) Before exercising any such powers every such person shall make a declaration before the Warden that, except as a witness in a Court of justice, he will not, without the consent of the owner of such mine, divulge to any person whomsoever any information obtained in the exercise of any such powers, save only as to whether any encroachment exists, and, if so, to what extent. 35

(e.) If any such person divulges any information in breach of such declaration as aforesaid he is liable to a penalty not exceeding fifty pounds. 40

When such powers
may be exercised.
Ibid, sec. 26

320. The powers by the last preceding section hereof conferred upon the Court may be exercised on the application of any person prior to the actual commencement of an encroachment suit, if the Court is satisfied that the applicant *bonâ fide* claims to be entitled to any land, mine, or mining privilege, and *bonâ fide* believes that the same is or may be encroached upon. 45

General powers of
Court.
Ibid, sec. 268

321. In all matters within its jurisdiction the Court shall have power to enforce contracts; award damages; appoint receivers; grant prohibitions, injunctions, attachment orders, charging orders; add, join, substitute, or strike out parties; impose penalties; cause gold, 50

metals, minerals, and other chattels to be restored to any person or place whence they have been improperly or unlawfully taken or removed, or to be deposited for safe custody with any person or in any place, or to be summarily seized ; summon witnesses ; award costs ; and generally

5 make such orders and give such judgments as it deems proper.

322. Subject to the express provisions of this Act in that behalf, every judgment, decision, or order of the Court in civil proceedings shall be carried out and enforced in like manner in all respects as if it had been given or made in civil proceedings in the Magistrate's Court ;

10 and every conviction or order of the Court in criminal proceedings, or proceedings imposing a penalty, shall be carried out and enforced in like manner in all respects as if it had been obtained or made in summary proceedings before Justices of the Peace.

323. Every warrant, order, or other process of the Court may

15 be served or executed and put in force by any bailiff of any Warden's or Magistrate's Court without it being necessary for him to be specifically named therein, or by any other person to whom it is, whether before or after issue, specially directed by any Warden, Magistrate, or Clerk of any such Court.

324. No proceedings shall be dismissed or vitiated because of any informality ; nor shall any objection be taken or allowed on the mere ground of any alleged defect or misnomer or inaccurate description, or of any variance between the relief claimed and the relief which the claimant appears to be entitled to, or between the complaint and the

20 evidence adduced in support thereof ; but in every instance the proceedings shall be amended by the Court so that the actual subject-matter in dispute may plainly appear and be adjudicated upon according to the substantial rights of the parties :

Provided that whenever it appears that any of the parties is deceived or misled, or that any injustice would be done by proceeding at once with the hearing, the Court may adjourn the proceedings upon such terms as to costs and otherwise as it thinks fit.

325. With respect to every judgment, conviction, or order of the Court, the following provisions shall apply :—

35 (a.) A minute thereof shall be entered in a register kept for the purpose, and no other record thereof shall be necessary.

(b.) If any of the parties so requests, or if the Warden thinks fit, it may at any time thereafter be formally drawn up under the hand of the Warden or Clerk and the seal of the Court.

40 (c.) It shall not be void, quashed, or vacated for want of form.

326. Service of any injunction, prohibition, or other order shall be effected on the person to be bound thereby—

(a.) By delivering to him a duplicate thereof under the hand of the Warden or Clerk and the seal of the Court ; or

45 (b.) If the Court so directs, by posting such duplicate to such person at his last known place of business or abode, or by publishing the same in such newspaper or by affixing the same in such conspicuous place as is named by the Court, being in every instance the land (if any) to which the order relates.

327. For the purpose of enabling the Court the more effectually to exercise the jurisdiction and powers conferred upon it by this Act,

How judgments and convictions to be enforced.
1898, No. 38, sec. 269

By whom warrants may be served.
Ibid, sec. 270

No proceedings to be dismissed for informality.
Ibid, sec. 271

Record and formal drawing-up of judgments.
Ibid, sec. 272

Mode of service of injunctions or other orders.
Ibid, sec. 273

Additional powers of Court.
Ibid, sec. 274

and to enforce obedience to its orders and to punish disobedience thereof, it is hereby declared that, in so far as no sufficient provision in that behalf is elsewhere contained in this Act, the Court and the Warden thereof shall be deemed to have and may exercise all the powers of the Supreme Court or a Judge thereof.

Orders may be enforced by commitment.
1898, No. 38, sec. 275

328. For the purpose of enforcing compliance with any order made by the Court directing not the payment of money but the doing or refraining from the doing of any act, the following provisions shall apply :—

(a.) If any person makes any default in duly complying with any such order, or in any way impedes or prevents the due compliance therewith, he commits an offence, and is liable to a penalty not exceeding ten pounds and to be imprisoned in default of payment, or to be imprisoned without the infliction of any such penalty, and the Court may issue a warrant of commitment accordingly.

(b.) The person named in such warrant shall be taken to some convenient prison named therein, and delivered to the keeper of such prison, who shall there detain him until he pays such penalty (if any) and gives security to the satisfaction of the Court that he will refrain from repeating such offence, or until he is released by order of the Court :

Provided that no person shall be imprisoned under this section for any term exceeding three months.

Punishment of persons guilty of contempt.
Ibid, sec. 276

329. Whenever, in the course of any proceedings before the Court, any person wilfully insults the Warden or Assessors, or any officer of the Court, or wilfully interrupts the proceedings, or in any other manner is guilty of contempt in the face of the Court, the following provisions shall apply :—

(a.) Such person may, by written or verbal direction of the Court, be taken into custody by the bailiff or any constable, with the assistance if necessary of other persons, and be detained until the rising of the Court.

(b.) Instead of discharging such person at the rising of the Court, the Warden may inflict any penalty not exceeding five pounds, and in default of payment commit him to prison for any term not exceeding five days, or may commit him to prison for any such term without inflicting any such penalty.

Rules for conduct of business.
Ibid, sec. 277

330. The Warden may from time to time make such rules, not inconsistent with this Act, as he thinks fit in order to regulate the orderly conduct of the business of his Court.

As to Practice and Procedure in the Warden's Court.

331. The rules set forth in this section shall regulate the practice and procedure in the Warden's Court :—

Rules of practice and procedure.
Ibid, sec. 278
1899, No. 29, sec. 20
1900, No. 64, sec. 19
1901, No. 60, sec. 7

Office and Officers.

(1.) The office of the Court shall be open to the public on such days and during such hours as are prescribed, and the Clerk shall attend there during office hours. He shall issue all summonses, warrants, and writs of execution; keep an

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account of all proceedings; take charge of and keep an account, in a book to belong to the Court, of all fees, penalties, and fines payable or paid into Court, and of all moneys paid into and out of Court; attend the sittings of the Court; and do and perform all other acts and duties properly incident to the office of Clerk. If there is no Clerk or Deputy Clerk, the Warden shall act.

- (2.) The bailiff of the Court shall attend the sittings of the Court, unless when his absence is allowed by the Warden, and shall, when required, serve all summonses and orders, and execute all warrants issued out of the Court, and in other respects shall be subject to the directions of the Warden.

Agents.

- (3.) Subject to prescribed regulations, the Warden, on being satisfied that any person is a fit and proper person to act on behalf of parties, may, in his discretion, register such person as a mining agent; and any such person, whilst so registered, shall have the right to appear and act for parties in all proceedings in any Warden's Court held within the district specified in that behalf in the register:

But such registration may be cancelled at any time by the Warden on it being made to appear to him that such person has been guilty of misconduct, or is otherwise unfit to act for parties in such Court.

- (4.) Subject to regulations under this Act a registered mining agent lawfully appearing and acting for any person in proceedings before the Warden or in the Warden's Court may charge, receive, and be allowed reasonable costs and charges for his services.

- (5.) Every party to proceedings may appear and act in person, or by solicitor or registered mining agent:

Provided that no officer of the Court shall, either by himself or by any partner, or person in his employment, be directly or indirectly engaged as counsel, solicitor, registered mining agent, or agent for any party in any proceeding.

Claim.

- (6.) Any person desirous of prosecuting a suit shall prepare and deliver to the Clerk a statement of claim, in the prescribed form, containing a full and explicit statement of the ground or cause of action and of the relief claimed; if there be more than one ground of action, each shall be stated in a separate paragraph, and all such paragraphs shall be numbered consecutively.

- (7.) The statement of claim shall be signed by or on behalf of the plaintiff, and shall specify his address for service in the district in which the proceedings are instituted, or within one mile of the office of the Court hearing such proceedings, and all notices to be served on the plaintiff may be served at such address.

- (8.) In any case where the Christian name or surname of any party to a suit is not known he may be designated by any name which he may have acquired by usage or reputation.

- (9.) Upon receipt of the statement of claim, accompanied by the prescribed fees, the Clerk shall file such statement for the use of the Court, and shall enter in a plaint-book to be kept for the purpose a minute specifying according to the statement of claim the names, occupations, and the last known 5 places of abode of the parties, and the substance of the suit intended to be brought, or the relief intended to be sought, and, where the claim is a money demand, the amount sought to be recovered.
- (10.) Every statement of claim shall be numbered in every year 10 according to the order in which it is entered in the plaint-book, and, where the party does not sue in his own right, there shall be stated the character in which he sues.
- (11.) The plaintiff shall, together with the aforesaid statement of claim, prepare and deliver to the Clerk so many copies 15 thereof as there are defendants to the suit, and one of such copies shall be annexed to and served with each summons, and be deemed a part thereof.
- (12.) The summons shall be in the prescribed form, and shall be 20 prepared and issued by the Clerk.

Witnesses.

- (13.) On application in that behalf, and on payment of the prescribed fees, any party may obtain from the Clerk summonses to witnesses in the prescribed form, with or without 25 a clause requiring the production of books and writings in their possession or under their control.

Service.

- (14.) The service of any summons shall be effected by delivering a duplicate of the same to each defendant personally, or, if he cannot conveniently be found, by leaving such duplicate 30 at his usual place of business or abode in the colony, with some inmate thereof appearing to be at least fourteen years of age, or, in the case of any incorporated company, in the manner prescribed by law for the service of process on such company. 35
- (15.) If service cannot be effected in any of the ways hereinbefore provided, the summons may, if the Warden or Clerk so directs, be affixed in some conspicuous place upon the site of the defendant's last known place of business or abode, or upon the mining privilege last known to have been held 40 by him, or otherwise as the Warden or Clerk directs.
- (16.) In cases under the last preceding rule, a notice of the affixing of such summons, with a statement of the manner in which it has been affixed, shall be advertised in a newspaper published or circulating in or near to the locality where the suit is 45 to be heard, and such affixing and publication shall be deemed to be a good service of such summons.

- (17.) The summons shall be served at least seven days before the time appointed for the hearing in the case of personal service, or fourteen days in the case of other than personal service :

Provided that any summons may issue and be served at any time before the hearing if the Warden so directs or the defendant consents.

- (18.) Any summons may be served by the bailiff, or by any other person whom the Warden or Clerk directs, or, at the option of the plaintiff, by himself or his agent.

- (19.) The person serving any summons shall, by affidavit in the prescribed form, certify the time and mode of such service :

Provided that the Warden may require further proof thereof if he thinks fit.

Defence and Counterclaim.

- (20.) Every defendant may set off by way of counterclaim any claim or demand whatsoever that he may have, in the capacity in which he is sued, against the plaintiff in the capacity in which he sues, and which the Court would have jurisdiction to hear and determine if the same were a claim or demand in such Court :

Provided that no counterclaim shall be set off against any one of two or more joint plaintiffs.

- (21.) The counterclaim shall be in the prescribed form, and shall be filed and served at least twenty-four hours before the time appointed for the hearing of the suit, but shall in all other respects conform and be subject to the provisions of this Act relating to statements of claim.

- (22.) The Court may order the statement of claim and counter-claim to be heard together or separately, as it thinks fit.

Hearing.

- (23.) All Assessors summoned for the trial of any one suit shall be deemed to have been summoned for the trial of all suits to be tried before Assessors at the same sittings of the Court.

- (24.) If the plaintiff does not appear at the time appointed, and good cause for his absence is not shown, the Court may dismiss, strike out, or adjourn the suit, with or without costs, as it thinks fit :

Provided that at any time before the conclusion of the same day's sitting the Court may, upon such terms as it thinks fit, reinstate any suit which has been so dismissed, struck out, or adjourned.

- (25.) If the defendant does not appear, and it is proved that the summons was duly served, the Court may proceed to hear the case *ex parte*, and to adjudicate thereon as fully and effectually as if the defendant had appeared.

Payment into Court.

- (26.) The defendant in any proceeding for or which includes a money demand may, at any time before the summons is heard, pay into Court such sum of money as he thinks a full satisfaction for such demand, together with the costs incurred by the plaintiff up to the time of such payment, and of serving the notice next hereinafter mentioned. 5
- (27.) The defendant paying into Court as aforesaid shall serve written notice thereof on the plaintiff, at his address for service. 10
- (28.) If the plaintiff, having been served with such notice at least forty-eight hours before the day of hearing, elects to proceed after such service, and recovers no further sum in respect of such money demand than the sum so paid into Court, he shall pay to the defendant the costs incurred by him after such service, unless the Court otherwise directs. 15

Costs and Fees.

- (29.) All the costs of any proceeding may be fixed by the Court or, under its instructions, by the Clerk, and may be apportioned between the parties or any of them in such manner as the Court thinks fit ; and in default of any special direction such costs shall abide the event of the action. 20
- (30.) The Court may in each case direct what number of witnesses shall be allowed between party and party, and their allowance for attendance shall in no case exceed the allowance prescribed by regulations. 25
- (31.) No costs of witnesses shall be allowed unless they have been summoned.
- (32.) The Court may make such order as it thinks fit concerning the times and by what instalments any sum of money for which judgment is obtained shall be paid, and all such money shall be paid into Court unless the Court otherwise directs. 30
- (33.) In any case where the Court reserves its decision, such decision may be given by the Warden at any subsequent sitting of the Court where he is exercising jurisdiction ; or may be drawn up in writing signed by the Warden, and be forwarded by him to the Clerk, who on receipt thereof may read the same either in open Court at its next sitting or at a time and place duly notified in that behalf by him to the parties. Such decision shall have the same force and effect as if given by the Court. 35 40
- (34.) There shall be payable in respect of all proceedings such fees as are prescribed by regulations, and a table of all such fees shall be kept affixed in some conspicuous place in the Courthouse and in the Clerk's office at every place where the Court is held. 45
- (35.) No officer of the Court shall do any act in respect whereof a fee is prescribed unless and until such fee is first paid ; but in the event of any such act being done without payment of the fee, such fee may by order of the Court be recovered 50

from the person who should have paid the same, in like manner as in the case of a judgment of the Court.

- (36.) The Governor may from time to time by regulations make such additional rules under this section as he thinks fit.

As to Rehearings.

332. The Court, on application in that behalf, may grant a rehearing of any suit decided ; and with respect to every such application and rehearing the following provisions shall apply :—

Rules in respect to
rehearings.
1898, No. 38, sec. 279

- (a.) Within ten days after the day on which the Court decided the suit the application for a rehearing shall be filed in the Court and be served on the opposite party.

- (b.) The application shall be in the prescribed form, and shall specify the grounds thereof, and contain a notification that it will be made on the day after the day of service, or as soon thereafter as it can be heard.

- (c.) On proof of the service of the application the Court shall hear the same, and all objections thereto, and in its discretion may grant or refuse it, and in granting it may by order stay all proceedings on the original hearing pending the rehearing.

- (d.) If the application is granted, the Court may grant it on such terms as to costs, notices, security, payment into Court, and otherwise as it thinks fit, and shall fix the time and place of the rehearing.

- (e.) All the provisions of this Act relating to the hearing of suits shall apply to the rehearing.

As to Special Cases reserved.

333. At any stage of any civil proceedings before it the Court may reserve any question for the opinion of the Supreme Court, and with respect to every question so reserved the following provisions shall apply :—

Special case may be
reserved for Supreme
Court, and interim
injunction granted.
Ibid, sec. 280

- (a.) The Warden shall prepare a special case, setting forth the question so reserved, and shall transmit such case to the Registrar of the Supreme Court of the Supreme Court district wherein the proceedings arose.

- (b.) The Registrar shall set the special case down for argument before the Judge of that Court on a day to be appointed by him, and the Judge's opinion on the special case shall, when given, be drawn up and transmitted by the Registrar to the Warden.

- (c.) The costs of the proceedings shall be in the discretion of the Judge, and shall be fixed by him.

- (d.) Upon receipt of such opinion the Warden's Court shall act in accordance therewith, and in the meantime no judgment or order of the Court shall affect the question so reserved.

- (e.) When reserving any such question, or at any time before acting on the Judge's opinion thereon, the Warden's Court, on the application of any party to the proceedings, and on such terms as it thinks fit, may make such order for an injunction

or a receiver, or for payment of money into Court, or for giving security for damages and costs, or otherwise as the Court thinks fit.

As to Appeals.

When appeal may
be made to District
Court.

1898, No. 38, sec. 281
1904, No. 33, sec. 10

334. (1.) Except where otherwise expressly provided, it is hereby declared that, from any final order, judgment, or other decision of the Warden under sections thirty-four, forty-nine, fifty, and fifty-seven of Part III., or under Parts IV., V., VI., VII., or VIII. of this Act, or of the Court or the Warden under Part IX. of this Act, an appeal at the instance of any party aggrieved shall lie to the appellate Court, being the District Court having jurisdiction within the place where the Warden's final order, judgment, or other decision was given; or, if there is no District Court sitting therein, or if by memorandum filed in the Warden's Court both parties to the appeal consent, then the Supreme Court sitting within the Supreme Court district wherein such decision was given :

Provided that there shall be no appeal in any case where, at or before the hearing, the parties by memorandum in writing lodged in the Court or the Warden's Office agree that the decision of the Court or the Warden shall be final.

1900, No. 64, sec. 16

(2.) The right of appeal conferred by this section shall not be in any way limited or affected merely by the fact that the decision forming the subject-matter of the appeal is one which by this Act is declared to be in the discretion of the Warden or the Court.

Result of appeal to
be communicated.

1901, No. 60, sec. 4

(3.) The result of every appeal under this section shall be forthwith communicated to the Clerk of the Court from which the appeal was made, or to the Commissioner whose decision is appealed against, by certificate under the hand of the Registrar or Clerk of the appellate Court and the seal of his Court.

Appeal on fact or
law.

1898, No. 38, sec. 282

335. Every such appeal may, as the appellant thinks fit, be on matter of fact alone, or of law alone, or of both fact and law :

Provided that there shall be no appeal on matter of fact from any summary conviction imposing a penalty, unless the amount of the penalty imposed, exclusive of costs, exceeds five pounds.

Notice and grounds
of appeal.

Ibid, sec. 283

336. With respect to every appeal, the following provisions shall apply :—

(a.) Within ten days after the decision to be appealed from has been given, the appellant shall file in the Court and serve on the other party notice of intention to appeal, and also lodge with the Clerk or Registrar of the appellate Court, as deposit by way of security for the costs of appeal, the sum of ten pounds if the appeal is on matter of law only, and twenty pounds if it is on matter of fact alone or of both fact and law.

(b.) Such notice of appeal shall specify whether the appeal is on matter of fact alone, or of law alone, or of both fact and law, and shall also state briefly the matters of law (if any) forming the grounds of appeal :

Provided that on the hearing of the appeal the appellant shall not be limited to the grounds of appeal stated in such notice.

(c.) The appellant, when lodging such deposit, shall also file in the office of the appellate Court a copy of all papers filed in the original proceedings, and of the decision appealed against.

(d.) Such copy shall be certified as correct under the hand of the Warden or the Clerk, and, with the notice of appeal, shall constitute the case on appeal.

(e.) Service of notice of appeal may be effected by personal service on the respondent, or upon the solicitor or mining agent who appeared for the respondent at the hearing of the suit or application in which the decision was given which is appealed against, or by leaving the same at the place of residence where the respondent was residing when the decision appealed against was given, or by leaving the same at the office of the said solicitor or mining agent of the respondent. 1900, No. 64, sec. 18

(f.) When service cannot conveniently be effected in manner aforesaid, it may be effected by filing a copy of the notice, within the prescribed time, in the office of the Warden's Court in which the decision appealed against was given.

337. If the appeal is on matter of law alone, the following provisions shall apply:—

(a.) The appeal shall be in the form of a special case to be agreed on by the parties, or, if within seven days they cannot agree, then to be settled by the Warden at the request of either of them. Procedure when appeal on law alone. 1898, No. 38, sec. 284

(b.) The special case, when agreed on or settled as aforesaid, shall be transmitted to the Clerk or Registrar of the appellate Court by the appellant, who shall also, within thirty days after the notice of appeal was filed as aforesaid, set the special case down for hearing, and give notice thereof to the other party.

338. If the appeal is on matter of fact alone, or of both fact and law, it shall be by way of a rehearing of the original proceedings in like manner as if the proceedings had been properly and duly commenced in the appellate Court: Appeal to be by way of rehearing. Ibid, sec. 285 1899, No. 29, sec. 21

Provided that where the appellate Court is the Supreme Court the Judge thereof may in his discretion, or on the application of either of the parties, and upon such terms as to costs or otherwise as he thinks fit, direct any issue of fact to be tried by jury: Issue of fact may be tried by jury.

Provided also that where the appellate Court is the District Court the Judge thereof in his discretion, or on the application of either of the parties, and upon such terms as to costs and otherwise as the Judge thinks fit, may direct any issue of fact to be tried by Assessors in like manner as if the proceedings were in the Warden's Court and were triable by Assessors, and the provisions of this Act relating to Assessors shall be construed accordingly.

339. The appeal shall in every case be deemed to be abandoned if the appellant—

(a.) Fails to duly file or serve such notice of appeal, or to duly lodge such deposit, within the time hereinbefore limited in that behalf; or

(b.) Fails to duly file such certified copy, if the appeal is on matter of fact alone or of both fact and law, or to duly set down such special case if the appeal is on matter of law

When appeal deemed to be abandoned. 1898, No. 38, sec. 286

alone, within the time hereinbefore respectively limited in that behalf, or such extended time as the Judge of the appellate Court thinks fit to grant on application made by the appellant before the expiration of the time limited as aforesaid :

Provided that no such extension shall be granted unless the appellant satisfies the Judge that, after making all reasonable efforts so to do, he had failed to procure such certified copy or to get such case settled early enough to admit of its being set down within the time hereinbefore limited in that behalf.

Proceedings when
appeal abandoned.
1898, No. 38, sec. 287

Court where appeal
to be heard.
Ibid, sec. 288

Special days for
hearing.
Ibid, sec. 289

Order for stay of
proceedings on
appeal.
1900, No. 64, sec. 17

Order of appellate
Court, and costs.
1898, No. 38, sec. 290

340. Whenever an appeal is abandoned, the same proceedings may be had and taken in respect of the decision appealed against as if no notice of appeal had been given.

341. Every appeal shall be heard at the sittings of the appellate Court held nearest to the place where the decision appealed against was given, and not earlier than twenty days after the time when it was given :

Provided that such Court may hear the appeal at such other place and (if the appeal is ripe for argument) such earlier time as it thinks fit.

342. The Judge of the appellate Court in each district may appoint special days for the hearing of appeals to such Court, and the days so appointed shall be publicly notified in the district by the Clerk or Registrar.

343. Whenever any appeal is brought, or about to be brought, the Warden or the Judge of the appellate Court, on the application of the appellant, may make such order for an injunction, or receiver, or payment of money into the hands of the Clerk of the Warden's Court, to abide the event of the appeal, or for stay of proceedings or otherwise, and upon such terms as such Warden or Judge thinks proper ; but without such order, or an order to the same effect, no appeal shall operate as a stay of proceedings ; and the said Warden or Judge may at any time thereafter, if he thinks fit, discharge or vary such order.

344. With respect to the proceedings on the appeal, the following provisions shall apply :—

- (a.) The appellate Court, after hearing the appeal, shall make such order reversing or varying the decision appealed against, or dismissing the appeal, as it thinks fit, and, except as provided in paragraph (e) of this section, every such order shall be final and conclusive.
- (b.) Such order may contain directions for the payment of money, or the delivery or restitution or possession of any mining privilege, or of any land or water, or of any gold, metal, mineral, or other chattels or property, to the person found to be entitled thereto.
- (c.) Such order may also contain such directions with respect to the costs of the appeal and of the original proceedings as the appellate Court thinks fit.
- (d.) Where it appears to the appellate Court that the subject-matter of the appeal does not exceed twenty pounds in value, the appellant, although successful on the appeal, shall not be entitled to any costs of appeal from the opposite

party unless the Judge is of opinion that the special circumstances of the case entitle him to costs.

- (e.) The decision of the appellate Court shall be final and conclusive except where the amount claimed or the value of the property in dispute exceeds three hundred pounds, in which case there shall be a further right of appeal to the Court of Appeal, whose decision shall be final and conclusive.

As to Jurisdiction of the District Court, and Appeals therefrom.

10 345. The District Court shall have an original jurisdiction concurrently with the Warden's Court in all cases where the amount claimed or the value of the property in dispute exceeds one hundred pounds; and with respect to all suits tried in the District Court in the exercise of such jurisdiction, the following provisions shall apply:—

When District Court to have original jurisdiction, and proceedings therein. 1898, No. 38, sec. 291

15 (a.) The forms of proceedings in use in such Court shall be applied as far as possible, and in so far as they are not applicable the forms of proceedings in the Warden's Court may be used, with such alterations as are necessary.

20 (b.) Except where an issue of fact is to be tried before Assessors, as hereinafter provided, the Judge of the District Court shall alone determine all matters of fact as well as of law.

25 (c.) For the purpose of the trial of any issue of fact before Assessors, the provisions of section three hundred and sixteen hereof relating to Assessors shall, *mutatis mutandis*, apply to the District Court and the Clerk thereof.

(d.) Subject as aforesaid, every issue of fact which is to be tried before Assessors shall be tried in the same manner as if such issue had been directed by the Supreme Court in a matter pending in that Court.

30 (e.) From every decision of the District Court an appeal shall lie to the Supreme Court, in the same manner and subject to the same rules, conditions, and procedure, *mutatis mutandis*, as in the case of appeals from a decision of the Warden's Court.

35 346. Notwithstanding anything in this Act, any action, whether now pending or hereafter commenced, where the amount claimed or the value of the property in dispute exceeds five thousand pounds, in a Warden's Court, or in a District Court exercising an original jurisdiction concurrently with the Warden's Court, under section three hundred and forty-five hereof, may be removed from any such Court into the Supreme Court upon the consent of both parties to the action, if the Supreme Court or a Judge thereof deems it desirable and orders that the action shall be tried in such last-mentioned Court.

Action may be removed to the Supreme Court. 1904, No. 33, sec. 25

45 347. The application to have any such action removed shall be made in accordance with the rules of the Supreme Court for the time being, and any order for removal shall be made upon such terms as to security and otherwise as the Supreme Court or a Judge thereof thinks fit to impose, and after the making of such order the action shall proceed as if the same had been commenced in the Supreme Court originally, and the rules of such Court as to amendment and otherwise shall apply thereto.

Application to have action removed. Ibid, sec. 26

Question may be reserved for Supreme Court. 1898, No. 38, sec. 292

348. The Judge of the District Court may at any time reserve for the opinion of the Supreme Court, by way of special case, any question arising in any proceedings in the District Court in the exercise of its original jurisdiction under this Act; and with respect to every such special case the provisions of section three hundred and thirty-three hereof shall, *mutatis mutandis*, apply. 5

Other Provisions.

Evidence of witnesses at a distance. Ibid, sec. 293

349. For the purpose of taking the evidence of witnesses resident at a distance from the place of hearing, the provisions of sections ninety-one to ninety-five of "The Magistrates' Courts Act, 1893," shall, *mutatis mutandis*, apply to all proceedings either in the Warden's Court or in the District Court in the exercise of its jurisdiction under this Act, or before the Warden in the exercise of his functions under any Part of this Act: 10

Provided that if there is no Warden's Court or District Court at the place where such evidence is to be taken it may be taken in the Magistrate's Court. 15

Proceedings within jurisdiction to be brought in Warden's or District Courts. Ibid, sec. 294

350. Subject to the provisions hereinbefore contained for appeal to the Supreme Court, or for special cases reserved for the opinion of that Court, or for the removal of actions into that Court, and subject also to the right of any person to proceed in the Supreme Court when the cause of action affects title to land held otherwise than under this Act, all proceedings in any matter within the jurisdiction of the Warden's Court or the District Court under this Act shall be brought in such Court alone. 20 25

Swearing of affidavits. Ibid, sec. 295

351. Affidavits to be used in any proceedings before the Warden or in the Warden's Court under this Act may be sworn before a Warden, a solicitor of the Supreme Court, a Justice of the Peace, or the Clerk.

Removal of defects in warrants, &c. Ibid, sec. 296

352. Every warrant, order, conviction, judgment, or decision of the Warden or the Court under this Act or any former Mining Act shall be deemed to have been made or given by the Magistrate of an inferior Court within the meaning and for all the purposes of "The Courts of Justice (Technical Defects Removal) Act, 1892." 30

PART X.

MISCELLANEOUS PROVISIONS.

35

As to Development of the Mining Industry.

Local authority may use funds to develop mining industry. Ibid, sec. 297 1899, No. 29, sec. 27

353. Subject to prescribed regulations, any local authority may from time to time apply such portions of its funds as it thinks fit in assisting the development of the mining industry in all or any of the following ways, that is to say:— 40

- (a.) In offering and paying rewards for the discovery of new mining fields in respect of gold or any other metals or minerals, or any precious stones;
- (b.) In prospecting for gold or any other metals or minerals or any precious stones;
- (c.) In or towards the erection, establishment, maintenance, and extension of schools of mines. 45

354. All moneys from time to time appropriated by Parliament for the purpose of assisting the development of the mining industry, whether by way of grants, rewards, or otherwise, shall be apportioned and applied as the Minister thinks fit, subject nevertheless to the special terms (if any) of such appropriation, and subject also to the provisions following, that is to say :—

Method of applying moneys appropriated by Parliament to assist development of mining industry. 1898, No. 38, sec. 298

(a.) The assistance to be given towards prospecting at deep levels shall be confined to three mining districts ; and in no case shall more than one deep level be assisted in any such district at one time.

(b.) In any case where such assistance is given by way of reward for the discovery of a new mining field, whether in respect of gold or any other metal or mineral, or any precious stone, the Minister may agree with any local authority that such authority shall pay such portion of the reward as is agreed on, not exceeding one moiety, and that the residue shall be paid by him ; and in every such case the local authority shall be liable to pay such portion accordingly.

(c.) In any case where any local authority itself offers any reward under the provisions in that behalf hereinbefore contained, the Minister may pay such portion thereof as is agreed on, not exceeding one moiety.

(d.) In any case where any local authority, being liable to pay any money in respect of any such reward, makes default in duly paying the same, the Minister may pay the same on its behalf, and all money so paid by him shall be a charge upon and be deducted from all goldfields revenue, or other subsidy or money, due or accruing due to such local authority under any Act.

355. With respect to every reward for the discovery of a new mining field, whether payable in whole or in part by the Minister, or by any local authority, the following special provisions shall apply :—

Reward for discovery of new mining field, when payable, and amount.

(a.) The reward shall in no case be payable unless the claim therefor is made within five years after the date of the discovery, nor until the genuineness of the discovery has been tested by actual working.

Ibid, sec. 299

(b.) The amount of the reward shall be computed on the basis of the number of miners *bona fide* engaged in mining operations on the new field at the expiration of twelve months after the date of the discovery thereof ; and the total amount of the reward shall in no case exceed five hundred pounds.

356. For the purposes of the three last preceding sections hereof, the Governor may from time to time make regulations prescribing—

Regulations as to applications for and conditions of assistance.

(a.) The mode of application to the Minister or any local authority for assistance ;

Ibid, sec. 300

(b.) The extent to which and the terms and conditions subject to which such assistance may be given ;

(c.) The definition of “ deep levels,” and the number and locality of the deep levels for the prospecting whereof assistance may be given by the Minister ;

(d.) The conditions as to the use of diamond drills in boring operations ;

- (e.) The number, localities, requirements, capacities, and method of construction of water-races and water-storage reservoirs towards which assistance may be given by the Minister ;
- (f.) The mode of application for rewards for the discovery of new mining fields, the terms and conditions subject to which such rewards may be offered and given, and the mode of computing the amount thereof ;
- (g.) Any other matter which the Governor deems necessary in the premises.

Minister may enter
into agreements.
1898, No. 38, sec. 301

357. For the purpose of specifying the purpose for which assistance is to be given by the Minister to any person, the extent of such assistance, and the terms and conditions subject to which it is to be given, the Minister may, in the name and on behalf of His Majesty, make such agreements and execute such instruments as he thinks fit.

Regulations.

15

Purposes for which
regulations may be
made.

Ibid, sec. 302

358. In addition to the regulations which the Governor is empowered to make under the foregoing provisions of this Act, he may from time to time make such regulations as he thinks necessary for all or any of the purposes following, that is to say :—

- (1.) Prescribing the rights, duties, powers, and functions of the Warden or any officer or other person appointed under this Act, or employed or acting in the administration thereof, and the districts or portions thereof wherein he shall exercise the same. 20
- (2.) Prescribing whatever the Governor deems necessary for the efficient management and administration of the affairs of mining districts. 25
- (3.) Prescribing the mode in which applications for the resumption of land may be made and dealt with.
- (4.) Prescribing whatever the Governor deems necessary in order to give full effect to the provisions of this Act relating to the resumption or ceding of land for mining purposes, or the surrender or determination of outstanding leases or licenses granted by the Native or other owners of land prior to the acquisition of such land by His Majesty. 30
- (5.) Prescribing the mode, times, and places for the issue of miners' rights. 35
- (6.) Prescribing the qualifications and privileges conferred by a miner's right upon the holder thereof.
- (7.) Exempting persons or classes of persons from the obligation to hold miners' rights ; such exemption being absolute or limited, as the Governor thinks fit to prescribe. 40
- (8.) Prescribing the mode in which goldfields revenue in respect of ceded land, reserves, endowments, and other lands shall be collected, accounted for, and distributed to the owners, trustees, or other persons entitled thereto. 45
- (9.) Prescribing in respect of mining privileges under this Act, the mode and terms of application therefor, and of marking out and taking up the land comprised therein ; the area and dimensions of such land ; the notices to be given, the person to be served, and the mode of service ; the forms, terms, and conditions of the licenses therefor, and of renewals 50

thereof; the fees, rents, and royalties payable in respect thereof; the time and mode of such payments; and the rights, privileges, duties, and obligations of the holders thereof.

- 5 (10.) Prescribing the mode in which and the terms and conditions subject to which mining privileges may be surrendered, exchanged, or amalgamated.
- (11.) Prescribing the forms of instruments for the disposition of mining privileges, and the mode of execution thereof.
- 10 (12.) Regulating the use and occupation of land under this Act, and the mode in which and the conditions and restrictions subject to which mining operations may be carried on therein or thereon.
- 15 (13.) Prescribing the terms, conditions, and restrictions subject to which prospecting operations may be carried on, whether under warrant or license or by virtue of a miner's right, the mode of assessing and settling the compensation payable by the prospector to the owner or occupier of the land prospected on, and whatever else the Governor thinks necessary for the purpose of regulating prospecting.
- 20 (14.) Prescribing in what cases, to what extent, and in what manner the outgoing holder of a mining privilege, or of surplus ground, may be entitled to receive from the incoming holder valuation for mining or other improvements existing thereon, and prescribing the mode of ascertaining such valuation.
- 25 (15.) Enabling holders of mining privileges to make and use and to use already-made shafts, levels, adits, drives, tunnels, races, or other mining-works through or over other lands, whether held as mining privileges or not, and prescribing the mode in which, and the terms and conditions as to compensation and otherwise subject to which, the same may be so made and used.
- 30 (16.) Prescribing the mode in which, and the terms, conditions, and restrictions subject to which, water may be diverted and used for mining or other purposes, and preventing the waste thereof.
- 35 (17.) Prescribing the mode in which, and the terms, conditions, and restrictions subject to which, watercourses may be diverted from their channels or beds, and mining be carried on therein.
- 40 (18.) Regulating the construction, maintenance, and use of races, dams, and other mining privileges in respect of water, and the use and sale of the water therein.
- 45 (19.) Prescribing the mode in which, and the terms, conditions, and restrictions subject to which, tailings, mining *débris*, and waste waters may be discharged or suffered to flow into watercourses proclaimed for that purpose.
- (20.) Prescribing the mode in which valuations for improvements may be made, and claims for compensation under this Act may be made, assessed, and disposed of.
- 50 (21.) Regulating and enforcing the drainage of mining privileges, and preventing damage from the escape or overflow of water from mines.

- (22.) Setting apart water, watercourses, and dams for specified purposes distinct from mining; regulating the use and sale of water for such purposes, and preventing the waste or fouling thereof.
- (23.) Regulating the proper working of mines and machinery (including dredging claims and dredges), and making provision for the safety of life and property in connection with mining operations. 5
- (24.) Authorising and regulating mining under roads, streets, and paths, subject to due provisions for the safety, preservation, and repair thereof. 10
- (25.) Requiring and regulating the fencing-in and filling-up of shafts, pits, holes, and excavations.
- (26.) Preventing nuisances and providing for sanitation in and about mining; privileges and the buildings erected thereon. 15
- (27.) Prescribing the mode in which, and the terms, conditions, and restrictions subject to which, timber on Crown lands may be felled and removed, fixing the prices to be paid for the various descriptions of such timber, and preventing the unlawful felling or removal thereof. 20
- (28.) Establishing and keeping registers for the registration of mining privileges and of the titles thereto, and of instruments of transfer and other dispositions thereof, and of liens and other encumbrances thereon, and prescribing the mode of such registration. 25
- (29.) Prescribing the mode in which liens and other encumbrances in respect of mining privileges may be discharged and such discharges may be registered.
- (30.) Prescribing the procedure for enforcing and obtaining the benefit of any lien authorised by this Act. 30
- (31.) Regulating the registration of persons as agents for parties in the Warden's Court and before the Warden, and prescribing the fees payable for such registration.
- (32.) Regulating the procedure and practice in the Warden's Court, and in proceedings before the Warden in his administrative as well as his judicial capacity. 35
- (33.) Fixing the fees to be paid in respect of proceedings in the Court or before the Warden.
- (34.) Regulating the costs that may be awarded, and the scale of allowances for witnesses' expenses in respect of such proceedings. 40
- (35.) Prescribing the maximum costs and charges that may be charged under this Act by solicitors and registered agents.
- (36.) Prescribing the procedure in specified cases, including claims for damage done to land by reason of prospecting operations thereon. 45
- (37.) Prescribing the mode in which surveys under this Act shall be made, the fees to be paid therefor, the amount of the deposit to be made in respect thereof, and the mode of disposing of such deposit. 50
- (38.) Appointing Postmasters for the issue of miners' rights or other specified mining privileges, and the receipt of fees

and other payments under this Act in respect of mining privileges; prescribing the mode of such issue and receipt, and of the accounting for all moneys so received.

(39.) Prescribing, in cases not hereinbefore provided for, the matters in respect whereof fees shall be payable under this Act, the amount thereof, and the persons liable to pay the same.

(40.) Making provision for the compilation of mining statistics, and for that purpose requiring every claimholder to furnish to the Inspector periodical returns in the prescribed manner and form, showing for each such period in respect of such claim the number of workmen employed, the quantity of gold produced, together with such other particulars as are prescribed.

(41.) For the purpose of such compilation as aforesaid, requiring every bank or other gold-buyer to furnish to the Inspector periodical returns showing for each such period the quantity of gold purchased by such buyer, together with such other particulars as are prescribed.

(42.) Exercising, in such manner as the Governor thinks fit, any power or authority conferred upon him by this Act.

(43.) Prescribing the respective forms of all licenses, certificates, and other documents issued under this Act, and the mode of recording the same, and giving effect to anything which under the provisions of this Act is to be prescribed.

(44.) Effectuating anything for which regulations are contemplated or required by this Act.

(45.) Generally prescribing whatever he deems necessary for the purpose of giving full effect to this Act, including penalties not exceeding ten pounds for the breach of any regulation.

359. With respect to all regulations under this Act, the following provisions shall apply:—

(a.) They shall be gazetted, and shall come into operation from the date of such gazetting.

(b.) They shall be laid before both Houses of the General Assembly within twenty-eight days after such gazetting, if Parliament is then in session, or, if Parliament is not in session, then within fourteen days after the commencement of the then next ensuing session thereof, and shall be referred to the Goldfields and Mines Committee of each House of the General Assembly.

(c.) In any case where the General Assembly by resolution requests that any regulation be amended in any respect, or be repealed, the Governor shall forthwith amend or repeal such regulation accordingly.

(d.) No right, title, or interest acquired under or created by any regulation under this Act shall be in any manner affected by the amendment or revocation of such regulation.

Regulations to be laid before General Assembly, who may request same to be amended.

1898, No. 38, sec. 303

General Provisions.

360. If any person carries on mining operations—

(a.) On Crown lands (other than Native ceded lands) without being duly authorised under this Act so to do; or

Persons mining on certain lands without authority commit offence. Ibid, sec. 304

(b.) On private land, without being duly authorised under this Act or by the owners so to do,—

he commits an offence, and is liable to a penalty of not more than five pounds, nevertheless without thereby releasing him from any other liability he may incur by reason of such illegal operations.

Manager, &c., not
to act as
sharebroker.
1898, No. 38, sec. 195

361. If any person whilst he is employed or acting as mine-manager, legal manager, or secretary of any mine, or of any registered or incorporated company carrying on mining operations, acts directly or indirectly as a sharebroker in respect of the shares or stock of such mine or company he is liable to a penalty not exceeding fifty pounds.

Evidence that con-
ditions complied
with.
Ibid, sec. 305

362. The issue of any license or certificate by the Warden under this Act or any former Mining Act shall, except in case of fraud, be conclusive evidence that all the conditions and provisions prescribed by such Act as precedent to such issue have been duly complied with.

If license or
certificate lost,
duplicate may be
issued.
Ibid, sec. 306

363. If any license, certificate, or other document issued under this Act or any former Mining Act is lost or destroyed, a duplicate thereof may be issued in such manner, and upon such conditions as to proof of loss and otherwise, as are prescribed.

Proof of licenses.
Ibid, sec. 307

364. (1.) In all proceedings in any Court of justice, the production of any document purporting to be a license, certificate, or other document issued by the Warden or any other officer under this Act or any former Mining Act shall, until the contrary is proved, be sufficient evidence that the document is what it purports to be, and that it was lawfully issued.

(2.) Nothing in this section contained shall limit or affect the operation of section three hundred and sixty-two hereof.

Certificated extract
of register to be
received as evidence
Ibid, sec. 308

365. A certificate in writing of the contents of or any extract from any register under this Act or any former Mining Act, purporting to be signed by the Registrar or other officer authorised to keep such register, shall, until the contrary is proved, be sufficient evidence in all Courts of justice, and for all purposes, of the matters set forth in such certificate, without production of the register or proof of the signature to such certificate.

Directors and
officers of company
liable for fees and
rent.
Ibid, sec. 309

366. In any case where any mining privilege is held by any company not registered in the colony, every director and attorney of such company, and also its manager and other officers, shall be severally liable for all fees, rents, royalties, and penalties payable in respect of such mining privilege, nevertheless without relieving the company from its liability in respect thereof.

Bailiff may sell
without license.
Ibid, sec. 310

367. It shall not be necessary for any bailiff conducting any sale under this Act to be the holder of an auctioneer's license, but if he does not hold such license he shall not be entitled to charge any commission for acting as auctioneer at such sale.

Penalty for breach
of Act or regulations.
Ibid, sec. 311

368. Every person who commits any breach of any of the provisions of this Act, or of any regulations thereunder, for the punishment whereof no express provision is made elsewhere than in this section, is liable to a penalty not exceeding, for the first offence, ten pounds, and for every subsequent offence of the same nature twenty pounds.

Penalty no bar to
civil action.
Ibid, sec. 312

369. Notwithstanding the institution of proceedings for the recovery of any penalty under this Act, or the recovery of such penalty, any person shall be entitled to enforce against all persons any civil remedy he may have by reason of the act or default in respect of which such proceedings were instituted.

370. (1.) All fees, rents, royalties, and other dues payable under this Act or any former Mining Act shall be deemed to be moneys of the Crown, and, without in any way restricting any other mode or remedy for the recovery thereof, any Receiver of Goldfields Revenue for a mining district, or Receiver of Land Revenue for a land district, may in his own name sue therefor in the Warden's Court, or any other Court of competent jurisdiction, if the same remains in arrear for thirty days :

Receiver may sue for fees or rent in arrear.
1898, No. 38, sec. 313

Provided that in any case where all the local authorities or persons entitled to any specified dues as goldfields revenue request the Minister to treat them as not recoverable, or to accept a composition in respect thereof, or to give time for the payment thereof, he may do so, and in every such case the Receiver shall act as directed by the Minister.

(2.) All mileage fees received for service of any process under this Act shall be paid into the Public Account and form part of the Consolidated Fund, anything in this or any other Act to the contrary notwithstanding.

371. The Receiver of Goldfields Revenue shall furnish a return half-yearly, in the prescribed form, to the local authority entitled to goldfields revenue, setting forth in respect of such half-year the particulars of all revenue payable, paid, and in arrear.

Receiver to furnish half-yearly return.
Ibid, sec. 314

372. Where land situate in a mining district is taken under "The Public Works Act, 1894," a copy of the Proclamation shall be deposited with the Mining Registrar for registration, and the Registrar shall register the same as on the hour and date of its being so deposited.

Registration of Proclamation taking land under Public Works Act.
1904, No. 33, sec. 11

373. The Mining Registrar shall furnish to the Minister a monthly return, in the prescribed form, setting forth the particulars of all licenses, transfers, forfeitures, or other transactions registered by him during each month.

Mining Registrar to furnish monthly return.
1898, No. 38, sec. 315

374. Every Warden acting in the execution of his office or duty under this Act shall be entitled to the same protection as Justices of the Peace under any law for the time being in force to protect Justices from vexatious actions for anything done by them in the execution of their office or duty ; and Part IV. of "The Justices of the Peace Act, 1882," shall, *mutatis mutandis*, apply to Wardens as fully as to Justices.

Protection to Wardens.
Ibid, sec. 316

375. Whenever a Warden is empowered or required by this Act to cause anything to be done, and the mode of doing it is not elsewhere sufficiently provided for by this Act, it may be done by any person authorised verbally or in writing by the Warden ; and all constables and peace officers shall, if thereunto required, assist any Warden or person authorised as aforesaid in the performance of his duty under this Act.

Power of Warden where no provision is made.
Ibid, sec. 317

376. Wherever by this Act any matter is to be done within a time, or in a mode, or subject to a condition or provision to be prescribed, and no prescription is made by this Act or the regulations thereunder, the Warden, when dealing with each such matter as it arises, may himself make the necessary prescription.

Warden to prescribe matter if omission made.
Ibid, sec. 318

Validation.

377. For the purpose of removing possible doubts as to the validity of any mining privilege heretofore granted by the Warden in respect of land that at the time of such grant had been acquired in fee-simple by the Crown from the Native owners thereof, but was held by the Kauri Timber Company (Limited) under lease or license given

Validating mining privileges on land acquired from Natives while subject to lease to Kauri Timber Company.
Ibid, sec. 319

by the Native owners prior to such acquisition, the following provisions shall apply :—

- (a.) In every case where any such mining privilege was granted by the Warden with the concurrence of the aforesaid company, the validity of such mining privilege shall not be in any way questioned or affected by reason merely that at the time of the grant thereof the company's outstanding lease or license had not been actually surrendered, or the land had not been resumed for mining purposes or notified by the Governor to be available for mining purposes; and in every such case the mining privilege shall be deemed to have been granted in respect of Crown lands open for mining.
- (b.) Sections *sixty* and *sixty-one* of this Act, and the corresponding sections of any former Mining Act, shall be construed subject to this section.

Schedules.

SCHEDULES.

FIRST SCHEDULE.

ACTS COMPILED.

- 1897, No. 7.—“ The Sunday Labour in Mines Prevention Act, 1897 ” : Except as to coal-mines.
- 1897, No. 18.—“ The Mining Companies Acts Amendment Act, 1897 ” : Section 11.
- 1898, No. 38.—“ The Mining Act, 1898.”
- 1899, No. 29.—“ The Mining Act Amendment Act, 1899.”
- 1900, No. 64.—“ The Mining Act Amendment Act, 1900.”
- 1901, No. 22.—“ The Miners' Rights Fee Reduction Act, 1901.”
- 1901, No. 60.—“ The Mining Act Amendment Act, 1901.”
- 1902, No. 22.—“ The Mining Act Amendment Act, 1902.”
- 1903, No. 26.—“ The Water-power Act, 1903 ” : The proviso to section 5.
- 1903, No. 81.—“ The Mining Act Amendment Act, 1903.”
- 1904, No. 33.—“ The Mining Act Amendment Act, 1904.”

1898, No. 38,
Second Schedule.

SECOND SCHEDULE.

CLAIMS THAT MAY BE MARKED OUT AND TAKEN UP.

- | | |
|---|---|
| If the area of the land resumed, ceded, or brought within a mining district does not exceed 5 acres | An ordinary claim. |
| If such area exceeds 5 acres but does not exceed 20 acres | An extended claim or any lesser claim. |
| If such area exceeds 20 acres but does not exceed 50 acres | A special claim not exceeding 30 acres or any lesser claim. |
| If such area exceeds 50 acres | A special claim or any lesser claim. |

PERSONS UPON WHOM THE RIGHT TO MARK OUT AND TAKE UP CLAIMS IS CONFERRED ; THEIR ORDER OF PRIORITY ; AND THE PROVISIONS SUBJECT TO WHICH SUCH RIGHT MAY BE EXERCISED.

- 1. The persons, or groups of persons, upon whom the right to mark out and take up claims is conferred are—
 - (a.) The person (hereinafter called “ the discoverer ”) who, being the holder of a prospecting license in respect of the land, *bonâ fide* discovers gold thereon,

and notifies the Minister in writing of the fact, date, and locality of the discovery, if the land is resumed, ceded, or brought within a mining district in consequence of such discovery and notification :

(b.) The person who is the owner or occupier (hereinafter called " the proprietor ") of the land :

(c.) The person (hereinafter, with all persons in the same group, called " the applicant ") pursuant to whose application and deposit the land is resumed :

Provided that, except in the case of separate proprietors as hereinafter mentioned, no such person or group of persons shall be entitled to mark out and take up more than one claim.

2. The rights of the discoverer, the proprietor, and the applicant to mark out and take up claims shall, as against all other persons, have priority during the whole of the period referred to in paragraph (f) of section 89 of this Act, but shall, as between themselves, be regulated as follows :—

(a.) During the first half of the said period each separate proprietor shall (subject to the proviso hereinafter contained) have the exclusive right to mark out and take up a claim as aforesaid on such portion (if any) of his land as comprises the site of mining operations which he was *bond fide* carrying on at the time when, as the case may be, the discoverer notified the Minister, or the applicant made his application and deposit, or (in the absence of such notification or application) the land was ceded or resumed or brought within a mining district.

(b.) Subject to the aforesaid exclusive right of the proprietor, the discoverer shall during the first half of the said period have the exclusive right to mark out and take up a claim as aforesaid on any portion of the land to which his discovery and notification relate.

(c.) Subject to the aforesaid exclusive rights of the proprietor and the discoverer, the applicant shall, during the first half of the said period, have the exclusive right to mark out and take up a claim as aforesaid on any portion of the land to which his application for resumption relates.

(d.) During the second half of the said period the rights of the discoverer, the proprietor, and the applicant (if or in so far as such rights have not already been exercised) shall be regulated by the date on which the claims are marked out and taken up :

Provided that the aforesaid exclusive right of the discoverer shall have priority over that of the proprietor in any case where the land was alienated from the Crown on or subsequent to the 29th day of September, 1873, or (if Native land) was alienated from the Native owners thereof to any person other than the Crown on or subsequent to the 30th day of August, 1888.

3. The claims shall be marked out and taken up under the provisions of this Act in like manner as if the land were available for mining purposes.

4. The right to take up a claim shall be deemed to include the right to a license for any other mining privilege to be used for the purpose of facilitating mining operations on such claim, and this Schedule shall be construed accordingly.

5. The Warden shall have jurisdiction to determine all questions and disputes that arise in relation to the exercise of the aforesaid rights.

THIRD SCHEDULE.

ALL that block of land in the Land District of Nelson, containing by admeasurement 2,100 acres, more or less, and situated in Blocks I. and II., Waitapu Survey District, and Block IV., Aorere Survey District, and bounded as follows : Commencing at a point on the Parapara River intersected by the south-western boundary of Section 192, Takaka ; thence by said boundary and the north-western boundary of Section 77, Milnthorpe Suburban, to the western corner of the latter section ; thence along the south-western boundary of the said section to the northern corner of Section 122, Square 14 ; thence along the north-western, south-western, and south-eastern boundaries of Section 122, Square 14, to the southern corner of Section 76, Milnthorpe Suburban ; thence along the south-eastern boundaries of Sections 76, 74, 72, and 70, Milnthorpe Suburban, to Trig. AA, at eastern corner of the latter section ; thence by a line to the southern corner of Section 69, Milnthorpe Suburban ; thence along the south-western boundaries of Sections 68 and 67, Milnthorpe Suburban, to the southern corner of the latter section ; thence along the

1902, No. 22,
Schedule.

north-western and south-western boundaries of Section 99, Takaka, to southern corner of same; thence along the north-western and south-western boundaries of Section 95, Takaka, to the northern corner of Section 16, Block II., Waitapu Survey District; thence along the north-western and south-western boundaries of that section to the Onekaka River; thence in a south-westerly direction along that river to the southern corner of Section 152, Square 14; thence by a right line bearing due west to the boundary between the Waitapu and Aorere Survey Districts respectively; thence due north along said boundary to its intersection with the south-western boundary of Section 149, Square 14; thence to the western corner of that section; thence by a line bearing 20° west of north to the Parapara River; and thence by that river to the point of commencement: excepting and excluding Section 3, Block IV., Aorere Survey District, which is within the above-described boundaries.

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