

# MINING ORDINANCE, 1937-1939. <sup>(1)</sup>

## An Ordinance to Consolidate and amend the Laws relating to Mining.

**B**E it ordained by the Legislative Council for the Territory of Papua, in pursuance of the powers conferred by the *Papua Act, 1905-1934*, as follows:—

### PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Mining Ordinance, 1937-1939*, <sup>(1)</sup> and is divided into Parts and Divisions as follows:—

- Part I.—Preliminary.
- Part II.—Goldfields and Mineral Fields:
  - Division 1.—Goldfields.
  - Division 2.—Mineral Fields.
- Part III.—Miners' Rights and Business Licences:
  - Division 1.—Miners' Rights.
  - Division 2.—Business Licences.
  - Division 3.—Provisions applicable to Miners' Rights and Business Licences.
- Part IV.—Special Prospecting Reserves.
- Part V.—Mining Leases:
  - Division 1.—Gold-mining Leases.
  - Division 2.—Mineral Leases.
  - Division 3.—Provisions applicable to Gold-mining Leases and Mineral Leases.
- Part VI.—Mining on Reserves Residence Areas and Business Areas.

Short title and Division of Ordinance.

Cf. Q. 62 Vic. No. 24, s. 1.

Section 1 amended by No. 2 of 1930, s. 2.

(1) The *Mining Ordinance, 1937-1939*, comprises the *Mining Ordinance, 1937*, as amended by the other Ordinance referred to in the following Table:—

#### ORDINANCES OF THE LEGISLATIVE COUNCIL FOR THE TERRITORY OF PAPUA.

Short title, number and year.	Date of reservation by Lieut.-Gov.	Date on which assent of Gov.-Gen. in Council published in Papua Govt. Gaz.	Date on which came into operation.
<i>Mining Ordinance, 1937</i> (No. 1 of 1938)	16.8.1937	5.1.1938	1.7.1938 (Papua Govt. Gaz. of 4.5.1938)
<i>Mining Ordinance, 1939</i> (No. 18 of 1939)	15.8.1939	6.12.1939	22.1.1940 (Papua Govt. Gaz. of 1.2.1940)

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Part VII.—Special Provisions Relating to Coal Mining.

Part VIII.—Mining for Gold Silver or Other Minerals Except Coal on Alienated Lands and upon Native Lands Within the Limits of Goldfields or Mineral Fields.

Part IX.—Miners' Homestead Leases.

Part X.—Permits for Aerial Ropeways.

Part XI.—Administration:

Division 1.—Wardens' Courts Wardens and other Officers.

Division 2.—Procedure of Wardens' Courts.

Division 3.—Special Powers and Duties.

Division 4.—Mode of Enforcing Orders and Decisions and Interpleader.

Division 5.—Statement of Special Case for the Opinion of the Central Court.

Division 6.—Appeals to Central Court.

Part XII.—General Provisions.

Part XIII.—Miners' Commons.

Part XIV.—Drainage of Mines.

Part XV.—Regulation of Mines:

Division 1.—Provisions Relating to Mines in General.

Division 2.—Provisions Relating to Collieries only.

Part XVI.—Regulations.

Commencement  
of Ordinance.

2. This Ordinance shall commence on a date to be fixed by the Lieutenant-Governor by Proclamation published in the *Gazette*.<sup>(1)</sup>

Interpretation.  
Cf. Q. 62 Vic.  
No. 24, s. 3.

3. In this Ordinance unless the context otherwise indicates the following terms have and include the meanings set against the same respectively that is to say:—

“Agent”—A person acting on behalf of the owner or having the care or direction of a mine or of any part thereof or of any works connected therewith.

“Alluvial Ground”—Ground containing gold found in detritus resulting from the disintegration of older

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(1) See footnote (1) printed on p. 3019.

deposits whose constituents have been brought into their present position by mechanical agencies.

“Board”—A Drainage Board constituted or deemed to have been constituted under the provisions of this Ordinance.

“Business Area”—A portion of Crown land occupied by the holder of a business licence.

“Business Licence”—A business licence issued under the provisions of this Ordinance or any Act or Ordinance hereby repealed.

“Claim”—The portion of Crown land which any person or number of persons shall lawfully have taken possession of and be entitled to occupy for mining purposes or any number of such portions lawfully amalgamated by the holders:

Provided that no land comprised in any mining lease shall be deemed to be a claim.

“Colliery”—A mine worked for the produce of coal shale stratified ironstone or fireclay.

“Crown land” or “Crown lands” shall include all lands vested in His Majesty which have not been dedicated to any public purpose and which have not been granted in fee or lawfully contracted to be so granted and subject to the provisions of Part VIII. of this Ordinance all lands held under lease from His Majesty pursuant to the “Land Ordinance” and shall include and shall be deemed always to have included all native lands.

Pap. No. 4 of  
1908, s. 2.

“Director” or “Director of Mines”—The Director of Mines appointed to administer this Ordinance or any other officer for the time being administering this Ordinance.

“Drainage Area”—A mining drainage area constituted or deemed to have been constituted under the provisions of this Ordinance.

“Drive”—Any passage in a mine in any direction or at any angle whatsoever other than a shaft; Provided that for the purposes of Section Seventy-one of this Ordinance the term may if necessary include any extension or continuation of any shaft.

“Earth”—Any rock stone quartz clay sand soil or mineral.

“Existing”—Existing at the time of the commencement of this Ordinance.

“Gold”—Includes platinum and any metal belonging to the platinum group of metals and as well any gold platinum or aforesaid metal as any earth or substance containing any gold platinum or aforesaid metal or having any gold platinum or aforesaid metal mixed in the substance

Pap. No. 5 of  
1899, s. 3.

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thereof or set apart for the purpose of extracting any gold platinum or aforesaid metal therefrom.

“Goldfield”—Any portion of Crown land proclaimed or constituted or deemed to have been proclaimed or constituted a goldfield under the provisions of this Ordinance.

“Gold-mining Lease”—A lease for the purpose of mining for gold or for purposes connected with such mining.

“Improvements”—Any house store stable hut or other building or any fence well dam tank reservoir trough pump or other apparatus for raising water or any garden plantation or cultivation.

“Insolvency”—Includes liquidation by arrangement.

“Inspector”—An inspector of mines appointed or deemed to have been appointed under the provisions of this Ordinance.

“Lieutenant-Governor<sup>(2)</sup>”—The Lieutenant-Governor<sup>(2)</sup> with the advice of the Executive Council.

“Land Ordinance”—*The Land Regulation Ordinance of 1888<sup>(3)</sup>* and any Ordinance amending such Ordinance or in substitution therefor.

“Machinery”—Steam or other engines boilers furnaces stampers rollers winding and pumping gear chains trucks tramways tackle blocks ropes tools and all appliances of whatever kind used in or about a mine or in or about any works used for the treatment of metals or minerals.

“Mine”—Any place pit shaft drive level or other excavation drift gutter lead vein lode or reef wherein or whereby any operation for or in connection with mining purposes is or shall be carried on.

“To Mine”—To disturb remove cart carry wash sift smelt refine crush or otherwise deal with any earth by any mode or method whatsoever for the purpose of obtaining gold or any other mineral therefrom.

“Mineral Field”—Any portion of Crown land proclaimed or constituted or deemed to have been proclaimed or constituted a mineral field under the provisions of this Ordinance.

“Mineral Lease”—A lease for the purpose of mining for any mineral other than gold or for purposes connected with such mining.

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(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

(3) Now the *Land Ordinance, 1911-1940.*

- “Miners’ Common”—Any common constituted or deemed to have been constituted under the provisions of this Ordinance.
- “Miner’s Homestead”—Land comprised in a miner’s homestead lease.
- “Miner’s Homestead Lease”—Any lease granted under the provisions of Part IX. of this Ordinance or deemed to have been so granted.
- “Miner’s Right”—A miner’s right or a consolidated miners’ right issued under the provisions of this Ordinance or any Act or Ordinance hereby repealed.
- “Mining Lease”—A gold-mining lease or a mineral lease.
- “Mining Manager” or “Manager”—The person who has the management of the mining operations carried on in or upon a mine.
- “Mining Purposes”—The purpose of searching for or obtaining gold or any other mineral from earth by any mode or method of mining and of stacking or otherwise storing any earth or ore containing gold or any other mineral.
- “Mining Tenement”—Any land held under a mining lease or application therefor or any claim or any area water-race drain dam reservoir stack or accumulation of earth containing gold or any other mineral or any easement taken up held occupied used or enjoyed under or by virtue of a miner’s right business licence or licence to search for coal.
- “Native Lands”—Includes all lands which have never vested in His Majesty. Pap. No. 4 of  
1908, s. 7.
- “New Goldfield”—Every goldfield and every portion of a goldfield until after the lapse of three years from the date of the Proclamation by virtue whereof the same became a goldfield or portion thereof (whether such Proclamation was made under this Ordinance or under any Act or Ordinance hereby repealed) or until after the lapse of such further period from such date as aforesaid as the Lieutenant-Governor<sup>(2)</sup> has before the commencement of this Ordinance declared or appointed or may at any time by Proclamation declare or appoint.
- “New Mineral Field”—Every mineral field and every portion of a mineral field until after the lapse of three years from the date of the Proclamation by virtue whereof the same became a mineral field or portion thereof (whether such Proclamation was made under

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(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

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this Ordinance or under any Act or Ordinance hereby repealed) or until after the lapse of such further period from such date as aforesaid as the Lieutenant-Governor<sup>(2)</sup> has before the commencement of this Ordinance declared or appointed or may at any time by Proclamation declare or appoint.

“Owner”—The holder of any mining tenement or any sub-lessee of any such tenement or any person in possession of such tenement with the consent of such holder.

“Plan”—A map and section and a correct copy or tracing of any original plan as so defined.

“Prescribed”—Prescribed by this Ordinance or the regulations.

“Regulations”—The regulations and forms for the time being in force under the provisions of this Ordinance.

“Reserve”—Any street or road or any lands which are for the time being set apart as a reserve for public purposes or which for the time being are vested in any corporation or person upon trust for public purposes or which are for the time being excepted from occupation for mining purposes under the provisions of this Ordinance or otherwise.

“Residence Area”—A portion of Crown land and such portion of the surface of gold-mining leases or mineral leases as may be reserved for residence purposes and occupied for the purpose of residence by the holder of a miner’s right.

“Shaft”—A downward excavation perpendicular or at any angle sunk from the surface designed for the working and removal of underground metalliferous ores minerals or metals for the removal of water for ventilation or for a travelling road for the use of such human beings or animals as are employed in the working of mines.

“Stock”—Any bull cow ox heifer steer calf horse mare gelding colt filly ass mule sheep goat camel or swine.

“Warden”—Every warden appointed or deemed to have been appointed under the provisions of this Ordinance.

“Warden’s Court”—Any Court held by and before a warden whether sitting alone or with assessors.

Repeal.  
Schedule I.

4. From and after the commencement of this Ordinance the Act and Ordinances specified in the First Schedule to this Ordinance are repealed:

Saving.  
Cf. Q. 62 Vic.  
No. 24, s. 4.

Provided that except as otherwise expressly provided in this Ordinance—

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

- (a) The repeal of the said last-mentioned Act and Ordinances (hereinafter called "the repealed Ordinances") shall not affect the previous operation of the repealed Ordinances or anything duly done or suffered or contracted to be done or suffered thereunder or any right privilege obligation or liability acquired accrued or incurred under any of the repealed Ordinances or any penalty forfeiture or punishment incurred in respect of any offence committed against any of the repealed Ordinances or any inquiry hearing appeal proceeding or remedy in respect of any such right privilege obligation liability penalty forfeiture or punishment as aforesaid and any such proceeding or remedy may be instituted continued or enforced and any such penalty forfeiture or punishment may be imposed as if this Ordinance had not been passed;
- (b) Unless this Ordinance in any respect otherwise expressly provides all lands and mining tenements which at the time of such repeal as aforesaid are applied for leased occupied used or enjoyed under the provisions of the repealed Ordinances or any of them shall until the same are surrendered or resumed or the existing title thereto is otherwise determined continue to be subject to such provisions in the same manner as if this Ordinance had not been passed and the owner of any such tenements shall be entitled to all the privileges conferred on holders of such lands and tenements under this Ordinance;
- (c) Without prejudice to the provisions in the next preceding subsection contained all lands and mining tenements which at the time of such repeal as aforesaid are applied for leased occupied used or enjoyed under the provisions of the repealed Ordinances or any of them shall as far as practicable be dealt with according to the provisions of this Ordinance and subject thereto in accordance with the provisions of the repealed Ordinances which shall for that purpose be deemed to continue in force notwithstanding the repeal thereof;
- (d) Any officer appointed any body elected or constituted and any office established under any of the repealed Ordinances shall continue and be deemed to have been appointed elected constituted or established as the case may be under this Ordinance;
- (e) Any Proclamation<sup>(4)</sup> published notification<sup>(4)</sup> made rules<sup>(5)</sup> framed and approved document issued notice

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(4) Particulars of proclamations and notifications continued in force by Section 4(e) are included in the relevant footnotes and Tables to this Ordinance.

(5) See footnote (25) printed on p. 3112.

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given licence certificate or authority granted under any of the repealed Ordinances shall continue in force as if it or they had been published made framed approved issued given or granted under this Ordinance;

- (f) Where this Ordinance repeals and re-enacts with or without modification any provisions of any of the repealed Ordinances references in any other Ordinance or in any document to the provisions so repealed shall unless a contrary intention appears be construed as references to the provisions so re-enacted.

### PART II.—GOLDFIELDS AND MINERAL FIELDS.

#### *Division 1.—Goldfields.*

Proclamation of  
goldfields.  
Cf. Q. 62 Vic.  
No. 24, s. 5.

5. The Lieutenant-Governor<sup>(2)</sup> may by Proclamation<sup>(6)</sup> published in the *Gazette* :—

- (a) Constitute any portion of Crown land to be a goldfield ;  
(b) Alter or amend the boundaries of a goldfield or abolish such goldfield.

Existing  
goldfields.  
Q. 1b. s. 6.

6. Every existing goldfield proclaimed or constituted<sup>(6)</sup> before the commencement of this Ordinance shall be and remain a goldfield for the purposes of this Ordinance and so far as may be necessary shall be deemed to have been constituted and proclaimed under the provisions of this Ordinance.

But the boundaries of every such goldfield may be altered or amended and every such goldfield may be abolished under the provisions of this Ordinance.

Provisional  
Proclamation of  
goldfields.  
Q. 1b. s. 7.

7. Whenever the discovery of payable gold on Crown lands is reported in writing under the hand of and signed by the person claiming to have made such discovery or reported by writing under the hand of the agent of any such person to the warden whose office is nearest the situation of such discovery the notification of such discovery by such warden posted outside his office shall operate to proclaim the portion or portions of Crown lands to be a goldfield within the meaning and for the purposes of this Ordinance which shall be contained in a square the boundary lines of which shall be directed to the cardinal points and the central point in each boundary line whereof shall be distant half a mile from such place of discovery and such notification<sup>(7)</sup> as aforesaid shall have the

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

(6) No proclamations have been published in *Papua Govt. Gaz.* pursuant to the present Section 5. A Table containing particulars of proclamations constituting goldfields, made under the repealed *The Mining Act of 1898 (Queensland, adopted)* and continued in force by the present Sections 4 and 6, is printed on p. 3211, and the proclamations still in force are printed immediately after the Table.

(7) No provisional proclamation is still in force.



effect of a provisional Proclamation of the said area as a goldfield to be in force until the same is revoked or cancelled or any enlarged or diminished area shall be proclaimed under the provisions of this Ordinance:

Provided that no such notification shall be posted until the warden shall have satisfied himself by personal inspection that payable gold has been actually discovered on such land:

Provided further that personal inspection by the warden shall not be necessary before posting a notification of the discovery of payable gold when the situation of the discovery is distant from the warden's office more than thirty miles by the nearest practicable route:

Pap. No. 18 of  
1935, s. 3.

And provided further that such notification shall be taken to refer back to and to operate from the day upon which the said discovery shall have been so reported as aforesaid and such Proclamation shall be published in the *Gazette* as soon as practicable after the posting thereof as aforesaid:

And provided also that if the warden to whom such discovery as aforesaid shall have been reported or any officer in that behalf authorized by the Director of Mines shall at any time during the continuance of such provisional Proclamation report to the Director of Mines that the alleged discovery of payable gold does not in his opinion warrant the proclamation as a goldfield of the said area, the Director of Mines may by notice<sup>(8)</sup> in the *Gazette* revoke and cancel the provisional Proclamation of such area and the lands comprised therein shall thereupon resume the same character and incidents as were attached to them before the notification of such discovery as aforesaid.

#### *Division 2.—Mineral Fields.*

8. The Lieutenant-Governor<sup>(2)</sup> may by Proclamation<sup>(9)</sup> published in the *Gazette*:—

Proclamation of  
mineral fields.  
Cf. Q. 62 Vic.  
No. 24, s. 9.

- (a) Constitute any portion of Crown land to be a mineral field;
- (b) Alter or amend the boundaries of a mineral field or abolish such mineral field;
- (c) Constitute any portion of a mineral field or the whole thereof an area within which mining shall be carried on solely by the holders of miners' rights.

9. Every existing mineral field proclaimed or constituted<sup>(9)</sup> under the provisions of the Act or Ordinances by this Ordinance

Existing mineral  
fields.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

(8) No notice has been published in *Papua Govt. Gaz.*

(9) No proclamations have been published in *Papua Govt. Gaz.* pursuant to the present Section 8. A Table containing particulars of proclamations constituting mineral fields, made pursuant to the repealed *The Mining Act of 1898* (Queensland, adopted) and continued in force by the present Sections 4 and 9, is printed on p. 3223 and the proclamations still in force are printed immediately after the Table.

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repealed shall be and be deemed to be a mineral field for the purposes of this Ordinance and so far as may be necessary shall be deemed to have been constituted and proclaimed as a mineral field under the provisions of this Ordinance.

But the boundaries of every such mineral field may be altered or amended and every such mineral field may be abolished under the provisions of this Ordinance.

### PART III.—MINERS' RIGHTS AND BUSINESS LICENCES.

#### *Division 1.—Miners' Rights.*

Issue of miner's right.  
Cf. Q. 62 Vic.  
No. 24, s. 11.

10. The Lieutenant-Governor<sup>(2)</sup> may cause documents to be issued to any person other than aboriginal natives of the Territory each of which shall be called a miner's right and shall be in force for any number of years not exceeding ten and subject to the provisions hereinafter contained any such document shall be granted to any person except as aforesaid applying for the same upon payment of a sum at the rate of Ten shillings for every year for which the same is to be in force but save as hereinafter provided shall not be transferable.

Form of miner's right.  
Q. *Ib.* s. 12.

11. On the face of every miner's right issued under the provisions of this Ordinance shall be specified—

- (a) the date and place of issue thereof; and
- (b) the name of the person in whose favour it is issued.

Issue of consolidated miners' right.  
Q. *Ib.* s. 13.

12.—(1.) The Lieutenant-Governor<sup>(2)</sup> may also cause other documents to be issued each of which shall be called "a consolidated miners' right" and which shall be in force for any number of years not exceeding ten and any such document shall be granted to any company or co-operative body of persons who shall have agreed to work in co-ownership or co-partnership any claim or claims taken up or held under the provisions hereof or to any manager trustee or trustees for such company or co-operative body applying for the same and shall during its continuance be held on behalf of the persons who shall from time to time be members of such company or co-operative body.

(2.) The said consolidated miners' right shall be in lieu of and represent and be of the same force and effect as a number of miners' rights granted for the same period of time equal to the number of the miners' rights by virtue of which the said claim or claims is or are taken possession of or held and the same shall be granted to any such company co-operative body or person as aforesaid so applying on payment of a sum at the rate aforesaid multiplied by the number of miners' rights which the same is to represent.

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(2) See Section 19(2) of the Ordinance Interpretation Ordinance, 1911-1940.

13. If a miner's right has been accidentally lost or destroyed before the expiry of the time for which it was issued a duplicate thereof may be issued for the remainder of such term at a fee of One shilling upon the applicant giving satisfactory evidence to the warden of its loss.

Duplicate of miner's right in case of loss.  
Cf. Q. 62 Vic. No. 24, s. 14.

14. The holder of a miner's right shall subject to the provisions of this Ordinance and the regulations be entitled (except as against His Majesty)—

Privileges conferred by a miner's right.  
Q. 17. s. 15.

- (a) to take possession of mine and occupy Crown lands for mining purposes;
- (b) to cut construct and use races dams and reservoirs roads and tramways which may be required for mining purposes through and upon any Crown lands;
- (c) to take or divert water from any natural spring lake pool or stream situate in or flowing through Crown lands and to use such water for mining purposes and for his own domestic purposes;
- (d) to use by the way of an easement any unoccupied Crown lands;
- (e) to take possession of and occupy Crown lands and such portion of the surface of gold-mining leases or mineral leases as may be reserved for the purpose of residence but not for business purposes except as hereinafter otherwise provided;
- (f) to put up and at any time to remove any building or other erection upon such land so taken up and occupied;
- (g) to cut timber on and to remove the same and to remove any stone clay or gravel from any Crown lands for the purpose of building for himself any place of residence or for mining purposes; but when timber is situated upon Crown land being native lands it shall not be cut and removed unless the permission in writing of the nearest Warden has first been obtained and subject to the payment of such compensation to the native owners as he may fix:

Paragraph (g) amended by No. 18 of 1939, s. 3.

Provided that—

- (i) No alien holding a miner's right who by lineage belongs to any of the Asiatic African or Polynesian races shall be entitled to exercise any of the rights or privileges hereby conferred otherwise than for the purpose of mining for gold on alluvial ground or for purposes connected with such mining or to exercise any of the rights or privileges afore-

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said for any purpose whatever upon any goldfield other than a goldfield upon which an Asiatic or African alien was at the commencement of this Ordinance permitted to mine for gold; and

- (ii) No consolidated miners' right shall authorize the employment by virtue thereof of an Asiatic or African alien upon any goldfield or mineral field.

Title to land  
under miner's  
right.  
Cf. Q. 62 Vic.  
No. 24, s. 16.

**15.—**(1.) Any person taking up and occupying Crown lands by virtue of a miner's right shall subject to the provisions of this Ordinance and the regulations be deemed in law to be possessed (except as against His Majesty) of such land so taken up and occupied.

(2.) All gold found upon any land so taken up and occupied for the purpose of mining for gold and all minerals other than gold found upon any land so taken up and occupied for the purpose of mining for minerals other than gold shall be the absolute property of the holder of such miner's right in lawful occupation of such land.

(3.) The holder of such land so taken up and occupied as afore-said may in the prescribed manner assign transfer let on lease and encumber the same or any share or interest therein:

Provided that no person shall obtain any interest under any such assignment transfer lease or encumbrance except he be the holder of a miner's right authorizing him to take up and occupy such land.

And in the case of a lease made under or by virtue of the provisions of this section the same rights shall exist between such holder and his lessee as exist between any landlord and his tenant.

Mining rights of  
natives.  
Pap. No. 4 of  
1908, s. 5.

**16.—**(1.) Aboriginal natives of the Territory shall have all the rights conferred by this Ordinance upon the holder of a miner's right for the purpose of mining for gold on alluvial ground and for purposes connected therewith but not otherwise.

(2.) No aboriginal native of the Territory shall hold any mining tenement on behalf of any other person.

Native labourers  
may mine on  
Crown lands  
without miners'  
rights.  
Pap. 1b. s. 5.

**17.** Native labourers shall be at liberty to mine on Crown lands for gold and other minerals without being the holders of miners' rights and neither they nor their employers shall be liable to any penalty under Section One hundred and seventy-seven of this Ordinance in respect thereof.

Division 2.—Business Licences.

18. The Lieutenant-Governor<sup>(2)</sup> may cause documents to be issued each of which shall be called a "business licence" and shall be in force for a period of not more than ten years and subject to the provisions hereinafter contained any such document shall be granted to any person applying for the same upon payment of a sum at the rate of Two pounds for every year for which the same is to be in force and the holder of such licence shall subject to the regulations be entitled to a renewal thereof when and so often as he shall require:

Issue of business licence.  
Cf. Q. 62 Vic.  
No. 24, s. 17.

Provided that no business licence shall be issued to any alien who by lineage belongs to any of the Asiatic African or Polynesian races other than members of those races who at the date of the passing of this Ordinance were holders of such licences.

19. On the face of every business licence issued under the provisions of this Ordinance shall be specified—

Form of business licence.  
Q. Ib. s. 18.

- (a) the date and place of issue thereof; and
- (b) the name occupation and residence of the person in whose favour it is issued.

20. A business licence shall subject to the provisions of this Ordinance and the regulations entitle the holder thereof during its continuance—

Rights and privileges conferred by business licence.  
Q. Ib. s. 19.

- (a) to occupy within the limits of any goldfield or mineral field for the purpose of residence and carrying on his business the prescribed area of Crown lands;
- (b) for either of the purposes aforesaid to put up any building or other erection thereon and at any time to remove the same; and
- (c) to hold in lawful possession (except as against His Majesty) the surface only of the land so occupied:

Provided that no person shall be entitled by virtue of one business licence to occupy at the same time more than one business area.

21. The holder's interest in a business licence may be assigned or transferred at any time during its currency in the manner following that is to say:—

Transfer of business licence.  
Q. Ib. s. 20.

The holder shall in writing under his hand endorsed upon the licence and signed by him in the presence of a witness express his desire to assign or transfer his interest in the same;

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(2) See Section 19(2) of the Ordinance Interpretation Ordinance, 1911-1940.

Upon the production and surrender to the warden of the licence so endorsed and upon payment of the sum of Five shillings the person named in the endorsement shall be entitled to a new licence in the prescribed form for the unexpired period of the original licence.

*Division 3.—Provisions applicable to Miners' Rights and Business Licences.*

Nature of interest in land held under miner's right or business licence.  
Cf. Q. 62 Vic. No. 24, s. 21.

22. The interest in land held under a miner's right or business licence shall be and be deemed to be a chattel interest and shall be and be deemed to be lands within the meaning of the *Statute of Frauds and Limitations of 1867*<sup>(10)</sup> (Queensland adopted) and a miner's right and a business licence and all rights and privileges conferred thereby shall on the death or insolvency of the holder thereof devolve upon and become vested in his personal representative or trustee in insolvency as the case may be in the same manner as if the same had been originally issued to such representative or trustee.

Post-dating of miner's right or business licence.  
Q. *ib.* s. 22.

23. If any person who shall be the holder of a miner's right or business licence shall at any time before the expiration of its currency make application to the proper officer to take out a new right or licence the authorized officer upon production of such expiring right or licence and upon payment of the sum ordinarily payable for a miner's right or business licence as the case may be shall issue to the applicant a new right or licence dated as of the day of such expiration which shall have the same force and efficiency as if it had been issued on that day.

Exemption of certain lands from occupation under miner's right or business licence.  
Q. *ib.* s. 23.

24.—(1.) Notwithstanding any provisions to the contrary the under-mentioned Crown lands that is to say:—

- (a) Land in lawful occupation as a yard garden orchard or cultivated field;
- (b) Land in actual occupation on which a house shed or other building has been erected; and
- (c) Land on which an artificial dam or reservoir has been made or well or bore sunk;

shall only be liable to occupation by the holder of a miner's right or business licence and upon payment of compensation to be determined in the prescribed manner.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*  
(10) Printed on p. 2819.

*Mining Ordinance, 1937-1939.*

(2.) And notwithstanding any provisions to the contrary the Lieutenant-Governor<sup>(2)</sup> may at any time by Proclamation<sup>(11)</sup> exempt from occupation by the holder of a miner's right or business licence any other specified portions of Crown lands or any class of Crown lands.

PART IV.—SPECIAL PROSPECTING RESERVES.

25.—(1.) The Lieutenant-Governor<sup>(2)</sup> may by Proclamation<sup>(12)</sup> reserve under this Part of the Ordinance any Crown land from occupation under the provisions of any law relating to mining and may authorize any person to occupy temporarily the whole or any part of any Crown land so reserved on such terms and conditions as he may think fit.

Reservation of Crown land for occupation by particular persons for prospecting or mining and conditions thereof.

Pap. No. 9 of 1934, ss. 2-4.

Such conditions may include the expenditure of a certain sum of money annually in prospecting or in the development of mining upon the land so occupied and the deposit of a sum of money to be held as security for the due performance of such terms and conditions.

(2.) Reservation as provided in this section and occupation pursuant thereto shall not affect mining rights or tenements already existing upon the Crown land the subject of the said reservation or occupation.

(3.) The proclamation of a reserve in accordance with this section shall not affect the right of any person to enter the reserve for the purpose of prospecting or mining within the reserve but no lease or other mining tenement shall be taken up by or granted to any person after the proclamation of the reserve except upon condition that the applicant shall allow the temporary occupant of the reserve the priority of acquiring the same on terms and conditions not more onerous than those upon which he would be prepared to offer it to others. A breach of this condition shall render the lease or other tenement liable to forfeiture.

PART V.—MINING LEASES.

*Division 1.—Gold-mining Leases.*

26. The Lieutenant-Governor<sup>(2)</sup> may subject to the provisions of this Ordinance and the regulations grant to any person not being

Power to grant gold-mining lease.

Cf. Q. 62 Vic. No. 24, s. 24.

Amended by No. 18 of 1939, s. 4.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

(11) No proclamation has been published in *Papua Govt. Gaz.* pursuant to the present Section 24. A Table containing particulars of proclamations exempting from occupation by the holder of a miner's right or business licence any specified portions of Crown lands or any class of Crown lands made under the repealed *The Mining Act of 1898* (Queensland, adopted) and continued in force by the present Section 4, is printed on p. 3231, and the proclamations still in force are printed immediately after the Table.

(12) No proclamation has been published in *Papua Govt. Gaz.*

MINING—

an alien who by lineage belongs to any of the Asiatic African or Polynesian races a lease to be called a "gold-mining lease" of Crown land on any goldfield not exempted by the next following section for any or all of the under-mentioned purposes that is to say:—

- (a) For mining for gold and for all purposes necessary to effectually carry on such mining operations therein or thereon; or
- (b) For cutting and constructing thereon water-races drains dams reservoirs tramways and roads to be used in connection with such mining; or
- (c) For erecting thereon any buildings or machinery to be used in connection with such mining; or
- (d) For pumping or raising water from any land mined for gold; or
- (e) For residence thereon in connection with such purposes.

Exemption of  
land from  
gold-mining  
lease.  
Cf. Q. 62 Vic.  
No. 24, s. 25.

27. Subject to the provisions of this Ordinance the under-mentioned lands shall be exempted from lease under the powers conferred by the next preceding section that is to say:—

- (a) All Crown lands upon a new goldfield until after the expiration of two years from the date of its proclamation:

Provided that in the construction and for the purposes of this subsection the expression "new goldfield" shall not include any extended portion of a goldfield of which the boundaries have been extended since the date of its original constitution if a period of not less than ten years has elapsed since the date of the first Proclamation by which such goldfield was originally constituted:

Provided further that the Lieutenant-Governor<sup>(2)</sup> may if he thinks fit notwithstanding anything in this section to the contrary grant a gold-mining lease upon a new goldfield at any time after the date of its proclamation:

Provided further that nothing in this section shall affect the operation of a Proclamation issued pursuant to Section Twenty-five hereof.

- (b) All Crown land which consists of alluvial ground except such land as in the opinion of the Director of Mines—
  - (i) has been already worked and abandoned; or
  - (ii) is only suitable for leasing on account of its great depth or excessive wetness or on

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

Pap. No. 18 of  
1935, s. 2.  
Proviso  
amended by  
No. 18 of 1939,  
s. 5.



*Mining Ordinance, 1937-1939.*

account of the costliness of the appliances required for its development; or

(iii) for any sufficient reason ought not to be exempt from lease; and

(c) All Crown land occupied by virtue of a miner's right or business licence unless the holder thereof consents to the leasing of such land:

Provided that any gold-mining lease may be made of any residence or business area if the person applying for the lease shall first make compensation to the holder of such area for any building erected or improvements made by him or by any prior holder thereon.

28. Subject to the provisions of this Ordinance the yearly rent of every gold-mining lease shall be at the rate of One pound per acre payable in advance at such time and in such manner as prescribed.

Rent, term and area of gold-mining lease.  
Cf. Q. 62 Vic. No. 24, s. 26.

The term shall not exceed twenty-one years but shall be renewable for a further period of twenty-one years on the same terms as may be in force with regard to gold-mining leases at the time of such renewal.

Further renewals each of a period of twenty-one years on the same terms as may be in force with regard to gold-mining leases at the time of such renewal may be granted if the Lieutenant-Governor<sup>(2)</sup> is satisfied that the applicant has faithfully performed and observed the conditions covenants provisions and stipulations of the existing lease.

The area shall be such (not exceeding fifty acres) as may from time to time be prescribed:

Pap. No. 2 of 1936, s. 2.

Provided that not more than twenty-five acres shall be granted except where the depth of the ground difficulty of working or the expense of erecting mining machinery is likely to be great or the poverty of the ground warrants it or the ground has been previously worked and abandoned for six months:

Provided further that no shaft shall be sunk in any such lease except at a distance of at least ten feet from the nearest boundary line of such lease.

29. In every gold-mining lease exceeding six acres a portion of the surface of the area not exceeding one-half of the area over and above six acres shall be reserved for residence purposes.

Reservation of portion of surface.  
Q. Ib. s. 27.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

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Covenants and conditions of gold-mining lease.

Cf. Q. 62 Vic. No. 24, s. 28.

30. Every gold-mining lease shall contain the following covenants on the part of the lessee his executors administrators and assigns that is to say:—

- (a) A covenant to pay the rent at the prescribed times;
- (b) A covenant to use the land continuously and bona fide for the purposes for which it is demised and in accordance with the regulations;
- (c) A covenant to work the land demised by not less than one man for every four acres and in no case by less than three men unless exemption or partial exemption is granted in such manner as may be prescribed;
- (d) Such other covenants not inconsistent with this Ordinance as may be prescribed.

And every gold-mining lease including such leases granted before the commencement of this Ordinance shall and shall be deemed to contain a condition that for a breach of any of the covenants therein contained the lessee shall pay such fine not exceeding One hundred pounds as the Director of Mines in his discretion may impose and for forfeiture of the lease upon either failure to pay such fine or the continuance of the breach.

And notwithstanding the provisions of any Act or Ordinances by this Ordinance repealed and notwithstanding the provisions of any existing gold-mining lease the afore-mentioned provision for forfeiture shall be in substitution for any provision for forfeiture in such existing leases.

Remission of rent.

Pap. No. 18 of 1935, s. 6.

31. Upon forfeiture of a gold-mining lease or an application for a gold-mining lease rent unpaid at the date of forfeiture may be remitted by the Director.

Exemptions.

32. Total or partial exemption from labour covenants of all mining leases may be granted by the Director of Mines on conditions to be prescribed by regulation.

### *Division 2.—Mineral Leases.*

Power to grant mineral lease.

Q. 1b. s. 30.

33. The Lieutenant-Governor<sup>(2)</sup> may subject to the provisions of this Ordinance and the regulations grant to any person not being an alien who by lineage belongs to any of the Asiatic African or Polynesian races a lease to be called a "mineral lease" of any Crown land not exempted by the next following section but one for any or all of the under-mentioned purposes that is to say:—

---

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

*Mining Ordinance, 1937-1939.*

- (a) For mining and for all purposes necessary to effectually carry on mining operations therein or thereon for any mineral other than gold; or
- (b) For cutting and constructing thereon water-races drains dams reservoirs tramways and roads to be used in connection with such mining; or
- (c) For erecting thereon any buildings and machinery to be used in connection with such mining; or
- (d) For pumping or raising water from any land mined for such mineral; or
- (e) For residence thereon in connection with any of such purposes.

34. Total or partial exemption from labour covenants of all mining leases may be granted by the Director of Mines on conditions to be prescribed by regulation.

Exemption.  
Cf. Q. 62 Vic.  
No. 24, s. 31.

35. The under-mentioned lands shall be exempted from lease under the powers conferred by the last preceding section but one that is to say:—

Exemption of  
lands from  
mineral leases.  
Q. 1b. s. 32.

- (a) All Crown land which consists of alluvial ground except such land as in the opinion of the Director of Mines—
  - (i) has been already worked and abandoned; or
  - (ii) is only suitable for leasing on account of its great depth or excessive wetness or on account of the costliness of the appliances required for its development; or
  - (iii) for any sufficient reason ought not to be exempt from lease under this Ordinance;
- (b) All Crown land occupied by virtue of a miner's right or business licence unless the holder thereof consents to the leasing of such land:

Provided that any residence or business area may be converted into a mineral lease if the person applying for the lease shall first make compensation to the holder of such area for any building erected or improvements made by him or any prior holder thereon unless the same is applied for under the provisions of Part VI. of this Ordinance.

36. The yearly rent of every mineral lease save as hereinafter provided with respect to coal mines shall be at the rate of Ten shillings per acre payable in advance at such time and in such manner as prescribed.

Rent, term and  
area of mineral  
lease.  
Pap. No. 18 of  
1935, s. 33.

The term shall not exceed twenty-one years and shall be renewable for a further term of twenty-one years on such conditions as the Director deems equitable.

## MINING—

The area save as hereinafter provided with respect to coal mines shall be such not exceeding one hundred and sixty acres as may be from time to time prescribed.

**Covenants and conditions of mineral leases.**  
Cf. Q. 62 Vic.  
No. 24, s. 34.

37. Every mineral lease shall be granted for the working of some mineral or combination of minerals to be specified therein and every lease shall contain the following reservation and covenants that is to say:—

- (a) A reservation of all gold found in the land comprised in the lease;
- (b) A covenant by the lessee his executors administrators and assigns to pay rent at the prescribed times;
- (c) A covenant on the part of the lessee his executors administrators and assigns to use the land continuously and bona fide for the purposes for which it is demised and in accordance with the regulations;
- (d) A covenant on the part of the lessee his executors administrators and assigns not to assign underlet or part with the possession of the land demised or any part thereof without the previous consent of the Director or warden;
- (e) A covenant that there shall be employed on the lease one man for every ten acres or fraction of ten acres unless exemption or partial exemption has been granted;
- (f) Such other covenants not inconsistent with this Ordinance as may be prescribed.

And every mineral lease including such leases granted before the commencement of this Ordinance shall and shall be deemed to contain a condition that for a breach of any of the covenants therein contained the lessee shall pay such fine not exceeding One hundred pounds as the Director of Mines in his discretion may impose and for forfeiture of the lease upon either failure to pay such fine or the continuance of the breach.

And notwithstanding the provisions of any Act or Ordinances by this Ordinance repealed and notwithstanding the provisions of any existing mineral lease the afore-mentioned provision for forfeiture shall be in substitution for any provision for forfeiture in such existing lease.

**Remission of rent.**

38. Upon forfeiture of a mineral lease or an application for a mineral lease rent unpaid at the date of forfeiture may be remitted by the Director.

39. When gold is found associated or combined with any other mineral in land held under a mineral lease and the nature of the mining operations is such as to lead to the extraction of such gold the lessee shall pay to the Treasurer a royalty of one per centum of the value of the gold extracted.

Royalty payable for gold found in association with other minerals. Cf. Q. 62 Vic. No. 24, s. 35.

40. When gold is found in any land held under a mineral lease otherwise than in association or combination with the mineral specified therein the land may for the purpose of mining for gold be dealt with notwithstanding the lease under the provisions of this Ordinance relating to mining for gold:

Provisions applicable when gold found on mineral leasehold. Q. 1b. s. 36.

Provided that any person mining thereon for gold shall not interfere with the workings of the lessee in actual use and shall not be entitled to acquire any mining tenement in or upon any mineral lease except at a distance beyond two hundred yards from such workings or from the crushing smelting or any other works used for the reduction or treatment of the minerals specified in such lease. In the event of any dispute as to what workings are in actual use or as to what works are used for crushing smelting or otherwise used for the reduction or treatment of such mineral the warden within whose jurisdiction such lease shall be situate shall decide the matter and his decision shall be final between the parties.

If the lessee mines for gold found otherwise than in such association or combination not being authorized to do so by a miner's right or gold-mining lease the lease shall be liable to forfeiture.

41. If any lessee desires to mine for any mineral other than that specified in the lease he shall apply to the Director for permission to do so and the Director may grant such permission and may alter or vary the conditions of the lease so as to make them applicable to mining for such other mineral in accordance with this Ordinance and the regulations.

Provisions applicable when lessee desires to work other minerals. Q. 1b. s. 37.

If a lessee mines for any such other mineral without obtaining such permission he shall be liable to a penalty not exceeding Five pounds for every day on which he shall so offend.

*Division 3.—Provisions applicable to Gold-mining Leases and Mineral Leases.*

42. When application is made under the provisions of this Ordinance for a mining lease of any land a part or the whole of which is held by the applicant under a miner's right the interest of the applicant shall in no wise be prejudiced by such application nor by the refusal abandonment or failure thereof; and if such lease is granted the interest of the applicant held under the miner's right shall merge in the interest held by him under the lease.

Effect of application for mining lease upon land held by applicant under miner's right. Q. 1b. s. 38.

Provisions applicable to applications for mining leases. Cf. Q. 62 Vic. No. 24, s. 39.

43.—(1.) Every application for a mining lease shall be made in the prescribed form and shall be accompanied by the prescribed survey fee and the first year's rent or prescribed portion thereof.

(2.) Applications for mining leases by persons who have complied with the regulations shall take priority according to the order in which they are made.

And in the event of more than one application for a lease of the same land or any part thereof being made at the same time such applications shall take priority according to the order in which the applicants marked the land out under the regulations.

(3.) If the application of any person is refused he shall be informed of the reasons for such refusal.

Protection of ground applied for as mining leasehold. Q. Ib. s. 40.

44. The entry upon occupation of or interference with any ground of which a mining lease has been applied for by any person who shall not prior to such application have been in the lawful occupation of such ground shall at any time after the lodging of such application and until and unless such application shall be refused or such entry occupation or interference shall have been authorized by the Lieutenant-Governor<sup>(2)</sup> be deemed to be a trespass or encroachment. And the applicant for the said ground may proceed for such trespass or encroachment and for any damages in respect thereof and for the recovery of any gold or other mineral taken by such first-mentioned person from the said ground or for the value thereof before any Warden's Court:

Provided always that no such applicant shall recover or succeed under the said procedure who shall not prove to the satisfaction of the said Court that he has complied with the regulations in force and applicable for the time being to the class of lease applied for so far as such regulations shall have been at the time of such entry occupation or interference capable of being complied with.

Power to amend description of lands comprised in lease. Q. Ib. s. 41.

45. If after the issue of any mining lease it is found on survey or by mutual consent of the parties interested that the description of the lands therein contained does not describe with sufficient accuracy the lands intended to be therein comprised the Lieutenant-Governor<sup>(2)</sup> may by Proclamation<sup>(13)</sup> describe the land intended to have been comprised in such lease.

And in every such case the land so described as last aforesaid shall be taken to be the land described in such lease and to have been leased thereby.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

(13) No proclamation has been published in *Papua Govt. Gaz.*

46. If the Director is satisfied that greater facilities for the working of two or more contiguous gold-mining or mineral leases of the same description would be ensured by the union of such leases he may authorize such union subject to the following conditions that is to say:—

Union of mining leases.

- (a) The application shall be made for union by a majority in number and value of the persons registered for the time being as holders of each lease;
- (b) The leases may be surrendered and a new lease embracing the aggregate area of the surrendered leases issued: Provided that in the case of gold-mining leases no greater area than one hundred acres shall be comprised in any such united lease: Provided further that in the case of mineral leases no greater area than one hundred and sixty acres shall be comprised in such united lease: Provided also that instead of surrendering the leases the applicants may have their leases endorsed by the Director sanctioning a union thereof whereupon all the conditions applicable in case of surrender and issue of new lease shall apply to such leases the union whereof has been sanctioned and the conditions as to working contained in the several surrendered leases in the aggregate shall be endorsed on such leases;
- (c) The conditions as to working contained in the several surrendered leases in the aggregate shall be embodied and contained in the new lease;
- (d) The general provisions and conditions and the power of resumption and re-entry on the part of the Crown for non-payment of rent and breach of covenant shall be the same as those prescribed for the individual leases;
- (e) When the unexpired terms of the surrendered leases are not the same the new lease shall be for the residue of that one of such terms which will first terminate;
- (f) When the conditions or provisions of the surrendered leases are not identical the conditions and provisions of the new lease shall be such of the conditions and provisions of the surrendered leases or any of them as the Director may determine.

Pap. No. 18 of 1935, s. 4.

47. A union of leaseholds may be cancelled by the Director—

- (a) at the request of two-thirds majority in number and value of interest of the persons registered for the time being as holders of each lease included in the union; or
- (b) on the transfer surrender or forfeiture of any lease included in the union.

Cancellation of union.  
Cf. Q. 21 Geo. V.  
No. 32, s. 13.

MINING—

Amalgamation  
of approved  
applications for  
mining leases.  
Pap. No. 18 of  
1935, s. 5.

48.—(1.) The Director of Mines may upon such terms and conditions as he shall think fit and for any period not exceeding twelve months permit the amalgamation of adjoining approved applications for mining leases held by the same applicant not exceeding in the aggregate one hundred acres.

(2.) An amalgamation of approved applications for mining leases shall extend only to the labour conditions of each application amalgamated and the labour to be employed on the aggregate area shall be the sum of the labour required in respect of each such separate application.

Transfer of  
mining leases.  
Cf. Q. 62 Vic.  
No. 24, s. 43.

49. Subject to the provisions of this Ordinance and the regulations a mining lease or an application for the same or any interest therein may be transferred assigned sublet or encumbered in manner prescribed on payment of the prescribed fee which shall be any sum not exceeding One pound.

Surrender of  
mining lease.  
Q. *Ib.* s. 44.

50. Any mining lease may be surrendered at any time provided that at the time of the surrender the conditions thereof on the part of the lessee shall have been fulfilled as far as the time which may have elapsed shall permit and that all payments due in respect thereof up to date shall have been made.

Withdrawal of  
approved  
application for  
mining lease.

51. Any approved application for a mining lease may be withdrawn at any time provided that at the time of the withdrawal the conditions thereof necessary to be fulfilled on the part of the applicant shall have been fulfilled as far as the time which may have elapsed shall permit and that all payments due in respect thereof up to date shall have been made.

Recovery of  
possession of  
mining leases.

52. Whenever any mining lease granted under the authority of this Ordinance or the regulations thereunder or under the authority of any Act or other Ordinance shall be surrendered or shall be liable to be forfeited or determined by any breach of condition or otherwise or in case the term thereby granted shall have expired possession of the land demised shall and may be taken on behalf of His Majesty in such manner as may be provided by any of the conditions of the lease or (if there be no such manner provided) it shall be lawful for possession of the land demised to be taken on behalf of His Majesty immediately and without suit or process of any kind by posting a notice outside the warden's office publishing the fact that possession has been taken on behalf of His Majesty. A certificate purporting to be signed by the Director, Chief Clerk of the Department of Mines, or a warden shall be sufficient prima facie proof in every Court of justice and for all purposes that such notice has been duly posted and possession duly taken on behalf of His Majesty.



53. The labour conditions applicable to a mining lease or any mining tenement shall be deemed sufficiently complied with if one man of European descent be employed and the number necessary to fulfil the conditions be completed by the employment of native labourers. A half-caste European shall for the purposes of this section be considered as being of European descent.

Fulfilment of labour conditions of mining lease.  
Pap. No. 4 of 1908, s. 6.

PART VI.—MINING ON RESERVES RESIDENCE AREAS AND BUSINESS AREAS.

54. Notwithstanding anything to the contrary in this Ordinance contained a mining lease may be granted under this Ordinance of any land comprised in a reserve residence area or business area and a lease of any such land may be applied for in accordance with the provisions of this Ordinance and of the regulations subject to the conditions following that is to say:—

Power to grant mining leases in reserves, residence areas and business areas.  
Cf. Q. 62 Vic. No. 24, s. 46.

- (a) The lease shall so far as regards any land comprised in a residence area or business area be deemed to be of the mines under such land only and not of the surface of the land but the surface may be resumed under such conditions as may be prescribed by this Ordinance or the regulations;
- (b) The lessee shall not be entitled to disturb the surface of a reserve which is a street or road or to do any act which will affect or disturb the beneficial enjoyment of the surface;
- (c) In the case of a reserve which is not a street or road the lessee shall not be entitled to disturb the surface of the reserve or to do any act which will affect or disturb the beneficial enjoyment of the surface except in either case with the permission of the Director and then only upon such part of the reserve and under such conditions as he may prescribe;
- (d) If the lessee does any injury to the surface or does any act affecting or disturbing the beneficial enjoyment of such surface he shall make compensation to the persons entitled to the surface or charged with the care and management thereof for all such damage;
- (e) Any claim for compensation must be made within three months after the right to make the claim has accrued.

55. The Director may by notice<sup>(14)</sup> in the *Gazette* declare that the whole or any part of the land comprised in a reserve and not being a street or road shall be open to be taken up as claims under miners' rights.

Reserves taken up as claims.  
Q. 1b. s. 47.

(14) No notice has been published in *Papua Govt. Gaz.*

On and after the day appointed in that behalf by the notice the land shall be open to be so taken up accordingly.

In any such case the conditions of the last preceeding section relating to leases shall so far as they are applicable apply to any claim so taken up and for that purpose shall be read as if the words "claim" and "claim-holder" were used therein instead of the words "lease" and "lessee" respectively.

Recovery of  
damages.  
Cf. Q. 62 Vic.  
No. 24, s. 48.

56. Any damages sustained by any person in respect of injury done to the surface of any reserve residence area or business area and which any other person is liable to pay may be recovered in the Warden's Court.

PART VII.—SPECIAL PROVISIONS RELATING TO COAL MINING.

Application for  
licence to search  
for coal.  
Q. 7b. s. 49.

57.—(1.) Any person who is desirous of prospecting Crown lands for coal may make application in the prescribed form to the nearest warden for a licence to occupy any Crown lands described in the application and not being of greater area than six hundred and forty acres for the purpose of searching for coal thereon.

Every such application shall be accompanied by a description of the land sufficient to identify it and the applicant shall pay to the warden when he lodges the application a sum equal to Sixpence for every acre or part thereof of the land comprised in the application.

If two or more applications are made for the same land or comprising in part the same land the first applicant shall be entitled to priority.

(2.) Upon receipt of the application the warden shall forthwith make a report thereon to the Director. Such report shall contain such particulars as may be prescribed or as may be required by the Director in any particular case.

(3.) Upon the receipt of the report the Director may either refuse the application or require it to be amended or accept it.

(4.) Upon the acceptance of the application or upon its being amended to the satisfaction of the Director and accepted in its amended form the Director may with the approval of the Lieutenant-Governor<sup>(2)</sup> give the applicant a licence to occupy the land for a period of twelve months from the date of the licence and to dig and search for coal therein.

If the application of a first applicant who is entitled to priority under this section is refused the Director shall not be precluded from considering a subsequent application for the same land or

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

comprising in part the same land and the priority hereby given shall be deemed to confer upon the first applicant only a right to have his application first considered.

In the case of an amended application it shall be in the discretion of the Director to deal with it as if it were dated either on the day of the original application or on the day of the acceptance of the amendment as he shall think just.

58. The entry upon occupation of or interference with any Crown lands so applied for as aforesaid by any person who was not prior to the application in the lawful occupation of such Crown lands shall at any time after the making of the application and until and unless the application is refused or such entry occupation or interference has been authorized by the Lieutenant-Governor<sup>(2)</sup> be deemed to be a trespass or encroachment. And the applicant for the said Crown lands may take proceedings for such trespass or encroachment and for any damages in respect thereof and may recover any coal taken by such first-mentioned person from the said Crown lands or the value thereof in the Warden's Court:

Protection of  
land applied for.  
Cf. Q. 62 Vic.  
No. 24, s. 50.

Provided always that no applicant shall recover in any such proceedings unless he proves to the satisfaction of the Court that he has complied with the regulations and statutory requirements in force and applicable for the time being to the licence applied for so far as such regulations and requirements were at the time of such entry occupation or interference capable of being complied with.

59. The licensee shall be entitled during the period of the licence to occupy the land and to dig and search for coal therein and to depasture upon the land any stock used by him in and about the digging for coal or kept for the use of the persons employed by him in and about such digging and to cultivate the land for the maintenance of such persons or stock and to cut timber for the purposes aforesaid but shall not be entitled to use the land for any other purpose.

Effect of licence.  
Q. *Ib.* s. 51.

60. The licence may be renewed by the Director with the approval of the Lieutenant-Governor<sup>(2)</sup> for another year upon payment of a like sum of Sixpence per acre or part thereof of the land comprised therein and upon proof to the satisfaction of the Director that the licensee has during the period of the licence used reasonable endeavours to search for coal upon the land and has not used the land for any purpose not hereby authorized.

Renewal of  
licence.  
Q. *Ib.* s. 52.

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(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

Application for a lease.

Cf. Q. 62 Vic. No. 24, s. 53.

61. If during the period of the licence or the renewed licence the licensee desires so to do he may apply under the provisions of this Ordinance for a lease for the purpose of mining for coal on any part of the land comprised in the licence not exceeding three hundred and twenty acres in extent and his application shall have precedence over the application of any other person for the same land:

Provided that in every such lease a portion of the surface not exceeding one-half shall be reserved for residence purposes: But provided further that the portion of the surface comprised in the lease shall not be less than six acres.

Rent and royalty payable.

Q. Ib. s. 54.

62. The yearly rent of land leased for the purpose of mining for coal shall except as hereinafter provided be Sixpence per acre or part thereof and there shall also be reserved in the lease a royalty at the rate of Threepence for every ton of coal raised from the land during the first ten years of the term of the lease and at the rate of Sixpence for every ton raised during the remainder of the term.

The times and mode of ascertaining the amount of any royalty so payable and the time for payment thereof shall be prescribed by the lease.

If land leased for the purpose of mining for coal is used for the purpose of mining for any other mineral rent shall become payable in respect thereof at the rate of Ten shillings per acre in addition to the royalty (if any) payable in respect of coal raised therefrom.

Special privilege to discoverer of coal.

Pap. No. 4 of 1912, s. 1.

63.—(1.) When any person—

- (a) discovers or has discovered payable coal at a distance of not less than fifty miles from any payable coal previously discovered (if any); or
- (b) discovers or has discovered a payable seam of coal at a depth of not less than six hundred feet from the surface

he may apply under the provisions of this Ordinance for a lease for the purpose of mining for coal on any part of the land whereon such discovery has been or shall be made not exceeding one thousand two hundred and eighty acres.

(2.) The Lieutenant-Governor<sup>(2)</sup> will consider the application and grant or refuse the same or grant it in respect of part only of the land so applied for as to him seems fit. The application may be so granted notwithstanding that the applicant has failed to comply with the regulations and subject to such conditions and modification of regulations as the Lieutenant-Governor<sup>(2)</sup> may think fit to impose.

(2) See Section 19(2) of the Ordinance Interpretation Ordinance, 1911-1940.

(3.) The royalty payable in respect of coal raised by the lessee shall in the case mentioned in paragraph (a) of Sub-section One of this section as to all coal and in the case mentioned in paragraph (b) of the said subsection as to all coal raised from a depth of six hundred feet and upwards be at the rate of One penny per ton instead of Threepence as hereinbefore provided.

(4.) In this section the term "payable" applied to coal or to a seam of coal means coal of such quality and thickness that it can under ordinary circumstances be worked with profit.

(5.) The provisions of this Ordinance relating to leases for the purpose of mining for coal shall except as is expressly provided in this section apply to all leases granted in respect of applications made under this section.

64. In the case of a lease granted for mining for coal the Director may by licence under his hand dispense with the performance of the lessee's covenant to work the mine continuously if upon application made to the warden in open Court it is proved to the satisfaction of the warden that the lessee has made reasonable efforts to work and develop the mine and that continued working of the mine would result in unnecessary loss to the lessee.

Dispensation with fulfilment of labour conditions.  
Cf. Q. 62 Vic. No. 24, s. 56.

Any such licence shall be for a period not exceeding six months and shall be subject to such conditions as the Director may think fit.

A licence may be renewed from time to time for a further period not exceeding six months upon fresh application and proof to the warden as aforesaid and may be so renewed subject to the same conditions as those to which the first licence was subject or different conditions.

65. The term of a lease under this Part of this Ordinance shall not exceed twenty-one years but shall be renewable for a further period of twenty-one years.

Term of lease.  
Q. *Ib.* s. 57.

#### PART VIII.—MINING FOR GOLD SILVER OR OTHER MINERALS EXCEPT COAL ON ALIENATED LANDS AND UPON NATIVE LANDS WITHIN THE LIMITS OF GOLDFIELDS OR MINERAL FIELDS.

66. All lands which are situated within the limits of a goldfield or mineral field and which are not for the time being alienated or in course of alienation by the Crown in fee-simple shall upon being alienated or leased or agreed to be alienated or leased under the "Land Ordinance" become and be subject to the provisions of this Part of this Ordinance.

Land subject to this Part of this Ordinance.

Native lands.  
Pap. No. 4 of  
1908, s. 3.

67. Any person intending to mine on or under any land not alienated by the Crown which is owned and occupied by natives shall before beginning any mining operations or any new mining operations give notice to the warden of his intention and of the nature of the operations and thereupon save as hereinafter provided the warden shall assess the amount of the damage likely to be done thereby to the surface of the land or to any improvements upon the land and shall require the person so intending to mine as aforesaid to deposit in his hands the amount so assessed as aforesaid and until that amount is deposited no mining operations shall be carried on either upon or under the land.

The warden shall hold the amount deposited as security to be paid either wholly or in part to the natives if they sustain any damage from injury to the surface or to the improvements and the remainder if any to be returned to the person making the deposit.

The warden shall not permit any such operations as in his opinion will cause substantial damage to a native village unless the natives who would be injured thereby give their consent thereto in his presence and then only subject to such conditions as he may approve.

Power for  
holders of  
miners' rights  
to mine for gold  
and silver under  
lands subject to  
this Part.

Cf. Q. 62 Vic.  
No. 24, s. 59.

Sanction to  
search.

68. With respect to any land which is subject to the provisions of this Part of this Ordinance other than land referred to in the preceding section the following provisions shall have effect:—

- (a) Any holder of a miner's right may with the written sanction of the warden enter upon the land for the purpose of searching for gold silver or other minerals subject to such conditions as to compensation or otherwise as the regulations may prescribe;
- (b) Any holder of a miner's right may make application for and take up for the purpose of mining for gold silver or other minerals in accordance with the provisions of Part III. of this Ordinance the mines under any part of the land and may obtain registration thereof in the same manner as if the land were unoccupied Crown land: Provided that if the land lying above the mines applied for is in actual occupation it shall not be necessary to mark off such land on the surface;
- (c) A gold-mining lease or mineral lease for mining under any part of the land may be granted under Part V. of this Ordinance: Provided that if the land lying above the mines of which the lease is applied for is in actual occupation it shall not be necessary to mark off such land on the surface;

Claims taken up.

Mining leases  
granted.

*Mining Ordinance, 1937-1939.*

- (d) Notice of the application for a claim or lease shall be given as prescribed by the regulations by the applicant to the occupier of the land or if there is no occupier shall be affixed in some conspicuous place on the land and notice by registered post shall also be sent to the owner or lessee and the occupier or owner or lessee of the land shall be entitled to be heard before the claim or lease is granted to the applicant; Notice of application.
- (e) A claim or lease granted or taken up under this Part of this Ordinance shall entitle the claim-holder or lessee to work underground for the purpose of mining for gold silver or other minerals at a depth of not less than seventy feet below the surface throughout the whole area comprised within the claim or lease and also to occupy such portion (if any) of the surface of the ground as may be allowed by the warden in the case of a claim or as may be specified in the lease: Provided that the warden may give permission to mine within a less depth than seventy feet where it shall be proved that no injury will be done to the surface; Rights of holder of claim or lease.
- (f) Every applicant for a claim or lease under this Part shall state in his application that such application is made pursuant to Part VIII. of this Ordinance and wherever possible shall state the name of the owner or leaseholder of the land the subject of his application; Name of owner or leaseholder.
- (g) Every applicant for a claim or lease shall state and describe in his application the area of surface for which he applies and every lease shall specify the area of surface (if any) which under its provisions may be occupied as well as the area within which the lessee may work the mine; Surface area to be specified.
- (h) A claim-holder or lessee shall not be entitled to work or carry on any mining operations except at a depth not less than seventy feet below the surface unless with such permission as aforesaid beneath any portion of the surface which he is not entitled to occupy and if he works or carries on mining operations at a depth less than seventy feet beneath any portion of the surface which he is not entitled to occupy he shall be deemed to have trespassed and encroached upon the property of the person entitled to the surface; Limitation of rights.
- (i) When a claim or lease granted or taken up under this Part of this Ordinance does not confer upon the holder a right to occupy the whole of the surface above the mines comprised in the lease or claim he Extension of surface area.

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may at any time make application for an extension of the surface area of such lease or claim. Every such application shall be made and dealt with in the same manner as the original application;

Inspection of  
underground  
workings.

(j) Owners and lessees of lands under which mining is authorized by this Part of this Ordinance shall be entitled on application to the warden to inspect and survey at the expense of the person entitled to mine under the land the underground workings from time to time as in the opinion of the warden may be necessary;

Appeal.

(k) In the case of a refusal by the warden to sanction the application of the holder of a miner's right to enter upon any lands subject to this Part of this Ordinance the applicant may appeal for permission to the Lieutenant-Governor.<sup>(2)</sup>

Compensation  
for damage.  
Cf. Q. 62 Vic.  
No. 24, s. 60.

69. Every person entitled to mine on or under land by virtue of this Part of this Ordinance shall before beginning any mining operations or any new mining operations give notice as prescribed by the regulations to the occupier of the land of his intention and of the nature of any such operations of which previous notice has not been given and such occupier or the lessee or owner of the land or any person claiming an interest in the land may at any time call upon the warden to assess the value of the damage likely to be done to the surface of the land or to any improvements upon the land by any mining operations carried on or intended to be carried on under it and the warden shall thereupon require the miner working or about to work under the land to deposit in his hands the amount of the damage which the working is likely to do to such lessee or owner or other person and until such payment is made the miner shall not be entitled to mine on or under the land.

Upon receipt of the amount so required to be deposited the warden shall hold the same as security to be paid either wholly or in part to such occupier lessee or owner or other person if he sustains any damage or to be returned to the miner on his leaving the land if he does no damage.

When any person has received compensation for injury to improvements he shall not afterwards be entitled to claim compensation in respect of the same improvements but shall be entitled to claim for additions made to them after the time when he received such compensation.

Arbitrators may  
be appointed.  
Q. *Ib.* s. 61.

70. If in any case in which the warden has been called on to value the damage sustained or likely to be sustained by any person

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.



by the operations of miners working under the land by virtue of this Part of this Ordinance either of the parties is dissatisfied with his decision such party may require that the question be referred to arbitration in which case one arbitrator shall be appointed by the person claiming compensation and one by the miner interested and the arbitrators prior to proceeding to arbitration shall appoint an umpire and the decision of the arbitrators or of the umpire as the case may be shall be final.

An application for arbitration must be made within fourteen days after the decision of the case by the warden otherwise it shall not be entertained and every such application shall be in writing addressed to the warden and a copy thereof shall be delivered by the applicant to the other party concerned.

71. When one or more mining leaseholds is or are wholly or partially divided or separated by other land held in fee-simple by any road or street or by virtue of any mining lease or licence the Lieutenant-Governor<sup>(2)</sup> may subject to the provisions of this Part of this Ordinance and the regulations grant to the person or persons in occupation of such mining leasehold or leaseholds or any of them a licence to construct a drive or drives through the land lying between or wholly or partially dividing or separating such mining leasehold or leaseholds for the purpose of enabling the whole of such mining leasehold or leaseholds to be effectually worked and mined.

Lieutenant-Governor may grant licences to construct drives through land intervening between leaseholds.

Of. Q. 62 Vic. No. 24, s. 62.

Amended by No. 18 of 1939, s. 6.

Such licence shall be for a term not exceeding twenty-one years but may be renewed for a further period not exceeding twenty-one years and shall be in such form and subject to such reservations covenants and provisions as the Lieutenant-Governor<sup>(2)</sup> may determine and shall be granted upon such conditions for the benefit of any person interested in the land through which any such drive is intended to be constructed as the Lieutenant-Governor<sup>(2)</sup> may deem equitable. And for the purpose of giving effect to any such conditions the licensee may be required to enter into an agreement in writing with any person interested in the land who shall be entitled to be heard before such licence is granted.

72. Any person who is the registered proprietor of an estate in fee-simple of any land may with the consent of all persons (if any) entitled to any registered estate or interest therein surrender such land to His Majesty and upon such surrender shall be entitled to have a fresh grant of the land issued to him subject to the registered charges estates and interests to which it was previously subject and an entry thereof shall be made on the grant and in the Register-book before the issue of the grant. All lands so surrendered shall

Surrender of existing title. Q. 1b. s. 63.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

thenceforth be subject to the provisions of this Part of this Ordinance.

Preferent right.  
Cf. Q. 62 Vic.  
No. 24, s. 64.

73. If the registered proprietor of any land surrendered to His Majesty under the provisions of the last preceding section or the person or persons to whom he may have assigned the right of mining for gold silver or other minerals under his said land shall within thirty days from the date of such surrender make application for a gold-mining or mineral lease for mining beneath such land his application save as hereinafter provided shall have priority over all others.

Rights of  
assignee of  
registered  
proprietor.  
Q. *Ib.* s. 65.

74. Notwithstanding anything hereinbefore or in any Act or Ordinance to the contrary contained where at the time of the commencement of this Ordinance any person is by virtue of any conveyance lease licence or other private agreement as against the registered proprietor of any land held in fee-simple entitled to mine for gold silver or other minerals under such land then and in every such case the following provisions shall have effect that is to say:—

- (a) If within thirty days from the date of the surrender of such land as hereinbefore provided such person or persons make application for a gold-mining or mineral lease as the case may be under the provisions of this Part of this Ordinance his application shall have priority over all others including that of the registered proprietor or proprietors; and
- (b) If the registered proprietor or proprietors of such land or any other person or persons entitled to any registered estate or interest therein upon being required so to do refuses or neglects or refuse or neglect to surrender or to consent to the surrender of such land as hereinbefore provided it shall be lawful for the Lieutenant-Governor<sup>(2)</sup> to grant to the person or persons claiming under such conveyance lease licence or other private agreement a gold-mining or mineral lease as the case may be under the provisions of this Part of this Ordinance in the same manner as if such land had been so surrendered:

Provided that every lease granted under the provisions of this section shall be granted upon such conditions for the benefit of the registered proprietor or proprietors or any other person or persons interested in the land as the Lieutenant-Governor<sup>(2)</sup> may deem equitable. And for the purpose of giving effect to any such conditions the lessee may be required to enter into an agreement in writing with the registered proprietor or proprietors or other

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

person or persons interested in the land who shall be entitled to be heard before such lease is granted:

And provided further that no such lease shall be granted or renewed for any term which would exceed the term (if any) in such conveyance lease licence or other private agreement specified.

75. The manager of every gold mine leased under the provisions of this Part of this Ordinance shall during the first week of every month forward to the Director of Mines a return showing the amount of gold obtained from such mine during the last preceding month and the value thereof.

Returns.  
Amended by  
No. 18 of 1939,  
s. 7.

76. Any officer appointed for that purpose by the Lieutenant-Governor<sup>(2)</sup> shall at any time have access to the books and accounts of any mine held under the provisions of this Part of this Ordinance and may examine the same.

Inspection of  
books, etc.  
Amended by  
No. 18 of 1939,  
s. 8.

\* \* \* \* \*

Section 77  
repealed by  
No. 18 of 1939,  
s. 9.

78. Any manager who shall neglect or refuse to furnish returns to the Director of Mines as hereinbefore required or who shall wilfully make a false return or any person who shall impede or obstruct any officer appointed by the Lieutenant-Governor<sup>(2)</sup> to perform any duty under the provisions of this Part of this Ordinance shall on summary conviction be liable to a penalty of not exceeding Fifty pounds and in default of payment to imprisonment with or without hard labour for any period not exceeding six months.

Offences.

PART IX.—MINERS' HOMESTEAD LEASES.

79. Any holder of a miner's right resident on a goldfield or mineral field being not less than eighteen years of age and not being an alien who by lineage belongs to any of the Asiatic African or Polynesian races and any incorporated company may subject to the conditions hereinafter prescribed make application in the prescribed form for a lease to be called a "miner's homestead lease" of any land within the limits of the goldfield or mineral field.

Application  
for miners'  
homestead leases.  
Cf. Q. 62 Vic.  
No. 24, s. 71.

The application must be lodged at the office of the warden.

The boundaries of the land applied for must be at right angles and the length must not exceed three times the breadth nor may the frontage to a road creek or water exceed one-half the depth: Provided that the course of a river or creek may be taken as a

Shape.

(2) See Section 19(2) of the Ordinance Interpretation Ordinance, 1911-1940.

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boundary when convenient and that land lying between lands not open to lease under this Part of this Ordinance may be taken up notwithstanding any irregularity in the shape of the land.

Area of land  
which may be  
leased.

Cf. Q. 62 Vic.  
No. 24, s. 72.

80. No person may apply for as a miner's homestead or homesteads within the limits of the same goldfield or mineral field a greater area than the following whether it is held in one holding or several holdings that is to say: within the limits of a proclaimed township one acre within two miles of the boundary of any such township five acres beyond two miles and within five miles from such boundary forty acres and outside the five-mile radius eighty acres and the aggregate area applied for by any one person within the limits of the same goldfield or mineral field shall in no case exceed eighty acres.

In cases where no township has been proclaimed within a goldfield or mineral field the warden shall mark and determine the boundaries of land to be reserved for a township before he approves or recommends the issue of any miner's homestead lease.

The area so reserved for a township shall be not less than four thousand acres unless the Crown lands available shall have a smaller area in which event the whole of the Crown lands so available shall be reserved for a township.

For the purposes of this section any portions of land in a goldfield or mineral field distant more than twenty miles from each other shall be deemed to form parts of different goldfields or mineral fields.

Rent and survey  
fee to be paid.

Q. *Ib.* s. 73.

81. At the time of lodging the application the applicant shall deposit at the warden's office the amount of a year's or half a year's rent at the rate hereinafter prescribed together with the prescribed survey fee. Applications made between the first day of January and the first day of July in each year must be accompanied by a year's rent and applications made between the first day of July and the first day of January by half a year's rent and in either case the next year's rent shall be payable on or before the thirty-first day of December next ensuing.

Applications  
priority.

Q. *Ib.* s. 74.

82. All applications shall be in duplicate signed by the applicant or his authorized agent and shall be duly entered in a register kept by the warden and numbered consecutively and the warden shall hear and determine all applications in the order of their numbers.

If two or more persons apply at the same time for the same portion of land the priority of right shall be determined by lot.

The warden or his clerk shall give a written receipt for every such application specifying such number.

*Mining Ordinance, 1937-1939.*

83. The applicant must within seven days or such other time as the warden may allow after lodging the application post on some conspicuous portion of the land applied for and at the warden's office a copy of the application and of the receipt aforesaid and such copy shall be kept so posted until the day of hearing the application by the warden.

Posting on land of application and receipt.  
Cf. Q. 62 Vic. No. 24, s. 75.

84. Any holder of a miner's right may at any time within forty days after the lodging of an application lodge at the warden's office a notice of objection to the application specifying the grounds of objection.

Objections.  
Q. *Ib.* s. 76.

85. All applications shall be heard on a day appointed by the warden of which public notice shall be given by posting it at his office and not being less than fifty days from the date of lodging the application.

Hearing.  
Q. *Ib.* s. 77.

86. All applications and objections thereto shall be disposed of by the warden in open Court after personal inspection of the land by him or upon personal inspection by an officer authorized in writing under the hand of the warden. The warden shall state in open Court his reasons for approving or rejecting any application to which objection has been made.

Manner of disposing of applications.  
Q. *Ib.* s. 78.

87. If the land applied for includes any claim or any land in the authorized occupation of any person or if the granting of the application would in the opinion of the warden in any way interfere with mining or with the requirements of the public the warden shall make such alterations in the area and boundaries of the land as seem advisable to him or he may absolutely reject the application.

Power of warden to alter or reject application.  
Q. *Ib.* s. 79.

If the land contains valuable improvements he may impose a condition that the applicant shall pay the value of such improvements to be fixed by arbitration.

88. Upon the approval of an application by the warden he shall forward the application to the Director of Mines with a request for survey and the Director shall arrange for the survey as soon as circumstances will permit.

Survey.

89. Upon receipt of the surveyor's plans and the report of the warden the Director may recommend that a miner's homestead lease be issued to the applicant and thereupon a lease may be issued accordingly which shall be in force subject to the conditions hereinafter contained so long as the lessee pays the rent as prescribed by this Ordinance.

Issue of lease.

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Return of rent  
and survey fees  
when application  
rejected.

90. When an application for a lease is rejected the applicant shall be entitled to have the amount deposited by him as rent and survey fee returned to him by the warden.

Occupation on  
approval of  
application.

91. When the warden has approved of an application for a lease the applicant shall be at liberty forthwith to enter upon and occupy the land applied for.

But if at the expiration of four months from the completion of the survey and notice thereof to the applicant he has not occupied the said land either by himself residing on it or by cultivation or by enclosing it with a substantial fence or by erecting substantial improvements on the land or by carrying on some manufacture or business upon or in connection with the land he shall be deemed to have abandoned the land and shall cease to be entitled to a lease thereof and shall not be entitled to a return of any moneys paid by him as rent or survey fee and the land may be immediately applied for by another applicant.

Rent.

92. The rent reserved by a miner's homestead lease shall be as follows that is to say:—

- (a) In the case of a miner's homestead which at the time of the granting of such lease is situated within the limits of a township an annual rent at the rate of Five shillings for every acre or part of an acre shall be payable so long as the lease shall remain in force;
- (b) In the case of a miner's homestead which at the time of the granting of the lease is not situated within the limits of any township if the area thereof does not exceed forty acres an annual rent at the rate of One shilling for every acre or part of an acre and if the area thereof exceeds forty acres an annual rent at the rate of Sixpence for every acre or part of an acre shall be payable during the first thirty years of the lease and thereafter the rent payable in respect of such miner's homestead shall be an annual rent or sum of One shilling and no more payable on the thirty-first day of December in every year if demanded: Provided that in case the area of the land comprised in such lease is less than five acres the rent payable during the first thirty years of the lease shall be Five shillings per annum;
- (c) A lessee may at any time or times after he has complied with the provisions of the preceding section pay in advance the rent reserved on his lease for the whole or any portion not being less than one year of such term.

93. Upon proof to the satisfaction of the Director that at the time of the granting of any existing miner's homestead lease the holding comprised therein was not situated within the limits of a township and that since the granting of such lease the rent thereby reserved has been duly paid for a period of not less than thirty years the holder of such lease shall be entitled to have an endorsement to that effect made upon his lease and thereupon the rent reserved shall cease to be payable and in lieu thereof the rent payable in respect of the said holding shall thenceforth be the annual rent or sum of One shilling and no more payable on the thirty-first day of December in every year if demanded:

Reduction of rents of existing homesteads.  
Of. Q. 62 Vic. No. 24, s. 85.

Provided that nothing herein contained shall be deemed or construed to entitle any person to the repayment of any sum or sums paid in respect of rent which accrued due before the commencement of this Ordinance.

94. Subject to the provisions of this Ordinance the rent shall be payable yearly in advance to the warden on or before the thirty-first day of December in each year and if default is made in the payment of rent the lease shall be forfeited: Provided always that such forfeiture may be defeated by the payment within ninety days of the full amount of rent together with a sum added by way of penalty at the rate of five per centum for every month or part of a month during which the default continues. If the full amount of rent together with the penalty is not paid on or before the last day of March the lease shall be forfeited:

Mode of payment, rent.  
Q. *ib.* s. 86.

Provided that the Director may waive such forfeiture upon payment by way of fine or penalty of such sum as he may see fit to impose.

95. Failure to pay the rent of an approved application for a miner's homestead lease shall render the applicant liable to the same consequences as follow upon failure to pay the rent of a miner's homestead lease.

Non-payment of rent of approved application.

96. A miner's homestead lease or an application therefor may be transferred by the lessee at the office of the warden upon signing an instrument of transfer in the prescribed form and paying a fee of Ten shillings.

Transfer of miner's homestead lease or approved application therefor.

Every transfer shall be entered in a book to be kept for that purpose and the warden shall endorse a certificate of transfer upon the back of the lease:

Provided that no person shall be entitled to transfer any homestead lease to any person then holding the maximum area under this Ordinance unless such lease shall have been in existence for a period of ten years prior to the date of such transfer and that the transferee must be a person otherwise qualified under this Ordinance.

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Returns of such transfers shall be forwarded monthly to the Director.

Transfer by sheriff when holding taken in execution and sold.

Cf. Q. 62 Vic. No. 24, s. 88.

97. When a miner's homestead is taken in execution under the judgment of a Court of competent jurisdiction and sold the sheriff or other proper officer shall execute a transfer of the lease to the purchaser at such sale and upon production of the transfer to the warden and payment of the prescribed fee the lease shall be transferred to such purchaser accordingly:

Provided that the purchaser shall not be an alien who by lineage belongs to any of the Asiatic African or Polynesian races.

Subdivision of miner's homestead.

Q. *Ib.* s. 89.

98. Any lessee of a miner's homestead may with the approval of the warden and upon payment of the fee of Ten shillings transfer any part thereof not less than one-quarter of an acre in extent if the miner's homestead is within the limits of a proclaimed township and not less than two acres in extent in any other case to any person not being an alien who by lineage belongs to any of the Asiatic African or Polynesian races.

The application must be accompanied by proper and correct plans and descriptions showing the proposed division of the miner's homestead and certified by the mining surveyor or a licensed surveyor and an endorsement shall be made on the original lease showing the portion so transferred and the transferee shall be entitled to a fresh lease of such portion.

Mortgage.

Q. *Ib.* s. 90.

99. A miner's homestead may be charged or made security for the payment of a sum of money.

When a miner's homestead is intended to be so charged the lessee shall execute a memorandum of mortgage in the form in the Second Schedule to this Ordinance or to the like effect.

Every memorandum of mortgage must be in duplicate and one original must be registered in the warden's office; and in the case of several mortgages of the same homestead they shall take effect according to priority of registration.

A fee of Five shillings shall be payable upon the registration of every such memorandum of mortgage.

A mortgage may be transferred on payment of the like fee for registration of the transfer.

No mortgage shall be made in favour of an alien who by lineage belongs to any of the Asiatic African or Polynesian races.

Effect of mortgage.

Q. *Ib.* s. 91.

100. A memorandum of mortgage shall have effect only as a security for the sum of money intended to be secured by it and shall not take effect as an assignment of the lease.



101. If default is made in the payment of the money secured by a memorandum of mortgage according to the tenor thereof or upon the happening of any event which according to the terms of the memorandum entitles the mortgagee so to do the mortgagee may—

Rights of mortgagee.  
Of. Q. 62 Vic.  
No. 24, s. 92.

- (a) enter upon and take and retain possession of the miner's homestead for any period not exceeding two years;
- (b) sell the miner's homestead by public auction after not less than thirty days' notice of the intended sale published in the *Gazette* and a newspaper (if any) generally circulating in the district:

Provided that the purchaser shall not be an alien who by lineage belongs to any of the Asiatic African or Polynesian races:

Provided nevertheless that the warden may extend for a further period not exceeding twelve months the time during which the mortgagee may retain possession of or sell the miner's homestead.

102. Upon a sale of a miner's homestead under the power of sale hereby conferred upon a mortgagee he may transfer the lease to the purchaser in manner hereinbefore prescribed and the transfer shall be registered in the warden's office upon payment of the aforesaid fee of Ten shillings.

Transfer on sale.  
Q. *Ib.* s. 93.

103.—(1.) Any holder of a miner's right may apply for and take up for mining purposes in accordance with the provisions of this Ordinance any land comprised in a miner's homestead and may mark off the claim or land to which he is entitled and may obtain registration thereof in the same manner as if the land were unoccupied Crown land.

Right of miners to work leased land.  
Q. *Ib.* s. 94.

(2.) A mining lease may be granted under this Ordinance of land comprised in a miner's homestead. But in any such case the lease shall be of the mines under such land only and not of the surface of the land.

(3.) When land comprised in a miner's homestead is taken up for mining purposes or is included in a mining lease the person entitled to mine thereon or therein shall be entitled to erect buildings sink shafts and carry on all necessary mining operations upon the surface of the land comprised in the claim or mining lease and shall also be entitled to access to the mines through the residue of the land comprised in the miner's homestead.

104. In any of the cases mentioned in the last preceding section the lessee may call upon the warden to assess the value of the damage likely to be done to any improvements upon the miner's homestead and the warden shall thereupon require the miner

Compensation.  
Q. *Ib.* s. 95.

working or about to work upon the land to deposit in his hands the amount of the damage which the working is likely to do to the lessee and until such payment is made the miner shall not be entitled to work upon the land.

Upon receipt of the amount so required to be deposited the warden shall hold the same as security to be paid either wholly or in part to the lessee if he sustains any damage or to be returned to the miner on his leaving the land if he does no damage. In assessing such damage only actual injury to improvements shall be taken into account and no compensation shall be allowed for the value of the land or the lessee's interest therein.

When a lessee has either before or after the commencement of this Ordinance received any money by way of compensation for injury to improvements he shall not afterwards be entitled to claim compensation in respect of the same improvements but shall be entitled to claim for additions made to them after the time when he received such compensation.

Appointment of arbitrators.  
Cf. Q. 62 Vic.  
No. 24, s. 96.

105. If in any case in which the warden has been called on to value the damage sustained or likely to be sustained by a lessee through the operations of miners working on the land comprised in his lease either of the parties is dissatisfied with his decision such party may require that the question be referred to arbitration in which case one arbitrator shall be appointed by the lessee and one by the miners interested and the arbitrators shall appoint an umpire and the decision of the arbitrators or of the umpire as the case may be shall be final.

An application for arbitration shall be made within forty-eight hours after the decision of the case by the warden otherwise it shall not be entertained and every such application shall be in writing addressed to the warden and a copy thereof shall be delivered by the applicant to the other party concerned.

Protection of mining improvements.  
Q. Ib. s. 97.

106. When a miner has put up any building or other erection or put down a shaft upon land comprised in a miner's homestead and afterwards leaves the land the lessee shall not remove or destroy such building erection or shaft without the sanction of the warden. Any lessee offending against the provisions of this section shall be liable to a penalty not exceeding One hundred pounds.

Resumption.

107. The Lieutenant-Governor<sup>(2)</sup> may after six months' notice to the lessee resume the whole or any part of a miner's homestead.

Upon any such resumption the lessee shall be entitled to compensation and the amount of such compensation shall be determined in the manner prescribed by the *Lands Acquisition Ordinance, 1914*, for determining compensation for land taken under that Ordinance.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940*.

108. The provisions of the *Fencing Ordinance*, 1912, shall apply to all miners' homesteads and the lessee shall be deemed the owner thereof for the purposes of that Ordinance and the issue of a lease of land under this Ordinance shall for the purposes of that Ordinance be deemed an alienation of the land.

Fencing.

PART X.—PERMITS FOR AERIAL ROPEWAYS.

109. Notwithstanding anything elsewhere in this Ordinance or in any Act or other Ordinance contained the holder of a mining tenement may apply to the warden for permission to construct and maintain an aerial ropeway (including in such term all ropes standards poles and other appliances necessary in regard thereto) over Crown lands for the purpose of conveyance of any metals minerals or ores mined by the said holder.

Application for permission to construct aerial ropeway.  
Cf. Q. 18 Geo. V. No. 16.

For the purpose of this section the term "Crown lands" shall include land held under any tenure whatsoever from the Crown excepting land held in fee simple.

110. The owner and occupier of the lands which will be subject to being traversed by such ropeway shall have such notice of the hearing of the application and be notified in such manner as the warden shall direct.

Notice of application.

111. Upon the hearing of the application the owner and occupier shall be entitled to be heard and the warden may in his absolute discretion grant or refuse the application.

Hearing.

112. Such application may be granted by the warden subject to such terms and conditions and to such provisions for compensation as may to him seem just.

Grant of application.

113. Upon the refusal of an application under this Part the applicant may if he thinks fit appeal to the Lieutenant-Governor<sup>(2)</sup> whose decision shall be final.

Refusal of application.

114. Nothing in this Part contained shall prevent the holder of a mining tenement from entering into any private agreement with the owner or occupier of the land through which it is proposed to traverse by such aerial ropeway. Any such agreement upon being duly filed in the office of the warden shall be in all respects of the same force and effect as if permission had been granted pursuant to an application under this Ordinance.

Private agreement.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

Appeal by owner or occupier.

115. The owner or occupier over whose land a permit to construct an aerial ropeway has been granted may appeal against such grant to the Lieutenant-Governor<sup>(2)</sup> whose decision shall be final.

Regulations.

116. The Lieutenant-Governor<sup>(2)</sup> may make regulations<sup>(15)</sup> providing for:—

1. The form of application for permission and the form of permit.
2. The registration and recording of such permits.
3. The forfeiture cancellation revocation or suspension of such permits.
4. The hearing of applications by the warden and of appeals to the Lieutenant-Governor<sup>(2)</sup> against the grant or refusal of such application.
5. The fees of application for and grant of permits.
6. All other matters which it is necessary convenient or desirable to prescribe in respect of aerial ropeways.

PART XI.—ADMINISTRATION.

*Division 1.—Wardens' Courts Wardens and other Officers.*

Establishment of Wardens' Courts and wardens' offices.

Cf. Q. 62 Vic. No. 24, s. 100.

117. The Lieutenant-Governor<sup>(2)</sup> may by Proclamation<sup>(16)</sup> establish Courts to be called "Wardens' Courts" with offices to be called "wardens' offices" at such places as he thinks fit and may assign to any Warden's Court such goldfields and mineral fields or parts thereof respectively as he thinks fit.

Alteration of situation of warden's office. Q. 7b. s. 101.

118.—(1.) The Lieutenant-Governor<sup>(2)</sup> may also by like Proclamation<sup>(16)</sup> alter the place at which a warden's office is situated or order that any Warden's Court be discontinued or that any goldfield or mineral field or part thereof cease to be assigned to such Court and be assigned to such other Court or Courts as the Lieutenant-Governor<sup>(2)</sup> may direct.

Transfer of records.

(2.) When a Warden's Court is discontinued or any goldfield or mineral field or part thereof ceases to be assigned to such Court all of the proceedings pending therein and all the records thereof or such of the proceedings and records as relate to such goldfield

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

(15) No regulations have been made.

(16) No proclamations have been published in *Papua Govt. Gaz.* pursuant to the present Section 117. A Table containing particulars of proclamations establishing Wardens' Courts and assigning goldfields and mineral fields to Wardens' Courts (made under the repealed *The Mining Act of 1898* (Queensland, adopted) and continued in force by the present Section 4) is printed on p. 3235, and the proclamations still in force are printed immediately after the Table. The Table also contains particulars of proclamations, ordering that Wardens' Courts be discontinued or that any goldfield or mineral field cease to be assigned to a Court and be assigned to another Court or Courts.

mineral field or part thereof shall be transferred to and continued in such other Warden's Court or Courts as the Lieutenant-Governor<sup>(2)</sup> may direct.<sup>(17)</sup>

119. Wardens' Courts shall be deemed to have been and until the Lieutenant-Governor<sup>(2)</sup> otherwise orders in manner hereinbefore provided shall remain and be established with wardens' offices at the several places at which existing wardens' offices are situated.

Continuance of existing Wardens' Courts and assignment of goldfields and mineral fields thereto.

Cf. Q. 62 Vic. No. 24, s. 102.

And until the Lieutenant-Governor<sup>(2)</sup> otherwise orders in manner hereinbefore provided the several existing goldfields and mineral fields shall be deemed to have been assigned to the several Wardens' Courts to which the existing wardens' offices for such goldfields and mineral fields respectively belong.

120. Every Warden's Court shall be a court of record and shall have jurisdiction to hear and determine all actions suits claims demands disputes and questions which may arise in relation to mining or in any way relating to any mining tenement whether the mine in respect of which the dispute arises is held under this Ordinance or any Act or other Ordinance and in relation to any breach of this Ordinance or any Act or Ordinance hereby repealed or of the regulations and in relation to any alleged forfeiture and such other jurisdiction as is provided by this Ordinance and shall also have jurisdiction to inflict any fine or penalty imposed by this Ordinance or any Act or Ordinance hereby repealed or by the regulations.

Nature and jurisdiction of Warden's Court.  
Q. *Ib.* s. 103.

121. Every Warden's Court shall have jurisdiction throughout the whole of the Territory:

Jurisdiction of Warden's Court.  
Q. *Ib.* s. 104.

Provided that when the hearing of a complaint involves the trial of a right to any land or mining tenement or share therein or any money due in respect thereof or contributions or calls made or apportioned by and between any persons or bodies corporate for the purpose of carrying on the business of mining or in any way connected therewith the same shall take place in the Warden's Court next hereinafter appointed that is to say:—

- (a) When such land or mining tenement is situated within the limits of a goldfield or mineral field or part thereof assigned to any Warden's Court then in the Warden's Court to which such goldfield or mineral field or part thereof is so assigned; and

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

(17) No direction made pursuant to the present Section 118 has been published in *Papua Govt. Gaz.* A Table containing particulars of proclamations or notices directing that all proceedings pending in a Warden's Court be transferred to and continued in another Warden's Court, (made under the repealed *The Mining Act of 1898* (Queensland, adopted) and continued in force by the present Section 4) is printed on p. 3247.

- (b) In all other cases in the Warden's Court which has its office nearest to the place where such land or mining tenement is situated;

And provided further that save as hereinbefore provided with reference to the hearing of any such complaint as in this section mentioned a defendant shall not be compellable to appear at any Warden's Court unless the defendant or one of two or more defendants as the case may be is resident within the limits of a goldfield or mineral field or part thereof which is assigned to such Court or at any place which is not situated within the limits of a goldfield or mineral field or part thereof assigned to any other Warden's Court and to which the office of the Warden's Court before which he is required to appear is the nearest warden's office.

Appointment of wardens.

Cf. Q. 62 Vic. No. 24, s. 105.

122.—(1.) The Lieutenant-Governor<sup>(2)</sup> may appoint officers to be called "wardens" and may from time to time assign to a warden such Warden's Court or Courts as he thinks fit. But the jurisdiction of a warden shall not be deemed to be thereby limited exclusively to the Court or Courts so assigned to him. But every warden shall have and exercise jurisdiction in respect of the matters contained in this Ordinance throughout the Territory with power to issue summonses warrants and other process which shall have legal effect and operation throughout the Territory.

(2.) Every existing warden under any Act or Ordinance by this Ordinance repealed shall be deemed to have been appointed a warden under the provisions of this Ordinance. And until otherwise directed by the Lieutenant-Governor<sup>(2)</sup> the several Warden's Courts which are deemed to have been established under the provisions of this Ordinance shall be deemed to have been assigned to the several wardens whose offices are the wardens' offices for such Courts respectively.

Places for holding Warden's Court.  
Q. *Ib.* s. 106.

123. The warden to whom a Warden's Court is assigned shall be empowered to hold such Court from time to time at any place which is within the limits of a goldfield or mineral field or part thereof assigned to such Court or at any place which is not within the limits of a goldfield or mineral field or part thereof assigned to any other Warden's Court and to which the office of the Court held by such warden is the nearest warden's office.

Power of warden to perform duties of another warden.  
Q. *Ib.* s. 107.

124. In the case of the illness or absence on leave or otherwise of a warden or on an emergency another warden may at the request in writing of the first-mentioned warden or the Director exercise all or any of the powers and perform all or any of the duties which that warden might have exercised or performed.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

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125. In case of the illness or absence of a warden or on any emergency the Lieutenant-Governor<sup>(2)</sup> may appoint some fit and proper person who shall be a justice of the peace to discharge the duties of a warden and such officer shall have the same jurisdiction and all the powers and authorities conferred upon a warden by this Ordinance.

Power to appoint acting warden.  
Cf. Q. 62 Vic.  
No. 24, s. 108.

126. The Lieutenant-Governor<sup>(2)</sup> may by Proclamation<sup>(18)</sup> direct that the Warden's Court holden on any goldfield or mineral field therein specified may subject however to the provisions of this Ordinance and the regulations be held by and before the warden sitting with assessors and thereupon until such direction is by like Proclamation altered or rescinded the following provisions shall have effect in relation to the Court holden on such goldfield or mineral field that is to say:—

Warden's Court holden with assessors.  
Q. 7b. s. 109.

(a) The warden shall during the first week of January in every year make or cause to be made a list of European persons of good repute who shall be registered claim-holders mining or machine owners or managers leaseholders or holders of business licences or residence areas resident within such goldfield or mineral field. From such list the warden shall select by ballot in open Court such number of persons as he shall deem expedient and who shall as required perform the duties of assessors for the current year and a list of the persons so selected shall be left posted outside the warden's office during the year for which they were selected;

Preparation of roll of assessors.

(b) When the hearing of any complaint involves the trial of a right to any mining tenement situated on the goldfield or mineral field or to any share therein or any money due in respect thereof or in any way connected therewith either of the parties may upon giving the notice prescribed by the regulations require that such complaint shall be heard before the warden sitting with three assessors and thereupon the warden or his clerk shall appoint a time and place at which the ballot for the assessors shall take place and notice thereof shall be given by the party requiring assessors to the opposite party and each party shall be entitled to be present at such ballot;

Demand for assessors.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

(18) No proclamation made under the present Section 126 has been published in *Papua Govt. Gaz.*; but by Proclamation dated 27.1.1919 and published in *Papua Govt. Gaz.* of 5.2.1919 (made under the repealed *The Mining Act of 1898* (Queensland, adopted) and continued in force by the present Section 4), the Lieutenant-Governor directed that the Warden's Court at Abau should "be presided over and holden by a Warden sitting with Assessors".

Ballot for assessors.

- (c) At the time and place appointed the warden shall first cause the names of not less than eight persons to be selected by ballot in open Court from such list as aforesaid by drawing eight names one after another out of a ballot-box containing only the names of all persons upon the list and the eight persons whose names are so selected shall form the panel of assessors;

The warden shall then cause the names of three persons to be selected by ballot in open Court from such panel as aforesaid by drawing such three names one after another out of a ballot-box containing only the names of such panel. And if any of the three persons whose names are so drawn out are challenged then by drawing one after another the names of such further number as may be necessary until the names of three persons are selected. And the three persons whose names are so selected shall be summoned to attend the Court on the day and at the time appointed for the hearing of the case and shall serve as assessors for the purposes of such case:

Provided that if there be no list of assessors or if three indifferent persons whose names are on such list cannot be found then any three indifferent persons shall be summoned to act as assessors;

Challenges.

- (d) When the names of the persons forming the panel of assessors are drawn out of the ballot-box either party shall be at liberty to challenge any number until the whole panel is exhausted or three assessors are selected whichever first happens. But if the whole panel is exhausted before three assessors are selected then the names of the persons forming the panel or of such of them as have not been selected shall be called over again in the order in which they were drawn out of the ballot-box and the parties shall each be confined to two challenges without cause but shall be at liberty to challenge any number for cause certain to be shown to the warden.

And no person having any pecuniary interest in a case shall be eligible to act as an assessor for the purposes of such case;

Fund for paying assessors.

- (e) Before any assessors shall be summoned by the warden such warden shall demand and receive the sum of Two pounds from the person demanding assessors and in case the hearing of the complaint shall be adjourned to any future day the warden shall demand and receive the further sum of Two pounds for every such



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adjournment and the said sums together with the amount of all fines on assessors shall form a fund for paying the expenses of assessors to be dealt with and accounted for by the warden;

- (f) Every assessor summoned as aforesaid who attends the Warden's Court in pursuance of such summons and serves as an assessor thereof shall for every day of such service be paid at the rate of Ten shillings a day; Fees payable to assessors.
- (g) Any person so summoned who without lawful excuse neglects or refuses to attend or to be sworn or serve as assessor shall be fined such sum of money not exceeding Five pounds as the warden shall think fit; Fines payable for non-attendance.
- (h) Before the Court shall proceed to hear a complaint heard before the warden and assessors the warden shall administer to each of the three assessors an oath in the following form:— Assessors' oath.

I, A.B., do swear well and truly to try the issues which shall be brought before me, and a true verdict give, according to the evidence, without fear or favour. So help me, God.

Provided that in the case of any assessor who may by law make an affirmation in lieu of swearing the warden shall in lieu of the oath hereinbefore mentioned administer the following declaration:—

I, A.B., do solemnly, sincerely, and truly affirm and declare that the taking of an oath is, according to my religious belief unlawful. And I do also solemnly, sincerely, and truly affirm and declare that I will well and truly try the issues which shall be brought before me, and a true verdict give according to the evidence, without fear or favour.

- (i) In the case of any complaint heard before the warden sitting with assessors the warden shall be the sole judge of and shall determine all questions of law. But questions of fact shall be determined by the assessors or a majority of them and the warden shall record the decision of the Court in accordance with the law upon the facts found by the assessors or a majority of them.

127. Until otherwise directed by such Proclamation as in the next preceding section provided every Warden's Court holden on an existing goldfield on which a Warden's Court has been established under provisions by this Ordinance repealed may subject however to the provisions of the next preceding section continue to be holden by and before the warden sitting with assessors.

And any existing roll of assessors for any such goldfield shall be the assessors' list for that goldfield until a new list has been made under this Ordinance.

Warden's Court  
on existing  
goldfields.  
Cf. Q. 62 Vic.  
No. 24, s. 110.

Manner of hearing cases in Warden's Court.  
Cf. Q. 62 Vic. No. 24, s. 111.

128. Except in such cases as any party is by virtue of the provisions of the next preceding section but one empowered to require and does in fact require a complaint to be heard by and before the warden sitting with assessors the Warden's Court shall in all cases be held by and before the warden sitting alone.

And except as in this Ordinance is otherwise expressly provided and except in such cases as the Director is by this Ordinance or the regulations empowered to enforce the decision of a Warden's Court every warden shall enforce and carry into effect the orders and decisions of a Warden's Court and shall have the same power to enforce and carry the same into effect as justices of the peace have to enforce orders and decisions of a Court of Petty Sessions.

Appointment of officers.  
Q. Ib. s. 112.

129. The Lieutenant-Governor<sup>(2)</sup> may appoint such and so many mining registrars surveyors and engineers and such and so many clerks officers bailiffs and assistants and for such places respectively as the Lieutenant-Governor<sup>(2)</sup> thinks necessary for the efficient performance of the duties of inspection surveying and registration of mining tenements and all other duties in connection with mining and with the administration of this Ordinance and the regulations which the Lieutenant-Governor<sup>(2)</sup> thinks fit to impose.

*Division 2.—Procedure of Wardens' Courts.*

Procedure of Warden's Court.  
Q. Ib. s. 113.

130. The proceedings taken forms used and manner time and place of hearing and determining all matters within the jurisdiction of the Warden's Court shall be in accordance with this Ordinance and the regulations:

Warden may decide summarily by consent.

Provided that notwithstanding anything in this Ordinance or in the regulations to the contrary contained it shall nevertheless be lawful for the warden upon oral or written complaint of any party with the consent of both parties immediately on the making of such complaint or at any time agreed on by the parties and at any place to investigate the matter of such complaint and to inquire into the case and on his own view or the oath of any witness to determine the same in a summary way and thereupon to exercise all and every the powers and authorities vested in the Warden's Court in the same manner in every respect as if the case had been heard upon complaint and notice of defence in the usual way: And provided further that in all cases where such consent is given the decision of the warden shall be final and there shall be no right of appeal in such cases:

Provided further that the warden shall in every such case make an entry of the grounds of complaint and defence or cross relief and of the decision.

(2) See Section 19(2) of the Ordinance Interpretation Ordinance, 1911-1940.

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131. Any person having a suit in the Warden's Court shall have the right of being represented by his duly constituted agent.

Representation of suitor.  
Cf. Q. 62 Vic. No. 24, s. 114.

132. In any case in the Warden's Court the defendant may at any time before the hearing thereof pay into Court such sum of money as he shall think a full satisfaction in respect of the matters complained of together with the costs incurred by the complainant up to the time of such payment and shall cause notice of such payment to be given to the complainant and the said sum of money and costs shall be paid to the complainant or his attorney; but if the complainant shall elect to proceed and shall recover no further sum than shall have been so paid into Court he shall pay to such defendant the costs incurred by him in the said proceeding after such payment and the warden may decree the same accordingly.

Payment into Court.  
Q. *Ib.* s. 115.

133. Any person who wilfully insults or obstructs any warden acting in the exercise of his jurisdiction under this Ordinance or who wilfully interrupts the proceedings of a Warden's Court may be excluded from the Court by the order of the warden and may whether he is so excluded or not be summarily convicted by a warden on view and on conviction shall be liable to a penalty not exceeding Ten pounds and in default of immediate payment to be imprisoned for a period not exceeding fourteen days.

Penalty for obstructing warden.  
Q. *Ib.* s. 116.

No summons need be issued against any such offender nor need any evidence be taken on oath but he may be taken into custody then and there by order of the warden and called upon to show cause why he should not be convicted.

134. Previously to the hearing of any complaint the parties thereto may agree to accept the decision of the Warden's Court as final and a memorandum of every such agreement shall be entered by the warden in the register to be kept by him as herein provided and no appeal shall in such case be made from such decision.

Decision of Warden's Court when final.  
Q. *Ib.* s. 117.

*Division 3.—Special Powers and Duties.*

135. Either of the parties shall be at liberty previous to or during the hearing of any complaint to apply to a warden for inspection to be made of any land or mining tenement in dispute and if the party so applying shall satisfy such warden as to the propriety and reasonableness of his application such warden if the case be heard before him alone shall make such inspection but if the case be heard before him and assessors shall order that such inspection be made by the assessors alone upon payment to the warden by the party so applying of such sum (if any) and upon such terms as to the said warden shall seem reasonable; and any sum so paid shall be appropriated towards defraying the expenses

Right of inspection of mining tenements.  
Q. *Ib.* s. 118.

of the assessors by reason of such inspection as such warden may direct or if such warden shall himself think that any such inspection would be proper he shall if the case be heard before him alone make such inspection or if the case be heard before him and assessors may make an order for such inspection by the assessors and for payment of the expenses thereof by such of the parties as he shall think right and the money paid for such expenses shall eventually be paid as part of the costs of the proceeding by such of the parties as the warden shall in that behalf direct.

Power of warden  
to order survey.  
Cf. Q. 62 Vic.  
No.24, s. 119.

136. If before or during the hearing of any complaint it shall appear to the warden that it will be necessary for a survey to be made of any land or water in dispute such warden may order either party to cause such survey and a plan thereof to be made and the costs thereof shall be deemed to be a part of the costs of the hearing.

Power of warden  
to order seizure  
of gold, etc.  
Q. Ib. s. 120.

137. Notwithstanding anything in this Ordinance to the contrary contained it shall be lawful for the warden if he shall think fit at the time of the making of any decision under this Ordinance or the regulations to order that any gold or other mineral in the possession of and belonging to the party by whom payment of any sum in respect of any debt damages or costs shall be ordered to the extent in value of such sum (such value to be fixed by the Warden's Court) shall be delivered up to the party entitled to such sum by way of satisfaction or in part satisfaction thereof: Provided that as to the balance the procedure herein otherwise provided shall apply.

Power of warden  
to authorize entry  
on adjacent  
claim.  
Q. Ib. s. 121.

138. It shall be lawful for any warden upon the application of any person claiming to be legally or equitably interested in any claim or in any land comprised in any mining lease or application therefor or in any other land adjoining or adjacent to any claim or land comprised as aforesaid by writing under his hand to authorize such person as the warden may think fit to enter upon any claim or land (whether at the time of such application alienated from the Crown or not if any mining operations shall be then carried on on such land) adjoining or adjacent to such first-mentioned claim or land or other land for the purpose of ascertaining whether the owner or occupier of the claim or land so to be entered upon is encroaching on the said first-mentioned claim or land or other land or if there is any influx of water therefrom or any accumulation of water thereon.

Powers of  
persons  
authorized to  
enter on claim.  
Q. Ib. s. 122.

139. It shall be lawful for the persons so authorized to enter upon the claim or land described in such order as last aforesaid and to descend any shaft or mine and to make the necessary surveys and for such purpose to use the engines and other machinery

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ordinarily employed for that purpose by the persons whose shaft or mine shall be descended and to make such plans and sections of the claim or land entered upon and of any drives or other works therein as shall be necessary for the purpose aforesaid:

Provided that any person so authorized to enter upon any claim or land shall before entering thereon make a statutory declaration before some person authorized to take the same that he will not (except as a witness in a Court of justice) without the consent in writing of the owner or occupier of the land to be entered upon divulge or cause to be divulged to any person whomsoever any information obtained upon or by such entry save only as to whether there is any such encroachment or any such influx or accumulation of water as aforesaid. Proviso.

140. It shall be lawful for any warden upon the application of any person claiming to be legally or equitably interested in any mining tenement (such application to be made on notice served twenty-four hours at least before the time for the making thereof on the parties interested in opposing the same or such of them as shall appear to such warden sufficiently to represent the parties so interested or upon such of them as such applicant can by using reasonable diligence or means in the opinion of such warden serve with such notice) in the presence of such parties or such of them as aforesaid or in the absence of any of them upon whom service of such notice shall be proved to the satisfaction of the warden to hear receive and examine evidence and thereupon if he in his discretion shall think fit and upon such terms (if any) as he may consider just by order under his hand to enjoin any person named in such order from encroaching upon occupying using or working such mining tenement or from seeking for washing out winning extracting or removing any earth gold or mineral taken therefrom or from selling or disposing of or damaging or otherwise interfering with such mining tenement earth gold or mineral or any share or interest therein respectively or from doing any act whereby the right title or interest of such applicant in or to the same might be affected. And such order shall remain in force for the period mentioned therein unless sooner discharged by the warden or some other Court of competent jurisdiction. Power of warden to grant injunction on notice.  
Cf. Q. 62 Vic. No. 24, s. 123.

141. If endeavours reasonable in the opinion of the warden to serve such notice as in the last preceding section mentioned shall be proved to the satisfaction of such warden to have failed it shall be sufficient service of such notice if the same shall be advertised in such manner as the warden shall direct as reasonable in all the circumstances and on every such application the warden may make such order as to costs as to him shall seem just. Service of notice by advertisement.  
Q. 1b. s. 124.

Power of warden  
to grant  
injunction for  
seven days  
without notice.  
Cf. Q. 62 Vic.  
No. 24, s. 125.

142. If by reason of the pressing emergency of any particular case it shall seem proper to the warden so to do he may on the application of any such person as aforesaid but without any notice by order under his hand grant such injunction as aforesaid but to be in force for a period of seven days only inclusive of the day upon which such order shall have been made or until the same shall by the said warden be sooner discharged. And no second order for an injunction shall be made for the same cause under this section; but any person at whose instance any injunction shall have been granted under this section shall be at liberty at any time before the expiration of the said period of seven days as well as thereafter to apply under the provisions of this Ordinance for an injunction for any longer period.

Power of warden  
to order deposit  
of gold, etc.  
Q. Ib. s. 126.

143. It shall be lawful for any warden upon the application of any party to any cause by order under his hand to direct any person party to or interested in such proceeding to deposit within the time or times mentioned in such order with any person or at any place named in such order in the name of such warden or of any other person mentioned in such order to abide the decision of the Warden's Court any gold or other mineral or any earth amalgam or matter containing gold or any other mineral or any money or other chattel described in such order which may then be or which at any time before the final termination of such proceeding may come into the possession power or control of such person party to or interested in such proceeding and the right to the possession whereof shall be claimed by such applicant: Provided that no such order shall be made except upon proof to the satisfaction of the warden that not less than twelve hours' notice of the application has been served on the parties interested in opposing the same or such of them as shall appear to such warden sufficiently to represent the whole: Provided also that the provisions of the last preceding section but one shall apply to such notices and the service thereof respectively.

Power of warden  
to amend defects  
or errors.  
Q. Ib. s. 127.

144. The warden may at any time amend any defect or error in any proceeding before him whether there is anything in writing to amend or not and whether the defect or error is that of the party applying to amend or not.

And an amendment may be made upon or without payment of costs and upon such terms as the warden thinks fit. And all such amendments as are necessary for the purpose of determining the real questions in controversy between the parties shall be so made:

Provided that if it shall appear to the warden that any party has been delayed misled or taken by surprise by reason of such defect or error or that injustice would be done by proceeding at once with the case the warden may on such terms as to costs or otherwise as he shall think fit grant such adjournment as he shall think just.

145. In case any such proceeding before a Warden's Court shall be for the recovery and possession of any gold mineral earth land mining tenement water-race drain dam or reservoir or any share therein such Warden's Court shall determine the right to the same and fix the boundaries thereof or the limits and quantity to be taken by either of the parties of such water if necessary so to do for the purpose of terminating the dispute; and if the complainant shall succeed shall determine whether any and what sum in the nature of mesne profits should be paid to the complainant. And in the event of the complainant so succeeding the warden shall order possession of such gold mineral earth land mining tenement race drain dam reservoir or water or share to be delivered to the complainant and any such sum to be paid to him; and shall or any other warden may cause such complainant to be put into possession of any such gold mineral earth land mining tenement race drain dam reservoir or water or share as aforesaid and (if necessary) cause or order any defendant his servants<sup>(18A)</sup> to quit the same or such part of them as shall have been awarded to the plaintiff or to desist or be prevented from the using of such water or to remove any buildings or other erections thereon.

Duty of Warden's Court when proceeding is for recovery of land, etc.

Cf. Q. 62 Vic. No. 24, s. 128.

146. In case any such proceeding before a Warden's Court shall be in respect of the right to divert any water or to use remove or otherwise meddle with any reservoir race drain or dam such Warden's Court shall determine such right and if the complainant shall succeed the warden shall declare him at liberty to divert use remove or otherwise meddle with the same and may make an order restraining any defendant his servants agents and workmen from preventing the complainant from so doing.

Duty of Warden's Court when proceeding is as to right to divert water, etc.

Q. 1b. s. 129.

147. In case any such proceeding shall be in respect of any encroachment or trespass upon or injury to any such land mining tenement race drain dam reservoir or water such Warden's Court shall determine the right to the same and fix the boundaries of any such land mining tenement or the limits or quantity to be taken by either or any of the parties of such water if necessary so to do for the purpose of terminating the dispute and at the same time assess the amount to be paid to the complainant by way of damages (if any) by reason of any such encroachment trespass or injury found to have been committed and the warden shall order such damages to be paid accordingly and that the person found to have encroached trespassed or injured as aforesaid his servants agents and workmen do cease from such encroachment trespass or injury and it shall be lawful for the same or any other warden to cause the person so found to have encroached trespassed or injured his servants implements goods and chattels to quit or be removed from the land mining tenement race drain dam reservoir or water so encroached

Duty of Warden's Court when proceeding is in respect of encroachment.

Q. 1b. s. 130.

(18A) The words "order any defendant his servants" appeared in the original Ordinance. *Semble*, "order any defendant and his servants" was intended.

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or trespassed upon or injured or to desist or be prevented from the using of such water and to cause such complainant to be put into possession thereof.

Duty of  
Warden's Court  
when proceeding  
is in respect of  
money due on  
a contract.  
Cf. Q. 62 Vic.  
No. 24, s. 131.

148. In case any such proceeding shall be in relation to any debt or contract or to money due in respect of any such land or water or any share or interest therein or in respect of any gold mineral or earth or to the amount of any contribution or other sum of money the warden shall order any money or damages or gold mineral or earth which shall be found due or payable or deliverable by either of the parties to the other of them to be paid or delivered accordingly.

Duty of  
Warden's Court  
when proceeding  
is in respect of  
a partnership.  
Q. *Ib.* s. 132.

149. And in case such proceeding shall be in respect of money due or gold mineral or earth deliverable upon a mining partnership account or accruing to the complainant from any mining partnership adventure or interest the warden shall take the account of such partnership adventure or interest so far as shall be necessary to ascertain what sum or amount of gold mineral or earth (if any) shall be so due or accruing; and the warden shall order any such sum or gold or mineral to be paid or delivered and may make an order for the dissolution of such partnership if he shall deem fit upon such terms as to the sale or division of the partnership property and the payment of the partnership debts as he may consider equitable and just.

### *Division 4.—Mode of Enforcing Orders and Decisions and Interpleader.*

Enforcing  
decision in case  
of debt, etc.  
Q. *Ib.* s. 133.

150. When any sum of money shall be awarded in a Warden's Court by way of debt damages or costs or otherwise and the same shall not be forthwith paid the warden on the application of the person entitled to receive such sum or of any attorney on his behalf shall grant to the party so applying a writ of execution under his hand and any bailiff of a warden's or petty debts Court to whom such writ shall be delivered for execution and all constables and other police officers within their several jurisdictions shall do and perform all things in respect of such writ which such bailiff constables and police officers are required to do and perform in respect of a warrant or writ of execution issued out of such Court in the case of the non-payment of money under a judgment of such Court; and every such bailiff may by virtue of such writ seize and take such property and dispose thereof in the same manner as he could seize take and dispose thereof by virtue of a writ issuing out of such Court and shall have the same powers in respect of the sale and disposal of such property and do and execute all duties in respect thereof as are by law conferred and imposed on



the bailiff of such Court upon a writ of *feri-facias* issued by a registrar thereof: Provided that no such writ shall except upon special cause shown to the satisfaction of the warden be issued until after the expiration of seven days from the day on which the decision under which such sum of money was awarded shall have been made.

151. Whenever any warden is empowered or required by this Ordinance to cause any act to be performed and the mode of performing such act is not otherwise expressly provided for it shall be lawful for any person authorized in writing by the warden or for any constable or police officer authorized in writing under the hand of such warden to perform such act and all constables and police officers shall if thereunto required aid and assist any warden or person authorized as aforesaid in the performance of his duty under this Ordinance.

Mode of enforcing warden's order where not specially provided for. Cf. Q. 62 Vic. No. 24, s. 134.

152. If any claim shall be made to or in respect of any goods or chattels taken in execution under any process issued by a warden or in respect of the proceeds or value thereof by any person not being the party against whom such process shall have issued it shall be lawful for any warden upon application of the officer charged with the execution of such process as well before as after any action brought against such officer to issue a summons calling before such warden as well the party issuing such process as the party making such claim; and thereupon any action which shall have been brought in any Court in respect of such claim shall be stayed and the Court in which such action shall have been brought or any judge thereof on proof of the issue of such summons and that the goods and chattels were so taken in execution may order the party bringing such action to pay the costs of all proceedings had upon such action after the service upon him of such summons issued out by the warden and the warden shall adjudicate upon such claim and make such order between the parties in respect thereof and of the costs of the proceedings as to him shall seem fit and such order may be enforced in like manner as any order made in any suit brought or any proceedings before such warden as the case may be.

Interpleader. Q. *Ib.* s. 135.

*Division 5.—Statement of Special Case for the Opinion of the Central Court.<sup>(2)</sup>*

153. On any proceeding before a Warden's Court in which such decision is not hereby declared to be final it shall be lawful for the warden if he shall think fit to reserve any question of law in the form of a special case for the opinion of a judge of the Central Court;<sup>(2)</sup> in such case no final order shall be made in respect of

Power for warden to state special case. Q. *Ib.* s. 136.

<sup>(2)</sup> See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

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any matter on which such question shall have been reserved until such opinion shall have been given.

Transmission of special case to Central Court.

154. Every such special case shall after it shall have been prepared by the warden be transmitted to the Registrar of the Central Court<sup>(2)</sup> who shall cause the same to be set down for argument before the judge whose decision when given shall be drawn up and transmitted by the said Registrar to the said warden who shall make his order in accordance with such decision.

Power of warden to grant injunction, etc.

155. Whenever any such special case shall have been reserved it shall be lawful for the warden who shall have reserved the same on the application of any of the parties interested in such case to make such order for an injunction or payment of money into Court and upon such terms as such warden shall think proper.

*Division 6.—Appeals to Central Court.*<sup>(2)</sup>

Appeal to Central Court. Cf. T.N.G. No. 18 of 1928, ss. 104-113.

156. Any person who is desirous of appealing from the decision of a warden in any case heard in the Warden's Court in which the decision is not by this Ordinance declared to be final may appeal from the decision to the Central Court<sup>(2)</sup> within thirty days after the day on which the decision is pronounced:

Provided that the warden may in his discretion extend the time for lodging the appeal upon an application made by the party appealing within three days after the date of the decision appealed against:

Provided further that the party appealing shall within seven days from the date of the decision appealed against—

- (a) give notice in writing of the appeal to the warden and to the opposite party; and
- (b) give security to the satisfaction of the warden in the sum of Fifty pounds or such lesser sum as to the warden seems reasonable to cover the cost of the appeal.

Extension of time.

157. Notwithstanding anything contained in the last preceding section the Central Court<sup>(2)</sup> may on application *ex parte* by the party appealing extend the time for compliance with any condition precedent to the hearing of any appeal from a decision of a Warden's Court.

Preliminaries to hearing appeals.

158. No appeal under this Division shall be heard unless at the hearing a copy of the minutes of the decision of the warden signed

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(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

and certified under the hand of the warden or the mining registrar is produced to the Central Court<sup>(2)</sup> and the warden is hereby required to lodge the copy or cause it to be lodged at the office of the Registrar of the Central Court.<sup>(2)</sup>

159. The Judges of the Central Court<sup>(2)</sup> may make Rules of Court<sup>(19)</sup> not inconsistent with this Ordinance prescribing the procedure to be followed in connection with appeals to the Central Court<sup>(2)</sup> under this Ordinance. Rules of Court.

160. Upon the hearing of an appeal the Central Court<sup>(2)</sup> may make an order reversing or varying the decision of the Warden's Court or dismissing the appeal and all such orders shall be final and conclusive on the parties and the judge shall (if necessary) order payment of money or the delivery of the possession of any land mining tenement water gold mineral or other property to the person who was the complainant before the Warden's Court or restitution of any land mining tenement water gold mineral or other property as the case requires and may make such order with respect to the costs of the appeal and of the proceeding appealed from as the Court thinks fit. Power for Central Court to make order on appeal.

161. If upon the hearing of the appeal the subject-matter of the dispute appears to the Central Court<sup>(2)</sup> not to exceed in value Twenty pounds the appellant shall not although he succeeds be entitled to receive any costs of his appeal from the opposite party unless the Court is of opinion that the interests involved directly or indirectly in the decision exceed that amount or that the special circumstances of the case entitle the appellants to costs in which cases the question of costs shall be in the discretion of the Central Court.<sup>(2)</sup> Costs, when allowable.

162. Subject to Section One hundred and sixty-four of this Ordinance every appeal shall be heard and determined by a judge sitting alone and shall be in the nature of a re-hearing or upon such points only as the parties thereto may by consent determine at any time before the hearing of the appeal. Appeals, how heard.  
Amended by No. 18 of 1939, s. 10.

163.—(1.) Whenever any appeal has been brought or is about to be brought the warden from whose decision the appeal is brought or is about to be brought on the application of any of the parties interested in the appeal may make such order for an injunction or receiver or payment of money into the hands of the warden to abide the event of the appeal or for stay of proceedings or otherwise and upon such terms as he thinks proper and the warden may Order by warden pending appeal.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

(19) No Rules of Court have been published in *Papua Govt. Gaz.*

at any time thereafter if he think fit discharge or vary any such order made by him.

(2.) In the absence of an order under the last preceding subsection or an order to the same effect by the judge no appeal shall operate as a stay of proceedings.

Hearing before  
judge with  
assessors.

164. In all proceedings in the Central Court<sup>(2)</sup> the Court shall be empowered to sit with or without assessors as it may see fit. The number of assessors that shall sit in any proceeding shall be decided by the Court but they shall not exceed twelve. The assessors shall be such persons as the Court sees fit to appoint as such. Any person so appointed shall be bound to act as an assessor. The duty of the assessors shall be limited to advising the Court but their advice shall in no wise be binding on the Court.

Costs on appeal.

165. The costs upon an appeal to the Central Court<sup>(2)</sup> pursuant to Section One hundred and fifty-six shall be in the discretion of the said Court.

PART XII.—GENERAL PROVISIONS.

Saving of  
prerogative.  
Cf. Q. 62 Vic.  
No. 24, s. 154.

166. Nothing in this Ordinance contained except so far as is herein expressly enacted shall be deemed to abridge or control the prerogative rights and powers of His Majesty in respect of gold and silver mines or in respect of petroleum and helium.

Saving of  
prerogative,  
native lands.  
Pap. No. 4 of  
1908, s. 1.

167. All minerals gems and precious stones on or under native lands shall after the passing of this Ordinance be the property of His Majesty.

Devolution  
of mining  
tenements.  
Q. *Ib.* s. 155.

168. All mining tenements acquired and held under the provisions of this Ordinance or of any repealed Act or Ordinance shall on the death or insolvency of the holder or holders thereof devolve on his or their personal representative or representatives or assignee or trustee in insolvency and shall be liable to seizure and sale under any execution issued from the Central Court<sup>(2)</sup> Small Debts Court Warden's Court or any other competent Court in the said Territory. The proper officer appointed to sell the same shall have full power to give an effectual transfer of the interest sold by him.

Disqualification  
of certain  
companies.  
Q. *Ib.* s. 156.

169. Notwithstanding anything in this Ordinance or in any other Act or Ordinance to the contrary contained no miner's right lease or licence shall be granted or held under the provisions of this Ordinance to or by any company which is not incorporated or registered in the Territory under the provisions of some public or

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

private Ordinance relating to the incorporation or registration of companies or whereof the incorporation is not otherwise recognized by some public or private Ordinance.

170. It shall be lawful for any person in custody under any order of commitment made under this Ordinance or the regulations upon giving reasonable notice to the person (or to one of such persons if more than one) on whose application such order was granted or if such person or none of such persons can be found to the judge or warden by whom such order was made to apply in a summary way on affidavit to a judge of the Central Court<sup>(2)</sup> for his discharge and it shall be lawful for such judge of the Central Court<sup>(2)</sup> in his discretion and on such terms (if any) as he shall think fit by order under his hand directed to the gaoler or other person in whose custody such applicant may be to direct that such applicant shall be discharged and such applicant shall be discharged accordingly: Provided that when such order of commitment shall have been founded on any previous decree or order it shall not be lawful for such judge of the Central Court<sup>(2)</sup> upon such application to inquire into the merits of such previous decree or order.

Party  
imprisoned may  
be discharged by  
Central Court.  
Cf. Q. 62 Vic.  
No. 24, s. 158.

171. Subject to the provisions of the *Native Labour Ordinance, 1911-1933*,<sup>(20)</sup> the amount for the time being due to all managers clerks miners artisans and labourers employed in or about a mine in respect of their wages or other earnings in relation to the mine not exceeding four weeks' wages or earnings to each such person shall be a first charge upon the claim or leasehold in or on which such mine is situated notwithstanding that such claim or leasehold be mortgaged or charged to secure the payment of any other moneys or that there be any lien upon the same.

Security for  
wages.

And in the winding-up of a company formed for or engaged in working a mine the amount (if any) due at the date of the winding-up order to such persons in respect of such wages or earnings not exceeding four weeks' wages or earnings to each such person shall except as in this section provided be paid in priority to all other debts secured or unsecured of the company. Such first charge shall include all costs awarded against any person or company in any proceedings before a Court to recover such wages or earnings and any costs charges or expenses properly incurred in enforcing such order.

The debts so charged upon a claim or leasehold and the debts so payable in priority to all other debts except as aforesaid of a company shall rank equally amongst themselves and if necessary shall abate in equal proportions between themselves.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

(20) Repealed and replaced by the *Native Labour Ordinance, 1941.*

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Incapacity to  
sue, etc.  
Cf. Q. 62 Vic.  
No. 24, s. 160.

172. No person shall be entitled to institute proceedings in any Court whatsoever to recover possession of any claim or of any share therein or to recover damages for or to restrain the occupation of or encroachment upon such claim or any part thereof or to obtain any relief as tenant in common joint tenant co-partner or co-adventurer against his tenant in common joint tenant co-partner or co-adventurer or to recover any interest or part interest in any water-race dam or reservoir used or to be used for or in connection with mining under or by virtue of a miner's right unless such person shall have been the holder of a miner's right at the time when his alleged title to recover such possession or damages or interest or to obtain such relief first arose or accrued:

Provided that this section shall not extend or apply to a cestui que trust who seeks to enforce the fulfilment of a trust with respect to any such claim water-race dam or reservoir as aforesaid:

Provided further that the non-production of a miner's right shall be no bar to suing for wages in the Warden's Court:

Proviso as to  
natives.

Provided further that nothing in this section shall extend or apply to aboriginal natives of the Territory mining for gold on alluvial ground pursuant to this Ordinance.

Infancy.  
Q. *Ib.* s. 161.

173. Any person under the age of twenty-one years being the holder of a miner's right may sue and be sued in respect of any matter which is within the jurisdiction of a Warden's Court in the same manner as if he were of full age any law statute custom or usage to the contrary notwithstanding.

Persons  
authorized to  
take affidavits.

174. Any affidavit to be used in any Warden's Court or Court of appeal therefrom or before a judge or warden thereof may be sworn before any judge of the Central Court<sup>(2)</sup> or any commissioner of that Court for taking affidavits or any warden or justice of the peace.

Penalty on  
warden holding  
mining interest  
or acting when  
interested.

175. If any warden shall at any time during his appointment hold any interest or share in any claim gold-mining or mineral lease or mining adventure he shall be guilty of a misdemeanour and be liable to fine or imprisonment for any term not exceeding three years or both in the discretion of the Court.

Assault on  
warden and  
other offences.  
Q. *Ib.* s. 166.

176. Any person who shall assault obstruct or resist any warden or any person duly authorized by any warden or any bailiff or other officer or any clerk or assistant of such bailiff or officer or any inspector or other person in lawfully entering upon any claim or land or in performing any other act authorized hereby or in the performance of his duty or in the exercise of his powers under this Ordinance or any person who after being removed by any warden

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

under the provisions of this Ordinance from any lands held under the provisions of this Ordinance or of any Act or Ordinance hereby repealed shall forcibly or clandestinely retake or retain or endeavour to retake or retain possession thereof or of any portion thereof or of any share therein or who after any decision of a warden that any complainant is entitled to use for mining purposes or to divert any water (such decision not having been reversed on appeal) shall resist such complainant or his agents in such use or diversion or who upon or in consequence of the decision of any Warden's Court against him shall assault or threaten to assault any person in whose favour such decision shall have been made shall on summary conviction forfeit any sum not exceeding Fifty pounds and in default of payment shall be liable to be imprisoned for any period not exceeding six months.

177. Except as provided in Sections Sixteen and Seventeen of this Ordinance if any person shall be found by the warden to be engaged in mining on Crown lands for gold or any mineral other than coal without being able on demand to produce his miner's right or without being able satisfactorily to account to the warden for not having a miner's right the warden is hereby empowered to demand the payment on the spot of the miner's right fee and in addition thereto then and there in his discretion to impose a fine on any such offender of a sum not exceeding Forty shillings and unless the amount of such miner's right fee and fine be thereupon immediately paid to the said warden he may cause the said offender to be arrested and to be imprisoned in the nearest lock-up for any period not exceeding one month unless in the meantime the whole amount shall have been paid and the order in writing of the said warden shall be sufficient authority to the keeper of the said lock-up for the detention of the offender. If any person shall occupy any Crown lands within any proclaimed goldfield or mineral field and carry on business thereon without having a business licence empowering him in that behalf he shall be liable to be fined by the warden a sum not exceeding Ten pounds and in default of immediate payment to be imprisoned in the nearest lock-up for any period not exceeding one month unless in the meantime the whole amount shall have been paid and the order in writing of the said warden shall be sufficient authority to the keeper of the said lock-up for the detention of the offender.

Power of  
warden to fine  
persons found  
mining without  
miner's right.

And if any person shall employ any person except as provided in Section Seventeen of this Ordinance not being the holder of a miner's right in mining for gold or any mineral on any Crown lands not being held under mining lease other than for coal such employer shall be liable to the same penalty as is hereinbefore imposed on any such person so mining.

Liability of  
employer.  
Pap. No. 4 of  
1908, s. 5.

Penalty on witness neglecting to appear.  
 Cf. Q. 62 Vic. No. 24, s. 168.

178. Any person on whom any summons issued by any warden requiring such person to appear as a witness in the Warden's Court or before such warden shall have been served personally or in such other manner as may be prescribed and to whom at the same time payment or tender of his expenses on the prescribed scale shall have been made and who shall refuse or neglect without sufficient cause to appear according to the tenor of such summons or who having so appeared shall refuse to be sworn or answer any lawful question shall on conviction thereof before any warden forfeit and pay any sum not exceeding Ten pounds and in default of immediate payment thereof he shall be liable to imprisonment in the nearest lock-up for any period not exceeding one month unless in the meantime the whole amount shall have been paid and the order in writing of the said warden shall be sufficient authority to the keeper of the said lock-up for the detention of the offender but no such conviction shall exempt such person from any action for disobeying such summons.

Unauthorized miners may be ejected.  
 Q. *Ib.* s. 169.

179. Any person who not being the holder of a miner's right is found working for gold or minerals other than coal on Crown lands and any person who not being the holder of a miner's right or licence to search for coal is found working for coal on Crown lands may be forcibly ejected therefrom by a warden police officer or any other person authorized by the Director:

Proviso as to natives.

Provided that nothing in this section contained shall extend or apply to an aboriginal native of the Territory mining for alluvial gold.

Proceeding and penalty for mining or removing minerals without authority from claims.  
 Q. *Ib.* s. 170.

180. Any person found working for gold or minerals or removing gold or minerals or gold or mineral ores from the claim lease or land of any other person who is personally or by his agent occupying the same without permission of such other person whether such claim lease or land is—

- (a) held under miner's right or mining lease or licence; or
- (b) held by an aboriginal native as permitted in this Ordinance without a miner's right; or

(c) applied for to be licensed or leased under this Ordinance, may be forcibly ejected by a warden police officer or any other person appointed by the Director and on conviction thereof shall forfeit and pay for every such offence any sum not exceeding Fifty pounds to be recovered summarily.

Removing minerals, etc., from claims—larceny.  
 Q. *Ib.* s. 171.

181. Any person who takes or removes gold precious stones or mineral ore from the claim lease or land of any other person without permission of such other person shall be deemed to have stolen the same and any person receiving the same with knowledge of such facts shall be deemed to have received the same knowing them to have been stolen



182. All fees charges and sums of money which shall or may be imposed or made payable and all penalties incurred under this Ordinance or under the regulations for which no other mode of recovery is provided herein or by the regulations may be recovered carried out or enforced by any warden in the manner in which justices are now by law authorized to enforce any order or award made in any Court of Petty Sessions.

Fees and penalties how recoverable and applied.  
Cf. Q. 62 Vic. No. 24, s. 172.

183. No proceedings under this Ordinance shall be removed or removable into the Central Court<sup>(2)</sup> save and except as hereinbefore provided.

Proceedings not to be removed into Central Court.  
Q. *Ib.* s. 173.

184. Whenever it shall be made to appear on oath or by statutory declaration of the holder of a mining lease that his lease instrument has been lost or destroyed together with a statement on oath or statutory declaration of any person having knowledge of the circumstances and the Director is satisfied as to the truth and bona fides of its loss or destruction he may cause a notice to be inserted in the *Gazette* and in at least one newspaper published in the Territory of his intention to issue an official copy of such lease instrument on or after a date specified in such notice not being less than thirty clear days after the date of the last published notification. If at the expiration of the notice no objection is made to the Director he may cause to be issued to the applicant an official copy of the mining lease which shall contain an exact copy of the original bound up in the register and of every memorandum and endorsement thereon and such official copy shall contain a statement of the circumstances under which it was issued and shall be marked plainly official copy. The fee upon issue of an official copy shall be One pound together with the cost of preparation and of the said advertisements.

Lost lease instruments.

#### PART XIII.—MINERS' COMMONS.

185. All Crown lands comprised within the limits of any goldfield or mineral field except such lands as have for the time being been taken up and are for the time being occupied used or held under or by virtue of any miner's right or business licence or licence to mine for coal or under or by virtue of any lease application for lease or licence from the Crown may by Proclamation<sup>(21)</sup> of the Lieutenant-Governor<sup>(2)</sup> be set aside as miners' commons.

Setting aside of certain lands on goldfields and mineral fields as commons.  
Q. *Ib.* s. 174.

186. The commonage rights shall appertain solely to holders of miners' rights or business licences or mining leases or miners' homestead leases resident on the goldfield or mineral field within which any miners' common is situated.

Nature of commonage rights.  
Q. *Ib.* s. 175.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

(21) No proclamation has been published in *Papua Govt. Gaz.*

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Subject to such conditions as are prescribed by this Ordinance as to the description of stock to be depastured every holder of a miner's right or business licence or mining lease or miner's homestead lease may depasture free of charge any number of stock his own bona fide property not exceeding twenty head upon the miners' common on the goldfield or mineral field upon which he is resident.

The depasturing of swine sheep bulls and entire horses exceeding six months old except under special conditions to be prescribed by the regulations shall be prohibited.

For the depasturing of stock in excess of the number of twenty head belonging to the same owner an agistment fee not exceeding One shilling per head per annum shall be charged and paid.

But nothing herein contained shall prevent bona fide travellers from depasturing their stock on any miners' common: Provided that no person travelling with stock shall be deemed a bona fide traveller unless such stock are driven towards their destination at least six miles within every successive period of twenty-four hours unless prevented by flood or rain or other unavoidable cause.

Appointment of officers.

Cf. Q. 62 Vic. No. 24, s. 176.

187. The Lieutenant-Governor<sup>(2)</sup> may from time to time appoint officers to have the charge of miners' commons and such officers shall be empowered to collect and receive all fees payable for agistment of stock upon the said miners' commons and to proceed as hereinafter provided for the recovery of the same and to prosecute all offenders in respect of breaches of the regulations for the time being in force with reference to miners' commons.

Recovery of agistment fees.

188. All stock which shall be depastured on any miners' common in respect of which the agistment fee is due and unpaid and all stock owned by any person who does not possess commonage rights on the miners' common on which such stock are depastured may be seized by the officer in charge of such common or any person authorized by him and dealt with in accordance with *The Trespass and Brands Ordinance of 1891*.

Stock on common, agistment fees for.

189. All stock other than travelling stock and stock exempt from payment of agistment under the next preceding section but two of this Ordinance which shall be found upon any miners' common shall be held to be depastured thereon and the owner thereof shall be liable to pay agistment therefor.

Returns of stock.

190. In the month of January in each year every owner of stock depastured upon any miners' common shall furnish to the officer in charge of the said common a return showing the number of stock depastured by him on the said miners' common and in default of

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940*.

making such return before the thirty-first day of January in each year he shall be liable to a penalty not exceeding Ten pounds and in default of payment to imprisonment with or without hard labour for any period not exceeding three months.

191. It shall be lawful for the officer in charge of any miners' common or any person appointed by him at any time to muster count and examine all stock depasturing upon the miners' common of which such officer is in charge and any person obstructing or aiding or abetting the obstruction of such officer or person so appointed in the execution of this duty shall be liable to a penalty not exceeding Ten pounds or in default of payment to imprisonment with or without hard labour for any period not exceeding three months.

Mustering of stock on miners' common.

192. The warden may grant licences to occupy land upon goldfield or mineral field<sup>(21A)</sup> to any person requiring land for the purpose of growing fruit vegetables fodder or other garden produce. Such licences shall be granted subject to such conditions as to rent residence and forfeiture and to such other conditions as may be prescribed by the regulations but no area so granted shall exceed five acres.

Licences to occupy for gardens.

193. Every penalty payable in respect of any offence under this Part of this Ordinance or the regulations for the time being in force with reference to miners' commons may be recovered before any warden in a summary way.

Recovery of penalties.

#### PART XIV.—DRAINAGE OF MINES.

194. If it is made appear to the Lieutenant-Governor<sup>(2)</sup> that by reason of the natural features of the ground or otherwise the mines within a specified area forming part of a goldfield or mineral field or such other area as may be proclaimed a mining drainage area by the Lieutenant-Governor<sup>(2)</sup> are so situated as to be liable to inundation from a common source and that in order to prevent such inundation it is desirable that common action should be taken by and at the joint expense of the owners of the mines within the area the Lieutenant-Governor<sup>(2)</sup> may by Proclamation<sup>(22)</sup> constitute such area a mining drainage area for the purposes of this Ordinance and may by like Proclamation abolish such mining drainage area or alter or amend the boundaries thereof. And all existing mining drainage areas constituted under the provisions of any Act or Ordinance hereby repealed shall be deemed to have been constituted under the provisions of this Part of this Ordinance.

Constitution of mining drainage areas.

Cf. Q. 62 Vic. No. 24, s. 184.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

(21A) The words "upon goldfield or mineral field" appeared in the original Ordinance. *Semble*, "upon a goldfield or a mineral field" was intended.

(22) No proclamation has been published in *Papua Govt. Gaz.*

Drainage boards.  
Cf. Q. 62 Vic.  
No. 24, s. 185.

**195.** For every drainage area there shall be a drainage board.

The board shall be elected by the owners of the mines within the drainage area and shall consist of so many members as may be directed by the Lieutenant-Governor<sup>(2)</sup> from time to time by Proclamation.<sup>(23)</sup>

When a joint-stock company or several persons are the owners of a mine the directors of the company or the owners as the case may be shall from time to time appoint some person to vote on behalf of the company or the owners at elections of members of a drainage board.

All existing boards elected under the provisions of any Act or Ordinance hereby repealed shall be deemed to have been elected under the provisions of this Ordinance.

Power for boards  
to require  
erection of  
drainage works.  
Q. *Ib.* s. 186.

**196.** A drainage board may require any owner of a mine within the drainage area to construct and maintain upon his mine any dam barrier pumping engine or other drainage works which the board consider necessary for preventing the flooding of mines within the drainage area.

If such works are not forthwith constructed by the owner or if the owner of the mine cannot be found the board may by their agents servants or workmen enter upon the mine and construct or cause to be constructed such works.

The board may from time to time by their agents servants or workmen enter upon a mine where any such works have been constructed and may do or cause to be done such things as are necessary for the maintenance or repair of the works.

Contribution of  
cost of drainage  
works.  
Q. *Ib.* s. 187.

**197.** The cost of the construction and maintenance of any drainage works constructed or maintained under the provisions of the last preceding section shall be borne by the owners of the mines within the drainage area which are benefited by the works. And such cost shall be borne by them respectively in proportion to the benefit derived by the several mines from the works.

The contribution payable by each owner shall be assessed and apportioned by the board and any person aggrieved by the board's assessment may within seven days after notice of the proportion payable by him appeal to the warden who shall hear and determine the matter after notice to all other parties liable or alleged to be liable to contribute.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

(23) No proclamation has been published in *Papua Govt. Gaz.*

The amount of every such contribution shall be a charge upon the mine in respect of which such contribution has been assessed and such charge may be enforced by order of the warden for the sale of the mine.

198. The amount payable by any person in respect of such contribution may be recovered by action in the Warden's Court at the suit of the owner of the mine by whom the work in respect of which it is payable was done or if the work was done by the board at the suit of the board.

Recovery of contributions by action.

Cf. Q. 62 Vic. No. 24, s. 188.

199. Where the operations of an efficient machine or appliance which is employed in raising or draining water from a mine are beneficial to another mine or other mines or are rendered more onerous by reason of the influx of water from another mine or other mines the owner of the machine or appliance shall be entitled to receive contribution towards the working expenses of raising or draining water from the first-mentioned mine from the owner of such other mine or mines.

Contribution by owners of mines towards expense of raising water by machinery.

Q. *Ib.* s. 190.

The amount of such contribution shall be in proportion to the benefit conferred upon the last-mentioned mine or mines or the amount of burden imposed by it or them as the case may be and may be recovered by action in the Warden's Court.

200. If the owner of a machine or appliance who has claimed and received such contribution intends to discontinue his raising or draining operations he shall give at least three months' notice to all contributors; and if an owner discontinues his operations without giving such notice he shall be liable to damages for any injury which any contributor may sustain in consequence of the discontinuance and such damages may be recovered by action in the Warden's Court:

Notice of discontinuance by owner of machine.

Q. *Ib.* s. 191.

Provided that the owner of any such machine or appliance shall not be liable for any loss or damage on account of the discontinuance of operations if such discontinuance was caused by accidental damage or injury to machinery or any other cause over which he had no control and if due diligence was exercised in repairing such damage or injury to machinery (if any).

201. When the holder of a mining lease or a claim fails to pay the amount of any contribution which he is lawfully ordered to pay under the provisions of this Ordinance the Lieutenant-Governor<sup>(2)</sup> may declare the lease or claim to be forfeited and the same shall be forfeited accordingly. But the forfeiture shall not operate as a release or discharge of any liability then already incurred under this Ordinance or otherwise.

Enforcement of payment by forfeiture.

Q. *Ib.* s. 192.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

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PART XV.—REGULATION OF MINES.

Division 1.—Provisions Relating to Mines in General.

Appointment of  
inspectors.  
Cf. Q. 62 Vic.  
No. 24, s. 193.

202. The Lieutenant-Governor<sup>(2)</sup> may from time to time appoint persons possessing competent knowledge skill and experience to be inspectors of mines and assign them their duties.

Notice of the appointment of every such inspector shall be published in the *Gazette*.

All persons who at the commencement of this Ordinance may be inspectors of mines shall be and shall be deemed to be inspectors of mines under this Ordinance:

Provided that every inspector appointed after the commencement of this Ordinance shall hold a first-class certificate of competency as hereinafter provided in regard to managers.

Powers of  
inspectors.  
Q. 1b. s. 195.

203. An inspector under this Ordinance shall have power to do any of the following things namely:—

- (a) To make such examination and inquiry as are necessary to ascertain whether the provisions of this Part of this Ordinance relating to matters above ground or below ground are complied with in the case of any mine;
- (b) To enter inspect and examine any mine and every part thereof at all reasonable times by day and night but so as not to impede or obstruct the working of the mine;
- (c) To examine into and make inquiry respecting the state and condition of any mine or any part thereof and the ventilation of the mine and in the case of a colliery the sufficiency of the special rules if any for the time being in force therein and all matters and things connected with or relating to the safety of the persons employed in or about the mine or any mine contiguous thereto;
- (d) To examine into and make inquiry respecting the state and condition of any boiler or other machinery and if advisable to have the same tested in his presence in any manner prescribed by this Ordinance;
- (e) To initiate and conduct prosecutions against persons offending against the provisions of this Part of this Ordinance;
- (f) To appear at all inquiries held respecting mining accidents and if he thinks fit to call and examine and cross-examine witnesses;
- (g) To exercise such other powers as are necessary for carrying this Part of this Ordinance into effect.

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(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

Whenever any mining inspector shall have inspected any mine or machinery he shall enter in a book to be kept on the mine or works for that purpose his opinion derived from such inspection of the actual condition of the mine and machinery at the time of such inspection. And he shall also record what alterations or requirements he thinks necessary.

**204.** Every person who wilfully obstructs an inspector in the execution of his duty under this Ordinance and every owner agent or manager of a mine or machinery who refuses or neglects to furnish to the inspector the means necessary for making an entry inspection examination or inquiry under this Ordinance in relation to such mine or machinery shall be guilty of an offence against this Part of this Ordinance.

Obstruction of inspector.  
Cf. Q. 62 Vic.  
No. 24, s. 196.

**205.** Upon any miner working in any mine making a complaint under this Ordinance to any inspector it shall be the duty of such inspector forthwith to make inquiry into the matter of such complaint and to take such other steps as he may deem necessary to investigate the matter and the name of the informant shall not be divulged by the inspector.

Inquiry by inspector upon complaint by miner.  
Q. *Ib.* s. 197.

**206.** If the workings in any mine or any portion thereof are considered unsafe by the miners working therein they may appoint two competent miners to examine and inspect the workings of such mine by giving notice to the mining manager (who may if he thinks fit accompany them) and all persons in the mine shall afford every facility for such inspection and the persons so appointed shall record the results of such inspection in a book to be kept at the mine for the purpose and the report shall be signed by the persons inspecting.

Inspection by representatives of miners.  
Q. *Ib.* s. 198.

**207.** The Lieutenant-Governor<sup>(2)</sup> may from time to time appoint persons possessing competent knowledge skill and experience to be a board of examiners to examine all candidates who may be desirous of becoming mining managers such board to have power to grant certificates of competency to all candidates who shall satisfy them that they possess the necessary knowledge skill and intelligence to qualify them for the position of mining manager. Such certificates may be of two classes: the first class certifying that the holder is qualified for the position of mining manager and the second class certifying that the holder is qualified for the position of under-manager: Provided that no person shall be debarred from acting as mining manager by reason only of his not having obtained any such certificate as aforesaid.

Appointment of examiners.  
Q. *Ib.* s. 199.

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(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

Certificates of service.

Cf. Q. 62 Vic. No. 24, s. 200.

208. Certificates of service may be given to any persons who shall satisfy the board of examiners that at any time before the commencement of this Ordinance they have performed for a period of not less than three years functions and duties substantially corresponding with those of a mining manager or under-manager of a mine. Such certificates of service shall have the same effect as first-class certificates of competency and shall be held as equivalent thereto.

Appointment of managers.

Q. *Ib.* s. 201.

209. For every mine there shall be a manager who shall be responsible for the control and direction of the mine to be nominated by the owner agent contractor or tributor as the case may be.

Every mining company whether registered or co-operative shall appoint and continue to have a manager except when under total exemption who shall be deemed the mining manager of the company under this Ordinance.

The name and address of every manager for the time being shall be notified in writing by the person or body appointing him to the nearest inspector or warden within fourteen days after his appointment and no person shall be so appointed who has not the management of the mining operations carried on in or at such mine.

No person shall be appointed to act as manager of more than two mines at one and the same time and no person who has been appointed manager of any mine in which twenty men are employed below ground shall whilst he holds such appointment be appointed manager of any other mine nor shall he act as such manager if the total number employed in the two mines exceed thirty-five men.

Paragraph added by No. 18 of 1939, s. 11.

When a mine is of such a kind that it is not practicable for one manager to be responsible for the control and direction of the whole the Lieutenant-Governor<sup>(2)</sup> may require the appointment of more than one manager each of whom shall be responsible for the control and direction of the portion of the mine for which he is appointed.

Penalty for neglect to appoint manager.

Q. *Ib.* s. 202.

210. If any mine is worked for more than seven days without there being a manager for that mine as required by the last preceding section the owner agent contractor or tributor of such mine shall each be liable to a penalty not exceeding Ten pounds and to a further penalty not exceeding Ten pounds for each day during which such mine is so worked.

Temporary absence of manager.

Q. *Ib.* s. 203.

211. If any manager is incapacitated from performing his duties or is about to be absent for more than three days he or the agent shall appoint some fit person to act as deputy manager during

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*



such incapacity or absence and shall notify such appointment to the nearest inspector or warden as provided in the next preceding section but one of this Ordinance.

**212.** The manager of every mine shall enforce the observance of all the provisions of this Part of this Ordinance in and upon the mine under his charge and shall immediately after the occurrence thereof report in writing to the nearest inspector or warden any offence against this Part of this Ordinance which has been committed in or on the mine whether the person committing it was or was not employed in the work of the mine; and in the event of the contravention of or non-compliance with this Part of this Ordinance in or upon any mine by any person the manager of such mine shall be guilty of an offence against this Part of this Ordinance:

Duties and  
responsibility of  
manager.  
Cf. Q. 62 Vic.  
No. 24, s. 204.

Provided that such manager shall not be deemed guilty of such offence if he proves to the satisfaction of the Court that he had taken all reasonable means of enforcing the provisions of this Part of this Ordinance and of preventing such contravention and non-compliance.

But the manager shall supervise all work carried out by contract in the mine and shall be responsible for any offence against this Part of this Ordinance committed by any contractor or his workmen unless he shall prove that he had taken all reasonable means to prevent such offence and had reported it to the warden or inspector immediately after it came to his knowledge.

**213.** Where in or about any mine whether above or below ground loss of life or any personal injury whatever to any person employed in or about the mine occurs by reason of any explosion of gas or of any explosive or of any steam boiler or by reason of any accident whatever the owner or manager shall within twenty-four hours or as soon after as is practicable after the explosion or accident send notice in writing of the explosion or accident and of the loss of life or personal injury occasioned thereby to the warden or inspector and shall specify in the notice the character of the explosion or accident and the number of persons killed or injured and in the case of injured persons a description of the injuries.

Notice of injury  
to be given to  
warden.  
Substituted by  
No. 18 of 1939,  
s. 12.

**214.** The place in which an accident has occurred shall not be interfered with except with a view of saving life or preventing further injury until it has been examined by the inspector or in his absence by two competent persons appointed by a warden or a justice of the peace.

Interference  
with place of  
accident.  
Q. *Ib.* s. 206.

**215.** Any employer mining manager or other person who shall prevent any persons so appointed by the warden or a justice of the

Penalty for  
obstructing  
examination.  
Q. *Ib.* s. 208.

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peace from making such investigation or shall obstruct insult or annoy them in the prosecution thereof shall be guilty of an offence against this Part of this Ordinance.

Manner of holding inquiries.  
Cf. Q. 62 Vic.  
No. 24, s. 209.

**216.** All inquiries into accidents attended with serious injury to any person shall be held before the warden and whenever it is reasonably practicable two experienced miners selected by the warden who shall state what in their opinion was the cause of such accident and such opinion shall be forwarded by the warden to the Crown Law Officer.

Burden of proof on defendant.  
Q. Ib. s. 210.

**217.** In any proceeding under the provisions of this Ordinance against a mining manager or person in charge of the mining operations in or upon a mine the burden shall lie on the defendant of proving he is not such manager or person.

Accident evidence of neglect.  
Q. Ib. s. 211.

**218.** The occurrence of any accident in or on a mine shall be prima facie evidence of neglect on the part of the owner and the manager.

Employment of boys and females.  
Q. Ib. s. 212.

**219.** No boy under the age of fourteen years and no female shall be employed below ground in any mine.

No boy under the age of eighteen years shall be allowed to charge or fire explosives.

A printed copy of this section shall be posted in the office if any and on a building or board in some conspicuous place in connection with every mine.

Employment of person in charge of machinery.  
Q. Ib. s. 213.

**220.** No person in charge of steam or other machinery used in connection with any mine or for the treatment of the products of any mine shall be so employed for more than eight consecutive hours at any time or for more than eight hours in any twenty-four hours such period of eight hours to be exclusive of any time occupied in raising steam and in drawing fires and exhausting steam in connection with the machinery in charge of such person and exclusive of meal-hours and of any time in which such person is employed in case of breakage or other emergency.

Every person in charge of machinery who is guilty of negligence by which any property is destroyed or damaged shall be guilty of an offence against this Part of this Ordinance.

The mining inspector shall after every inspection record in a book to be kept on the mine for that purpose any defect which he observes in the state and condition of the mine and machinery and the remedy he suggests: Provided nothing contained in or absent from such written report of the inspector shall be held to limit or affect the responsibility imposed upon the owner or manager by this Ordinance.

221. The following general rules shall wherever reasonably practicable be observed in every mine:—

General rules.

1. An adequate amount of ventilation shall be constantly produced in the mine by the passing through the workings thereof of a current of not less than one hundred cubic feet of fresh air per minute for each man boy or horse employed in the underground workings of the mine so that the shafts, winzes, levels, underground stables and working places of the mine and the travelling roads to and from such working places shall be in a fit state for working and passing therein.

Ventilation.

2. In every case where quartz or any other substance is crushed in a dry state there shall be used in and about the battery or place where such crushing is done such appliances as in the opinion of the inspector will effectually keep the air fresh and prevent the accumulation of dust.

Dry crushing.

3. Gunpowder or other explosive or inflammable substance shall only be used in a mine as hereunder provided that is to say:—

Gunpowder and blasting.

(a) It shall not be stored on the surface of or adjacent to the mine unless in such place as is in writing approved by the warden or inspector nor in any quantity exceeding five hundred-weight;

(b) It shall not be stored in a level in any mine in any quantity exceeding fifty pounds of gunpowder or dynamite or other nitro-glycerine compound and if stored in the mine it shall be kept in a drive or chamber separated by a door fixed across such drive at least fifteen feet from any travelling road;

(c) It shall not be taken for use into the workings of the mine except in a securely covered case or canister containing not more than eight pounds of gunpowder or five pounds of dynamite or other nitro-glycerine compound;

(d) A workman shall not have in use at one time in any place more than one of such cases or canisters;

(e) Detonators for blasting shall be kept on the surface of the ground in a covered box placed in a separate magazine.

Not more than one hundred detonators shall be kept underground in any level at one time

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and these shall be kept in a covered box in a separate drive or chamber and only taken out in such quantities as required for immediate use. Detonators shall not on any pretence whatsoever be placed near any travelling road pass or working face;

- (f) 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;
- (g) In a mine no iron or steel pricker shall be used in blasting and no iron or steel tool shall be used in tamping or ramming;
- (h) A charge which has missed fire may be drawn by a copper pricker but in no case shall any iron or steel tool be used for the purpose of drawing or drilling out such charge;
- (i) A charge which has missed fire shall not be approached until one hour when blasting powder is used and half an hour when nitro-glycerine compounds are used has elapsed from the time of lighting the fuse. This rule shall not apply to charges fired by an electric current.

Man-holes to be provided in self-acting or engine planes.

4. Every underground plane whether self-acting or worked by an engine whim or whip shall for the use of persons travelling thereon be provided (if exceeding forty 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 man-holes for places of refuge.

Space in horse roads.

5. Every road on which the produce of the mine in transit exceeds ten tons per hour over any part thereof and on which the load is drawn by a horse or other animal shall for the use of persons travelling thereon be provided at intervals of not more than one hundred yards with sufficient spaces for places of refuge each of sufficient length and of at least three feet in width between the wagons running on the tramroad and the side of the road.

Man-holes and spaces to be kept clear.

6. Every man-hole and space for a place of refuge shall be constantly kept clear and no person shall so place anything in such man-hole or space as to prevent access thereto.

7. The top and all entrances between the top and bottom of every working or pumping shaft shall be properly and securely fenced or covered but this provision shall not be taken to forbid the temporary removal of a fence for the purpose of repairs or other operations if proper precautions are used; and every abandoned or disused shaft shall be fenced or securely covered in by the lessee or registered owner thereof and its position indicated on the surface by a post with a notice thereon affixed. Fencing of entrances to shafts.
8. Where the natural strata are not safe every working or pumping shaft shall be securely cased lined or otherwise made secure. Securing of shafts.
9. 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. Drive and excavation to be protected.
10. Where one portion of a vertical 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 securely separated from the last-mentioned portion. Division of shaft.  
In the case of underlie shafts no material shall be raised at the same time as any person is travelling in the shaft unless the travelling portion of the shaft is fenced off from that used for raising material.
11. Every working shaft in which a cage is used and every division of such shaft in which persons are raised shall if exceeding fifty yards in depth be provided with guides and some proper means of communicating distinct and definite signals— Signalling.  
(a) from the bottom of the shaft and from every entrance for the time being in work between the top and the bottom to the top and thence to the engine-room;  
(b) 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  
(c) in every shaft which is divided into two compartments there shall be a knocker-line communicating with the signal knocker in each compartment.
12. Subject to the provisions of this Ordinance the following code of signals shall be used in all mines:— Code of signals.

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One knock to hoist ;  
One knock to stop when cage in motion ;  
Two knocks to lower ;  
Three knocks to speak ;  
Four knocks men getting on ;  
Other knocks as arranged at mine.

And the prescribed code shall be posted in a clear and legible form on framed boards—one of which shall be placed at the chamber at every working level in the shaft one on the brace and one in the engine-room :

Provided that the code hereby prescribed shall be subject to such alterations and amendments as may from time to time be ordered by the Director on the report of the inspector and any neglect to carry out such indicated alterations or amendments shall be an offence against this Part of this Ordinance.

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.

Every person employed in a mine shall make himself acquainted with the system of signals used in such mine.

Clear view.

13. A clear view shall be kept for the engine-driver between his station and the shaft at the surface brace.

Proper ladder or footway.

14. A proper ladder or footway shall be provided in every working shaft where no machinery is used for lowering or raising persons employed therein.

Slipping of rope on drum.

15. There shall be flanges or horns on the drum of every machine used for lowering or raising persons and also if the drum is conical other appliances sufficient to prevent the rope from slipping.

Brake.

16. An adequate brake independent of that on the fly-wheel of the engine shall be fixed to every winding drum worked by steam water or mechanical power and it shall be so placed that the engine-driver can apply it without leaving the driving lever of the engine. There shall also be a sprag-block to hold the drum when out of gear and an indicator showing to the engine-driver the position of the cage in the shaft.

Person in charge of machinery.

17. No person who does not hold a certificate of competency as an engine-driver shall be employed as driver of any engine used in connection with the working of a mine.

No person under the age of eighteen years shall be placed in charge of or have the control of any steam

engine used in connection with the working of a mine. No person in charge of the steam machinery working in a mine shall under any pretext whatever unless relieved by a competent person absent himself or cease to have continual supervision during the time such machinery is so used.

18. When the only means of egress from a mine is a machine worked by steam water or mechanical power such machine shall be always kept ready for use whilst any person is below in the mine and the engine-driver shall remain in attendance at his engine so long as any person is below ground in the mine. Means of egress to be kept ready for use.
19. In raising or lowering men the rate of speed shall not exceed two hundred feet per minute when the cage or bucket is within one hundred feet of the surface nor five hundred feet per minute in any other part of the shaft. Speed of raising or lowering.
20. No truck iron timber tools rails sprags or other material except when repairing the shaft shall be placed in the same cage in which men are being lowered or raised from their work. Materials and men not to be raised or lowered at same time.
21. All machinery whether above or below ground shall be kept in good order and condition. Condition of machinery.
22. Every brace or pit-bank shall be properly covered to protect the workmen from the inclemency of the weather. Protection from weather.
23. No person under the age of eighteen years shall be employed as lander or braceman on any mine and the brace and all elevated tramways leading therefrom shall be securely fenced. Brace and tramways.
24. Every fly-wheel and all exposed or dangerous parts of the machinery used in or about the mine and all ashheaps shall be kept securely fenced. Fencing machinery and ashheaps.
25. Every steam boiler or other vessel connected with any mine or machinery in which pressure is used 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 with a proper safety valve. Once in every twelve months every such boiler or vessel shall be subjected to hydraulic test and the date and full description of every such test shall be entered in a book kept by the mining manager or other person in charge of the mine or machinery and the entries in such book shall on demand be open to the perusal of an inspector under this Ordinance. Gauges to boilers and safety valve.

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Seven days previous notice in writing shall be given by the owner to the nearest warden or inspector of the day and hour any boiler or vessel is to be tested under this Ordinance.

The safety valve shall be so adjusted that when the machine is working the pressure in any boiler or vessel shall not exceed two-thirds of that shown by the last preceding test to be a safe pressure for that boiler or vessel.

Wilful damage.

26. No person shall wilfully damage or without proper authority use remove or render useless any fencing covering 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 a mine.

Boring rods to be used.

27. In every working in a mine approaching a place likely to contain a dangerous accumulation of water boring rods shall be used for the purpose of perforating the ground in advance of such working and no drive gallery or other excavation shall be made within a dangerous distance of such accumulation of water.

Rule 28 substituted by No. 18 of 1939, s. 13.

28. The manager of every mine or such competent person or persons as he may appoint for the purpose shall once in every twenty-four hours examine the state of all safety appliances or gear connected with the cages of shafts of the mine and shall once in every 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 on the mine for that purpose his opinion as to their condition and safety and as to any repairs or alterations required to insure greater safety to the persons employed in the working of such mine and such book shall on demand be open to perusal by any inspector and every such appliance or gear if condemned by any inspector shall be forthwith removed or made fit.

Shafts with vertical or overhanging ladders to have platforms.

29. After the commencement of this Ordinance every ladder constructed and fixed in a shaft for the ascent and descent of persons working in the mine shall be inclined at the most convenient angle which the space allows and such ladder shall have substantial platforms at intervals of not more than fifteen yards and spaces for foothold of not less than six inches.

Cover overhead.

30. A sufficient cover overhead shall be used when lowering or raising persons in every working shaft except where



it is worked by a whim or whip or windlass or where a person is employed about the pump or some work in the shaft.

Such cover shall be of iron not less than three-eighths of an inch in thickness or of steel one-quarter of an inch thick shall be securely hung on hinges and fitted with sloping sides so as to be easily lifted by persons within the cage and shall not be less than six feet six inches above the floor of the cage.

31. Every cage shall be fitted with a safety-hook and proper appliances shall be fixed on the poppet-heads to prevent the cage from coming into contact with them and no safety-hook shall be used that will not suspend the cage at the poppet-heads when detached from the rope. Appliances for cage.

Wherever cages are used there shall not be less than a distance of fifteen feet between the floor of the brace and the pulley-wheel. Where buckets or any other appliances are used the inspector shall have power to determine the distance to be allowed between the floor of the brace and the pulley-wheel.

32. The mouth of every shaft shall be protected by automatic self-closing doors fixed to the skids or guides below the poppet-heads so as to prevent the cage or anything else from falling down the shaft. Self-closing doors.

33. Suitable lights protected from draughts of air shall be provided in the main drives of any mine and the upper entrance to every winze rise or jump-up while open or unfenced shall be illuminated by a fixed light. Lights.

34. Ladders shall be fixed in each winze rise or jump-up so as to give access from the lower to the higher levels in a mine. But it shall be sufficient to have one such means of access from each level to the one above it. Ladders.

35. Safety cages shall be provided when required by the inspector and shall be tested before they are used. Safety cages.

36. If more than four persons are employed below ground in any mine in one shift sufficient accommodation shall be provided above ground near the principal entrance of the mine and not in the engine-room 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 dress upon a boiler. Accommodation.

37. Before any rope or chain is used in the shaft of a mine it shall be tested and proved by the inspector if avail- Testing ropes and chains.

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able but if not by the manager and two employees who shall record the result of such test in the book provided for in Rule Twenty-eight of this section to be equal to carrying not less than one and a-half times the weight of the ordinary load consisting of cage loaded truck and weight of rope from bottom of shaft to pulley-wheel and the working load shall not exceed one-eighth of the breaking strain of the rope as shown by manufacturer's certificate.

Every rope and chain used in lowering and raising men in a shaft shall be tested by the inspector at intervals of not less than six months.

Length of shoes  
or cones.

38. The length of the shoes or cones on a rope shall not be less than one foot on a rope working in a vertical shaft or seven inches where the shaft is on the underlie or incline.

Temporary  
removal of fence  
from shaft.

39. When a fence has been temporarily removed from an entrance to a shaft to admit of the carrying on of ordinary mining operations a strong horizontal bar shall be securely fixed across the entrance not less than four nor more than five feet from the floor of the brace chamber or drive as the case may be.

Ambulance.

40. Where ten or more persons are employed in or on a mine ambulances or stretchers with splints and bandages shall be kept at the mine ready for immediate use in case of accident: Provided that there is no ambulance corps established within a radius of two miles from the post office.

Offences.

Every person who contravenes or does not comply with any of the general rules in this section shall be guilty of an offence against this Part of this Ordinance; and in the event of any contravention of or non-compliance with any of the said general rules by any person whomsoever being proved the mining manager shall also be deemed guilty of an offence against this Part of this Ordinance unless he proves that he had taken all reasonable means by publishing and to the best of his power enforcing the said rules to prevent such contravention or non-compliance.

Suspension and  
variation of  
rules.

Pap. No. 5 of  
1899, s. 2.

222. If in the opinion of the inspector the observance of the foregoing general rules is not reasonably practicable in any particular mine the Lieutenant-Governor<sup>(2)</sup> may from time to time suspend alter or vary such rules in such manner as he deems necessary in respect to such mine. And any general rules so altered or varied shall be deemed to be the general rules of the mine to which they relate.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

*Mining Ordinance, 1937-1939.*

**223.** A printed copy of the general rules as aforesaid and of this section shall be posted in the office if any and on a building or board in some conspicuous place in connection with every mine. And every person who pulls down injures or defaces a notice hung up or affixed as required by this Ordinance shall for every such offence be liable to a penalty not exceeding Forty shillings.

Posting of rules on conspicuous places, penalty for defacing.  
Cf. Q. 62 Vic. No. 24, s. 216.

**224.** Every person employed in or about a mine shall before commencing and whilst at work use ordinary and reasonable precaution to ascertain that the tubs chains tackle windlass ropes or other appliances he uses are not unsafe; he shall cease to use anything unsafe; and every such person who witnesses in or about the mine anything likely to produce danger of any kind shall forthwith report the same to the mining manager and on leaving work he shall report to the man relieving him the state of that part of the works where he has been employed and in default he shall be guilty of an offence against this Part of this Ordinance.

Duty of employees not to use unsafe appliances.  
Q. *Ib.* s. 217.

Report of danger.

**225.** If any person employed in or about a mine suffers injury in person or is killed owing to the negligence of the owner contractor or tributor of such mine or his agent or agents or owing to the non-observance in such mine of any of the provisions of this Part of this Ordinance (such non-observance not being solely due to the negligence of the person so injured or killed) the person injured or his personal representatives or the personal representatives of the person so killed may recover from the owner contractor or tributor of such mine compensation by way of damages as for a tort committed by such owner contractor or tributor:

Employers' liability, compensation.  
Q. *Ib.* s. 218.

Provided that in estimating the damages due regard shall be had to the extent (if any) to which the person injured or killed contributed by any negligence on his own part to the injury or death.

**226.** Every action for recovery of compensation under this Part of this Ordinance shall be brought in a Court of Petty Sessions unless the defendant is a person or corporation not amenable to the jurisdiction of any such Court in the Territory.

Recovery of compensation.

**227.** Any person who contravenes or does not comply with any of the provisions of this Part of this Ordinance or who by the negligence of himself or his agent causes any person to be injured or killed shall be deemed guilty of an offence against this Part of this Ordinance.

Offences.

And any person who is guilty of an offence against this Part of this Ordinance for which no specific penalty is herein provided shall be liable to a penalty not exceeding if he is the owner contractor or tributor mining manager or person in charge of or giving orders or directions relating to the carrying on of any mining

Penalty.  
Q. *Ib.* s. 220.

operations in a mine Fifty pounds and if he is any other person Ten pounds for each offence to be recovered in a summary manner. The whole or any part of such penalty may be awarded to any person injured or to the personal representative of any person killed in consequence of such offence and such award shall be in addition to the right of action such person or personal representative has under this Ordinance or otherwise.

Protection of  
abandoned  
shafts.  
Cf. Q. 62 Vic.  
No. 24, s. 221.

228. Any person who shall after any shaft has become disused for mining purposes wilfully damage or render it useless by the removal of any fencing casing lining ladder platform or other appliance provided in such shaft without the consent of the Director warden or inspector shall be guilty of an offence against the provisions of this section and be liable to a penalty not exceeding Two hundred pounds or in default of payment to imprisonment for a term not exceeding six months. This section shall apply to all mines but shall not apply to any owner of freehold land where in any such shaft is situated except freehold land alienated under Part VIII of this Ordinance or the corresponding Part of any Act or other Ordinances hereby repealed.

Examination of  
engine-drivers.  
Q. Ib. s. 222.

229. The Lieutenant-Governor<sup>(2)</sup> may from time to time appoint for any goldfield or mineral field a board of two or more competent persons to examine candidates who may be desirous to qualify themselves as engine-drivers; and such board when satisfied of the skill and competence of any candidate by practical as well as theoretical tests and on the production by the candidates of a certificate from a duly qualified medical practitioner certifying that he is not subject to any physical infirmity such as deafness defective vision or epilepsy which would render him unfit may grant to him a certificate of fitness and competency. Engine-drivers' certificates shall be of two classes—namely ordinary and first-class.

No uncertificated  
engine-driver to  
be employed.  
Q. Ib. s. 223.

230.—(1.) No person who does not hold a first-class certificate of competency or a certificate of service shall be allowed to drive upon any mine a direct motion engine or any engine of more than twenty-five nominal horse-power and any person driving any such engine without holding a first-class certificate and also any person employing him shall be guilty of an offence against this Part of this Ordinance.

(2.) And subject to the provisions of this Ordinance no person who does not hold a certificate of competency or service shall be allowed to drive any engine in or upon a mine and any uncertificated person so driving an engine and also any person so employing him shall be guilty of an offence against this Part of this Ordinance.

(2) See Section 19(2) of the Ordinance Interpretation Ordinance, 1911-1940.

(3.) After the commencement of this Ordinance engine-drivers must obtain a first-class certificate before driving a winding engine. This shall not apply to engine-drivers now engaged or who have been previously engaged driving winding engines.

**231.** Any person holding a certificate of competency or of service as an engine-driver may if charged with any offence or misconduct be called upon by a board of examiners to show cause why his certificate shall not be cancelled and if he shall not appear or if the said board shall find that he has been guilty of any negligence or misconduct whereby life or property was or might have been endangered the board shall have power to cancel his certificate or permit or to suspend it for such period as it may think fit.

Certificate may be cancelled or suspended.  
Cf. Q. 62 Vic. No. 24, s. 224.

**232.—(1.)** The owner agent or manager of every mine where six or more men are ordinarily employed underground shall keep at the office at the mine an accurate plan on a scale of not less than two chains to one inch of the workings of such mine made by a duly qualified mining engineer or manager or by a mining surveyor authorized as such by the Lieutenant-Governor<sup>(2)</sup> showing the workings up to within three months past for collieries and other mines except gold mines and up to six months in cases of gold mines and a register showing the respective progress of the workings the condition and nature of the strata together with memoranda of such circumstances as may be useful to note as being of interest to the work of the mine and the safety of the workmen and shall produce such plan at the mine to any inspector or to any other person duly authorized by the Director and shall if requested by any such inspector or other person mark on such plan the progress of the workings of the mine up to the time of such production and shall allow the inspector to examine and take a copy or tracing thereof and it shall be incumbent on such inspector to make such tracing.

Plans to be furnished.  
Q. 17. s. 225.

(2.) Every such copy or tracing shall be deposited with such person at such place as the Director may appoint and no copy or tracing thereof shall be furnished nor information in relation thereto given nor shall such plans or tracings be open to inspection unless with the permission of the Director. If any officer shall without the consent of the Director furnish any copy tracing or information or shall allow any person to inspect any such plan or tracing he shall be guilty of an offence against this Ordinance.

(3.) If the owner agent or manager of any mine fails to keep such a plan as is prescribed by this section or wilfully refuses to produce such plan or to allow it to be examined or copied or conceals any part of the workings of his mine or produces an imperfect or inaccurate plan he shall be guilty of an offence against this Ordinance.

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(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

Abandoned mines, plans to be deposited with Director.

Cf. Q. 62 Vic. No. 24, s. 226.

233. Where any mine of which a plan should be kept under the last preceding section is abandoned the owner at the time of abandonment shall within three months thereafter forward to the Director an accurate plan on a scale of not less than two chains to one inch showing the boundaries of the workings of such mine up to the time of abandonment.

Every person who fails to comply with this section shall be guilty of an offence against this Ordinance.

*Division 2.—Provisions Relating to Collieries only.*

Inspection by miners.

Q. *Ib.* s. 227.

234. The persons employed in a mine may at their own cost appoint two competent miners to inspect the mine and the persons so appointed shall be allowed once at least in every month to go to every part thereof and to inspect the shafts levels planes working places return air-ways ventilating apparatus old workings and machinery and the manager (who may if he thinks fit accompany them) and all persons in the mine shall afford every facility for such inspection and the persons so appointed shall record the result of such inspection in a book kept at the mine for the purpose and the report shall be signed by the persons inspecting.

Noxious gases.

Q. *Ib.* s. 228.

235. If at any time it is found by the person in charge of a colliery or any part thereof or by the inspector that by reason of noxious gases or of any cause whatever the colliery or the said part is dangerous every workman shall be withdrawn therefrom and the mining manager or inspector shall inspect the same (and if the danger arises from inflammable gas shall make such inspection with a locked safety-lamp); and in every case shall make a true report of the condition of such colliery or part thereof and no workman shall except in so far as is necessary for inquiry into the cause of danger or for the removal thereof or for exploration be readmitted into the colliery or such part thereof as was so found dangerous until the same is reported by the mining manager or inspector to be safe. Every report shall be recorded in a book kept at the colliery for the purpose and shall be signed by the person reporting.

Safety lamps.

Q. *Ib.* s. 229.

236. Whenever a safety-lamp is required to be used it shall be first examined and securely locked by some person who is duly authorized for that purpose by the manager and who shall keep the key thereof. And no one except the person so authorized shall have in his possession or shall use any key or other contrivance for the purpose of opening any safety-lamp.

Two openings to be furnished in mine.

Q. *Ib.* s. 230.

237. Within one year and six months after commencing the working of any bords stalls or long wall workings in any mine there shall be made and completed at least two separate openings to the day or surface from such mine not less than fifty feet apart inter-

communicating with each other by means of either of which openings all persons employed in the mine may at all times whatsoever pass in or out.

And the owner of any mine wherein two such openings shall not be completed as aforesaid shall be liable to a penalty not exceeding Fifty pounds for every month during which the same shall remain incomplete whilst work is carried on in the mine.

But this section shall not apply so long as not more than ten persons are employed below ground at any one time in the whole of the different seams in connection with each outlet in such mine or working.

**238.** No person shall be precluded by any agreement from doing such acts as may be necessary for providing a second shaft or outlet to a mine where the same is required by this Ordinance or be liable under any contract to any penalty or forfeiture for doing such acts as may be necessary in order to comply with the provisions of this Ordinance with respect to shafts or outlets.

No liability to be incurred by making second shaft.

Cf. Q. 62 Vic. No. 24, s. 231.

**239.** A contractor for mineral<sup>(23A)</sup> or person employed by such a contractor is not eligible for the post of manager or under-manager under this Part of this Ordinance nor will the letting of any colliery to a contractor lessen in any way the responsibility or liability of the owner agent or manager of any colliery.

Disqualification for post of manager or under-manager. Q. *Ib.* s. 232.

**240.** Within three months after work is commenced or resumed at any colliery the mining manager thereof shall frame such special rules for the conduct and guidance of persons employed in or about the colliery as appear under the particular state and circumstances best calculated to ensure their health and safety and such mining manager shall cause a copy of such special rules to be hung up in some conspicuous place in the colliery and call the attention of the miners working therein to them. A copy of such rules shall also at once be transmitted by the mining manager to the Director and if they are not objected to within one month after the receipt thereof by the Director they shall be the special rules of the colliery and shall be published in the *Gazette*.

Special rules. Q. *Ib.* s. 233.

**241.** If the Director does not approve of any proposed special rules he shall within thirty days after the receipt of them propose and transmit to the mining manager by whom they were framed and to some person on behalf of the miners employed in the colliery to which they refer any alteration in or addition to the same or the substitution of any other rules therefor.

Objections to special rule. Q. *Ib.* s. 234.

If the mining manager objects to any such alteration or addition or substituted rules he may within fourteen days or such further

(23A) The word "mineral" appeared in the original Ordinance. *Semble*, "minerals" was intended.

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time as may be reasonably required after receipt of the same give notice thereof to the Director. If the miners object to the special rules they shall give notice of such objection to the mining manager and the Director within one month after such rules are hung up as aforesaid or if they object to the alterations proposed by the Director they shall give him notice of such objection within fourteen days or such further time as may be reasonably required after the receipt thereof and thereupon the parties interested may concur in the appointment of a single arbitrator or failing such concurrence each party on the request of the other shall appoint an arbitrator who is not interested or employed in such colliery (and if there are only two arbitrators they shall before entering upon the reference appoint by writing under their hand an umpire) to determine the matter in dispute and to decide what special rules shall be established in the colliery.

And in the event of any dispute arising between the parties aforesaid as to such rules or between the parties and any inspector as to the administration of the rules or upon any matter within the scope of this Part of this Ordinance (not being an offence against this Part of this Ordinance) and not otherwise provided for the matter in dispute may be referred to arbitration in manner aforesaid. And the determination of such arbitrators or arbitrators and umpire or of the majority thereof (if there be more than two) shall be final and the award may be made a rule of the Central Court.<sup>(2)</sup>

Promulgation of special rules.  
Cf. Q. 62 Vic. No. 24, s. 235.

242. For the purpose of making known the special rules to all persons employed in or about a colliery the mining manager thereof shall cause a printed copy to be supplied to every person before he is employed in or about such colliery.

Amendments of special rules.  
Q. *Ib.* s. 236.

243. The provisions hereinbefore contained in respect of the adoption and promulgation of special rules shall apply to and be followed in respect of any proposed amendments of such special rules.

Cost of arbitration.  
Q. *Ib.* s. 237.

244. The costs of every arbitration under this Part of this Ordinance shall be in the discretion of the arbitrators.

Evidence—special rules.  
Q. *Ib.* s. 238.

245. A copy of the special rules purporting to be certified under the hand of the Director shall upon production without further proof be evidence of such special rules and of having been duly made under this Ordinance.

Payment by weight to persons employed in colliery.  
Q. *Ib.* s. 239.

246. Where the amount of wages payable to any persons employed in a colliery depends on the amount of mineral gotten by them such persons shall be paid according to the weight of the

(3) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*



mineral gotten by them and the owner of every colliery shall at his own cost provide and maintain all necessary apparatus for truly weighing such mineral at a place as near to the pit or mine mouth as is reasonably practicable and shall be liable to a penalty of Ten pounds for every week during which such apparatus is not so provided and maintained:

Provided that nothing herein contained shall preclude the owner or mining manager of the colliery from agreeing with the persons employed therein that deductions shall be made in respect of the stones or materials other than mineral contracted to be gotten which are sent out of the colliery with such mineral or in respect of the tubs baskets or hutches being improperly filled by the getter of the mineral or his drawer or by the person immediately employed by him; such deductions being determined by the banksman or weigher and check-weigher (if there be one) or in case of difference by a third party to be mutually agreed on by the manager on the one hand and the persons employed in the colliery on the other.

Where it is proved to the satisfaction of the Director that by reason of exigencies existing in regard to a colliery to which the foregoing provision applies it is expedient that the persons therein employed should not be paid by the weight of the mineral gotten by them or that the beginning of payment by weight should be postponed the Director may if he thinks fit by order exempt such colliery from the provisions of this section either with or without conditions or postpone in such colliery the beginning of such payment by weight.

**247.** The persons employed in a colliery to which this Ordinance applies and paid according to the weight of the mineral gotten by them may if two-thirds of their number shall so agree at their own cost station a person (in this Ordinance referred to as a "check-weigher") at the place appointed for the weighing of such mineral in order to take an account of the weight thereof and if reasonable facilities are not afforded him for taking such account the mining manager of the colliery shall be guilty of an offence against this Part of this Ordinance. And all the persons so employed in such colliery shall contribute equally to the wages of such check-weigher; and the amount contributable by each such person may be recovered by such check-weigher in the Warden's Court or in any other Court of competent jurisdiction.

Appointment of  
check-weigher by  
employees.  
Cf. Q. 62 Vic.  
No. 24, s. 240.

The check-weigher shall not be authorized in any way to impede or interrupt the working of the colliery or to interfere with the weighing but such shall be authorized only to take such account as aforesaid and his absence shall not be a reason for interrupting or delaying such weighing.

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If a check-weigher impedes or interrupts the working of the colliery or interferes with the weighing or otherwise misconducts himself the mining manager may complain to the nearest Court of Petty Sessions which if it thinks fit may call upon the check-weigher to show cause against his removal.

The Court shall hear the parties and if it thinks that sufficient ground is shown to justify the removal of the check-weigher make a summary order for his removal and he shall thereupon be removed but without prejudice to the stationing of another check-weigher in his place. The Court may in every case make such order as to the cost of the proceedings as it thinks just.

Weights in  
collieries.  
Cf. Q. 62 Vic.  
No. 24, s. 241.

248. The provisions of the *Weights and Measures Ordinance, 1913*, shall apply to all weights balances scales steelyards and weighing-machines used at any colliery for determining the wages payable to any person employed in the colliery according to the weight of the mineral gotten by him in like manner as it applies to weights balances scales steelyards and weighing-machines used for trade.

An inspector of weights and measures appointed under the said Ordinance shall once at least in every six months inspect and examine in manner directed by the said Ordinance the weights balances scales steelyards and weighing-machines used or in the possession of any person for use as aforesaid at any colliery within his district; and shall also make such inspection and examination at any other time in any case where he has reasonable cause to believe that there is in use at the colliery any false or unjust weight balance scale steelyard or weighing-machine.

The inspector shall also inspect and examine measures and gauges in use at the collieries within his district; but nothing in this section shall prevent or interfere with the use of the measures or gauges ordinarily used at the colliery.

An inspector may for the purposes of this section exercise at or in any colliery with respect to all weights measures scales balances steelyards and weighing-machines used or in the possession of any person for use at or in that colliery all such powers as he possesses under the said Ordinance with respect to any such weights measures scales balances steelyards and weighing-machines as therein mentioned and all the provisions of that Ordinance including the liability to penalties shall apply to such inspection.

The inspector of weights and measures shall not in fulfilling the duties required of him under this section impede or obstruct the working of the colliery.

249. The following general rules shall be observed so far is<sup>(23B)</sup> reasonably practicable in every colliery:—

General rules applicable in collieries.  
Cf. Q. 62 Vic. No. 24, s. 242.  
Ventilation.

*Rule 1.*—An adequate amount of ventilation shall be constantly produced in every colliery to dilute and render harmless noxious gases to such an extent that the working-place of the shafts levels stables and workings of the colliery and the travelling roads to and from those working-places shall be in a fit state for working and passing therein. The ventilation so produced shall be the supply of pure air in quantity not less than one hundred cubic feet per minute for each man boy and horse employed in the colliery which air (in that proportion but with as much more as the inspector shall direct) shall sweep along the airways and be forced as far as the face of and into each and every working-place where man boy or horse is engaged or passing main return airways only excepted.

Every colliery except such as are worked on the long-wall system shall be divided into districts or splits of not more than seventy men in each; and each district shall be supplied with a separate current of fresh air. The intake air shall travel free from all stagnant water stables and old workings. In the case of collieries required by this Ordinance to be under the control of a certificated manager the quantity of air in the respective splits or currents shall at least once in every month be measured and entered in a book to be kept for the purpose at the mine.

*Rule 2.*—Where a mechanical contrivance for ventilation is introduced into any colliery after the commencement of this Ordinance it shall be in such position and placed under such conditions as will tend to insure its being uninjured by an explosion.

Ventilation by machinery.

*Rule 3.*—A station or stations shall be appointed at the entrance to the colliery or to different parts of the colliery as the case may require and the following provisions shall have effect:—

Stations and inspection of condition as to ventilation, etc.

(1.) As to inspection before commencing work—

A competent person or competent persons appointed by the owner agent or mining manager of the colliery for the purpose not being contractors for getting minerals in the colliery shall within such time immediately before the commencement of each shift as shall be fixed by special rules made under this Ordinance inspect every part of the colliery situate beyond the station or each of the stations and in which workmen are to work or

(23B) The words "so far is" appeared in the original Ordinance. *Semble*, "so far as is" was intended.

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pass during that shift and shall ascertain the condition thereof so far as the presence of gas ventilation roof and sides and general safety are concerned.

No workman shall pass beyond any such station until the part of the colliery beyond that station has been so examined and stated by such competent person to be safe.

A report specifying where noxious or inflammable gas if any was found present the condition of the ventilation and what defects if any in roofs or sides and what other source of danger if any were or was observed shall be recorded without delay in a book to be kept at the colliery for the purpose and accessible to the workmen and such report shall be signed by and so far as the same does not consist of printed matter shall be in the handwriting of the person who made the inspection.

For the purpose of the foregoing provisions of this rule two or more shifts succeeding one another without any interval are to be deemed to be one shift.

(2.) As to inspection during shifts—

A similar inspection shall be made in the course of each shift of all parts of the colliery in which workmen are to work or pass during that shift but it shall not be necessary to record a report of the same in a book: Provided that in the case of a colliery worked continuously throughout the twenty-four hours by a succession of shifts the report of one of such inspections shall be recorded in manner above required.

Securing of roofs and sides.

*Rule 4.*—The roof and sides of every travelling road and working-place shall be made secure and a person shall not unless appointed for the purpose of exploring or repairing travel or work in any such travelling road or working-place which is not made so secure.

Timbering.

*Rule 5.*—Where the timbering of the working-places is done by the workmen employed therein suitable timber shall be provided at the working-place gate-end pass-by siding or other similar place in the colliery convenient to the workmen.

Option of using downcast shaft.

*Rule 6.*—Where there is a downcast and furnace shaft to the same seam and both such shaft<sup>(24)</sup> are provided with apparatus in use for raising and lowering persons every person employed in the colliery shall on giving reasonable notice have the option of using the downcast shaft.

Penalties for offences against this Part of Ordinance.

Cf. Q. 62 Vic. No. 24, s. 243.

**250.** If through the default of the mining manager of a colliery special rules are not established for the same or the general or

(24) The word "shaft" appeared in the original Ordinance. *Semle*, "shafts" was intended.

special rules are not promulgated as hereinbefore provided or if any of such rules are neglected or wilfully violated by the mining manager of such colliery he shall be liable to a penalty not exceeding Twenty pounds and to a further penalty of One pound for every day during which the offence continued after notice thereof in writing is giving<sup>(24A)</sup> by the Director or inspector; and in default of payment of any such penalty to be imprisoned for any period not exceeding one month. And any other person employed in or about a colliery who neglects or wilfully violates any of the special rules established for such colliery shall for every such offence be liable to a penalty not exceeding Five pounds or in default of payment to be imprisoned for any period not exceeding one month.

251. Upon the affidavit of any person taken before a justice of the peace or commissioner of the Central Court<sup>(2)</sup> for taking affidavits claiming to be legally or equitably interested in a colliery or in any land adjoining or near to another colliery that the owner of such last-mentioned colliery is or is by the person making such affidavit believed to be encroaching upon the first-mentioned colliery or land the Director may by writing under his hand authorize the inspector together with a mining surveyor or experienced miner who is not ordinarily employed by any of the persons interested in the property alleged to be encroached upon to enter upon the last-mentioned colliery or land for the purpose of ascertaining whether such encroachment has been made and if so the extent thereof.

Entry on adjoining mine, etc., to ascertain encroachment.  
Cf. Q. 62 Vic. No. 24, s. 244.

Before granting such authority the Director shall require the person making or lodging the affidavit to deposit a sum of money not exceeding One hundred pounds sufficient to cover the cost of such inspection.

The persons so authorized may thereupon enter on the colliery or land described in such order and descend any shaft and use the engines and other machinery ordinarily employed for that purpose and make such plans and sections of the colliery or land entered upon and of any drives or other works therein as are necessary for ascertaining the extent of the encroachment (if any). And the mining manager of the colliery to be entered upon shall render all necessary assistance to the persons so authorized.

What may be done under such authority.

Every such inspector surveyor or miner shall before entering on such colliery or land make a statutory declaration before some person authorized to take the same that he will not (except as a witness in a Court of justice) without the consent in writing of the owner of the colliery or land to be entered upon divulge or cause to be divulged to any person whomsoever any information obtained upon or by such entry save only as to whether such owner is encroaching on such first-mentioned colliery or land.

Statutory declaration.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

(24A) The word "giving" appeared in the original Ordinance. *Semble*, "given" was intended.

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### Penalty.

Any person who acts contrary to such declaration and any mining manager who refuses the assistance necessary to enable the persons authorized by the Director to descend the shaft or enter and examine the colliery shall forfeit and pay a sum not exceeding One hundred pounds:

### Compensation.

Provided that the Director may out of the sum deposited as aforesaid defray the cost of such inspection and if the mining manager renders the assistance necessary for the purposes aforesaid and if there is no encroachment may out of such sum award to the owner compensation of<sup>(24B)</sup> any loss or expense to which he is put by reason of such inspection.

Colliers not required to hold miners' rights.  
Cf. Q. 62 Vic. No. 24, s. 245.

252. It shall not be necessary that men employed in a colliery shall be the holders of miners' rights anything in this Ordinance contained to the contrary notwithstanding.

Interpretation.  
Q. *Ib.* s. 246.

253. In the construction and for the purposes of this Part of this Ordinance unless the context otherwise indicates the term "Owner" when used in relation to any mine means and includes any person or body corporate being the immediate proprietor or lessee or occupier of any mine or of any part thereof but does not include a person or body corporate merely receiving a royalty rent or fine from a mine or being merely the proprietor of a mine subject to any lease grant or licence for the working thereof or being merely the owner of the soil and not interested in the minerals of the mine.

## PART XVI.—REGULATIONS.

Power to make regulations.

254. The Lieutenant-Governor<sup>(2)</sup> may from time to time make regulations<sup>(25)</sup> not being contrary to the provisions of this Ordinance for all or any of the matters following that is to say:—

1. For determining the dimensions boundaries form position and extent of any mining tenement or class of mining tenements and the subsequent adjustment of the same where necessary and the time when such determination shall be deemed to take effect and the number and extent and classes of mining tenements which any one person or any two or more persons may take possession of.
2. For determining the manner in which persons desirous of taking possession of mining tenements on all lands coming within the operation of this Ordinance shall mark

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

(24B) The word "of" appeared in the original Ordinance. *Semble*, "for" was intended.

(25) No regulations have been made under the present Section 254. See, however, the *Mining Regulations*, 1935 (made under the repealed *The Mining Act of 1898* (Queensland, adopted) and continued in force by the present Sections 4 and 259), printed on p. 3121.

- out the same and the requirements to be complied with and rent to be paid by such persons.
3. For providing for the registration and the mode of obtaining and effecting the registration of mining tenements and any share or interest therein and any lien or encumbrance thereon and of the assignment or sub-lease thereof and of any share or interest therein and of any lien or encumbrance thereon and of the discharge of any such lien or encumbrance and for providing for the registration and the mode of effecting and obtaining the registration of any such mining tenement share interest lien encumbrance assignment or sub-lease in the case of death insolvency or insanity or of sale under the decree judgment or order of any Court.
  4. For prescribing the labour conditions not hereinbefore provided for subject to which any mining tenement or class of mining tenements shall be held and the condition on which exemption from the performance thereof may be applied for granted and obtained and generally for prescribing the manner in which and with what incidents rights and obligations any mining tenement or class of mining tenements shall be taken possession of held occupied used worked or enjoyed.
  5. For determining the events on which the title to any mining tenement or any share therein shall become forfeited and for imposing any penalty on the happening of any one or more of such events in lieu of any such forfeiture and for determining what shall constitute exemptions from on<sup>(25A)</sup> suspensions of such forfeiture and what persons shall be entitled to enforce such forfeiture or penalty and whether there shall be any order of priority of right in any persons to enforce any such forfeiture or penalty and if so what shall be such order unless where hereinbefore provided for.
  6. For limiting the time within which and prescribing the mode in which proceeding for any such forfeiture or penalty must be taken.
  7. For determining whether and under what circumstances any person who shall have obtained an adjudication of any such forfeiture shall as a condition precedent to his obtaining possession of the forfeited tenement pay to the person as against whom the same shall be adjudged forfeited any sum as compensation for any property upon such mining tenement.
  8. For regulating the cutting constructing use and maintenance of races dams and reservoirs upon Crown lands.

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(25A) The word "on" appeared in the original Ordinance. *Seemle*, "or" was intended.

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9. For determining whether and under what circumstances and subject to what conditions the holders of miners' rights entitled to the use of any water shall have amongst themselves any priority of supply of such water and if so how or according to what system such supply is to be regulated and when the events upon the order of priority of which any such priority is to depend shall be deemed to have occurred.
10. For determining what shall constitute relinquished abandoned or deserted as distinguished from forfeited mining tenements or shares therein and by what person lawfully competent thereto and in what mode and under what circumstances it shall be ascertained whether any particular mining tenement or share therein is relinquished abandoned or deserted within the meaning so determined and whether and under what circumstances any person shall be permitted to relinquish without being liable to any consequences as for the forfeiture of any mining tenement.
11. For determining the mode in which any mining tenement or any share therein which may be transferred assigned sublet or encumbered may be so transferred assigned sublet or encumbered and in which any lien or encumbrance may be assigned or discharged and for determining the rights and obligations of any assignee lienee or encumbrancee of or upon any mining tenement or share therein and the order of priority of any two or more such lienees or encumbrancees.
12. For regulating the mode in which the rights privileges and interests of the owners of mining tenements may be exercised or enjoyed and for limiting qualifying or restricting the exercise and enjoyment of such rights privileges and interests and generally for the protection of such owners in the exercise and enjoyment of such rights privileges and interests.
13. For preventing the accumulation of and for the removal to some convenient place of sludge tailings and other waste and refuse matter oozing or flowing from or connected with any mining tenement and of waste water and for the making of such channels as shall be necessary for any of the purposes aforesaid and for otherwise regulating and preventing the allowance of such oozing flowing and running to waste with or without any condition for payment of money or otherwise.



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14. For the protection from injury destruction and unlawful removal of any machinery and of races drains dams and reservoirs and of the water therein and of pegs posts fences and notices and of any plant or appliances used for or in connection with mining and for the protection from obstruction of such races and dams and of channels drains creeks and rivers used for mining purposes.
15. For regulating the mode of construction and materials and strength of embankments of dams and reservoirs used or constructed for mining purposes.
16. For the constructing and keeping in repair of suitable bridges or other crossings over races channels or drains used for mining purposes and cut across roads or thoroughfares or over such races channels or drains over which roads or thoroughfares shall be carried and for making proper approaches to such bridges or crossing<sup>(26)</sup> and for determining the width of such bridges crossings and approaches.
17. For making and keeping in repair and for regulating the width and formation of private ways and passages used for mining purposes over claims or races or Crown lands used in connection with mining or business carried on under business licences and for regulating and imposing conditions on the right to change the direction of any such way or passage and for the protection of the same from injury or obstruction.
18. For the prevention of nuisances in or about any mining tenement and for cleansing and keeping clean the same.
19. For securing the bailing of water from mines so as to prevent injury from such water to any mining workings.
20. For preventing the defiling or wasting of water used for domestic purposes and for determining whether any and what waterhole spring or other depository of water shall be reserved for domestic use and the mode of such reservation.
21. For determining the cases in which Crown lands exempted from occupation for mining purposes shall cease to be so exempted.
22. For prescribing the manner in which compensation shall be ascertained and paid under the provisions of this Ordinance and the regulations.
23. For determining the distance and enforcing the same at which shafts and other mining workings are to be kept

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(26) The word "crossing" appeared in the original Ordinance. *Seemle*, "crossings" was intended.

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- from public and private roads ways and passages and from private land dwellings and other buildings.
24. For prescribing rules for the management of goldfields and mineral fields and for the regulation of mining generally.
  25. For defining the manner of doing or performing any thing by this Ordinance required to be done or performed.
  26. For prescribing the manner in which registers shall be kept.
  27. For prescribing the survey of any land or mining tenement and the manner in which the same are to be surveyed.
  28. For defining the powers and duties of wardens mining registrars surveyors inspectors and engineers and clerks officers bailiffs and assistants appointed or deemed to have been appointed under the provisions of this Ordinance in all cases where such powers and duties have not been defined by this Ordinance.
  29. For prescribing the manner in which persons desirous of having leases or licences granted to them shall mark out the land they apply for.
  30. For prescribing the mode of making and investigating and determining upon applications for and objections to the granting of leases and licences and the amount of deposit (if any) to be paid by applicants and objectors respectively in connection with such determination.
  31. For prescribing the manner of dealing with cases when two or more applications are made in respect of the same mining tenement.
  32. For prescribing the forms of leases licences certificates applications objections notices and other documents granted issued or used under or for the purposes of this Ordinance.
  33. For prescribing the covenants conditions reservations and exceptions to be inserted in leases granted under this Ordinance and the manner in which such leases shall be registered.
  34. For determining the time and mode of ascertaining the amount of any royalty and the time for payment thereof.

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35. For prescribing returns to be furnished by owners and managers of mines and mineral works.
36. For regulating the pleading practice and procedure in the Wardens' Courts and for regulating the sittings of such Courts and the duties of the officers and costs of the proceedings therein.
37. For prescribing rules for the management of miners' commons and for giving effect to commonage rights and for limiting the number of stock depastured by one person thereon.
38. For prescribing the qualifications of members of boards the time and mode of election their tenure of office and the mode of conducting their proceedings.
39. For enabling the board to enforce its orders or the orders of its chairman or other authorized officer.
40. For empowering the board from time to time to order all work to cease in any mine within its drainage area when and for such time as it may deem expedient.
41. For empowering the board to compel the permanent or temporary shutting and closing of all doors gates and other appliances in any mines whether constructed by the board or not for the purpose of preventing flooding in any mines within the drainage area.
42. For empowering the board to compel the bailing of water accumulating in mines and removal of any obstruction in mines hindering or likely to hinder the board in viewing repairing or dealing with dams gates doors or other appliances.
43. For regulating the carrying out of works ordered by the board and the mode of recovery of any expenses incurred by the board in doing the same.
44. For preventing the removal from any mines of any machinery or other appliances used for raising or lowering men therein.
45. For prescribing the fees (if any) which shall be payable for the several matters hereinafter mentioned:—
  - (a) The inspection during office hours of any register kept under the provisions of this Ordinance;
  - (b) Appeals from the Warden's Court to the Central Court;<sup>(2)</sup>

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(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

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- (c) Applications surveys travelling expenses and processes and exemptions from performance of labour conditions or conditions of use or occupation or otherwise;
  - (d) The registration of any amalgamation union or sub-division of leases or mining tenements or of any mortgage lien or encumbrance or any transfer or discharge thereof or of any under-lease assignment or transfer or of any rules or agreements;
  - (e) The filing of any declaration of the loss of any document;
  - (f) The registration of transmission by death or under the laws relating to insolvency or insanity;
  - (g) The agistment of stock on miners' commons;
  - (h) The examination of candidates for any certificates granted or to be granted under the provisions of this Ordinance.
46. For prescribing the appliances and remedies to be kept at mines for the relief of persons injured.
47. For providing for the protection of health and regulating the sanitary conditions of mines including the examination and exclusion of persons likely to be infected with infectious or transmissible diseases.
48. For providing for the safe handling of materials particularly hot-furnace products.
49. For prescribing the rules and precautions to be used in the use of electricity and electrical machinery.
50. For all other matters and things that may be necessary to give effect to this Ordinance.

Operation of regulations.  
Cf. Q. 62 Vic.  
No. 24, s. 248.

**255.** Such regulations may be for the whole Territory or for any particular part thereof and so far as the same relate to drainage boards may be of general application or may apply to one board or two or more specified boards.

Judicial notice.

**256.** Such regulations shall be judicially noticed in every Court of justice: Provided that nothing herein contained shall affect the rights of His Majesty.

Penalties for breach of regulations.

**257.** Such regulations may impose for any breach thereof or for any disobedience of a lawful order of a warden or of a board or its chairman or other authorized officer a fine not exceeding Fifty

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pounds and in default of payment imprisonment with or without hard labour for any period not exceeding six months.

258. Copies of all regulations made under this Ordinance shall be laid before the Legislative Council within fourteen days of the making thereof if it shall be then in session and if not then within fourteen days after the commencement of the next session thereof.

Copies to be laid before Legislative Council.

259. The regulations and forms<sup>(25)</sup> made under any Act or Ordinance hereby repealed and in force and use at the commencement of this Ordinance shall except when they are inconsistent with the provisions of this Ordinance continue to be in force under this Ordinance unless and until rescinded by the Lieutenant-Governor.<sup>(2)</sup>

Saving of existing regulations.

FIRST SCHEDULE.

No. of Statute.	Short Title of Statute.
62 Vic. No. 24	<i>The Mining Act of 1898</i> (Queensland adopted).
5 of 1899	<i>The Mining Ordinance of 1899.</i>
4 of 1908	<i>The Mining Ordinance of 1907.</i>
6 of 1910	<i>The Gold Mining Encouragement Ordinance of 1909.</i>
4 of 1912	<i>Mining Ordinance, 1911.</i>
8 of 1924	<i>Mining Ordinance, 1924.</i>
11 of 1931	<i>Mining Ordinance, 1931.</i>
9 of 1934	<i>Mining (Facilities for Development) Ordinance, 1934.</i>
15 of 1934	<i>Mining Ordinance, 1934.</i>
18 of 1935	<i>Mining Ordinance, 1935.</i>
2 of 1936	<i>Mining Ordinance (No. 2), 1935.</i>

SECOND SCHEDULE.

MEMORANDUM OF MORTGAGE.

I, A.B., of \_\_\_\_\_, being the registered lessee of [*describe the holding and number of the lease*] under the provisions of Part IX of the *Mining Ordinance, 1937*, in consideration of the sum of \_\_\_\_\_ lent to me by [or due by me to] C.D., of \_\_\_\_\_ hereby mortgage the said lease to him. And I do hereby covenant and agree with the said C.D. that I will pay him the said sum on [*here insert day appointed for payment, covenant for payment of interest, and such other covenants as may be agreed upon*]. And in default of performance, on my part, of the above covenants or any of them, I authorize the said C.D. to sell the said lease in accordance with the provisions of the said Ordinance.

In witness whereof I have hereto signed my name, this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

A.B.

Signed by the above-named A.B. as mortgagor,  
this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_,  
in my presence.

E.F.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

(25) See footnote (25) printed on p. 3112.

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