

## No. XIII.

## An Act to make better provision for the regulation of Mining. [16th April, 1874.]

MINING.

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows:—

*Preliminary.*

1. This Act shall come into force on the first day of May one thousand eight hundred and seventy-four and may be cited as the "Mining Act 1874." Commencement and short title.

2. In the construction and for the purposes of this Act and of the Schedules hereto the following terms in inverted commas shall have the respective meanings hereby assigned to them unless there is anything in the subject matter or context repugnant to such construction (that is to say):— Interpretation of terms.

- "Business"—The vending or disposition of any goods merchandise or chattels whether by hawking or in any other manner.
- "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 the purpose of mining therein for gold or any number of such portions lawfully amalgamated by the holders. Provided that no land comprised in any lease granted under any Act in force for the time-being authorizing the granting of leases for gold-mining purposes shall be deemed to be a claim.
- "Crown Lands"—All lands vested in Her Majesty which have not been dedicated to any public purpose or which have not been granted in fee or lawfully contracted to be so granted or which are not under lease for purposes other than pastoral purposes.
- "Dam" "Reservoir"—Any natural or artificial storage or accumulation of water.
- "Earth"—Any rock stone quartz clay sand soil or mineral.
- "Gold"—As well any gold as any earth containing gold or having gold mixed in the substance thereof or set apart for the purpose of extracting gold therefrom.
- "Gold Field"—Crown Lands proclaimed or which may be proclaimed a Gold Field as hereinafter provided.
- "Governor"—The Governor with the advice of the Executive Council.
- "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 upon Crown Land.
- "Miner's Right"—A miner's right issued under the provisions of this Act or the Act hereby repealed.
- "Mining Purposes"—The purpose of obtaining gold by any mode or method and of stacking or otherwise storing any earth.

" Prescribed

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“Prescribed”—Prescribed by this Act or the Regulations thereunder.

“The Regulations”—The Regulations made under this Act or any other Act relating to the Gold Fields or to mining for minerals or metals other than gold in force for the time being.

“The Warden”—The Warden in charge of the Mining District denoted in the context where the expression is used or any Warden appointed under this Act.

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

“Race”—Any artificial channel or ditch for the conveyance of water and also the natural bed of any creek or gully through which water is led or diverted for mining for gold or any other mineral or metal.

“Mining Surveyor”—A licensed surveyor specially appointed to carry out surveys under this Act.

Repeal of Acts.  
First schedule.

Saving clause.

3. From and after the commencement of this Act the Acts and parts of Acts specified in the First Schedule hereto shall be and the same are hereby repealed to the extent therein expressed but such repeal shall not affect any proceeding matter or thing lawfully taken done or commenced or any regulation proclamation or appointment made before the commencement of this Act under or in pursuance of the provisions of any of the said repealed enactments or prevent applications made before the passing of this Act from being dealt with under the provisions of this Act And all Regulations not being inconsistent with the provisions of this Act duly made and proclaimed in pursuance of the provisions of the “Gold Fields Act of 1866” and all such Regulations relating to leases for mining on Crown Lands for any mineral or metal other than gold made in pursuance of the provisions of the “Crown Lands Occupation Act of 1861” shall be and continue in force until altered or repealed by Regulations under this Act.

Preservation of  
existing interests.

4. Every miner's right business license and lease issued under the “Gold Fields Act of 1866” and every mining lease and license to search for any mineral or metal other than gold and every authority to select mineral lots issued under the “Crown Lands Occupation Act of 1861” shall except as hereinafter provided continue in force and confer the same rights and privileges and entail the same obligations and penalties as if this Act had not been passed.

Saving of Royal  
prerogative.

5. Nothing in this Act contained except so far as is herein expressly enacted shall be deemed to abridge or control the prerogative rights and powers of Her Majesty in respect of Gold Mines and Silver Mines.

Division of Act.

6. This Act is divided into Three Parts embracing the following subjects:—

PART I.—MANAGEMENT AND REGULATION.

DIVISION I.—*Department of Mines.*

*Mining Districts.*

*Gold Fields—Miners' Rights—Business Licenses  
&c.*

DIVISION II.—*Gold Mining Leases.*

DIVISION III.—*Mineral Leases and Licenses.*

DIVISION IV.—*Regulations by Government—by Mining Board.*

PART

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## PART II.—ADMINISTRATION OF JUSTICE.

DIVISION V.—*Wardens' Courts.*DIVISION VI.—*Special Powers and Duties of Wardens.*DIVISION VII.—*Mining Assessors.*DIVISION VIII.—*Appeals—*(1.) *To District Court sitting as a Mining Appeal Court.*(2.) *To Supreme Court.*  
*Miscellaneous Provisions.*

## PART III.—PENALTIES—FORFEITURE.

## PART I.—MANAGEMENT AND REGULATION.

## DIVISION I.

*Department of Mines—Mining Districts—Gold Fields—Miners Rights—Business Licenses &c.*

7. All powers authorities and duties in relation to mining on Crown Lands for gold or for minerals other than gold heretofore exercised by or vested in the Department of the Secretary for Lands shall be on and after the first day of May one thousand eight hundred and seventy-four transferred to and all such powers authorities and duties created or imposed by this Act or any regulation thereunder shall on and after the said day be vested in and be exercised and performed by a Secretary for Mines to be appointed by the Governor alone And such Secretary for Mines shall be a responsible Minister having the management and control of the Department of Mines which the Governor is hereby empowered to establish for the purpose of more effectually carrying out the provisions of this Act and to appoint thereto an Under Secretary and such staff of officers clerks and servants and to assign to such officers clerks and servants such duties and subject to the annual vote of Parliament such remuneration as he may think fit.

Transfer of Mining Administration to Department of Mines.

8. It shall be lawful for the Governor to establish in connection with the said Department of Mines and by and under such constitution and management as he shall think fit a School of Mines and a Mineralogical Museum for the purpose of providing instruction by means of classes lectures or otherwise in geology mineralogy and chemistry in their scientific and practical application to mining pursuits and offices for the assaying of mineral ores and to appoint such a staff of professors and readers in any of the said sciences and of assayers curators or keepers and of servants as may in the opinion of the said Governor be requisite to give effect to the provisions of this section And all persons appointed under this Act shall be paid by such salaries or fees or both by salaries and fees as the Governor may direct and as shall (in the case of salaries) be voted by Parliament And such School and Museum and Offices as aforesaid and the staff thereof shall be under the control and management of the Department of Mines Provided however that if it shall be thought fit to establish such School and Museum in connection with the University of Sydney the same shall so long as such connection shall continue be under the control and management of the Senate of the University and such Senate shall in that case appoint such professors and readers and other persons as aforesaid as may be required.

School and Museum of Mines &c.

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Establishment of  
Mining Districts.

9. From and after the commencement of this Act the distribution of the Gold Fields into "Gold Fields South" "Gold Fields West" and "Gold Fields North" shall subject to the provisions hereinafter contained be abolished and in lieu of the three divisions aforesaid there shall be eight Mining Districts comprising respectively the several Gold Fields and areas specified in the Second Schedule hereto and to be respectively designated as follows *i.e.*—

- "The Mudgee Mining District"
- "The Tambaroora and Turon Mining District"
- "The Bathurst Mining District"
- "The Lachlan Mining District"
- "The Southern Mining District"
- "The Tumut and Adelong Mining District"
- "The Peel and Uralla Mining District"
- "The New England and Clarence Mining District"

Saving of provisions  
of Electoral Act of  
1858.

And every such Mining District shall be divided into so many divisions which shall be designated by such names as the Governor may determine Provided always that it shall be lawful for the Governor from time to time to establish any additional Mining District and to divide the same and designate the divisions thereof as aforesaid and also to alter abolish and vary the limits and boundaries of any Mining District or division thereof Provided further that nothing herein contained shall affect the existing divisions of the Gold Fields for the purposes of the "Electoral Act of 1858" or for the purposes of holding elections of Mining Boards under this Act or any divisions of the Gold Fields hereafter to be made for electoral purposes.

Proclamation of  
Gold Fields.

10. It shall be lawful for the Governor by proclamation in the *Gazette* to declare any Crown Lands to be a Gold Field within the meaning and operation of this Act to define the limits and boundaries thereof and to assign a designation thereto and from time to time to alter amend and vary such limits boundaries and designation Provided that all such proclamations as aforesaid and all proclamations affecting boundaries shall be made by the Secretary for Lands.

Declaration as to  
conditional purchase.

11. On and after the proclamation of any Gold Field it shall be lawful for the Secretary for Lands to declare any conditional purchase made within such Gold Field under the thirteenth section of the Crown Lands Alienation Act to be held under the fourteenth section thereof and to cause notice of such declaration to be served on the selector or posted in some conspicuous place on the selection and all the provisions of the said fourteenth section shall thereafter apply to such selection as fully as if made thereunder originally Provided that such declaration shall not be applicable to any conditional purchase that may have been made for more than three calendar months prior to the said proclamation.

Appointment of  
Wardens

and other officers.

12. It shall be lawful for the Governor from time to time to appoint in and for New South Wales or any Mining District or portion thereof officers to be called Wardens of Mining Districts who shall have and exercise the jurisdiction hereinafter conferred upon them in Part II of this Act and also from time to time to appoint such and so many Registrars of Mining Districts Mining Surveyors Mining Engineers Clerks Officers Bailiffs and Assistants and for such Mining Districts Courts divisions and places respectively as the said Governor shall think necessary for the efficient performance of the duties of inspection surveying and registration of claims and mines and of all other duties in connection with mining and with the administration of this Act which the said Governor may think fit to impose and the said Governor may by regulations define the powers and duties of such officers

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officers clerks and assistants and the mode of exercising and performing the same in all cases where such powers and duties have not been defined by this Act Provided that no Judge Warden Registrar Surveyor or other officer upon whom any judicial or official duties shall devolve in the administration of this Act shall during his tenure of office hold either directly or indirectly any share or beneficial interest in any claim gold mining or mineral lease mineral license or mining venture whatsoever in New South Wales.

13. When any Gold Field shall have been proclaimed upon any Crown Lands then under lease or license for pastoral purposes the Governor may suspend such lease or license so far as may be necessary for the accommodation of the horses cattle and sheep required for the subsistence and convenience of any persons holding miners rights licenses or leases and for the supply of water and otherwise for effectually working the said Gold Field and shall thereupon return or remit to the lessee or licensee such portion of the rent of such lands as may be reasonable and just.

Partial suspension of pastoral leases on proclamation of Gold Field.

14. It shall be lawful for the Governor to cause documents to be called "Miners Rights" to be issued in the form set forth in the Third Schedule hereto And every such miner's right shall be in force for any period not exceeding fifteen years from the date thereof and shall be granted to any person applying for the same upon payment of a sum at the rate of ten shillings for every year for which the same is to be in force And where such miner's right shall be applied for to be in force from the date thereof to the thirty-first day of December then next ensuing the same may be granted to the person applying therefor between the first day of January and the thirtieth day of June in each year upon payment of a fee of ten shillings and after such last-mentioned day upon payment of a fee of five shillings Provided that every such miner's right shall be deemed to expire on the thirty-first day of December in the year or last year of the period for which it shall have been granted.

Miners' rights.

15. Every holder of a miner's right and any number of persons collectively being each the holder of such miner's right shall subject to the provisions of this Act and the Regulations thereunder be entitled (except as against Her Majesty) to the following rights and privileges viz.—

Rights and privileges conferred by miner's right.

- (1.) To enter upon mine in for gold and occupy for gold-mining purposes or for residence during the continuance of such miner's right any Crown Lands and in the prescribed manner quantities dimensions and according to the prescribed boundaries and according to the Regulations in force from time to time Provided that such quantities dimensions or boundaries shall not be prejudicially affected by any regulation made after the time of taking possession :
- (2.) To cut construct and use water-races dams and reservoirs for gold-mining purposes through and upon any Crown Lands and to take or divert water from any spring lake pool or stream situate in or flowing through such lands and to use such water for gold-mining and domestic purposes Provided that if anything proposed to be done or done under the powers by this sub-section conferred shall be calculated to be or shall be prejudicial to the owner or occupier of any freehold land such owner or occupier shall be entitled to full compensation for any loss thereby sustained or to be sustained by him in respect of such lands from the person or persons doing or proposing to do such act such compensation to be determined by arbitration in the usual manner The amount

Proviso as to freehold land.

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awarded under such arbitration to be paid by such person or persons before doing such act or after doing the same as the circumstances of the case shall require :

- (3.) To exercise any rights of the nature of easements (in connection with gold-mining) upon and over unoccupied Crown Lands :
- (4.) To erect from time to time any building or structure and at any time to remove the same to cut strip and remove bark and remove any live or dead timber and to remove any stone or gravel for mining or building purposes or otherwise for his own personal use from any Crown Lands not by law exempted from occupation for mining purposes nor reserved temporarily or permanently from sale nor within the operation of any proclamation or notification prohibiting the cutting or removal of such timber bark stone or gravel nor included within any reserve for the preservation of timber :
- (5.) To make tramways and other roads in aid of and for the carrying out of all operations in connection with gold-mining upon any Crown Lands not exempted nor reserved as last aforesaid :
- (6.) To the possession of and property in during the continuance of such miner's right such portion or portions of Crown Land as aforesaid or occupied for residence and to the absolute property in all gold found during the continuance of such right in or upon such portion or portions of land whilst being in the lawful occupation of the holder of such right as aforesaid :

*Provisoes.*

Provided that it shall be lawful for any holder of a miner's right to take possession of Crown Lands for the purpose of mining thereon for gold under the provisions of this Act either for himself or if authorized by such persons on behalf of any number of persons collectively not exceeding five being each the holder of a miner's right Provided also that no person shall be entitled to occupy for the purpose of residence more than one portion of land and such portion shall not exceed one quarter of an acre in extent and shall be situated with respect to any street or otherwise as shall be provided for by the Regulations And the holder of any such portion of land may assign and encumber the same in such manner and subject to such provisions as to registration as such Regulations shall direct and in default of such direction either orally or by any instrument in writing but no person shall take any interest under any such assignment who shall not be the holder of a miner's right.

*Registration of claims*

16. The person or persons or any of them who shall have taken possession or be in the occupation of any claim not being a block claim in new ground (viz. ground not worked or abandoned) or the executors or administrators or the assignee or assignees in insolvency or the guardian in infancy or the committee or guardian in lunacy or the purchaser under an execution of the interest of such person or of any of such persons shall within one calendar month after their right to such occupation or possession or other derivative or representative interest respectively first accrued register such claim and the owner of any share as hereinafter mentioned in a registered claim shall within a like period after his title to such share first accrued register such share in the office of the Mining Registrar of the Mining District wherein such claim or share is situated in the prescribed manner Provided that no claim shall be registered unless the miner's right or miners rights under which such claim shall be held shall be produced to the officer required to register the same And any such person or persons as aforesaid who shall neglect to register any such claim within the said period shall if he or they shall work or mine in such claim incur the respective penalties hereinafter prescribed for unauthorized mining on Crown Lands and shall be deemed to have abandoned the said claim

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claim to all intents and purposes and such claim shall and may thereupon be dealt with as an abandoned claim. Provided always that if it shall be shewn to the satisfaction of the Warden that any such neglect to register has been caused by the sickness absence or other like disability of any such person or persons as aforesaid then it shall be lawful for such Warden to extend the time within which such registration may be made to a further period not exceeding fourteen days from the expiration of the said first-mentioned period.

17. After but not before the registration of any such claim as aforesaid the owner or owners thereof for the time-being may subject to the Regulations from time to time divide the interest in such claim into such and so many shares as he or they shall think proper any of which may be allotted to any person or persons and may assign or encumber or create any interests in such claim and the owner or owners for the time-being of any such share may if the same shall be registered subject to such Regulations assign or encumber or create any interest in such share and in such manner and subject to such registration both in regard to claims and shares as such Regulations shall direct and until and in default of such direction either orally or by any instrument in writing. Provided that the miner's right or miners rights under which any claim shall be held may be transferred to or to any person on behalf of the assignee or assignees of any such claim and the officer appointed to register claims shall upon being so required endorse the name of the transferee upon every right so transferred and thereupon the same shall for the remaining period of its currency vest in the transferee thereof as fully as if he had been the original grantee thereof but subject to any trusts or conditions agreed upon on the occasion of such transfer. Provided also that the owners of any two or more adjoining claims may whether such claims have been registered or not amalgamate the same but every such amalgamation shall be registered by such owners in the prescribed manner.

Privileges of registered claimholders.

Miner's right may be assigned.

18. Every share or interest in any claim or portion of land occupied for business or residence under this Act and any right title or interest acquired or created under the provisions of this Act or any regulation to be made thereunder shall be deemed and taken in law to be a chattel interest.

Share interest &c. in claim &c. to be deemed a chattel.

19. 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 connexion with gold-mining 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 the production in such Court by any person of any certificate of registration under the hand of a Mining Registrar or Warden's Clerk shall be sufficient evidence that the person named in such certificate was the holder of a miner's right at the date of such certificate and that all the requirements of this Act and the regulations necessary to vest the title to such claim as aforesaid in such person had been complied with by him up to the date of the registration thereof.

Incapacity to sue &c. without miner's right.

20. If there be held from time to time by or on behalf of the owner or owners for the time being of a registered claim such a number of miners rights as would have authorized the taking possession thereof when the same was taken possession of then it shall not be necessary that

Necessary number of miners rights sufficient.

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that any other miner's right should be held by any shareholder in such claim as such shareholder. And the word "owner" in this and the seventeenth section hereof shall be taken to include any guardian in infancy or committee in lunacy as aforesaid.

Business license to issue.

21. It shall be lawful for the Governor to cause documents to be issued each of which shall be called a "Business License" and which shall be granted to any person applying for the same upon payment of the sums hereinafter mentioned that is to say if such person shall apply for a license for six months ten shillings or if for twelve months one pound and every such document shall be in the form in the Fourth Schedule hereto and shall be dated of the day and at the place of the issuing thereof and shall be in force for such of the said periods as shall be named therein and shall contain the christian and surname and the occupation and residence of the person in whose favour the same shall be issued.

Fourth Schedule.

Occupation under business license.

22. Every business license shall subject to the provisions of this Act and to the Regulations entitle the holder thereof during the continuance of such license to occupy on any Gold Field for the purpose of residence and carrying on his business so much of the Crown lands not exceeding in extent a quarter of an acre in township sites and one acre on other Crown Lands as may be prescribed by the said Regulations and for either of the purposes aforesaid to put up any building or other erection and at any time to remove the same and every such holder shall during the continuance of such business license be deemed in law to be possessed (except as against Her Majesty) of the land which he shall occupy by virtue of such license and no person shall be entitled by virtue of a business license to occupy more than one such portion of land.

Transfer of business license.

23. The holder of any such business license or of any new business license as hereinafter mentioned shall be entitled to transfer the same respectively to any other person and provided such holder shall express his desire to that effect in writing under his hand endorsed on the said license and signed by him in the presence of and attested by any Warden or Justice another business license shall be granted to the person named in such endorsement upon production and surrender of such endorsed license and upon payment of the sum of five shillings and every such last-mentioned business license shall be dated of the day and at the place of the issuing thereof and shall be in force for the then unexpired period of such endorsed license (the day when such unexpired period is to end being stated in every such endorsement) and shall contain the christian and surname and the occupation and residence of the person in whose favour the same shall be issued and every such business license together with the right and interest thereunder shall on the death or insolvency of the holder thereof devolve on his personal representative or assignee.

Issue of new miner's right and business license

24. The holder of any miner's right or business license may at any time within one month before the day when any such right or license will expire apply for a new right or license for any term for which such right or license might have originally been lawfully granted. And upon payment by such holder of the fee or fees respectively chargeable under sections fourteen or twenty-one hereof a new right or license to be in force for the period specified therein and to bear date of the day of the expiration of the existing right or license shall be issued to the applicant and shall confer such rights and privileges during its continuance upon the holder thereof as are expressed to be conferred by section fifteen hereof. Provided that if any person who shall have been the holder of any such right or license shall not on or before the day of the expiration thereof have taken out a new right or license as the case may be a new right or license dated of the day of such expiration

may be antedated in certain cases.

and

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and which shall have the same force and efficacy as if it had been issued on that day may nevertheless within one month from such expiration be granted to such person upon production of such expired right or license and upon payment of the sum of five shillings in the case of a miner's right and in the case of a business license fifty *per centum* of the respective sums hereinbefore made payable therefor in addition to the ordinary price of such miners' right or business license Provided further that no such additional sum shall be chargeable where the new right or license shall be applied for within seven days after such expiration.

25. All Crown Lands which shall have been applied or shall be dedicated to any public use or purpose or which shall be lawfully and *bonâ fide* used as a yard garden cultivated field or orchard or upon which any house outhouse shed or other building actually used and occupied or any artificial dam or reservoir shall be lawfully standing shall be and the same are hereby exempted from occupation for the purpose of mining for gold or for any other mineral or metal and for residence or business under any miner's right or business license under this Act Provided that any Crown Lands which shall have been so lawfully and *bonâ fide* used as aforesaid or upon which any house outhouse shed or building or any artificial dam or reservoir shall be standing shall upon payment of compensation to be ascertained and paid in the manner prescribed by the Regulations cease to be exempted from such occupation.

Lands exempted from occupation under this Act.

26. The Governor may at any time reserve from occupation for mining under any of the provisions of this Act or for residence or business purposes under any miner's right or business license any specific portion of Crown Lands or any class of Crown Lands and no land so reserved or included in any class so reserved shall be so occupied until such reservation shall be revoked.

Other lands may be excepted.

27. No person shall cut or remove from any lands so exempted or reserved as aforesaid any timber or stone gravel or earth or mine or employ any other person to mine for gold or any other mineral or metal in or upon or shall cut or construct any race dam or tramway through over or upon such lands or do in or upon such lands any other act or thing or exercise any privilege hereinbefore conferred upon the holder of a miner's right Provided nevertheless that it shall be lawful for the Governor upon application to him for that purpose to authorize any one or more holders of a miner's right or the holders generally of miners rights to occupy under such rights any Crown Lands which may have been so reserved as aforesaid and also to construct drives under any lands so exempted as aforesaid if it shall be made to appear to the satisfaction of the said Governor that such drives can be constructed without injury to or obstruction to the enjoyment of such exempted lands and such occupation and construction of drives shall be subject to such conditions restrictions and regulations as the said Governor shall impose and make Provided that where such lands are within any municipality notice of such application shall one month before the same shall be made be given to the Mayor of such municipality and published in some newspaper circulating in the neighbourhood of such lands.

Occupation of exempted or reserved lands may be allowed.

28. It shall be lawful for the holder of a miner's right or of a lease under this Act or any of the Acts hereby repealed to mine for gold or any other mineral or metal upon or under any street road highway navigable waters or under any common or reserve whether dedicated or not or under any harbour estuary bay river or creek on obtaining from the Secretary for Mines an order permitting him so to do and for the purpose of obtaining such order such holder shall apply therefor by notice in writing to such Secretary who shall thereupon

Mining under public roads.

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thereupon inquire and decide whether the same can be effected without injury to adjoining property or injury or obstruction to such public road street or highway or to the navigation of such harbour estuary bay river or creek as the case may be and thereupon such Secretary shall issue his order permitting on such conditions and terms and subject to such restrictions as he shall think fit or forbidding such mining as the case may require. Provided always that the said Secretary for Mines before making any decision or issuing any order under this or the next preceding section shall cause notice of every such application to be published in the *Gazette* and in some newspaper circulating in the district wherein the proposed mining operations are to be carried on for four consecutive weeks and shall not issue any order permitting such mining to any applicant if any valid objections to such permission shall within three weeks after the last publication of such application be lodged with him. And the validity of all objections shall be left to the decision of the said Secretary for Mines.

Sluice-boxes tramways and culverts may be allowed under public roads.

29. It shall be lawful for the Warden upon application by any holder of a miner's right or of a lease under this Act or any of the Acts hereby repealed and upon the report of any engineer or surveyor that a sluice-box tramway or culvert can be laid or constructed on over or under any public road street or highway without any substantial injury to or obstruction of the traffic thereon and that such sluice-box tramway or culvert is necessary for the due and proper working of any mine or for the conveyance of water for any mining purposes by order in writing made after inspection by some duly authorized officer of the road street or highway mentioned in such report to allow subject to the rights of occupiers of adjoining lands such sluice-box tramway or culvert to be laid or constructed for the purpose of conveying any water tailings sludge waste water or earth. Provided that such works shall be so constructed as not substantially to injure such road street or highway or obstruct the traffic thereon and if after the construction of any such sluice-box tramway or culvert under such order it shall be made to appear to the Warden that such construction does in fact injure such road street or highway or obstruct the traffic thereon it shall be lawful for him to order that the obstruction be removed and if after seven days from the date of such last-mentioned order the obstruction caused by such sluice-box tramway or culvert shall not be removed the same shall be deemed a nuisance and the person who shall have obtained the said first-mentioned order or the owner or occupier shall be liable to a penalty not exceeding twenty pounds and the said nuisance may be abated in the manner by law provided for the abatement of nuisances upon proof of the said last-mentioned order and of the disobedience thereof.

Warden may permit roads over mining works.

30. It shall be lawful for the Warden to permit any person to make or construct any roads or temporary or permanent ways or other works over across or through any workings made or constructed under the authority of this Act or of any enactment hereby repealed. Provided that before any such permission shall be given fourteen days notice thereof shall be given by the person applying for such permission to the person lawfully interested in such last-mentioned workings.

Races to be reserved on sale of Crown Lands.

31. When at the time of any sale or alienation of Crown Lands under the "Crown Lands Alienation Act of 1861" or any other Act relating to the sale or alienation of Crown Lands now or hereafter to be in force any race drain dam or reservoir flows through or over or is upon any portion of such land although no reservation or exception thereof be contained in the Crown grant of such land no person unless specially authorized thereto by the Secretary for Lands shall obstruct or interfere therewith.

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32. The registered owner or a majority of the registered owners of any claim who shall prove to the satisfaction of the Warden by evidence on oath in open Court that any of the causes for suspension of work in such claim hereinafter in this section mentioned actually exists may register such claim for suspension of work therein for any period not exceeding six months on the occasion of each such registration. And thereupon such owner or owners shall hold such claim without incurring in respect thereto any penalty for the breach of any provisions of this Act or of the Regulations relating to the working of claims committed during the said period.

Registration by  
Warden for suspensio  
of work &c. in claims.

- (1.) That the claim is unworkable from any cause whatsoever.
- (2.) That such owner or owners require to be absent for some sufficient cause from the locality of the claim or is or are unable by reason of sickness or other sufficient cause to work in such claim.
- (3.) That the supply of water is insufficient to allow the working of the claim to be profitably carried on.

## DIVISION II.

*Gold-mining Leases.*

33. It shall be lawful for the Governor in the name and on behalf of Her Majesty to grant subject to the provisions of this Act and the Regulations to any holder of a miner's right applying for the same a lease of any Crown Land not included within the exemptions contained in the next following section for the purpose of mining thereon or therein for gold or of cutting and constructing thereon water-races drains dams reservoirs and tramways to be used in connection with such mining or of erecting thereon any buildings and machinery to be used for any process whatsoever in connection with the extraction of gold or for pumping or raising water from any land mined or worked or intended so to be for the extraction of gold therefrom or for the purpose of residence thereon in connection with any of the purposes herein enumerated or for all or any of such purposes.

Leases for gold-  
mining.

34. All Crown Lands comprised within any one of the following classes shall be exempted from the power of leasing conferred by the last preceding section viz.—

What lands exempted  
from such leases.

- (1.) Crown Lands leased or contracted to be leased under the provisions of this Act or any of the Acts hereby repealed or under lease for other than pastoral purposes.
- (2.) Crown Lands occupied by the holder and by virtue of any miner's right or mineral license unless such holder shall consent to the demising of the land so occupied by him.
- (3.) All alluvial ground except such as in the opinion of the Secretary for Mines may have been worked and abandoned or such as he may deem suitable to be leased by reason of its great depth or wetness or on account of the costly appliances required for its development or such as for other sufficient reasons ought not in his opinion to be exempt from the leasing provisions of this Act.

35. The lessee of any Crown Lands for gold-mining purposes shall be entitled by virtue of his lease either by himself or his servants to mine for gold in and upon such land subject only to the conditions of his lease and to the Regulations.

Effect of lease.

36. A lease for gold-mining purposes under this Act may be granted for any term not exceeding fifteen years. And no such lease shall (except when the same shall be granted under the thirty-eighth section hereof) embrace an area exceeding twenty-five acres. Provided that

Extent and duration  
of leases.

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Dimensions.

that where any such lease shall be granted of lands whereof the working will be chiefly confined to quartz-veins or lodes the area of the lands leased thereby shall not exceed in length six hundred yards along the line of the lode nor the width across the lode two hundred yards And in no case shall the area be marked out so that the lode will be distant from either extremity of the boundaries defining the width of the said area less than one-tenth of such width nor shall the length along the lode in any such area be greater than three times the width of such area And in all other gold-mining leases the parcel of land demised shall be in the form of a parallelogram wheresoever practicable whereof the maximum length shall not exceed more than twice the maximum breadth.

Rent to be reserved.

37. The yearly rent to be reserved in any lease for gold-mining purposes shall be twenty shillings per acre and such rent shall be payable at the times and places and in the manner prescribed by the Regulations Provided that all such rents shall be payable yearly in advance and the first payment shall be made on making the application for such lease.

What claims may be converted into leases.

38. Upon the application of the registered holder or holders of any claim not being a prospecting claim in the prescribed manner and upon the performance by such holder or holders of the prescribed requirements it shall be lawful for the Governor in the name and behalf as aforesaid to convert the claim of such holder or holders into a lease subject to the provisions of this Act Provided always that no less annual rent shall be reserved on the granting of such lease than twenty shillings per acre and notwithstanding that the ground demised shall be less than one acre in extent And all the provisions of this Act so far as the same shall be capable of being carried out relating to the mode of application for and granting of leases shall apply to and be carried out in the conversion of any such claim into a lease as hereinbefore provided.

When ground may be taken possession of.

39. It shall be lawful for any person being the holder of a miner's right who shall have applied for a gold mining lease in the prescribed manner and shall have made the first payment therefor as provided by the thirty-seventh section hereof to take possession of occupy and mine upon and in the land so applied for so soon as he shall have marked out the same in the manner prescribed by and shall have in all other respects complied with the Regulations Provided always that nothing in this section contained shall affect the right title or interest of any other person or persons in or to the said land or in or to any gold or other mineral or metal obtained or that may be obtained therefrom.

Protection of ground applied for.

40. The entry upon occupation of or interference with any ground so applied for and for which such payment of rent has been made as aforesaid 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 Governor be deemed to be a trespass or encroachment within the provisions of Part II of this Act and within the jurisdiction of the Warden of the Mining District wherein the ground in question is situated 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 or metal taken by such first-mentioned person from the said ground or for the value thereof before any Warden's Court in the manner provided by this Act for proceedings before Wardens in cases of trespass or encroachment Provided always that no such applicant shall recover or succeed under the said procedure who

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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 Provided further that notwithstanding any decision of a Warden to the contrary no applicant shall be entitled to the delivery to him of any such gold mineral or metal or to payment therefor or to levy the amount of the value thereof or of any damages awarded to him until and unless it shall have been decided to grant his application for the said lease but such gold mineral metal amount or damages shall until the determination of such application be lodged with the Warden and shall be delivered or paid by him to the applicant if such application shall be determined in his favour and if otherwise to the person from whom the same shall have been recovered.

41. If at the time of lodging an application for a gold mining lease in the prescribed manner the land applied for shall not have been surveyed by a Mining Surveyor or by some person authorized by the Secretary for Mines in that behalf the applicant may deliver to the Warden a written application for a survey of such land And if after the expiration of three calendar months from the delivery of such last-mentioned application no such survey of the said land shall have been made it shall be lawful for the applicant to cause a survey thereof to be made by any Licensed Surveyor And the survey of such land by such Licensed Surveyor shall have the same effect for all purposes as if the said land had been surveyed by a Mining Surveyor. Survey by licensed surveyor.

42. If any person shall object to the issue of any such lease to the applicant therefor he shall within the prescribed time lodge with the Warden and serve such applicant with a written notice of every objection intended to be taken by him against the issue of such lease And such notice shall be deemed to be sufficiently served for the purposes of this section if the same shall be delivered at or transmitted by post to the address of the said applicant or be posted on the land applied to be leased. Objection to application how lodged.

43. Every person so objecting shall at the time of lodging the notice of his objections deposit with the Warden's Clerk or if there be no such clerk with the Clerk of the Petty Sessions holden nearest to the land applied for the prescribed sum for the purpose of defraying all expenses so far as the same will extend which in the opinion of the Secretary for Mines the applicant shall have incurred by reason of such objections But no applicant shall be entitled to the repayment of any such expenses unless such objections shall fail or shall not be prosecuted And the said clerk shall give to the person paying the said sum a receipt therefor according to the form in the Fifth Schedule hereto and if there be no such expenses incurred or if after payment thereof there shall be a balance thereof remaining the said clerk shall refund the whole of such sum or the said balance thereof to the said depositor. Deposit by objectors.

44. If after the expiration of fourteen days from the date of the said application no notice of objections shall have been lodged to the issue of the said lease the Warden shall forward the said application together with a report thereon to the Secretary for Mines to be dealt with under the provisions of this Act but if any such notice as aforesaid shall have been lodged within the said period then the Warden shall appoint a place and time for hearing in open Court every person who shall have lodged such notice of objections against as well as the applicant for the issue of the said lease And two clear days notice in writing of such appointment shall be given to the applicant and to every person who shall have lodged the said notice of objections Provided that if several persons shall have united in lodging Applications and objections how to be dealt with.

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lodging any objections notice to any one of such persons shall be sufficient And the said hearing shall be in the nature of an inquiry by the Warden into the truth of the particulars stated by the applicant and each objector but such inquiry shall not take place unless the receipt mentioned in the next preceding section hereof shall have been delivered to the Warden on or before the day so appointed as aforesaid.

Inquiry may be adjourned.

45. It shall be lawful for the Warden to adjourn from time to time the hearing of any such inquiry to such other day and place (if necessary) and on such conditions as to costs as he may think fit (not being more than fourteen days from the day so first appointed as aforesaid) and notice of such adjournment shall be given to the applicant and each objector as in the next preceding section hereof provided.

Procedure on hearing of inquiry.

46. At and for the purpose of holding the said inquiry the Warden shall hear receive and examine evidence touching the matter of the said application and the objections thereto and he shall have power in that behalf to administer oaths and take affirmations and in other respects to conduct the said inquiry in accordance so far as may be practicable with the provisions of this Act relating to procedure in Wardens' Courts.

Application &c. to be transmitted together with Warden's report to Secretary for Mines for consideration and decision.

47. After the termination of the said inquiry the Warden shall transmit to the Secretary for Mines for his consideration and decision the said application and the objections thereto together with the evidence so taken by him the report plan and map (if any) of the Mining Surveyor and a report to be drawn up by him the said Warden upon the said application objections and evidence and recommending the grant or refusal of the lease applied for And the Governor may grant or refuse the said application or grant the same in a modified form as he shall think fit.

Copies and extracts may be made of reports &c.

48. Any person shall upon application and payment of the prescribed sum therefor be furnished with a copy of the Mining Surveyor's report and plan of any land so applied for and of any evidence taken as aforesaid and also a copy of such Warden's report.

Determination of questions of priority.

49. In the event of more than one application being made for the same land or any part thereof the application which shall have been first lodged with the Warden in manner prescribed by this Act and the Regulations shall be first considered and dealt with under the provisions hereinbefore contained and in the event of two or more such applications being so lodged at the same time then it shall be determined by lot to which applicant a lease shall be issued.

Application for a lease not to affect land of the applicant held under a miner's right.

50. When any land a lease of which shall be applied for shall comprise the whole or part of land held by the applicant under a miner's right the interest of such applicant under such right shall in nowise be affected by such application or by the refusal or abandonment or failure in any other way thereof and if such lease shall be granted the interest held under the miner's right shall merge in the interest held under the lease.

Form of lease.

51. Every lease granted under the provisions of this Act shall according to the nature of such lease contain the covenants conditions reservations and exceptions contained in the respective forms prescribed by the Regulations or as near thereto as circumstances will permit having regard to the special requirements herein provided And every such lease shall bear date the day of the execution thereof by the Governor and shall after such execution be transmitted to the Warden for delivery to the applicant (or to such person as shall be by such applicant duly authorized to receive and execute the same) upon his application therefor and execution thereof and upon payment to the Warden of the deed-fee of one pound.

Transmission to Warden and delivery to applicant.

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52. In case any lease granted under the authority of this Act or of any Act authorizing the granting of leases for mining purposes and whether for gold or for any mineral or metal other than gold shall be or 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 recovered on behalf of Her Majesty in such manner as may be provided by any of the conditions of the lease or (if there be no such condition) it shall be lawful for the Attorney General on behalf of Her Majesty to bring a suit in the Warden's Court of the Mining District in which the land demised by such lease shall be situate to recover possession of such land and such suit shall be commenced and carried on as any other suit in the said Court and the proceedings therein shall be the same and the judgment therein enforced in like manner as in the case of any other suit in the said Court.

Ejectment may be brought in the Warden's Court.

53. It shall be lawful for the Governor subject to the limitations prescribed in this Act and the Regulations on the occasion of the granting of any special lease to prescribe the term for and the rent or royalty or both at which the same shall be granted and the quantity and form of land to be comprised therein and the covenants conditions reservations and exceptions to be contained in the same but every such lease shall contain a condition that if the lessee his executors administrators and assigns fail at any time during the term to fulfil the conditions and terms therein contained or to use the land *bonâ fide* for the purposes for which it shall be demised the lease shall for any such failure be voidable at the will of the Governor.

Special terms and conditions.

54. The holder of any lease granted under the provisions of this Act or of any Act authorizing the granting of leases for gold-mining and the executors administrators and assigns of such holder shall be entitled at any time with the consent of the Governor to surrender the said lease And it shall be lawful for the Governor in the name and on behalf of Her Majesty to grant to any such person as aforesaid a lease for any term not exceeding fifteen years of the whole or any part of the land demised by such surrendered lease And any such gold mining lease may with the like consent be renewed for any period not exceeding fifteen years Provided that every such new lease shall be subject to the rent which shall be chargeable by law in respect of such lease and to the covenants and conditions prescribed by Regulations to be made by the Governor in that behalf and which shall at the time of the granting of such lease be in force and applicable or to such other covenants and conditions as the Governor shall think fit to impose.

Surrender of leases.

Renewal of leases.

55. Every such gold mining lease shall be registered in the manner place and subject to such fee as may be prescribed by Regulations to be made by the Governor in that behalf and the holder or a majority of the holders of any such registered gold mining lease shall be entitled to register the land comprised in such lease or any portion thereof for suspension of work thereon upon satisfying the Warden by evidence on oath in open Court of the actual existence in reference to such land of any of the causes specified in the thirty-second section hereof with regard to claims and for a period not exceeding six months.

Registration of lease and suspension of work.

## DIVISION III.

*Mineral Leases and Licenses.*

56. The Governor may grant leases of any Crown land for the purposes of mining for any metal or mineral other than gold subject to the following conditions And upon the granting of any such lease any lease

Leases for minerals &c. other than gold.

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lease for pastoral purposes which may have been granted or promised under the "Crown Lands Occupation Act of 1861" inclusive of the same land or any part thereof shall as respects such land absolutely cease and determine—

- Area. (1.) The area in any lease shall not exceed six hundred and forty acres for coal-mining lots and shall not exceed eighty acres for other mineral lots.
- Duration of lease. (2.) Leases may be for any period not exceeding twenty years but may be renewed for a further period not exceeding twenty years.
- Mode of application. (3.) Applications for leases may be made at such times and places and in such form as may be prescribed by any Regulations hereunder to the Warden if the land be within a Mining District or if otherwise to the Land Agent of the district or other officer authorized in that behalf by any such regulation and shall set forth a clear description of the lots proposed to be leased and of the boundary-marks or natural features by which the same are to be identified And the applicants may forthwith take possession of such lots Provided always that the right shall be reserved to the Minister for Lands to determine the boundaries of all such lots and to make provision for the preservation of water supply or access thereto and for such other reservations as he may deem necessary for the public interests.
- Disposal of application. (4.) Applications for leases hereunder shall be entitled to precedence in the order of their receipt by the Warden or Land Agent or other authorized officer.
- Rent. (5.) The rent shall be five shillings per acre payable annually in advance the first payment to be made at the time of making the application which shall cover the rent for one year from the granting thereof and the rent for each ensuing year or such part thereof as may be proportioned to the period between the granting of the application and the thirty-first December to be paid to the Colonial Treasurer in Sydney not later than the month of November of the year preceding and in default of any such payment the lease shall be forfeited.
- (6.) Leases shall in all cases terminate on thirty-first December.
- Necessary annual expenditure. (7.) Lessees shall expend at the rate of five pounds sterling per acre on their lots within the first three years of the lease.
- (8.) Lessees may determine their leases by giving to the Minister three months' notice of their desire to do so but no rent shall in any such case be refunded.
- Renewal of leases. (9.) Lessees may on application to the Secretary for Mines in writing during the nineteenth year of their leases obtain a renewal of the same for a further period not exceeding twenty years and the fine to be paid on such renewal not being less than two pounds ten shillings per acre shall be determined in such manner as may be provided by any regulation hereunder and full information of the working and returns of the mine shall be afforded to the Secretary for Mines by the lessees on pain of forfeiting their claim to renewal.
- Removal of machinery. (10.) If any lease be forfeited or not renewed the lessee shall be at liberty within six months from the termination of his lease to remove or otherwise dispose of all machinery and improvements and the minerals brought to the surface during the term of his lease.
- Forfeiture. (11.) On the breach by the lessee of any condition of a lease the Governor may direct the cancellation of such lease.

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57. In the event of a dispute arising as to the right to any lease it shall be lawful for the Secretary for Mines to authorize and direct some competent officer to make inquiry into such dispute and to take such other proceedings in relation thereto as are authorized by this Act to be taken by the Warden in an inquiry into the right to a lease for gold mining and the several provisions of the said sections shall so far as the same are applicable be held to apply to any inquiry hereunder.

Inquiry into disputed claims.

58. On its being made to appear that the property in dispute is liable to be prejudiced by the working of the minerals therein pending such inquiry the Secretary of Mines may issue and cause to be served upon either party or posted in some conspicuous place on the land in dispute his injunction for the suspension of all mining operations and workings on the said land until the right to a lease of such land shall have been duly inquired into and determined in favour of either party as herein provided or until such injunction shall have been withdrawn or otherwise lawfully set aside and any person who shall wilfully or knowingly disregard and disobey any such injunction by working for or removing or otherwise interfering with the minerals on the said land contrary to the intent and purport thereof shall for the first such offence forfeit a sum not exceeding fifty pounds sterling and for any second or succeeding offence shall forfeit a sum not exceeding fifty pounds sterling for every day during which such minerals shall have been so worked for removed or otherwise interfered with and such penalties may be recovered in a summary way before any two or more Justices in Petty Sessions and in default of payment of any penalty adjudged by them such Justices may commit the offender to some gaol or house of correction for any period not exceeding twelve calendar months.

Secretary for Mines to issue injunction.

59. The Governor may make and proclaim Regulations carrying this division of the Act into full effect so as to provide for all proceedings forms of leases and other instruments for the working of mineral lots for the issue of injunctions prohibiting the working of minerals on such lots pending any dispute or inquiry for the cutting of water-races through leased land for fixing the days upon which mineral selections shall be made and all other matters and things arising under and consistent with the provisions of this Act and not herein expressly provided for And all such Regulations shall upon publication in the *Gazette* be valid in law Provided that copies of every such regulation shall be laid before both Houses of Parliament within one month from the issue thereof if Parliament be then in Session or otherwise within one month after the commencement of the then next ensuing Session.

Power to make Regulations.

60. In any case in which it shall be made to appear to the satisfaction of the Secretary for Mines that greater facilities for the working of adjoining mineral lots would be ensured by the amalgamation of such lots it shall be lawful for him to authorize such amalgamation upon the payment of a fee not exceeding twenty shillings for each lot so to be amalgamated and the provision as to expenditure on mineral lots hereinbefore contained shall apply to such lots when so amalgamated and for the purposes of this section the word "lots" shall be taken to include as well land under mineral lease as land applied to be leased under section fifty-six hereof or under the Act hereby repealed.

Amalgamation of adjoining lots.

61. Every person who shall have obtained a mineral lease under this or any other Act and who shall desire to mine in the land demised by such lease for any mineral or metal other than that for the mining of which such lease shall have been granted shall give notice of such his desire to the Secretary for Mines And if any such person

Lessee to give notice of intention to work more than one mineral.

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person shall proceed to mine for any such other mineral or metal without having obtained due authority so to do as hereinafter mentioned he shall be liable to a forfeiture and cancellation of his lease as for a breach of condition.

Where gold is associated with other minerals &c.

62. Where gold is associated or combined with any other mineral or metal in any land demised under this or any other Act if the lessee shall desire to mine for such gold or should the nature of the mining operations be such as to lead to the removal of such gold such lessee shall make application for a gold-mining lease of the said land to the said Secretary for Mines under the provisions of this Act in addition to any mineral lease which he may hold. And if such lessee shall proceed to mine for such gold before he shall have obtained such gold-mining lease his mineral lease shall be liable to be forfeited and cancelled as aforesaid.

Mineral licenses.

63. It shall be lawful for the Governor to cause documents to be called "mineral licenses" to be issued to any person or persons applying for the same and upon payment of the sum of twenty shillings for each such license. Every such mineral license shall be in force for the period of twelve months from the date thereof and shall during the said period confer on the holder thereof the same rights and privileges in respect or in connexion with mining for minerals other than gold as are declared by this Act to be conferred on holders of miners' rights in respect of mining for gold.

## DIVISION IV.

*Government Regulations—Regulations of Mining Board.*

Governor to make Regulations for all mining districts.

64. In addition to any power by this Act conferred on the Governor to make Regulations [and such power shall in every case be inferred for the purposes of any section in this Act in which Regulations to be made by the Governor are mentioned or referred to] it shall be lawful for the said Governor subject to the provisions of this Act to make Regulations from time to time to be in force in all the Mining Districts of the Colony or in any such district or division thereof or in any Gold Field within the Colony as the said Governor shall direct. And such Regulations may be for any of the purposes following viz. :—

- (1.) For prescribing the terms and conditions upon which miners' rights and mineral licenses shall be granted and the modes times and places of the issue thereof.
- (2.) For prescribing the extent and form of the land to be demised by any lease or occupied under any mineral or other license under this Act—the manner in which applicants for leases or licenses shall mark out the land they apply for—the requirements to be complied with by such persons—the manner of dealing with cases when two or more applications are made for a lease or a license in respect of the same land race reservoir or dam—or to divert or collect or use water for mining for gold or other minerals or metals—the mode times and places for payment of rent therefor—the forms of leases and licenses to be granted under this Act—the covenants conditions reservations and provisions to be inserted in such leases and licenses and the mode of registering the same—the fees to be paid on issue of such leases and upon registration thereof—the duties of the persons conducting the same—the conditions upon which licenses under this Act shall be issued and the privileges to be enjoyed under them—and generally for carrying out the provisions of this Act in respect to all such leases and licenses.

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- (3.) For enforcing under a penalty in any case of default of a sum not exceeding fifty pounds the proper ventilation and safe construction and timbering or supporting of all mining shafts tunnels drives or other mining workings used in mining for gold or any other mineral or metal for prescribing the mode of inspection of all such shafts tunnels drives or workings and the powers and duties to be exercised by the persons authorized to act as inspectors in that behalf and determining and for enforcing the distance at which all such shafts and other mining workings are to be kept from public and private roads ways and passages and from private land dwellings and other buildings.
- (4.) For regulating the mode times and places of conducting elections of members of the Mining Board hereinafter mentioned the mode times and places in and at which the proceedings of such Board shall be conducted and for determining what number of members shall be a lawfully constituted Board and what number shall be a quorum at meetings of the said Board.

65. It shall be lawful for the Governor to cause to be called together at any time he may think fit a Mining Board the members whereof shall not exceed eleven in number who shall have power subject to the provisions of this Act and in respect of all matters not otherwise provided for thereby to make Regulations from time to time for mining for gold to be in force in all the Mining Districts of the Colony or in any such district or division thereof or in any Gold Field within the Colony or on any Crown Lands as the said Governor shall direct And such Mining Board shall consist of two members not being Wardens to be appointed by the said Governor and of nine members being the holders of miners rights gold-mining leases or business licenses and being natural born or naturalized subjects of Her Majesty and not less than twenty-one years of age who shall be elected as hereinafter provided and who shall represent three of them the Electoral District of the Gold Fields South three that of the Gold Fields West and three that of the Gold Fields North Provided that each of the aforesaid Electoral Districts of the Gold Fields shall be sub-divided in such manner as the Governor may direct into three divisions and that each sub-division shall return one of the three Members as aforesaid.

Mining Board how constituted—their functions.

66. The said nine members shall be elected by persons having the same qualifications and by the same mode of election in so far as may be deemed to be practicable and advisable by the said Governor as are respectively prescribed by the said "Electoral Act of 1858" for the election of Members of the Assembly to represent the three Gold-mining Electorates therein described But where the said Governor shall deem that the mode of conducting elections for Members to serve in the Assembly as prescribed by the said Act shall not be applicable to or convenient for the election of members of the said Mining Board he shall make such Regulations for such elections as he may think fit And every Mining Board constituted under this Act shall continue for three years from the date of the election of the nine elected members and no longer And all persons appointed or elected members of such Mining Board shall be paid by such fees not exceeding in the aggregate the sum of one thousand pounds per annum as the Governor may direct and as shall be voted by Parliament And all such Regulations made by such Mining Board shall be presented to the said Governor for approval and so far as such Regulations shall be so approved but no further the same shall when published in the *Government Gazette* have the force of law And the Regulations to

Board how to be elected its duration and remuneration.

Regulations to be approved.

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be made by the said Mining Board may be enforced in the case of any breach or default thereof by such penalty not exceeding the sum of twenty pounds or in the case of continuing breaches or defaults not exceeding the sum of five pounds for each day of the continuance of such breach or default as may be prescribed by such Regulations and such Regulations may be for any of the purposes following viz. :—

- (1.) For determining the dimensions boundaries form and position of any claim or class of claims and the subsequent adjustment of the same where necessary when such determination shall be deemed to take effect and the number extent and classes of claims which any one person or any two or more persons in conjunction may take possession of under a miner's right or miners' rights.
- (2.) For regulating the cutting constructing use and maintenance of races dams and reservoirs upon Crown Lands included within any proclaimed Gold Field.
- (3.) For prescribing the manner in which and with what incident rights and obligations any claim or class of claims business or residence areas race dam or reservoir or any water taken or diverted by virtue of a miner's right shall be taken possession of held occupied used worked or assigned.
- (4.) For determining the order of priority among the holders of miners' rights entitled to the use of any water—how such priority is to be regulated—and under what conditions and circumstances.
- (5.) For prescribing the mode of registration of any land occupied under this Act for residence or business or of any claim race dam reservoir or easement enjoyed under a miner's right or any share or interest therein or encumbrance thereon and for the registration of the assignment of any such land claim race dam reservoir or easement or of any share or interest therein or encumbrance thereon or of the discharge of any such encumbrance and the mode of registration of any such share or interest in the case of the death insolvency or lunacy of the owners thereof or of the sale of any such share or interest under the decree judgment or order of any Court or the decision of a Warden and the mode of registration of amalgamated claims and of claims for suspension of work and for fixing the fees to be charged on any such registration as aforesaid.
- (6.) For prescribing the time and mode of taking possession of forfeited or abandoned claims of registering such claims and the labour conditions to be performed by the persons taking possession of such claims.
- (7.) For enforcing and regulating the drainage of claims and of lands held under gold-mining leases heretofore or hereafter to be granted.
- (8.) For regulating the mode in which the rights and privileges of the owners of claims and of races dams reservoirs and easements enjoyed under a miner's right and of land occupied under this Act for residence or business may be exercised or enjoyed and for limiting qualifying or restricting the exercise and enjoyment of such rights and privileges and generally for the protection of such owners in the exercise and enjoyment of the rights privileges and interests conferred by this Act.
- (9.) For preventing the accumulation of and for the removal to some convenient place of sludge tailings and other refuse matter oozing or flowing from or connected with any land held

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held or occupied under the provisions of this Act and worked by means of puddling quartz-crushing or other machines and of waste water and for the making of such channels as shall be necessary for any of the purposes aforesaid and for otherwise regulating as between claims such oozing flowing and running to waste.

- (10.) For the protection from injury destruction and unlawful removal of such machines as last aforesaid and of races drains dams and reservoirs used or enjoyed under miners' rights 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.
- (11.) For regulating the mode of construction and materials and strength of embankments of dams and reservoirs used or to be constructed by virtue of a miner's right.
- (12.) For the constructing and keeping in repair of suitable bridges or other crossings over races channels or drains used for mining purposes 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 crossings and for determining the width of such bridges crossings and approaches.
- (13.) 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 any Crown Lands used or to be used in connection with mining or business carried on under business licenses 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 by the leaving of felled timber or other obstruction or any waste or injurious matter thereon.
- (14.) For the prevention of nuisances in and about residences or places of business held under a miner's right or business license and for cleansing and keeping clean the same.
- (15.) For securing the baling of water from mines so as to prevent injury from such water to any mining workings.
- (16.) 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.
- (17.) For determining the cases in which Crown Lands lawfully and *boná fide* used as a yard garden cultivated field or orchard or upon which any house outhouse shed or other building or any artificial dam or reservoir shall be standing as herein-before mentioned shall cease to be exempted from occupation for mining purposes and for prescribing the manner in which compensation shall be ascertained and paid to the person or persons holding or using any such lands.

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## PART II.—ADMINISTRATION OF JUSTICE.

## DIVISION V.

*Wardens' Courts.*

Establishment of  
Wardens' Courts.

67. It shall be lawful for the Governor to establish by Proclamation published in the *Gazette* as many Courts to be styled Wardens' Courts as he shall think fit And every such Court shall be a Court of Record possess such jurisdiction as is hereinafter conferred and be held at such places as the Governor shall appoint And for the purposes of this Part the term "Wardens' Court" means equally the Warden having jurisdiction under this Part or such Warden sitting with Assessors as hereinafter provided.

Extent of jurisdiction  
of Wardens.

68. Every Warden appointed under the provisions of this Act shall have and exercise jurisdiction in respect of the matters hereinafter contained throughout New South Wales with power to issue summonses warrants or other process which shall have legal effect and operation throughout the said Colony.

Subjects within such  
jurisdiction.

69. Every such Warden's Court shall have original jurisdiction to hear and determine all suits relating to any of the following matters:—

- (1.) The claim of any person to the possession or occupation of any Crown Land by virtue of a miner's right or of a lease or mineral or other license lawfully issued or to cut construct use possess occupy or hold any interest in any race drain dam or reservoir for gold-mining by virtue of a miner's right or license or under any Act or Regulation.
- (2.) The claim of any person to recover any land race drain dam or reservoir alleged to have been abandoned or forfeited under any Act or Regulation and to the mesne profits thereof.
- (3.) The claim of any person to the use enjoyment and sale of any water by virtue of a miner's right or any license granted under the provisions of any Act or Regulation or to the priority of use and enjoyment as against any other claimant of water taken diverted or used or claimed so to be under any Act or Regulation.
- (4.) Any encroachment or trespass upon or unlawful interference with or injury to any such land race drain dam or reservoir as aforesaid or unlawful interference with or injury to any machinery thereon—any diversion or abstraction of water possessed or used under a miner's right or under any such license as aforesaid—the unlawful ouster or exclusion of any person from any share or interest in any such land race drain dam reservoir or water and the damages and compensation for any such encroachment trespass ouster diversion abstraction interference or injury.
- (5.) Any claim for debt or damages or both arising out of or made in respect of any contract or agreement whatsoever relating to mining for gold or any other mineral or metal or to any holding or interest authorized by any Act or Regulations.
- (6.) The claim to any gold or other mineral or metal in or to be taken out of any land occupied or held under any Act or Regulation any matter concerning or arising out of any contract relating to such gold mineral or metal.
- (7.) Concerning or arising out of any partnership for or in relation to mining for gold or other mineral or metal in any Crown Land occupied or held as aforesaid or any partnership  
in

*Mining.*

- in any such land or in any race drain dam reservoir water gold mineral or metal or concerning or arising out of any contract for or in connection therewith or for the dissolution wholly or in part of any such partnership or
- (8.) Concerning contribution to calls or to the expense of working or using any such land race drain dam reservoir or water or any share or interest therein.
- (9.) Concerning or arising out of any mortgage or assignment by way of security of or charge upon any such land race drain dam reservoir water gold mineral or metal vested in any person or any share or interest therein.
- (10.) Concerning the cancellation and delivery up of instruments relating to mortgages charges or encumbrances of or upon any such land race drain dam reservoir water gold minerals or metals as aforesaid or any share or interest therein or to any assignment of such mortgages charges and encumbrances or to any contract respecting the working or use of for mining purposes or otherwise in relation to mining any such race drain dam reservoir or water or of any instruments relating to any partnership for mining or in any such land race drain dam reservoir water gold mineral or metal or the total or partial dissolution of any such partnership.
- (11.) Concerning the ascertainment and adjustment of boundaries of land held or occupied under any such Act or Regulation where such boundaries shall be in dispute or doubtful and the Court before which any such question of boundaries shall be brought shall ascertain and determine such boundaries by such means as shall be found convenient and shall make and give all such orders and directions as shall be necessary for the purpose of carrying out the decree or order of such Court.
- (12.) Concerning any Crown Land or share or interest therein which the complainant shall claim to be entitled to take possession of and occupy for residence or business under a business license and of which the defendant is and claims to be entitled to be in possession—any trespass upon any such land of which the complainant is in and of which he claims a right to the occupation or possession under such license—any money claimed to be due to the complainant upon any mining partnership account or as in any way accruing to the complainant from any mining partnership adventure or interest—and the recovery of any sum of money which any person shall be liable to pay under any such Act or Regulation and for which no other mode of recovery is hereby provided.
- (13.) And generally all questions and disputes which may arise between miners in relation to mining on Crown Lands.

And the jurisdiction hereby conferred shall extend to cases where the claim or title of either party to a suit is derivative by assignment or otherwise as well as to where the same is original And in all cases of debt or contract wherein the amount claimed shall not exceed fifty pounds the decision of the Warden's Court shall be final.

70. Every proceeding in a Warden's Court shall be commenced by a summons which if the proceeding be for the recovery of any land race dam or reservoir or in respect of any encroachment or trespass thereon shall as nearly as practicable be in the form in the Sixth Schedule hereto and if for any other purpose in the form as nearly as practicable in the Seventh Schedule hereto and every such summons shall be issued by such Warden or by a Warden's Clerk upon the application of any complainant and shall be filled up according to

Jurisdiction—

Decision when final.

Proceedings before Warden to be commenced by summons.

Sixth and Seventh Schedules.

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to the nature of his case and so as to show the substance of the facts constituting the cause of complaint and shall require the defendant to appear before the Warden's Court on a day to be named in the summons and upon the day so named or upon any adjourned day of hearing and upon proof of such service or substituted service of the said summons as the Warden shall think sufficient the Court shall proceed to investigate the matter of such complaint and in the presence of all the parties interested or of such of them as shall appear to him sufficiently to represent all the parties interested or in the absence of any of the parties interested who having been duly served with such summons shall not appear shall hear receive and examine evidence and determine such complaint in a summary way with full power to adjourn the hearing of such complaint to any other time or place and to make all such amendments in any proceedings in such Court as may be necessary for the purpose of determining the real question in controversy between the parties. Provided that before any such summons as aforesaid shall be issued a fee of two shillings and sixpence shall be paid by the complainant to the Warden or his clerk and the said fee shall be deemed to be a part of the costs of the hearing.

Fee to be paid.

Provision for summary hearing of complaints.

71. Notwithstanding the provisions and requirements of the last preceding section it shall be lawful for the Warden in his discretion and if the parties concerned shall consent thereto to hear and determine any such complaint (not including a money demand or for damages) summarily and without requiring any formal proceedings to be taken in a Warden's Court. Provided always that both parties to the complaint shall be present at such hearing and the decision of the Warden shall in every such case be final and conclusive and a minute thereof shall be made by him in the Register of Complaints hereinafter mentioned.

Register of Complaints. Eighth Schedule.

72. Every Warden shall cause a register to be kept in the form in the Eighth Schedule hereto in which shall be entered every complaint laid before him together with the names and last known places of abode of the parties the nature of the relief sought and where the claim is for money the amount sought to be recovered and every one of such complaints shall be numbered in every year according to the order in which it shall be entered.

Valuation of demand and payment thereof to Warden.

73. Every person shall at the time of obtaining a summons as aforesaid specify the amount of his demand (so far as the same shall be a money demand or a demand in the nature of unliquidated damages within the jurisdiction of a Warden's Court as hereinbefore defined) sought to be recovered by such summons and such amount shall be entered in the said register in the proper column for that purpose and it shall be lawful for the defendant at any time before the hearing to pay to the Warden or his clerk such amount together with the costs incurred by the complainant in respect thereof up to the time of such payment and of delivering the notice hereinafter mentioned and notice of such payment shall be communicated by the Warden or his clerk to the complainant by causing the same to be delivered at his usual or last known place of abode or business or to his attorney and the said amount shall be paid to the complainant and the said costs to the complainant or his attorney and after such payment no other proceeding shall be brought in any Court in respect of the demand in satisfaction of which such amount shall have been so paid.

Payment of less than demand.

74. The defendant in any proceeding in a Warden's Court for or which shall include any such demand or a demand as last aforesaid may at any time before the hearing pay to the Warden or his clerk such sum of money as he shall think a full satisfaction for such demand together with the costs incurred by the complainant up to the time of such payment and of delivering the notice hereinafter mentioned and

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and notice of such payment shall be communicated by the Warden or his clerk to the complainant by causing the same to be delivered at his usual or last known place of abode or business or to his attorney and the said sum of money shall be paid to the complainant and the said costs to the complainant or his attorney but if the complainant shall elect to proceed and shall recover no further sum in respect of such money demand than shall have been so paid he shall pay to such defendant the costs incurred by him in the said proceeding after such payment and the Warden may make an order for such payment accordingly.

75. No complaint shall be dismissed by any Warden's Court for informality either in the summons itself or in the entry thereof nor shall any objection to any such summons or complaint be taken or allowed for any alleged defect or misnomer or inaccurate description of any person or place or on the ground that the complainant appears at the hearing of the summons to be entitled to different relief from that sought therein or for any variance between such summons and the evidence adduced on the part of the complainant but such summons may be amended by the Warden so that the real question in controversy between the parties shall plainly appear and the Court shall proceed to adjudicate according to the rights of the parties Provided always that if it shall appear to the Warden upon the hearing of the case that the defendant has been deceived or misled by reason of any such amendment having been made and that injustice would be done by proceeding at once with the case it shall be lawful for such Warden on such terms as to costs or otherwise as he shall think fit to adjourn the further hearing of the case to another day.

Complaints not to be dismissed for informality.

76. It shall be lawful for either of the parties previous to the hearing of any such complaint to require from the Warden or for the Warden before such hearing to require that such complaint shall be heard before such Warden and two Mining Assessors to be summoned as hereinafter provided Provided also that before any assessors shall be so summoned there shall be paid to the Warden or his clerk the sum of one pound by the person demanding assessors and each of the assessors before whom the complaint is heard shall be entitled to receive thereout the sum of ten shillings and in case the hearing of any complaint shall be adjourned to any future day there shall be paid to the Warden or his clerk the further sum of one pound for every such adjournment and each of the assessors shall be entitled to receive thereout the further sum of ten shillings Provided that any part of any of such sums which shall not be required for the payment of assessors shall be returned to the complainant and the residue thereof 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.

Assessors may be summoned.

Fees to assessors.

77. In all cases where any complaint shall be heard before a Warden sitting with assessors the Warden shall before the hearing administer to each assessor an oath in the form in the Ninth Schedule hereto Provided that if any assessor shall be unwilling from alleged conscientious motives to be sworn it shall be lawful for the Warden to permit him to make his solemn affirmation and declaration in the words contained in the Tenth Schedule hereto which affirmation and declaration shall be of the same force and effect as an oath in the usual form and on such oath being administered or affirmation and declaration made such Warden's Court shall proceed to hear and determine such complaint and the decision of the Court shall be that of the majority of the members of such Court And every such decision shall have the same force and effect as that of the Warden sitting alone and shall be carried into effect by the same or any other Warden.

Oath to be administered and Court to hear and determine. Ninth Schedule.

Tenth Schedule.

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Decision of Court to be recorded.  
Eleventh schedule.

78. A minute of every decision of a Warden's Court in the form contained in the Eleventh Schedule hereto or to that effect shall on the day of the pronouncing thereof be entered by such Warden in the register to be kept as hereinbefore provided and such Warden shall make an order in accordance with such decision and write the same in the said register under the said decision and such decision with the said order so underwritten shall be signed by the Warden and no formal order or other record of such decision shall be necessary and every such entry shall be made in form as the decision of the Warden's Court. A copy of such minute or order shall on demand be given by the Warden's clerk to any of the parties interested therein and the decision of a Warden's Court shall be binding and conclusive on all parties unless in cases where on appeal therefrom the same shall be reversed or varied and a document purporting to be any such copy certified by the Warden as a true copy shall at all times be admitted in all Courts and places whatsoever as conclusive evidence of such decision or order having been given or made.

Warden may state special case for Supreme Court.

79. In any proceeding before a Warden's Court it shall be lawful for the Warden on the application of either party to the complaint to reserve any question in the form of a special case for the opinion of the Supreme Court and in such case no order shall be made in respect of any matter on which such question shall have been reserved until such opinion shall have been given and every such special case shall after it shall have been prepared by such Warden be transmitted by him to the Prothonotary of the Supreme Court who shall cause the same to be set down for argument before the said Court whose opinion thereon and as to the costs thereof when given shall be drawn up and transmitted by such Prothonotary to the said Warden who shall make his order in accordance with such opinion and whenever any such special case shall have been reserved it shall be lawful for the Warden to make such order for an injunction or receiver or payment of money into the hands of the said Warden or otherwise and upon such terms as such Warden shall think proper.

Proceedings for recovery of land &c.

80. Where any proceeding before a Warden's Court is to recover possession of any land water-race drain dam or reservoir or any share therein such Court shall determine the right to the same and fix the boundaries of any such land or the quantity of water to be taken by either of the parties if such determination shall be necessary 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 shall be paid to such complainant and in the like event the Warden's Court shall order possession of such land race drain dam reservoir water or share to be delivered to the complainant and shall cause such complainant to be put into possession of any such land race drain dam reservoir water or share as aforesaid and if necessary cause any defendant his servants buildings fixtures implements goods and chattels to be removed therefrom.

For diversion of water.

81. Where any such proceeding before a Warden's Court shall be in respect of the right to divert any water or to remove any reservoir race drain or dam such Court shall determine such right and if the complainant shall succeed the Court shall declare him at liberty to divert or remove the same and may make an order enjoining any defendant from interfering with or preventing such diversion or removal.

For encroachment.

82. Where any proceeding before a Warden's Court shall be in respect of any encroachment or trespass upon or any unlawful interference with or injury to any such land 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 or the quantity of such water to be taken by either of the parties if such determination shall

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be necessary 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 interference or injury found to have been committed and the Warden's Court shall order such damages to be paid accordingly and that the person found to have encroached or trespassed interfered or injured as aforesaid do cease from such encroachment trespass interference or injury and it shall be lawful for the Court to cause the person so found to have encroached trespassed interfered or injured together with his servants implements goods and chattels to be removed from the land race drain dam reservoir or water so encroached or trespassed upon interfered with or injured or from the using of such water and to cause such complainant to be put into possession thereof Provided that if in such proceeding the said Court shall find that the complainant himself has so encroached or trespassed unlawfully interfered with or injured such land race drain dam reservoir or water the said Court shall have and exercise the same powers as against such complainant as are herein conferred in respect of the person complained against.

83. Where 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 minerals or metals or to the amount of any contribution or other sum of money (suits for the recovery of which the Warden's Court is hereby authorized to hear and determine) the Court shall order any money or damages gold minerals or metals which the said Court shall find due or payable or deliverable by either of the parties to the other of them to be so paid or delivered And in case such proceeding shall be in respect of money due gold or other minerals or metals deliverable or accruing to the complainant upon a mining partnership account adventure or interest the said Court shall take the account of such partnership adventure or interest so far as shall be necessary to ascertain what sum gold minerals or metals (if any) shall be so due or accruing and the Court shall order any such sum gold minerals or metals to be paid or delivered accordingly.

84. 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 or duly authorized agent on his behalf shall grant to the party so applying a writ of execution under his hand in the form as nearly as practicable of the Twelfth Schedule hereto and any bailiff of a Warden's or District Court to whom such writ shall be delivered for execution and all constables and other peace officers within their several jurisdictions shall do and perform all things in respect of such writ which such bailiff constables and peace officers are required to do and perform in respect of a warrant or writ of execution issued out of a District 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 as and dispose thereof in the manner he could seize take and dispose thereof by virtue of a writ issuing out of a District 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 a District Court upon a writ of *feri facias* issued by a Registrar thereof Provided that the Warden may withhold the issuing of such writ if he shall consider it just or reasonable so to do until after the expiration of three days from the day on which the decision under which such sum of money as aforesaid was awarded shall have been made.

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## DIVISION VI.

*Special Powers and Duties of Warden.*

Gold auriferous earth &c. may be seized.

85. It shall be lawful for the Warden if he shall think fit at the time of any such decision as in the next preceding Division of this Act mentioned being made by a Warden's Court to order that any gold or auriferous earth in the possession and being the property of the party by whom payment of any sum in respect of any such debt damages or costs as last aforesaid shall be ordered to the extent in value of such sum such value to be fixed by such Court shall be delivered up to the party entitled to such sum by way of satisfaction or in part satisfaction thereof and such Warden shall forthwith cause such gold or earth to the extent aforesaid to be seized and delivered accordingly and thereupon a minute of such order shall be entered and signed in the register and a writ of execution for the balance only of such sum after deducting the value of the gold or earth so seized and delivered shall be granted by such Warden.

Warden may authorize entry on adjacent claim.

86. It shall be lawful for any Warden in his discretion upon the application of any person claiming to be legally or equitably interested in any claim or in any land comprised in any lease (granted under the provisions of any Act authorizing the granting of gold mining leases) by writing under the hand of such Warden to authorize a Mining Surveyor to enter upon any claim or land adjoining such first-mentioned claim or land for the purpose of ascertaining whether the owner or occupier of the claim or land so to be entered upon is encroaching on such first-mentioned claim or land and such surveyor may thereupon enter upon the claim or land described in such order and descend any shaft or mine and for such purpose use the engines and other machinery ordinarily employed for that purpose and 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 and every such surveyor shall before entering on such claim or land make a statutory declaration before such Warden (who is hereby authorized to take the same) that he the said surveyor will not (except as a witness in a Court of Justice) without the consent in writing of the owner or occupier of the claim 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 or occupier is encroaching on such first-mentioned claim or land.

Warden may grant injunction on notice.

87. Upon application to the Warden's Court of any person claiming to be legally or equitably interested in any land claim race drain dam reservoir water or easement (such application to be made after notice served at least twenty-four hours before the time for the making thereof on the parties interested in opposing the same or such of them as shall appear to such Court sufficiently to represent such parties) it shall be lawful for such Warden in the presence of such parties 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 in the discretion of the Court and upon such terms (if any) as it may consider just by order under the Warden's hand to enjoin any person named in such order from encroaching upon occupying using or working such land claim race drain dam reservoir water or easement or from seeking for washing out extracting or removing any earth or gold taken from such land or from selling or disposing or otherwise interfering with such land claim water-race drain dam reservoir easement earth gold or any share or interest therein respectively or from

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from doing any act whereby the right title or interest of such applicant in or to the same might be affected and every such order shall be in force for such period as shall be named therein unless the same shall be sooner discharged by the Warden's Court making the same or by a Mining Judge. Provided that if the Warden's Court shall be satisfied that reasonable attempts have been made to serve notices on the parties aforesaid without success it shall be sufficient service of any such notice if the same shall be advertised in some newspaper circulating in or if none then in such newspaper as the said Court shall appoint and on every such application the said Court shall make such order as to costs as shall seem just.

88. The Warden's Court may on the application of any such person as last aforesaid who shall satisfy the Court that the case is one of extraordinary urgency without any such notice as aforesaid by order under the Warden's hand grant such injunction as last 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 be discharged by the Court. And no subsequent 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 the last preceding section for an injunction for any longer period. Injunction without notice.

89. Upon the application to the Warden's Court of any party to any proceeding on summons before him (such application to be made after notice served twelve 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 the Warden sufficiently to represent such parties) it shall be lawful for the Court 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 such Warden 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 in any such proceeding any earth gold 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 which will in the opinion of such Warden be put in issue in the course of such proceeding. Provided that service of the notice hereby required may be made by advertisement under the circumstances and in the manner mentioned in the last but one preceding section hereof. Warden may order deposit of gold &c.

90. Every order made by a Warden's Court under any of the five next preceding sections may be in the form prescribed by General Rules as hereinafter mentioned or to that effect and every such order shall unless the Warden shall otherwise order be served by delivering a copy to the person to be bound thereby and at the same time showing the original order if such person shall require to see the same and every such order shall be entered by the Warden who shall have made the same in the register to be kept by him as aforesaid. Provided that if the Warden shall see fit so to direct it shall be sufficient service of any such order to publish a copy of such order in such newspaper and to affix a copy thereof in such conspicuous place at or near the property in dispute (if any) as the Warden shall appoint. Form of order.

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When Warden may order working of claim under injunction.

91. Whensoever any injunction shall have been granted by a Warden's Court under this Act it shall be lawful for such Warden upon the application of any holder or holders of registered claims adjacent to the claim or mining tenement under such injunction who shall show to the satisfaction of such Warden that the claims of such holder or holders will sustain damage or be materially depreciated in value by reason of the non-working of the claim or tenement under injunction to order upon such terms as he shall think fit such working of the said claim or tenement as in his opinion will be sufficient to prevent such damage or depreciation and the said Warden shall make such order as to the cost of such working as he shall think just.

Mode of enforcing Warden's order where not specially provided for.

92. Whenever any Warden's Court or Warden is empowered or required by this Act to cause any act to be performed and the mode of performing such act is not otherwise expressly provided for it shall be lawful for any person verbally authorized by the Warden and in his presence or for any constable or peace officer authorized in writing under the hand of such Warden to perform such act and all constables and peace officers shall if thereunto required aid and assist any Warden or person authorized as aforesaid in the performance of his duty under this Act.

#### DIVISION VII.—MINING ASSESSORS.

Mining assessors how chosen.

93. In and for each Mining District established under the provisions of this Act there shall be seventy-two Mining Assessors to be chosen as hereinafter provided. And the said number of Mining Assessors may be chosen either from the whole of such Mining District or from such divisions thereof and in such proportions as the Governor shall from time to time appoint.

List of persons qualified to be Mining Assessors.

94. The Warden of every Mining District shall as early as practicable in the month of June in the year one thousand eight hundred and seventy-four and in the same month in each succeeding year cause a list to be prepared containing in alphabetical order the name in full and address of every natural born or naturalized subject of the Queen being a male of the full age of twenty-one years and being a registered claim or gold-mining lease holder under this Act or the Regulations and resident within such Mining District. And the said Warden shall cause the said list to be corrected from time to time by the addition of the names of qualified persons and the cancellation of the names of persons who shall have resigned died or become disqualified. Provided that if from any cause such list shall not have been prepared at the time herein prescribed such list if prepared as soon thereafter as practicable shall for all purposes be as valid and effectual as if the same had been prepared within the time first hereinbefore mentioned.

How Warden to proceed in selecting assessors.

95. The said Warden shall thereupon from the list so prepared as aforesaid for every such Mining District (in which said list the names of the persons mentioned therein shall be so arranged as to show in what divisions (if any) of such district such persons are resident) select seventy-two Mining Assessors for such district in the following manner that is to say—

- (1.) He shall collect the names contained under the seven letters of the alphabet in such list which contain the fewest number of such names and such collection shall be formed into a group and treated as if the same were contained under a single letter.

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- (2.) From the names contained under the remaining nineteen letters of the alphabet and such group as aforesaid he shall select from each letter and group such a number of names as will be approximately proportionate to the number of names contained under such letter or group (but in no case shall he select more than six names from any such letter or group) and as will in the aggregate complete the number of seventy-two names.
- (3.) He shall wheresoever practicable endeavour to make such selection in such a manner that to every division of the Mining District there may be assigned such a number of Mining Assessors as is fairly proportionate to the number of qualified claim or lease holders resident in such division.
- (4.) He shall thereafter in the said month of June of each succeeding year from the said list select the like number of Mining Assessors for such year in the same manner as hereinbefore provided except that he shall omit the names of persons who have served as Mining Assessors at any time during the then next preceding three years.
- (5.) He shall from time to time whensoever any vacancy occurs in the roll of Mining Assessors fill up such vacancy by selecting some qualified person from the said list whose name is contained under the same letter or group as that of the Mining Assessor causing the vacancy.

96. If any Mining Assessor shall become insolvent within the Office how vacated. meaning of any Act now or hereafter to be in force or be convicted of felony perjury or any infamous offence or become insane or shall be absent from his district more than six calendar months his office shall thereby become vacant.

97. It shall be lawful for the Warden of a Mining District in Deficiency in number of Mining Assessors how made up. case the required number of Mining Assessors cannot from any cause be obtained either for such district or for any division thereof to fill up any such deficiency by appointing by writing under his hand such number of Mining Assessors for such district or division as may be necessary and willing to complete the required number.

98. It shall be the duty of the Warden of every Mining Duties of Returning Officer and Warden after election. District to cause a roll to be called the "Roll of Mining Assessors" for such district to be compiled and corrected from time to time by the addition or cancellation as the case may require of the names of all Mining Assessors who have been selected as hereinbefore provided or have ceased to hold office And the said Warden shall have the custody of such roll And a copy thereof to be called the "Mining Assessors Book" duly corrected as aforesaid shall be kept by the Warden's clerk and by the Registrar of the District Court having jurisdiction within such district.

99. Whenever Mining Assessors shall be required to hear any Assessors how summoned. complaint in a Warden's Court or any appeal in a Mining Appeal Court seven clear days written notice of such assessors being required shall in all cases where practicable be delivered to the Warden's clerk or Registrar of the Mining Appeal Court by the party requiring such assessors And upon the receipt of such notice or upon the direction of a Warden or Judge of the said Court such Clerk or Registrar as the case may be shall summon to attend the Court by a Warden's or Judge's summons at a time and place to be mentioned in such summons so many of the persons whose names are in such book as the said Warden or Judge shall direct not being less than six nor more than twenty.

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Fine on non-attendance &c.

100. Every person so summoned as aforesaid shall attend at the Court at the time mentioned in the summons and in default of attendance or in case of withdrawal from the Court without leave from the said Warden or Judge or of refusal to act as an assessor shall be fined in such sum of money as the said Warden or Judge shall direct not being more than five pounds for each default and the delivery of such summons to the person whose attendance is so required or to his wife servant or any inmate at his usual place of abode or business shall be deemed good service. Provided always that the Warden or Judge shall have power on sufficient cause being shown to him to remit the whole or any portion of the said fine.

What to be good service of summons.

Striking assessors in complaints and appeals.

101. At the opening of the Court for the hearing of any complaint or appeal as aforesaid the Warden's Clerk or Registrar of the Mining Appeal Court shall put together in a box to be provided for that purpose pieces of card as nearly as may be of equal size containing each the name addition and place of abode of each assessor so summoned as aforesaid and upon any such complaint or appeal being called on to be heard such Clerk or Registrar shall in open Court draw out the said cards one after another until twice the number of assessors required shall appear and after all causes of challenge allowed shall remain indifferent and approved of or until the whole of such cards shall be exhausted.

In default of assessors bystanders may be nominated.

102. In case of a deficiency of assessors the necessary number of assessors shall be nominated by the Warden or Judge from the bystanders being registered claim or gold-mining lease holders. And if any person so nominated shall refuse to act without an excuse allowed by the said Warden or Judge he shall be liable to the same penalty as an assessor for not attending after having been summoned.

Re-swearing not necessary.

103. No person once sworn as an assessor shall need to be re-sworn on each trial. And either of the parties to a complaint or appeal shall be entitled to his lawful challenge against any of such assessors.

Payment to assessors.

104. Every person summoned or nominated to act as an assessor under the provisions hereinbefore contained shall for his attendance be entitled to the same compensation and allowance for his travelling expenses as are provided by law for jurors attending the Supreme or any Circuit Court under a general jury precept.

Decision of Courts when not invalidated.

105. No decision judgment or order of any Court holden under the provisions of this Act shall be invalidated or affected by any irregularity or informality in the appointment or summoning of any assessor who shall have sat in the complaint appeal or other proceeding in which such decision judgment or order was made or by the fact that any such assessor was disqualified at the time of his so sitting. But nothing in this section contained shall be construed to qualify or permit any assessor to sit in any such complaint appeal or proceeding if he shall have a pecuniary interest in the result thereof.

#### DIVISION VIII.—APPEALS.

##### (1.)—*To District Court sitting as a Mining Appeal Court.*

Appeal from Warden's Court.

106. If either party to any complaint or proceeding in a Warden's Court shall be dissatisfied with the decision of the said Court where such decision is not hereby declared to be final and whether the decision be a dismissal of the case or otherwise such party may appeal from the same to the District Court sitting as a Court of Appeal in its mining jurisdiction (which jurisdiction is hereby conferred on the several District Courts throughout New South Wales) and hereinafter

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after termed the "Mining Appeal Court" the Judge whereof is in this Act designated by the term "Judge" or "Mining Judge" at that sitting of such Court which next after the expiration of fifteen days from the day of the making of such decision shall be held nearest to the place at which such decision shall have been made. Provided that such person shall within seven days from the day of the making of such decision deposit with the Registrar of such Court at the place where such sitting is to be held the sum of ten pounds or such less sum as the Warden shall order to abide the costs of such appeal and thereupon such Registrar shall issue out of such Court a summons directed to the persons interested in supporting such decision or to such of them as shall appear to the Judge sufficiently to represent all the parties interested requiring them to show cause to such Court at a time and place to be named in such summons why such decision should not be reversed or varied and every such summons shall be made returnable at the next sitting of the Court at such place as shall be nearest to the place at which such decision was made and every such appeal shall be heard before the said Court which shall proceed to make an order reversing or varying such decision or dismissing such appeal or such other order as to the said Court shall appear just and the Judge shall if necessary order payment of money or the delivery of the possession of any claim land race drain dam reservoir water gold or other property to the person who was the complainant before the Warden or restitution of any claim land or water gold or other minerals or metals or other property as the case may require and in and by such order the said Court may make such order with respect to the costs of the appeal and of the proceeding appealed from as such Court shall think fit. Provided always that no such appeal shall be so heard unless the said summons shall have been served seven days before the same is returnable upon all parties interested in supporting such decision or upon such of them as shall appear to the Judge sufficiently to represent all the parties interested or in case no such party can be found upon the Warden who made the decision nor unless at the hearing of such appeal a copy of the minute of such decision certified under the hand of a Warden shall be produced to such Court.

107. Prior 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 hereinbefore provided and no appeal shall in such case lie from the decision of the said Court. Agreement to bar appeal.

108. If upon the hearing of such appeal the subject matter of the dispute shall appear to the Court before which the appeal shall be heard not to exceed in value twenty pounds the appellant shall not although he succeeds be entitled to receive any costs of such appeal from the opposite party unless the Judge shall be of opinion that the special circumstances of the case entitle the appellant to costs. No costs on appeal under twenty pounds unless under special circumstances.

109. Every such appeal shall be in the nature of a rehearing of the whole matter and shall be heard and determined by the said Judge alone sitting as aforesaid or (at the option of either party to the appeal) by the said Judge and four Mining Assessors as hereinbefore provided (such Court in either case being hereinafter termed the Mining Appeal Court) and no ground of appeal except those stated in the notice of appeal shall be entered upon unless the Judge shall allow either before or at the hearing other grounds to be added upon such terms as to adjournment costs or otherwise as he may think fit. Provided that before the hearing of such appeal by such Judge sitting with assessors each assessor shall take the oath or make the affirmation mentioned in section seventy-seven hereof. Appeal how to be heard.

No ground of appeal except those stated to be entered on.

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Assessors may be summoned.

Fees to assessors.

110. Either party to the appeal or the said Judge prior to the hearing thereof may require that such appeal shall be heard before such Judge and four Mining Assessors to be summoned as hereinafter provided And such Mining Assessors shall determine any matter of fact material to the issue which either the appellant or respondent or the said Judge may require to be so determined and the verdict of a majority of such assessors as to any such matter of fact shall in all cases be received Provided that before any assessors shall be so summoned there shall be paid to the Registrar of the said Court seven clear days before the sitting of the Court at which the said appeal is to be tried the sum of two pounds by the party demanding assessors and each of the assessors before whom the appeal is heard shall be entitled to receive thereout the sum of ten shillings and in case the hearing of such appeal shall be adjourned to any future day there shall be paid to the Registrar the further sum of two pounds for every such adjournment and each of the assessors shall be entitled to receive thereout the further sum of ten shillings Provided also that any part of any of such sums which shall not be required for the payment of assessors shall be returned to the appellant and the residue thereof shall eventually be paid as part of the costs of the appeal by such of the parties as the Judge shall in that behalf direct.

In cases of appeal an injunction &c. and stay of proceedings may be had.

111. Whenever any such appeal shall have been brought or be about to be brought it shall be lawful for the Warden from the decision of whose Court the appeal shall be or be about to be brought on the application of any of the parties interested in such appeal to 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 shall think proper but without such order or an order to the same effect by the Judge of the Court in which the appeal shall be brought no appeal shall operate as a stay of proceedings and such order the said Warden may at any time thereafter if he think fit discharge.

Mode of enforcing decision after appeal.

112. After any appeal against the decision of any Warden's Court shall have been determined if such appeal shall be dismissed it shall be lawful for any Warden to proceed to enforce such decision in the same manner as such Warden might have done if no such appeal had been brought and in case any such decision shall be varied upon appeal the decision so varied shall be deemed to be the decision of the Warden's Court whose decision shall have been appealed against and it shall be lawful for any Warden to proceed to enforce the decision as so varied in the same manner as if it had been the original decision and no such appeal had been brought Provided always that if any decision when so affirmed or varied shall contain an award of debt damages and costs or either of them and the same shall not have been previously paid or satisfied or in case any decision of a Mining Appeal Court reversing the decision of the Warden's Court shall contain an award of debt damages and costs or either of them or an order for payment or repayment of money and the same shall not forthwith or within the time limited for such payment in the adjudication on appeal be paid or satisfied it shall be lawful for the Registrar of the Court on the application of the person entitled to such debt damages and costs or either of them or to such money and without any summons or notice to the person required to pay the same forthwith to issue execution for the amount thereof in the same manner as if the same had been recovered by an original proceeding before the Judge of the said Court sitting as a District Court Judge and in case such Mining Appeal Court shall order that any money received by any respondent under the decision appealed against shall be paid into Court and the same shall not forthwith or within the time limited as aforesaid be paid into Court

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Court or in case such Court shall decree costs against any party to such appeal and the same shall not be paid within the time so limited it shall be lawful for the Registrar of such Court (upon the application of the person entitled to receive the same and without any summons or notice to the person required to pay the same) forthwith to issue execution for the amount thereof in the same manner as upon any decree of the said Court for payment of money or in case the said Court shall order that possession of any such land race dam reservoir or water as is hereinbefore mentioned or of any gold or of any share or interest therein respectively shall be delivered or restored to any party to the appeal then it shall be lawful for any Warden and he is hereby required to cause possession thereof to be delivered or restored to such party and if necessary for that purpose to cause to be removed from any such land race dam reservoir or water any other person his servants goods and chattels and all constables and other peace officers shall assist him in doing so.

113. It shall be lawful for the District Court Judges for the time-being or any three of them from time to time but subject to the provisions of this Act to make such general rules as they shall think fit for regulating the practice and procedure of the Mining Appeal Courts holden under this Act and the practice and procedure in cases before the Wardens and for the execution of the process of Mining Appeal or Wardens' Courts and in relation to any of the provisions of this Act which relate to the Courts to be holden thereunder the fees to be allowed to barristers-at-law and attorneys practising in the said Courts and the expenses to be paid to witnesses in the said Courts and also to frame forms for every matter or proceeding in the said Courts for which they shall think it necessary that a form should be provided and also for keeping all books entries and accounts to be kept by the Registrar or Clerk of any such Court and from time to time to rescind or alter any such rule and all such rules as aforesaid shall from and after the expiration of the time fixed therein for the commencement thereof be of the same force and effect as if the same had been herein enacted and in any case not expressly provided for herein or by the said rules the general rule in force for the time being made under the "District Courts Act of 1858" may be adopted and applied so far as practicable by the Wardens and Mining Judges under this Act.

Power to make rules  
of practice

114. All general Rules framed under the power hereinbefore or hereinafter contained and all Regulations under this Act shall be published in the *Government Gazette* and shall be laid before both Houses of Parliament within fourteen days after the making or approval thereof as the case may be if Parliament be then sitting and if not then within fourteen days after the commencement of the then next Session of Parliament.

Regulations and  
Rules to be laid  
before Parliament.

(2.)—*Appeal to Supreme Court.*

115. If either the appellant or respondent in any appeal to the District Court sitting as a Mining Appeal Court under the provisions of this Act in which the amount of the original claim or the value of the property involved exceeded fifty pounds shall be dissatisfied with the determination or direction of the said Court in point of law or upon the admission or rejection of any evidence or if the appellant or respondent shall be dissatisfied with the determination and direction of the said Court on any grounds if the amount claimed or involved by the decision of such Court shall not be less than five hundred pounds such appellant or respondent may appeal from the said determination or direction to the Supreme Court Provided that the party so appealing shall within such time and in such manner as shall be prescribed by the Rules to be made

Appeal to Supreme  
Court.

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as hereinbefore provided give notice of such appeal to the other party or his attorney and also give security (to be approved of by the Registrar of the said Mining Appeal Court) for costs of the appeal and the amount of the judgment or in lieu of giving such security deposit in the hands of such Registrar the amount of the judgment together with thirty pounds in addition to such amount to answer the costs of the appeal if such appeal be dismissed. And the Supreme Court may either order a new trial before such Mining Appeal Court on such terms as it thinks fit or may order judgment to be entered for either party as the case may be and make such order with respect to the costs of the said appeal as such Court may think proper and such orders shall be final and such appeal shall be in such manner and form and subject to such Regulations in all respects as the Judges of the Supreme Court shall by general rules in that behalf prescribe and such appeal shall be transmitted by the appellant to the Prothonotary and be set down for argument in the Supreme Court in the same manner as special cases in actions at law in that Court.

*Miscellaneous Provisions.*

Fees penalties &c.  
how recoverable and  
applied.

116. All fees charges and sums of money which shall or may be imposed or made payable under this Act and all penalties incurred thereunder or under any Regulation in force for the time-being for which no other mode of recovery is hereinbefore provided may be recovered in a summary way before any Justice being a Warden under the provisions of the Act or Acts in force for the time-being regulating proceedings on summary convictions and if any such sum of money be not paid either immediately after the order or conviction or within the time appointed by such order or conviction the same shall be levied by distress and sale of the goods and chattels of the offender or person directed by such order to pay any such sum as aforesaid and on failure of distress shall be enforced in the manner directed by the said Act or Acts.

Documents may be  
in writing or print.

117. All summonses plaints answers notices decrees orders warrants and other documents whatsoever used in any proceedings in any Court under this Act or in relation to any such proceedings may be in writing or in print or partly in one and partly in the other.

Who may take  
affidavits.

118. Any affidavit to be used in any Warden's or Mining Appeal Court or before a Judge or Warden thereof may be sworn before any Judge of the Supreme Court or any Commissioner of that Court for taking affidavits or before the Judge of any District Court or any Warden or Justice of the Peace.

Contempt of Court.

119. If any person shall wilfully insult the Judge or any Warden or assessor of any Court holden under this Act during his sittings or attendance in Court or before such Warden or shall wilfully interrupt the proceedings of any such Court or before any Warden or being summoned or examined as a witness in any suit appeal or proceeding in any such Court or before a Warden shall refuse to be sworn or to answer any lawful question it shall be lawful for the Judge or Warden if he shall think fit to commit any such offender to prison for any time not exceeding forty-eight hours or to impose on any such offender a fine not exceeding five pounds for every such offence and in default of immediate payment thereof to commit the offender as aforesaid for any time not exceeding forty-eight hours unless the fine be sooner paid and in either of the cases aforesaid a warrant in the form contained in the Thirteenth Schedule hereto shall and may be issued by such Judge or Warden and shall be good and valid in law without any other order summons or adjudication whatsoever and the bailiff and gaoler to whom the same shall be addressed shall obey the same.

Thirteenth Schedule.

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120. If any claim shall be made to or in respect of any goods or chattels taken in execution under any process issued out of any Mining Appeal Court or by a Warden or in respect of the proceeds or value thereof by any person not being the party against whom such process shall have issued it shall be lawful for the Registrar of such Court or for such 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 the said Court or 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 the Supreme Court or in any District 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 of the said Mining Appeal Court or by the Warden and such last-mentioned Court or 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 it or him shall seem fit and such order may be enforced in like manner as any order made in any suit brought in such Court or on any proceedings before such Warden as the case may be.

121. Notwithstanding the recovery of any penalty under this Act any person shall be entitled to enforce any civil remedy which he may have by reason of the act or default in respect of which the penalty shall have been recovered.

122. No proceedings under this Act shall be removed or removable by certiorari or otherwise into the Supreme Court save as hereinbefore provided.

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PART III.—PENALTIES—FORFEITURE.

123. Any person who shall mine or employ any other person to mine in or shall cut or construct any race drain dam or reservoir through or upon or cut or remove any live or dead timber or any earth from any Crown lands applied to any public use or purpose or used or excepted as hereinbefore mentioned in Part I of this Act without being authorized so to do as hereinbefore mentioned and any person not being the holder of a business license issued under this Act or any Act or regulation in force for the time being who shall carry on or follow any business on any gold field and any person who shall occupy for the purpose of mining or of residence or business any greater extent of land than he is hereby or by any such Acts or regulations entitled to occupy and any holder of a miner's right or business license who shall occupy for the purpose of residence any greater extent of land than he is entitled to occupy under this or any such Act or regulation shall be liable on conviction to forfeit and pay for every such offence a sum not exceeding ten pounds.

124. Any person not being the holder of a valid and unexpired miner's right or of a gold mining lease under this Act or the Act hereby repealed who shall mine for gold in or upon any Crown lands and any person who shall employ any such unauthorized person so to mine and any person not being the holder of a miner's

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right license or lease duly empowering him in that behalf and not being an authorized person within the meaning of this Act who shall occupy any Crown lands in any proclaimed gold field or who whether or not so authorized shall employ any such unauthorized person in any business therein shall be liable for every such offence to a penalty not exceeding ten pounds.

Penalty for certain offences.

125. If any person shall forge any miner's right or any lease license or permit issued or purporting to be issued under the authority of this Act or fraudulently use utter or exhibit any such forged miner's right lease license or permit knowing the same to be forged such person shall be guilty of a misdemeanour and shall on conviction thereof be sentenced to imprisonment either with or without hard labour at the discretion of the Court for any period not exceeding twelve months.

Penalty for breach of regulation.

126. Any person who shall infringe any regulation under this Act or any regulation in force for the time being for the infringement whereof no penalty is prescribed by such regulation shall on conviction thereof incur for every such offence a penalty not exceeding ten pounds.

Penalty on Warden holding mining interest or acting if interested.

127. If any Warden appointed under this Act shall at any time during his appointment hold any interest or share in any claim gold mining or mineral lease or mining adventure or shall knowingly adjudicate in any matter in which he shall have any pecuniary interest he shall be guilty of a misdemeanor and be liable to fine and imprisonment or both in the discretion of the Court.

Penalty for extortion.

128. Any person who shall wilfully and corruptly exact take or accept any fee sum or reward whatsoever other than and except such fees or sums as are or shall be lawfully appointed or allowed for or on account of anything done under the authority of this Act shall on conviction thereof forfeit and pay any sum not exceeding fifty pounds.

Assault on Warden and other offences.

129. Any person who shall assault obstruct or resist any Warden or any person duly authorized by any Warden in lawfully entering upon any claim or land or in performing any other act authorized hereby or any bailiff or other officer or any clerk or assistant of such bailiff or officer or any inspector or other person in the performance of his duty or in the exercise of his powers under this Act or any person who after being removed by any Warden under the provisions of this Act from any claim or other place 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 favor such decision shall have been made shall on conviction thereof before any two Justices 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.

Penalty on witness neglecting to appear.

130. Any person on whom any summons issued out of any Mining Appeal or Warden's Court or by any Warden requiring such person to appear as a witness in such Court or before such Warden shall have been served personally or in such other manner as shall be directed by the rules hereinbefore mentioned and to whom at the same time payment or tender of his expenses shall have been made according to the scale to be fixed by general rules as hereinbefore mentioned 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

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on conviction thereof before any two Justices forfeit and pay any sum not exceeding ten pounds but no such conviction shall exempt such person from any action for disobeying such summons.

131. Any person who shall feel himself aggrieved by any conviction or order of any Justice or Justices under this Act may appeal from any such conviction or order to the next Court of General Sessions of the Peace which shall be held nearest to the place where such conviction or order shall have been given or made and the execution of every such conviction or order so appealed from shall be suspended in case such person shall with two or more sufficient sureties immediately before such Justice or Justices enter into a bond or recognizance to Her Majesty in the sum of fifty pounds which bond or recognizance respectively such Justice or Justices is and are hereby authorized and required to take and such bond or recognizance shall be conditioned to prosecute such appeal with effect and to be forthcoming to abide the determination of the said Court of General Sessions and to pay such costs as the said Court shall award on such occasion and such Court of General Sessions is hereby authorized and required to hear and determine the matter of the said appeal and the decision of such last-mentioned Court shall be final to all intents and purposes.

Appeal to General Sessions.

SCHEDULES.

FIRST SCHEDULE.

Sec. 3.

Year and Number.	Title.	Extent of Repeal.
20 Vic. No. 29.....	An Act to amend the Laws relating to the Gold Fields.	The unrepealed portion.
29 Vic. No. 20.....	An Act to amend the "Gold Fields Act of 1861."	The whole.
30 Vic. No. 8 .....	An Act to amend the Laws relating to the Gold Fields.	The whole.
25 Vic. No. 2 .....	An Act for regulating the occupation of Crown Lands.	So much of section 11 as limits the term for which Crown Lands may be leased for mineral purposes other than gold mining. Section 22.
26 Vic. No. 17.....	An Act for the better regulation of Coal Fields and Collieries.	So much as vests any administrative functions in the Minister for Lands for which term or the term "Minister" throughout the Act the term "Secretary for Mines" is substituted.
36 Vic. No. 25.....	An Act to amend the "Crown Lands Occupation Act of 1861."	The whole.

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Sec. 9.

## THE SECOND SCHEDULE.

*Descriptions of Mining Districts.*

## THE MUDGEE MINING DISTRICT.

Embracing portions of the Counties of Bligh Phillip and Wellington Commencing at the junction of the Meroo Creek with the Cudgegong River and bounded thence by a line north-westerly to Mount Emiguley on the western boundary of the County of Bligh at the source of Mitchell's Creek thence on the west by the range forming the west boundary of the County of Bligh northerly to the Talbragar River by that river upwards to the confluence of Coolaburragundy Creek on the north by the Talbragar River upwards to the north-east corner of W. Bowman's 890 acres above Cockabutta thence by a line bearing east to the Great Dividing Range dividing the eastern and western waters thence on the east by that range southerly to the north-eastern boundary of the Police District of Mudgee thence by that boundary bearing about south by compass to the confluence of Cudgegong Creek with the Cudgegong River thence by Cudgegong Creek upwards to its source thence on the south by the range forming the southern watershed of the Meroo Creek north-westerly to the junction of Meroo Creek with the Cudgegong River at the point of commencement.

## THE TAMBAROORA AND TURON MINING DISTRICTS.

Embracing portions of the Counties of Wellington Bligh Bathurst Gordon Lincoln and Roxburgh Commencing at the junction of the Meroo Creek with the Cudgegong River and bounded thence on the north by the range forming the southern watershed of the Meroo Creek easterly and the northern watershed of the Turon River easterly to the Great Dividing Range thence on the east by that range southerly to the southern watershed of the Turon River thence on the south by the southern watershed of that river north-westerly to where the spur branches forming the northern watershed of Cheshire Creek and Winburndale Rivulet and by that spur south-westerly to the junction of the Winburndale Rivulet and the Macquarie River thence by the Macquarie River upwards to the southern boundary of the parish of St. David as shown on the map of the County of Bathurst published by the Government thence by that boundary and its westerly continuation to the eastern watershed of Lewis Ponds Creek thence by that watershed northerly to the junction of Lewis Ponds Creek with the Macquarie River thence by a line north-westerly to the range forming the eastern watershed of the Bell River at the source of Larras Lake thence by Larras Lake to the Bell River and by the Bell River to the junction of Molong Creek thence by the southern boundary of the County of Gordon and the western boundary of that County northerly and the western watershed of Little River northerly to the junction of the Little River with the Macquarie River thence by a line north-easterly to the junction of Mitchell's Creek with Erskine or Talbragar River thence on the north-east by the north-eastern watershed of the Mitchell Creek to the western boundary of the County of Bligh thence by that boundary southerly to Mount Emiguley and thence by a line south-easterly to the junction of the Meroo and Cudgegong Rivers aforesaid.

## THE BATHURST MINING DISTRICT.

Embracing part of the Counties of Bathurst Roxburgh Westmoreland Wellington and Georgiana Commencing at the junction of Winburndale Rivulet with the Macquarie River and bounded thence on the north and north-east by the spur range forming the northern watershed of that creek and Cheshire's Creek north-easterly to the southern watershed of the Turon River and by that watershed south-easterly to the Great Dividing Range and by that range to the Bathurst Road and by that road to Cox's River by Cox's River downwards to the Kowmung River on the east by the Kowmung River upwards to its nearest source thence to Mount Collong thence by the range southerly and westerly to the source of the Abercrombie River near Mount Muruin thence by the eastern watershed of the Abercrombie River southerly on the south by the southern watershed of that river westerly and by a line west to the junction of Sandy Creek with the Lachlan River thence by the Lachlan River downwards to the junction of the Belubula River thence by the western boundaries of the Counties of Bathurst and Wellington northerly to the junction of the Molong Rivulet with the Bell River thence again on the north by the Bell River and Larras Lake upwards to the eastern watershed of the Bell River thence by a line south-easterly to the junction of Lewis Ponds Creek with the Macquarie River thence by the eastern watershed of Lewis Ponds Creek southerly to the westerly prolongation of the south boundary of the parish of St. David's thence by that prolongation and the south boundary of that parish as shown on the map of the County of Bathurst published by the Government easterly to the Macquarie River and thence by the Macquarie River downwards to the junction of the Winburndale Rivulet aforesaid.

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## THE LACHLAN MINING DISTRICT.

Embracing parts of the Pastoral Districts of Lachlan and Wellington Commencing at the junction of Molong Rivulet with the Bell River and bounded on the east by the western boundaries of the Counties of Wellington Bathurst and King southerly to the Yass River on the south by the Yass and Murrumbidgee Rivers downwards to the junction of Jugiong Creek thence on the west by the range dividing the waters of that creek from Kitticarrara Creek north-westerly to the range dividing the Lachlan and Murrumbidgee waters thence by that range and the western boundaries of the Police Districts of Young Grenfell and Forbes northerly to the Lachlan River thence by the Lachlan River upwards to the Corridgerry Range thence by that range northerly and by a line north to the southern watershed of the Bogan River thence on the north by the northern boundary of the County of Ashburnham easterly to the point of commencement.

## THE SOUTHERN MINING DISTRICT.

Embracing parts of the Counties of Argyle St. Vincent Murray Dampier Auckland and Wellesley Commencing on the sea-coast at the junction of the Shoalhaven River and bounded on the north by the northern margin of the Shoalhaven River to the junction of Barber's Creek on the west by Shoalhaven River upwards to Nerrimunga Creek thence by the western watershed of the Shoalhaven River southerly and by the range dividing the eastern and western waters southerly to the spur range dividing the waters of the M'Laughlin and the Umaralla Rivers thence by the northern and the western watershed of the M'Laughlin River westerly and southerly to the junction of M'Laughlin and Snowy Rivers thence by the Snowy River to the junction of the Delegate River and thence by the range dividing the waters of the Delegate and Snowy Rivers south-westerly to the boundary dividing the Colonies of New South Wales and Victoria on the south by that boundary easterly to the sea and on the east by the sea northerly to the point of commencement.

## THE TUMUT AND ADELONG MINING DISTRICT.

Embracing parts of the County of Murray and the Pastoral Districts of Lachlan Monaro and Murrumbidgee Commencing at the range dividing the eastern and western waters and bounded on the north by the northern boundary of the County of Murray to the junction of the Yass and Murrumbidgee Rivers and by the Murrumbidgee River to the junction of Jugiong Creek thence by the spur range dividing the waters of that creek from Kitticarrara Creek north-westerly to the range dividing the Lachlan and Murrumbidgee waters thence by that range to the western watershed of Houlahan's Creek thence by the western boundary of the County of Clarendon to the Murrumbidgee River thence by the western boundary of the County of Wynyard southerly to the northern boundary of the Police District of Albury thence by that boundary westerly and the western boundary of that Police District southerly to the Murray River on the south by the Murray and Indi Rivers upwards being the boundary dividing the Colonies of New South Wales and Victoria to the source of the Indi River in the Snowy Mountains and thence by the boundary-line dividing the aforesaid Colonies south-easterly to the range dividing the Snowy and Delegate Rivers on the east by that range north-easterly to the junction of the Delegate and Snowy Rivers and by the Snowy River to the junction of the M'Laughlin River thence by the western and northern watersheds of the M'Laughlin River to the Great Dividing Range dividing the western and coast waters and thence by that range northerly to the point of commencement.

## THE PEEL AND URALLA MINING DISTRICT.

Embracing part of the Counties of Durham and Brisbane and parts of the Pastoral Districts of Gwydir Liverpool Plains and New England Commencing at the junction of Rouchel Brook with the Hunter River and bounded thence on the south by the northern watershed of that brook easterly to the eastern boundary of the County of Durham on the east by the eastern boundary of that County and the eastern boundary of the County of Brisbane northerly to the Liverpool Range thence by the Liverpool Range and the Great Dividing Range easterly and northerly to Ben Lomond thence by the northern watershed of the Bundarra or Gwydir River and the northern watershed of the Gwydir River westerly to the junction of the Horton and Gwydir Rivers thence by the eastern watershed of the Horton River southerly and the southern watershed of the Horton River to the Cobbadah Barraba and Tamworth Road and thence by the Tamworth Road to the Peel River at Tamworth and thence by the Wallabadah Road to the boundary dividing the Counties of Buckland and Parry thence by that boundary southerly to the Liverpool Range and by the Liverpool Range easterly to the spur dividing the Isis River from Page's Creek and Hunter River thence by that spur southerly to the junction of the Hunter River and Rouchel Brook to the point of commencement.

*Mining.*

## THE NEW ENGLAND AND CLARENCE MINING DISTRICT.

Embracing parts of the Pastoral Districts of New England and Clarence Commencing on the boundary dividing the Colonies of New South Wales and Queensland at the head of the Clarence River near Mount Lindsay and bounded thence on the east by the eastern watershed of the Clarence River southerly to where the range known as the Coal Ridge meets that river at Nettle Creek thence by the range dividing the Mitchell and Nymboi or Boyd Rivers from the Clarence and Orara Rivers and a line south to the Nymboi River near Buccarumbi thence on the south by a line west to the junction of Guy Fawkes River with the Boyd River thence on the west by a line northerly to the junction of the Henry and Mitchell Rivers and by a line north to the southern watershed of the Timbarra River thence by that watershed westerly to the Great Dividing Range thence by that range northerly to Maryland and thence by that range easterly to Mount Lindsay at the point of commencement.

Sec. 14.

## THE THIRD SCHEDULE.

MINER'S RIGHT.		NEW SOUTH WALES.	
No.	_____	No.	[Insert here sum paid for the Miner's Right.]
Mining District and Division or Place in which issued		Mining District and Division or Place in which issued	
Date		Date	
Name		MINER'S RIGHT.	
To be in force until		Issued to _____ of _____	under the provisions of the "Mining Act 187 " to be in force until 18

Sec. 21.

## THE FOURTH SCHEDULE.

BUSINESS LICENSE.		NEW SOUTH WALES.	
No.	_____	No.	[Insert sum paid for the Business License.]
£		District and Division or Place in which issued	
Mining District and Division or Place in which issued		(Date)	
Date		[Insert here whether for six or twelve months.]	
Name		BUSINESS LICENSE.	
Occupation		Occupation	
Residence		Residence	
To be in force until the day of 18		Issued to _____ of _____	under the provisions of the "Mining Act 187 " to be in force until the day of 18

*Mining.*

## THE FIFTH SCHEDULE.

Sec. 43.

*Form of Receipt of Objector's Deposit.*

In the matter of the application of the undersigned person (or persons) for a lease under the "Mining Act 187" and of objections thereto lodged by

RECEIVED from the abovenamed persons the sum of *Five Pounds* pursuant to the provisions of the said Act.

Dated

(Signed)  
Clerk to \_\_\_\_\_ Warden.  
(or)  
Clerk to \_\_\_\_\_ Petty Sessions.

*Names and Addresses of Applicants*

## THE SIXTH SCHEDULE.

Sec. 70.

To *[insert names of all the defendants]* of

You are hereby summoned to appear before me or some other Warden at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ next at ten o'clock in the forenoon of the same day precisely to answer the complaint of A.B. of \_\_\_\_\_ and C.D. of \_\_\_\_\_ *[insert names of all the complainants]* by which complaint they seek *[here insert nature of complaint showing whether for encroachment trespass &c.]*. If you desire the said complaint to be heard before assessors you are entitled to have it so heard.

You may have a summons to compel the attendance of any witness or for the production of any books or documents on applying at my office.

Bring this summons with you when you come to my office.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_ 18

## THE SEVENTH SCHEDULE.

Sec. 70.

To *[insert names of all the defendants]* of

You are hereby summoned to appear before me or some other Warden at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ next at ten o'clock in the forenoon of the same day precisely to answer the complaint of A.B. of \_\_\_\_\_ and C.D. of \_\_\_\_\_ *[insert names of all the complainants]* by which complaint they seek to recover from you the sum of \_\_\_\_\_ pounds in respect of a certain contract entered into on the \_\_\_\_\_ day of \_\_\_\_\_ *[or in respect of a certain share or interest in \_\_\_\_\_ or upon a certain mining partnership account or for wages or state generally nature of claim]*. If you desire to have the said complaint heard before assessors you are entitled to have it so heard.

You may have a summons to compel the attendance of any witness or for the production of any books or documents on applying at my office.

Bring this summons with you when you come to my office.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_ 18

Warden.



*Mining.*

## THE NINTH SCHEDULE.

Sec. 77.

I A.B. do swear well and truly to try and determine the matters which shall be brought before me and a true judgment to give according to the evidence without fear or favour.

So help me GOD.

## THE TENTH SCHEDULE.

Sec. 77.

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 &c. &c.

## THE ELEVENTH SCHEDULE.

Sec. 78.

A.B. and C.D. Complainants E.F. and G.H. Defendants.

THE Warden's Court finds that [*set forth the decision*] and it is ordered that [*state order in full*] and that the said E.F. and G.H. do pay to the said A.B. and C.D. the sum of \_\_\_\_\_ pounds for damages and \_\_\_\_\_ pounds for costs]

It is also ordered that certain auriferous earth in the possession of the said A.B. and which has been valued by me [*or by assessors*] at \_\_\_\_\_ shall be delivered to the said A.B. and C.D. in satisfaction [*or in part satisfaction*] of such damages and costs.

Dated this \_\_\_\_\_ day of \_\_\_\_\_

(Signed)

J.K.

Warden.

## THE TWELFTH SCHEDULE.

Sec. 84.

*Writ of Execution against the Goods of Defendant.*

No. of Complaint.

No. of Writ.

In the Warden's Court \_\_\_\_\_ holden at \_\_\_\_\_

Between A.B. Complainant and C.D. Defendant.

WHEREAS on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ the complainant obtained a judgment in this Court against the defendant for the sum of £ \_\_\_\_\_ for \_\_\_\_\_ and it was thereupon ordered by the Court that the defendant should pay the same into Court on the \_\_\_\_\_ day of \_\_\_\_\_ (*or by instalments of \_\_\_\_\_* for every \_\_\_\_\_ days) And whereas default has been made in payment according to the said order these are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the defendant wheresoever they may be found (except the wearing apparel and bedding of him or his family and the tools and implements of his trade if any to the value of ten pounds) the sum stated at the foot of this warrant being the amount due to the plaintiff under the said order including the costs of this execution and also to seize and take any money or Bank notes and any cheques bills of exchange promissory-notes bonds specialities or securities for money of the defendant which may there be found or such part or so much thereof as may be sufficient

*Mining.*

sufficient to satisfy this execution and the costs of making and executing the same and to pay what you shall have so levied into this Court and make return of what you have done under this warrant immediately upon the execution thereof.

Given under my hand this                    day of                    18                    Warden.

To the Bailiff of the said Court and others the Assistant Bailiffs thereof.

	£	s.	d.
Amount for which Judgment was obtained .....			
Costs .....			
Mileage .....			
Paid into Court .....			
Remaining due .....			

Total amount to be levied \_\_\_\_\_

*Notice.*—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized unless they be of a perishable nature or at the request of the defendant.

Application was made to the Warden for this Writ at                    minutes past  
the hour of                    in the                    noon of the                    day of                    18

*Writ of Execution against the Goods of Complainant.*

No. of Complaint.

No. of Writ.

In the Warden's Court of                    holden at

Between A.B. Complainant and C.D. Defendant.

WHEREAS at a Court holden at                    on the                    day of                    18 it was ordered by the Court that judgment should be entered for the defendant (or that judgment of nonsuit be entered) and that the complainant should pay into Court on or before the                    day of                    the sum of                    for the defendant's costs of suit And whereas default has been made in payment according to the said order these are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the complainant wheresoever they may be found (excepting the wearing apparel and bedding of him or his family and the tools and implements of his trade if any to the value of ten pounds) the sum stated at the foot of this warrant being the amount due to the defendant under the said judgment including the costs of this execution and also to seize and take any money or Bank notes and any cheques bills of exchange promissory-notes bonds specialities or securities for money of the complainant which may there be found or such part or so much thereof as may be sufficient to satisfy this execution and the costs of making and executing the same and to pay what you shall have so levied into this Court and make return of what you have done under this warrant immediately upon the execution thereof.

Given under my hand this                    day of                    18                    Warden.

To the Bailiff of the said Court and others the Assistant Bailiffs thereof.

	£	s.	d.
Costs adjudged .....			
Mileage .....			
Paid into Court .....			
Remaining due .....			

Total amount to be levied \_\_\_\_\_

*Notice.*—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized unless they be of a perishable nature or at the request of the said complainant.

Application was made to the Warden for this warrant at                    minutes past  
the hour of                    in the                    noon of the                    day of                    18

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*Prisons.*


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## THE THIRTEENTH SCHEDULE.

Sec. 119.

To the Bailiff of the Court of the Mining District of and  
to the Keeper of the Gaol at

THESE are to command you the said Bailiff to apprehend O.B. and to convey him to the said gaol and deliver him to the said Keeper thereof and you and the said Keeper are hereby required to receive him into your custody in the said gaol and him there safely to keep for the term of [unless the sum of shall be sooner paid] I the undersigned Judge of the said Court [or Warden] having now here adjudged the said O.B. [to pay a fine of and in default of immediate payment thereof] to be imprisoned for the said term for that he the said O.B.

[Here state the case as follows]

has now during my sitting in my office as such Judge [or Warden] wilfully insulted me the said Judge [or Warden] [or an Assessor as the case may be lawfully in attendance during my sitting or interrupted the proceedings of the said Court (or before me (or having been summoned as a witness in a suit (or appeal or complaint) before me between &c. &c. refused to be sworn or being sworn as a witness before me refused to answer a certain lawful question that is to say "Whether &c." or been guilty in the opinion of me the said Judge (or Warden) of prevarication as such witness or misbehaved himself towards the said Court or during my sitting in my office as Warden)].

Given under my hand this day of

A.B.

Judge of the said Court [or Warden].

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