

*To be construed with Ord 20 of 1931, Ord 25 of 1933.
Ord: 99 of 1933. See Ord. 11 of 1935.*

CHAPTER 175.

MINING (CONSOLIDATION).

[No. XXXIV of 1920.]

[31st March, 1921.]

1. This Ordinance may be cited as the Mining (Consolidation) Ordinance. Short title.

2. In this Ordinance and in any regulations made under it, unless the context otherwise requires,— Interpretation.

“the Commissioner” means the Commissioner of Lands and Mines, or, in the absence of the Commissioner, the Assistant Commissioner;

“officer” means and includes every justice of the peace, commissary of taxation, customs officer, officer of the department of lands and mines, and warden and sub-warden, all police and other constables, all officers specially appointed for the purposes of this Ordinance, and every other public officer appointed by the Governor by notice in the Gazette;

“warden” means any officer appointed by the Governor for the purposes of this Ordinance and of the mining regulations for the time being in force to be warden of a mining district and, unless the context otherwise requires, includes sub-warden;

“regulations” means the Mining Regulations;

“mining district” means any portion of the colony declared to be a mining district under section four of this Ordinance;

“raw gold” includes any substance or thing containing gold or of which gold forms a part, whether it has been smelted or not, upon which the payment of royalty is not admitted by the Commissioner and includes gold won by milling or dredging;

“precious stones” means rough or uncut precious stones only;

- “valuable minerals” means any mineral containing gold, silver, platinum, and any of the rarer metals, or any combination of them, together with some other metal or mineral matter in such proportion that the gold, silver, platinum, and rarer metal, or combination of them, is or was of greater value than the baser metal or mineral matter in which it is or was contained;
- “minerals” includes ores or compounds of minerals;
- “metals” includes ores or compounds of metals;
- “concession” means and includes any permission, exclusive right, concession, or grant, in respect of a portion of the Crown lands of the colony, under the second part;
- “licence” and “claim licence” mean any licence to occupy a portion of the Crown lands of the colony for the purpose of mining, issued under the third part;
- “precious stones licence” means a licence for the purpose of mining for precious stones only;
- “claim” means the area of Crown land in respect of which a concession is granted or a licence is issued, and includes any claim located, whether a concession or licence has been issued in respect thereof or not, and includes the area of any land or water in respect of which a dredging concession is granted;
- “person” includes any company, corporation, society, syndicate, or other body of persons, whether corporate or unincorporate;
- “servant” means anyone who has entered into and is subject to a contract of service to be performed on or in respect of a claim, and includes a registered labourer.
- “part,” as used for instance in the expression “this part,” or “the seventh part,” means one of the ten parts of this Ordinance;

PART I.

ADMINISTRATION.

Guardianship
of mineral
products.

3. The Commissioner shall have the charge of, and act as guardian over, all metals and minerals, including gold, silver and valuable minerals, precious stones, mineral oil, asphalt, coal, and other substances of a like nature, within the lands, rivers, and creeks of the colony.

4. The Governor may by notice to be published in the Gazette and one or other newspapers circulating in the colony, declare any portions of the colony to be mining districts, and establish one or more stations in or in the neighbourhood of a mining district, and by a like notice direct that all those going to or coming from a mining district shall stop and report themselves at one or more specified station or stations to the respective officers in charge thereof and be examined and searched.

Mining districts and stations.

5.—(1) The Governor may appoint for each mining district an officer to be called a warden.

Appointment and duties of wardens.

(2) Each warden shall be responsible for the efficient working within his mining district of this Ordinance and of any regulations made under it and for the time being in force.

(3) The Governor may at any time transfer a warden from one mining district to another.

6. The Governor may appoint for each mining district one or more assistants to the warden, to be called sub-wardens.

Appointment of sub-wardens.

7. The Governor may appoint any other officers, including female searchers, he considers necessary for the purposes of this Ordinance, who shall respectively have and exercise the powers and discharge the duties assigned to them by this Ordinance or by any regulations made under it.

Appointment of officers.

8. All wardens and officers in the performance of their duties under this Ordinance and under the regulations shall act under the directions of the Commissioner and will be held responsible through him to the Governor.

Control of wardens and officers.

9. The Governor may by order in council confer on any warden the jurisdiction and powers, and require him to discharge the duties of a magistrate within his mining district, and due notice thereof shall be published in the Gazette.

Magisterial powers of wardens.

10. If the mining district of a warden or any part thereof forms part of the judicial district of a magistrate, any order of the Governor under the preceding section shall not affect the jurisdiction or powers of the magistrate.

Their effect on magistrate's jurisdiction.

Powers of
the Commis-
sioner.

11. The Commissioner or Assistant Commissioner may exercise any of the powers or discharge any of the duties by this Ordinance or the regulations conferred or imposed upon a warden or other officer of the department of Lands and Mines, except the powers and duties conferred and imposed by section nine of this Ordinance.

Inspection of
claim by
warden.

12. A warden may at any time enter on and inspect any claim and any building or work connected therewith.

PART II.

CONCESSIONS AND LEASES.

General
concession.

13. The Governor may, with the approval of the Secretary of State, grant a general concession to anyone entitling him to the soil, and to all metals and minerals, including gold, silver, valuable minerals, precious stones, mineral oil, asphalt, coal, and substances of a like nature.

Mining
concessions.

14. The Governor in Council may grant, on the terms and conditions he deems meet, a concession or lease, authorising anyone therein named to occupy any portion of the Crown lands of the colony and, subject to the provisions of this Ordinance and the regulations, to mine for, and when found to take and appropriate,—

(a) gold, silver, and valuable minerals; or

(b) precious stones; or

(c) gold, silver, and valuable minerals, and also precious stones; or

(d) any one or more metal or metals, or mineral or minerals, other than gold, silver and valuable minerals or precious stones; or

(e) mineral oil, or asphalt, or coal, or other substances of a like nature.

Permission
to explore.

15.—(1) Whenever, owing to the amount of capital to be invested or the works to be undertaken by anyone who desires to obtain a concession or lease, it appears expedient to the Governor in Council to do so, he may, with the approval of the Secretary of State, permit that person temporarily to occupy and explore for the purpose of testing their value, unoccupied Crown lands without a concession or lease in respect thereof being first granted, subject nevertheless to any terms and conditions to the Governor in Council seeming meet.

(2) The Governor in Council may, in special cases and with the approval of the Secretary of State, give to anyone the exclusive right to occupy and explore, as provided in the preceding sub-section, within a given area.

Exclusive right to explore.

16. The Governor may, in his discretion and subject to the regulations, grant to different persons concessions, leases, or licences for different purposes in respect of the whole or any portion of the area comprised in a concession or lease under this part :

Concessions or leases to different persons for different purposes in respect of the same area :

Provided that—

Proviso.

(a) the holder of the concession, lease, or licence for different purposes shall not interfere with the workings in actual use of the concessionaire or lessee already in occupation, and shall not be entitled to acquire any mining tenement in or upon the land held by the prior concessionaire or lessee except at a distance beyond two hundred yards from those workings, or from the crushing, smelting, or other works the property of that concessionaire or lessee; and

(b) a licence to mine for precious stones shall not be granted in respect of an area held under a concession to mine, dredge, or wash for, gold except to the holder of the gold concession and vice versa.

17. The Governor in Council may grant, on any terms and conditions he deems meet, a concession or lease to anyone to occupy any river or creek or portion thereof, including the banks thereof and flats adjacent thereto, and there to dredge for and, when found, to take and appropriate all metals and minerals including gold, silver, precious stones, and valuable minerals.

Dredging concession.

18. Whenever a concession or lease is granted in respect of unoccupied Crown lands the Governor may make an absolute grant therewith of the Crown lands in respect of which the concession or lease was granted without requiring the provisions of the Crown Lands Ordinance, and the Crown lands regulations for the time being in force, to be complied with :

Grants of Crown lands to which concessions relate :

Chapter 171.

Provided that no grant of the nature set forth in this section shall be made either under this section or in any other way without the approval of the Secretary of State.

Proviso.

Limit of area to be granted by concession.

19. No concession or lease shall be granted to anyone for any larger area than ~~five hundred~~ acres except with the approval of the Secretary of State. *one thousand*

Grant to others of rights other than mining rights over the area comprised in any concession or lease.

20. Nothing in any concession or lease shall be construed to prevent the Governor from granting to anyone other than the concessionaire or lessee the right to make or construct any pumping plant, hydro-electric plant, pipeline, transmission line, telegraph line, wireless or radio station, railway, tramway, roads, or waterways, on, through, or over, or to construct reservoirs on, or to take, lead or convey water from, the land specified in the concession or lease, subject to payment by that person to the concessionaire or lessee of compensation in respect of all damage to or interference with any of his works or workings, or in respect of all actual loss, damage or injury he may sustain by reason of being deprived of any right appurtenant to the surface of the land taken away, that compensation to be determined, in default of agreement, by two arbitrators or their umpire, pursuant to the provisions of the Arbitration Ordinance, or any Ordinance amending or replacing it, for the time being in force.

Chapter 24.

Right to cut timber and fuel.

Chapter 176.

21. The holder of every concession or lease may, subject to the regulations, any regulations under the Forestry Ordinance, and the Crown lands regulations for the time being in force, cut timber and fuel on the Crown lands for mining purposes, on payment of the royalty prescribed by the last named regulations.

Payment of royalty.

22. The holder of every concession or lease shall pay on the value of all metals or minerals, including gold and silver, their ores and compounds, precious stones, mineral oil, asphalt, coal, and substances of a like nature, found and appropriated within the area of his concession or lease, the royalty ~~or duty on profits~~ prescribed in any Ordinance or regulations relating to the concession or lease in force at the time it is granted, and, where expressly so provided in the concession or lease, the royalty ~~or duty on profits~~ prescribed in any subsequent Ordinance or regulations.

Ord 25 of 1953.

1. 2.

Land required for public purposes may be withdrawn from a concession.

23. Nothing in any concession or lease shall be construed to prevent the Governor from directing at any time that any portion of the land in respect of which it is granted shall be taken and used for public purposes, and, when the

Governor so directs, the land specified in the order of the Governor shall be taken and used for public purposes without giving any right to compensation therefor.

24. Every concession or lease shall during its continuance be subject to the regulations relating thereto in force at the time it is granted, except where it is expressly provided in the concession or lease that any subsequent regulations shall apply.

Concession
subject to
regulations.

25.—(1) The Governor in Council may cancel any concession issued under the provisions of the second part—

Cancellation
of conces-
sions :

- (a) in case of persistent refusal or neglect to carry out the regulations;
- (b) on breach of any condition on which the concession was granted, or which is included in the terms of the concession;
- (c) if it is certified to the Governor, by an officer appointed to visit the claim specified in the concession or to report thereon, that the concession is not being efficiently worked, or that the person to whom the concession was granted has ceased to carry on the work or to pursue the purpose for which the concession was granted.

(2) Where, upon complaint by a person, other than the concessionaire, who desires to obtain a concession for the claim, the officer appointed to visit it certifies as above, and the concession is cancelled, the Governor may grant to the complainant a concession for the whole or any part of the area included in the cancelled concession :

Provided that no concession shall be cancelled until the holder of it has had an opportunity of being heard, either personally or by counsel, and showing cause against the cancellation before the Governor in Council.

Proviso.

26. Notwithstanding anything hereinbefore contained, the Governor in Council may grant any concession or lease upon the terms that no royalty shall be paid in respect of any metals and minerals, including gold, silver, valuable mineral, precious stones, mineral oil, asphalt, coal, and substances of a like nature, obtained thereunder, if due provision, to the satisfaction of the Governor in Council, is made in the concession or lease for the payment of any sum or sums of money or other consideration, in lieu of royalty.

Grant of
concession
without
payment of
royalty.

Publication of notice of intention to grant concession or lease.

27. Before a concession or lease is granted notice of the intention to grant it shall be published in the Gazette on ~~three~~ successive Saturdays, and anyone desiring to object to the grant of it may do so by petition addressed to the Governor in Council, and may, if the Governor so orders, be heard in person or by counsel in opposition.

Plurality of applications for concession or lease :

28. Where more than one application is received for a concession or lease in respect of the same area, the Governor may in any case direct that the privilege of obtaining the concession or lease shall be exposed to public competition at auction :

Proviso.

Provided that the Governor may in his discretion in any case direct that the competition for the privilege shall be restricted to any two or more of the applicants only.

Refusal of concession or lease.

29. The Governor may, in any case, refuse to grant a concession or lease.

Property in metals and minerals obtained without permission of claim holder.

30. All metals and minerals, including gold, silver, valuable minerals, precious stones, mineral oil, asphalt, coal, and substances of a like nature, obtained on a claim without the permission of the owner of the claim, shall be the property of the owner of the claim, provided he is complying with the regulations as to the marking of boundaries and has paid the rent payable by him; but if he is not complying with the regulations, or has not paid the rent, it or they shall be the property of the colony.

PART III.

LICENCES.

Issue of licence to mine.

31.—(1) The Commissioner may, with the approval of the Governor, issue a licence authorising anyone therein named to occupy any portion of the unoccupied Crown lands of the colony and, subject to the provisions of this Ordinance and of the regulations, to mine for and when found take and appropriate—

- (a) gold, silver, and valuable minerals; or
- (b) precious stones; or
- (c) gold, silver, and valuable minerals, and also precious stones;
- (d) any one or more metal or metals, or mineral, or minerals, other than gold, silver, and valuable minerals or precious stones;

(e) mineral oil, or asphalt, or coal, or other substances of a like nature.

(2) The licence shall be issued in accordance with and subject to any conditions prescribed by the regulations.

32. The Governor may, in his discretion and subject to the regulations, grant to different persons concessions, leases, or licences, for different purposes, in respect of the whole or any portion of the area comprised in a licence under the third part :

Licences to different persons for different purposes in respect of the same area :

Provided that—

(a) the holder of the concession, lease, or licence for different purposes shall not interfere with the workings in actual use of the licensee already in occupation, and shall not be entitled to acquire any mining tenement in or upon the land held by the prior licensee except at a distance beyond two hundred yards from those workings, or from the crushing, smelting or other works, the property of the prior licensee; and

Proviso.

(b) a licence to mine for precious stones shall not be granted in respect of an area held under a concession to mine, dredge, or wash, for gold except to the holder of the gold concession and vice versa.

33. The provisions of sections nineteen, twenty, twenty-one, twenty-two, twenty-three, and thirty of this Ordinance, respecting concessions, shall also apply to licences issued under the third part.

Provisions of Ordinance relating to concessions made applicable to claim licence.

34.—(1) The Governor in Council may revoke a licence issued under this part, but no licence shall be revoked until the holder of the licence has had an opportunity of being heard, either in person or by counsel, and of showing cause against the revocation before the Governor in Council.

Right to revoke or withhold licence.

(2) Where, upon the complaint of anyone who desires to obtain a licence for the same area or any part thereof, the warden certifies that the area included in any licence is not being efficiently worked and upon that certificate the licence is cancelled, a licence for that area or any part thereof may be granted to the complainant.

(3) The Governor may order that a licence under this part shall not be issued.

Repealed by sec 2 of Ord 25 of 1933.
PART IV.

DUTY ON PROFITS ON GOLD WON BY MILLING AND DREDGING.

Duty in lieu
of royalty to
be paid on
profits on
gold.

35.—(1) Every holder of a concession, lease, or licence for a claim on which gold, tin, or copper is obtained by crushing ore with machinery, consisting of a mill containing at least ten stamps, or other mill equivalent to a battery of ten stamps, or of a concession, lease, or licence for a claim on which gold or tin is won by means of dredging machinery, shall in lieu of royalty pay a duty of five per centum on the annual amount of all profits made from or in respect of the exercise of the rights conferred by the concession, lease, or licence, and no holder of any concession, lease, or licence aforesaid shall be required to pay any royalty.

(2) All sums payable under this part as duty on the footing of profits in lieu of royalty, and all penalties and other charges incurred hereunder by the holder, shall be a first charge on his claim, and on all machinery, mills, dredges or other assets, his property in or upon the claim, and may be recovered by parate execution.

Method of
estimating
profits.

36. In estimating those profits, no sum shall be set aside or deducted on account of any capital employed in the improvement of any premises occupied for the purpose of exercising the rights granted by the concession, lease, or licence for the claim; or on account of any loss not connected with the trade or business carried on in the exercise of those rights, or for any sums employed or intended to be employed as capital in that trade or business, or on account of any capital withdrawn therefrom; or on account of any interest which might have been made on those sums if laid out at interest, or any debts except bad debts proved to be bad to the satisfaction of the Commissioner, or for any sum recoverable under an insurance of contract of indemnity; or for any expenses whatever not exclusively laid out for the purpose of the industrial or trading concern as distinct from domestic or private purposes.

Annual
statement of
profits to be
delivered to
Commis-
sioner.

37.—(1) Every holder of a concession, lease, or licence for a claim on which gold, tin, or copper is obtained by milling or dredging in the manner specified in section thirty-five of this Ordinance, shall in each and every year, within three months after the date up to which the accounts

of the trade or business carried on in the exercise of the rights granted by the concession, lease, or licence, have been made up, prepare and deliver to the Commissioner a true and correct statement of the profits made as aforesaid during the twelve months immediately preceding that date.

(2) The statement shall be delivered before any appropriation or distribution is made or any dividend is declared payable in respect of any of the profits.

38. Anyone acting for the time being as attorney or agent in the colony of the holder of a concession, lease, or licence shall be answerable for doing all those things that are required by this part to be done by the holder, for assessing or computing the duties in respect of profits payable by the holder under the provisions of this part.

Liability of agent to deliver statement of profits.

39. Anyone required by this part to deliver any statement under section thirty-seven of this Ordinance who neglects to deliver it as directed shall be guilty of an offence and be liable to a penalty not exceeding two hundred and forty dollars, and in addition to pay treble the amount of any duty payable under this part in respect of the profits required to be included in the statement.

Penalty for default in delivery.

40. The Commissioner shall in each case assess the amount of duty with which every holder of a concession, lease, or licence shall be charged in respect of profits as in this part provided, and, subject to appeal as hereinafter provided, the assessment shall be final and conclusive.

Commissioner to assess duty.

41. The Commissioner may require any person, answerable under this part for delivering a statement of profits, to appear and verify the statement, and may summon any other person whom he thinks able to give information respecting statements of profits.

Verification of statement of profits.

42. The Commissioner acting under this part shall have the same powers as to summoning witnesses and compelling their attendance, employing bailiffs, police or rural constables, examination of witnesses and adjournments, as are for the time being vested in a magistrate in the exercise of his jurisdiction under the (Petty Debt) Summary Jurisdiction Ordinance.

Compelling attendance of witnesses.

Chapter 15.

Expenses of witnesses.

43. All persons summoned to attend and give evidence or to produce documents shall be entitled to the expenses allowed to witnesses summoned to attend the Supreme Court on a criminal trial, if expenses are allowed by the Commissioner, but the Commissioner may disallow the whole or any part of those expenses if he thinks fit.

Fixing duty when default made in delivering statement of profits.

44.—(1) Where any person makes default in delivering a statement of profits as required by this part, or if the Commissioner is not satisfied with the statement, he shall assess the duty to be charged in the sum which, according to the best of his judgement, ought to be charged by virtue of this part, and shall add thereto any costs which he has incurred for the purpose of ascertaining that duty, and the amount of duty and costs so found shall be deemed to be the assessment in every case.

(2) Subject to appeal, as hereinafter provided, the assessment shall be final and conclusive.

Notice of assessment.

45. As soon as the Commissioner has made an assessment he shall give notice in writing to the holder of the mining claim or concession, or to his agent or representative, who shall pay the amount of the assessment to the Colonial Treasurer.

Recovery of duty.

46. If, at the expiration of six weeks after service of the notice of assessment prescribed in the preceding section, where no appeal is brought, and at the expiration of fourteen days after the decision of the Court when an appeal has been brought, the amount of the assessment is not duly paid to the Colonial Treasurer, the Commissioner may recover it as provided in sub-section (2) of section thirty-five of this Ordinance, and in any proceeding to do so a certificate signed by him shall be conclusive evidence that the amount is due.

Appeal.

47. Anyone who thinks himself aggrieved by an assessment under this part may, within six weeks after service of the notice of assessment under section forty-five of this Ordinance, appeal to the Supreme Court.

Conveyance of gold to Georgetown.

48. All gold, tin, or copper obtained on any claim to which this part applies shall be recorded and conveyed from the claim to Georgetown in the manner provided by the regulations for the time being in force relating to the record and conveyance of gold.

49. Anyone who, wilfully and with intent to defraud, prepares, makes, or delivers any false statement of profits required under this part, shall on summary conviction thereof be liable to a penalty not exceeding five hundred dollars.

Making false statement of profits.

Penalty.

50. Every holder of a concession, lease, or licence, for a claim, or his agent or representative in the colony, shall, when called upon to do so by the Commissioner, furnish the Commissioner with any returns and statistics, or other particulars of the operations being carried on upon the claim, and the results thereof, and in the form, the Commissioner requires, verifying them, if and when required to do so, by a statutory declaration of their truth and correctness, and in default of so doing shall be liable to a penalty not exceeding one hundred dollars.

Statistical returns to be furnished when required.

Penalty for default.

51. The Commissioner may depute any officer of the department of lands and mines to perform any of the duties or exercise any of the powers imposed or conferred on him under this part.

Appointment of deputy.

PART V.

MINING LICENCES ON PRIVATE LANDS.

52. The Commissioner may with the approval of the Governor, issue a licence to anyone authorising him to enter on private lands or lands of the colony and there search and mine for and, when found, take and appropriate gold, silver, and valuable minerals, precious stones, or other metals or minerals, and in addition thereto in the case of private lands granted after the passing of the (repealed) Mining (Mineral Oil) Ordinance 1910, mineral oil, asphalt, coal or other substance of a like nature; but the licence shall always be subject to any regulations from time to time made by the Governor and Legislative Council.

Licences to mine on private lands.

Ord 20 of 1931.

(No. XXIX of 1910.)

53.—(1) The owner of any private lands granted before the passing of the Mining Ordinance, 1903, shall hold and enjoy all metals other than gold and silver therein or thereon, and may search and mine for and, when found, take and appropriate them to his own use without previously obtaining any licence.

Right to baser metal on private lands:

(No. I of 1903):

(2) The owner of private lands so granted shall also be entitled to take and appropriate to his own use any metal, other than gold or silver, contained in any valuable mineral in or on his lands and which has been separated from the gold or silver by the holder of the licence aforesaid, unless the holder purchases the metal from the owner of the land at an agreed price, or, if no agreement is reached, as stated in writing by the Commissioner to be the net value of the metal after paying the cost of winning it, no deduction from the cost being made on account of gold or silver or both having been obtained together with the metal.

(3) The owner of private lands so granted may, without previously obtaining a licence, search and mine for and, when found, take and appropriate any mineral therein or thereon containing gold or silver, or both, together with some other metal in such proportions that the gold or silver, or both combined, obtainable from the mineral is or are not of greater value than the cost of obtaining it or them alone therefrom :

Proviso.

Provided that in that case the owner shall, if any gold or silver, or both, is or are extracted from the mineral, comply with the regulations for the time being in force as to keeping a record of gold or silver obtained and as to the removal thereof and the payment of the royalty thereon.

(4) Nothing in this section shall authorise the owner of any private lands to search and mine for or, when found, to take and appropriate to his own use any valuable mineral in or on his lands without previously obtaining the licence aforesaid.

(5) Nothing in this section shall give the owner of private lands any right to any precious stones therein or thereon.

(6) Notwithstanding anything in this or any other Ordinance contained, no grant of Crown land made after the passing of the Mining Ordinance, 1903, shall be deemed to confer upon the grantee any right to any mineral or metal whatsoever therein, and all those minerals and metals shall remain the absolute property of His Majesty.

(No. I of
1903.)

Application
of certain
provisions
in the case
of private
lands.

54. The provisions of sub-section (2) of section thirty-one and of sections thirty-two and thirty-four of this Ordinance respecting licences shall also apply to licences issued under this part.

PART VI.

MINING PARTNERSHIPS.

55.—(1) A mining partnership exists when two or more persons own or acquire a claim for the purpose of working it, and actually engage in working it or jointly employ others to work it for them; and whether there is a written contract of partnership or not. Definition.

(2) An express agreement to become partners, or to share the profits or losses of mining, is not necessary to the formation or existence of a mining partnership; the relation arises out of the ownership of shares in a claim, and working the claim for the purpose for which the concession or lease for it was granted or the licence in respect of it was issued.

56. Any claim owned and worked by partners in mining, whether purchased with partnership funds or not, is partnership property. Claim worked by partners.

57. A member of a mining partnership shares in the profits and losses thereof in the proportion which the interest or shares he owns in the claim bears or bear to the whole number of shares. Share of partner in profits and losses.

58. Each member of a mining partnership has a lien on the partnership property for the debts due to the creditors of the partnership and for money advanced by him for its use. Lien of partner on partnership property.

59.—(1) Anyone owning a share or interest in a claim, or in any mining company owning or working a claim, or any agent authorised by him in writing, shall be entitled, at any time between the hours of ten o'clock in the forenoon and four o'clock in the afternoon of a working day, to enter the claim with or without an expert, and to inspect it and all the workings and mining operations therein; and for that purpose the person, or his agent and expert, shall have at all times free ingress and egress thereinto and therefrom. Right of person owning share in mine to inspect it.

(2) Every manager of a claim, or director or manager of any company aforesaid, who prevents, obstructs, or delays, or causes the prevention, obstruction, or delay of, any person or expert aforesaid in entering the claim shall Preventing inspection of claim.

Penalty. be liable to a penalty not exceeding one hundred dollars, and to a further penalty not exceeding ten dollars for every day during which the prevention, obstruction, or delay continues.

Transfer of interest of partner : **60.**—(1) One or more of the partners in a mining partnership may convey or assign his interest in the claim without dissolving the partnership and without the consent of the other members; but the interest shall in the first instance be offered to and refused by the other members.

(2) The purchaser from the date of his purchase shall become a member of the partnership :

Proviso. Provided that no transfer shall be allowed or made unless the remaining partners have intimated in writing to the Commissioner that the transferor has made provision for the payment of his share of the debts due by the partnership, or unless the transferor can otherwise satisfy the Commissioner that that provision has been made.

Mode of binding partnership. **61.**—(1) No member of a mining partnership, nor agent or manager thereof, can by a contract (other than a contract for the employment of labourers) bind the partnership, except by express authority in writing derived from the members thereof.

(2) The decision of the members owning a majority of the shares or interests in a mining partnership binds it in the conduct of its business.

Dissolution of partnership. **62.** It shall be a ground for dissolution of a mining partnership that a member thereof refuses or neglects, within thirty days after personally receiving notice in writing thereof from the other partner or partners, to pay or satisfy any assessment of the partnership liabilities, or neglects, when notified in writing by the other partner or partners to do so, to perform any labour or discharge any liability incurred.

Application of preceding sections. (No. XXI of 1898.) Chapter 178. **63.**—(1) This part shall not apply to any company or association incorporated or registered under the (repealed) Companies Ordinance, 1898, or under the Companies (Consolidation) Ordinance, or any Ordinance amending or repealing it, and the application of all or any of these sections may be expressly limited or excluded by a written contract of partnership.

(2) The Partnership Ordinance shall not apply to any question provided for in this part where this Ordinance applies to the partnership in connection with which the question has arisen. Chapter 83.

PART VII.

PREVENTION OF THEFT OF RAW GOLD OR SILVER, OR OF VALUABLE MINERALS OR PRECIOUS STONES.

64. For the purposes of this Ordinance a person shall be deemed to be in possession of raw gold, silver, or of valuable minerals or precious stones, if it or they, although not in his actual possession, is or are at the time in his custody or power or under his control. Presumption as to possession.

65. Everyone in whose possession raw gold or silver, or valuable minerals or precious stones, is or are found by an officer shall be guilty of an offence against this Ordinance, unless he can prove, to the satisfaction of the court before which he is tried, that he is lawfully entitled to that possession. Possession an offence unless justified.

66. Any officer who has reasonable cause to suspect that anyone is unlawfully in possession of, or removing, any raw gold or silver, or valuable minerals or precious stones, may stop and examine the person, and any vessel, or cart or other conveyance, in his possession or under his control, or in which he is, and any package under his control; and, if any raw gold or silver, or valuable minerals or precious stones, is or are found upon him or in any vessel, cart, conveyance, or package aforesaid may seize and detain the same and arrest and detain the person until he can be brought before a magistrate and dealt with according to law. Powers of officers.

67. Notwithstanding anything in this Ordinance, and in addition to the powers herein contained, the Commissioner, or Assistant Commissioner, or a warden, in order to ascertain whether anyone is unlawfully in possession of, or removing, any raw gold, silver, valuable minerals, or precious stones, may— Powers of search.

- (a) stop anyone within a mining district, and demand the production of all raw gold, silver, or valuable minerals or precious stones in his possession;

- (b) search, or cause to be searched in that officer's presence, anyone within a mining district and everything in his possession or under his control; and,
- (c) anywhere within the colony search or cause to be searched anyone who has come from a mining district, and everything in his possession or under his control within seven days after leaving that district.

Powers of officers to search premises.

68. If an officer has reasonable cause to suspect that raw gold or silver, or valuable minerals, or precious stones, is or are in the unlawful possession of anyone in any house, store, shop, building, or other enclosed place whatsoever within the colony, then, upon oath made by the officer before a justice of the peace of the fact of the suspicion, the justice may, by warrant under his hand, authorise the officer, with all necessary assistance and by force if required and at any hour of the day or night, to enter the house, store, shop, building, or other enclosed place, and to seize and detain any raw gold or silver, or valuable minerals, or precious stones, found therein, and to arrest and detain the owner or occupier, or the person in charge thereof, and the person or persons in whose possession the raw gold or silver, or valuable minerals, or precious stones is or are found, until he or they can be brought before a magistrate and dealt with according to law.

Suspected person may be taken to a police station.

69.—(1) For the purposes of examination and search under this Ordinance, an officer may, if he thinks fit, cause anyone to be taken to the nearest police station or other station appointed for the purpose of this Ordinance.

(2) A female shall be searched only by a duly appointed female searcher, alone or in presence of another female, notwithstanding anything to the contrary in section sixty-seven of this Ordinance.

Detention of seizures and arrest of possessor.

70. Any raw gold or silver, or valuable minerals or precious stones, produced on demand or discovered on search, may be seized and detained by the officer, who may also arrest and detain the person from whom the gold or precious stones was or were seized until he can be brought before a magistrate and dealt with according to law.

71. All raw gold or silver, or valuable minerals or precious stones, seized shall as soon as possible be conveyed under the care of some responsible person to the inspector or other officer of police, or if there is no officer of police in the district, the magistrate of the district in which they were seized, and the inspector, or other officer of police, or the magistrate, shall make any provisions he deems advisable for the safe custody thereof.

Custody of seizures.

72.—(1) As soon as possible after the seizure of any raw gold or silver, or valuable minerals, or precious stones, a complaint shall be preferred against the person from whom they were seized for the unlawful possession thereof.

Complaint to be preferred forthwith.

(2) The complaint may be preferred by the seizing officer or by any other officer.

Procedure thereon.

(3) On the hearing of the complaint the complainant shall prove—

(a) the finding of the raw gold or silver, or the valuable minerals, or the precious stones, in the possession of the person charged; and

(b) reasonable cause, at the time of seizure, or, in the case of the Commissioner or Assistant Commissioner or warden, acting under section sixty-seven of this Ordinance, either at the time of seizure or from information subsequently obtained, to suspect the possession to be unlawful; and thereupon the onus shall lie upon the person charged of proving to the satisfaction of the court that he is lawfully entitled to the possession of the raw gold, silver, valuable minerals, or precious stones.

73. If, on the trial of anyone in respect of the raw gold, silver, valuable minerals, or precious stones, it is proved to the magistrate's satisfaction to whom it or they belongs or belong, the magistrate may make an order for the delivery thereof to the rightful owner on payment of the royalty, or duty on profits, as the case may be, payable thereon, and of any expenses in his opinion properly incurred in recovering the gold or silver, or valuable minerals or precious stones.

Delivery to rightful owner.

74.—(1) If there is no proof, or insufficient proof, as to the ownership of the gold, silver, or valuable minerals or precious stones seized, the magistrate shall publish the seizure with particulars thereof for four successive Saturdays in the Gazette and one other newspaper circulating in the colony, and anyone having any claim thereto, may,

Adjudication of claim to ownership in case of doubt.

on or before the last Saturday on which the seizure is required to be published, give notice in writing thereof to the magistrate, whereupon the magistrate shall fix a day and hour for the hearing of any claim or claims so made and shall adjudicate thereon in a summary manner.

(2) If on the hearing the magistrate is of opinion that the claimant has established his claim, he shall order the gold, silver, or valuable minerals or precious stones, to be delivered up after payment of the royalty, or duty on profits, as the case may be, payable thereon and the expenses aforesaid.

(3) If the claim is not established, or no claim is made, the magistrate shall thereafter transmit the gold or silver, or valuable minerals or precious stones, to the Commissioner to be dealt with as the Governor directs.

(4) The warden or Assistant Commissioner, or the Commissioner, or any officer of the department of lands and mines authorised by the Commissioner in writing, shall have the right to appear and be heard at any proceedings taken under this part, and shall have the same rights in all respects as if he were a party thereto.

Right of
appeal.

75. Any order of a magistrate under this Ordinance shall be subject to appeal.

PART VIII.

OFFENCES.

Non-report,
non-attend-
ance at
station,

76. Everyone who—

(a) fails to report himself to the proper station; or
(b) fails to attend at any station when required by an officer to do so; or

refusing to
be searched.

(c) refuses to allow himself or anything under his control to be examined and searched,

shall be guilty of an offence against this Ordinance.

Harbouring
registered
labourer.

77. Everyone who—

(a) harbours, conceals, or employs any servant while his contract of service with another subsists;
or

(b) removes or entices the servant from the service of his employer, or solicits or entices him to leave that service,

Penalty

shall be guilty of an offence against this Ordinance and on conviction thereof shall be liable to a penalty not exceeding

one hundred dollars, and shall further pay to the employer the sum of two dollars for every day during which the servant has been so harboured, concealed, or employed.

78. Everyone who—

- (a) fraudulently personates the holder of any licence or concession or lease; or
- (b) falsely represents that a servant or other person is an authorised holder of a licence; or
- (c) fraudulently exhibits as his own a licence issued to another; or
- (d) uses, or exhibits as valid, a licence which has expired,

Fraudulent dealing with licence.

shall be guilty of an offence against this Ordinance.

79. Everyone who unlawfully obtains any gold, silver, valuable minerals, or precious stones, or who procures or employs another unlawfully to obtain, convey, or dispose of, any gold, silver, valuable minerals, or precious stones, in addition to any punishment incurred for a breach of the regulations, shall be guilty of an offence against this Ordinance.

Unlawfully procuring or disposing of gold or precious stones.

80. Everyone who sells or purchases any gold, silver, valuable minerals, or precious stones, in a mining district otherwise than in accordance with the regulations, shall be guilty of an offence under this Ordinance.

Selling contrary to regulations.

81. Everyone who, with intent to defraud his co-owner, co-partner, or co-adventurer in a claim, or in any share or interest in a claim, secretly keeps back, conceals, or disposes of, any gold, silver, valuable minerals, or precious stones found in or taken from the claim shall be guilty of an offence against this Ordinance.

Cheating mining partner.

82. Everyone who is guilty of an offence against this Ordinance for which no penalty is otherwise expressly provided shall be liable to a penalty not exceeding five hundred dollars, and in default of payment forthwith, or within the time directed by the court, to imprisonment with or without hard labour for any term not exceeding six months, and on the second or any subsequent conviction to imprisonment with or without hard labour for any term not exceeding six months and in addition to a penalty not exceeding five hundred dollars.

General penalty.

PART IX.

PROCEDURE.

Change of
venue :

83.—(1) Where an offence against this Ordinance has been committed within the jurisdiction of one magistrate and the Commissioner certifies in writing that in his opinion the complaint for the offence can be more conveniently or fairly heard before the magistrate of another district in the colony, the other magistrate is authorised and hereby required to hear and determine the complaint as if the offence had been committed within his jurisdiction :

Proviso.

Provided that the venue shall not be so changed except with the consent in writing of the parties or the approval in writing of the Attorney General.

(2) If proceedings are taken under this section before the magistrate of a district other than that in which the offence was committed, all gold, silver, valuable minerals, or precious stones, seized and dealt with under this Ordinance shall be sent to that magistrate, and all further proceedings in respect thereof shall be had and taken by and before him.

Statement of
reasons for
seizure
receivable in
evidence.

84. On the trial of anyone in respect of the unlawful possession of raw gold, or silver, or valuable minerals, or precious stones, seized by an officer, or of any claim thereto under this Ordinance, the production of a written statement purporting to be signed by that officer, giving his reason for the seizure and the circumstances in which it was made shall with the consent of the defendant be *primâ facie* evidence of the facts therein stated.

Account
of wages
receivable in
evidence.

85. A certificate of registration issued under the regulations, and an account of salary or wages of a servant employed on a claim, certified by the holder of the claim or person in charge thereof, shall in all courts be *primâ facie* evidence of all matters contained therein or indorsed thereon respectively.

Service of
process in
proceeding
for recovery
of wages.

86. In any proceeding by a servant employed on a claim for the recovery of salary or wages for working thereon, delivery of process at the registered address of the person who was the holder of the claim at the time when the proceedings were commenced shall have the same effect as personal service on everyone liable for payment thereof.

87. The Commissioner, or Assistant Commissioner, or a warden, for the purpose of determining any disputes which he is by the regulations empowered to determine, shall have the same powers as to summoning witnesses and compelling their attendance, employing bailiffs, police, rural constables, the examination of witnesses, and adjournments, as are for the time being vested in a magistrate in the exercise of his jurisdiction under the Summary Jurisdiction (Petty Debt) Ordinance.

Powers of Commissioner and warden.

Chapter 15.

88. All fees or costs awarded payable under the regulations in proceedings for the determination of dispute by the Commissioner, Assistant Commissioner, or warden shall be recoverable by action.

Fees on proceedings before wardens or Commissioner.

89. In all cases in which the regulations and the seventh part provide that anyone aggrieved by a decision of the Commissioner, Assistant Commissioner, or of a warden, may appeal therefrom to the Supreme Court, the Court shall have full jurisdiction to hear and determine all questions of fact and of law between the parties raised in appeal, and the parties to the proceedings may appeal from any decision of the Court to the Full Court.

Appeal.

90. The appellant shall, within six weeks after the pronouncing of the decision, serve upon the Commissioner and upon the opposite party notice in writing of the reasons for his appeal, and the notice may be served either personally or by registered letter :

Notice of appeal :

Provided that, wherever a person entitled to appeal from any decision aforesaid is unavoidably prevented from appealing within the time hereinbefore specified, he may apply by motion to the Court for leave so to appeal, and the Court may either refuse to grant the leave or may grant it on the terms and conditions it thinks fit.

Proviso.

91. The appellant, within one month after the date of the decision under appeal, shall enter into a recognizance, with at least one sufficient surety, in fifty dollars to the satisfaction of the Commissioner, or Assistant Commissioner, or warden, conditioned for the due prosecution of the appeal and for abiding the result thereof, including the payment of all costs of the appeal and otherwise.

Security for appeal.

Practice and procedure in appeal

92. Subject to the provisions of this Ordinance, the practice and procedure in respect of an appeal shall be the same as the practice and procedure for the time being in force in the court in respect of appeals from magistrates' decisions.

Effect of decision in appeal.

93. The decision of the judge shall bind the parties but shall give no right as against the Crown or any officer of the Government, and shall not be deemed to confer any right to obtain a concession or lease or licence under this Ordinance.

Order of Supreme Court for work on claim to cease.

94. The Court at any time after proceedings in appeal have been commenced, on motion by either party, may order that all work shall cease on a claim, either generally or by any particular person or persons, pending the decision of the matter.

Fees and costs on appeal.

95. The fees and costs payable on appeals and the remuneration of witnesses shall be the same as in matters within the civil jurisdiction of the Supreme Court.

Procedure on prosecution for harbouring servant.

96.—(1) Wherever an employer or his agent satisfies a magistrate or justice of the peace, by information upon oath, that his servant whose contract of service is subsisting is harboured, concealed, or employed, by another person, the magistrate or justice may issue a warrant to an officer to search any premises of or occupied by that person for the servant, and to bring him, if found, and the person by whom he is harboured, concealed, or employed, before a magistrate to be dealt with according to law.

(2) In any proceeding under this section or under section seventy-seven of this Ordinance it shall not be necessary to prove on behalf of the prosecution that the defendant knew that the servant was under a subsisting contract of service, but it shall be a sufficient defence for the defendant to prove that he did not know, and had no reasonable means of knowing, that the servant was under that contract.

(3) Where a servant is harboured, concealed, or employed, as aforesaid on a claim, the holder of the claim, and the principal person in charge thereof, shall each be liable to the penalty enacted in section seventy-seven of this Ordinance.

97. Any offence created or penalty imposed by this Ordinance or the regulations made under it may be prosecuted or recovered under the Summary Jurisdiction Ordinances. Prosecution of offences.

PART X.

MISCELLANEOUS.

98.—(1) The Governor in Council may make and when made may alter, amend or revoke, regulations with respect to all or any of the following matters:— Regulations.

- (a) the prospecting and locating of claims and the issue of concessions, leases, and licences;
- (b) filing of objections;
- (c) duration of concessions, leases, or licences, and size and extent of claims;
- (d) mode of working claims and deposit of waste and tailings;
- (e) keeping of records of gold, silver, and valuable minerals, precious stones, metals, minerals, mineral oil, asphalt, coal, or other substances found;
- (f) definition of boundaries and maintenance of boundary marks;
- (g) the amalgamation, purchase, and transfer of concessions, leases, and licences;
- (h) surveys;
- (i) the regulation of the use of the surface of the land, and of the cutting of timber and fuel;
- (j) water rights and the use of water;
- (k) permits to occupy land for business purposes connected with mining;
- (l) cutting of paths and trails, and the use of them;
- (m) jumping of claims;
- (n) employment and registration of labourers, the payment of wages and the duties of employers;
- (o) the conveyance, detention, sale, and purchase, of gold, silver, valuable minerals, precious stones, metals, minerals, mineral oil, asphalt, coal, or other substances of a like nature;
- (p) duties of traders in gold, valuable minerals, or precious stones;
- (q) the sanitary regulation of claims and places adjacent thereto;
- (r) the regulation of mines;
- (s) the determination of disputes;
- (t) employment and rights of aboriginal Indians;

- (u) disposal of forfeited gold, silver, or valuable minerals, or precious stones, or metals, minerals, mineral oil, asphalt, coal, or other substances of a like nature;
- (v) prescribing the conditions under which mining rights in respect of the same area may be granted to different persons, and providing where necessary for the payment of compensation to the first occupier for disturbance of his rights;
- (w) the determination of the amounts to be paid for royalty, fees of office, and other amounts payable to the Colonial Government;
- (x) the regulation of the conditions on which entry may be made on private lands, and securing to those entitled thereto due compensation for disturbance of the surface of the land;
- (y) the grant to first discoverers of new payable mining fields of award claims or any payment out of funds provided by the Legislative Council for the purpose; and
- (z) all matters not hereinbefore specially mentioned connected with the search or mining for or dealing with gold, silver, valuable minerals, or precious stones, or metals, minerals, mineral oil, asphalt, coal, and other substances of a like nature, and generally all matters connected with the proper carrying out of the provisions of this Ordinance.

(2) The Governor in Council may prescribe any penalty, not exceeding one hundred dollars, he thinks fit for breach of any regulation.

(3) Everyone guilty of a breach of any regulation for which no penalty is expressly provided shall be liable to a penalty not exceeding one hundred dollars.

General
penalty.

Breach of
regulations
in certain
ways.

99. Everyone guilty of a breach of any of the regulations by—

- (a) refusing or neglecting to comply with any duty imposed on him by or under them; or
 - (b) refusing or neglecting to comply with any lawful order or direction given by an officer; or
 - (c) obstructing an officer in the execution of his duty;
- or

(d) giving incorrect information in relation to any matter within his knowledge, shall be liable to a penalty not exceeding one hundred dollars. Penalty.

100. The holder of a licence issued under this Ordinance or under the regulations who is guilty of a breach of any condition expressed in his licence, or a breach of any regulation relating to licences of the kind held by him, in addition to any other penalty provided for the breach, if the Governor in Council so orders, shall forfeit his licence. Forfeiture of licence for breach of conditions.

101.—(1) All gold, silver, valuable minerals, precious stones, metals, minerals, their ores and compounds, mineral oil, asphalt, coal, or other substances of a like nature, removed, conveyed, purchased, or otherwise dealt with contrary to this Ordinance or the regulations may be seized by any officer, and if anyone is convicted of an offence in respect of the gold, silver, valuable minerals, or precious stones, metals, minerals, mineral oil, asphalt, coal, or other substances of a like nature, the magistrate may order it or them to be forfeited or delivered to him who appears to be entitled thereto. Forfeiture of substances in respect of which an offence is committed.

(2) If the person from whom any gold, silver, valuable mineral, precious stones, metals, minerals, mineral oil, asphalt, coal, or other substances of a like nature, is or are taken, is not convicted of any offence in respect thereof or prosecuted for any offence, or if the magistrate has not made an order under the preceding sub-section, the officer may detain the gold, silver, valuable minerals, precious stones, metals, minerals, mineral oil, asphalt, coal, or other substances of a like nature, until that person, or any other person claiming it or them, satisfies the officer or a court of competent jurisdiction that he came by the same lawfully or has a good title thereto.

(3) All gold, silver, valuable minerals, precious stones, metals, minerals, mineral oil, asphalt, coal, or other substances of a like nature, so seized as aforesaid, to which no claim is made or sustained within six months from the date of the seizure, may be forfeited by the Governor.

102. Everyone who, either by himself or his agent or servant, is guilty of any negligence in relation to any matter dealt with in the regulations whereby anyone is injured, in addition to any action to which he may be liable, shall be deemed guilty of a breach of the regulations. Liability for negligence involving personal injury.

Reward to
informer.

103. Anyone giving information as to the breach of the regulations respecting the removal, or conveyance of, or dealing with, any gold, silver, valuable minerals, precious stones, metals, minerals, mineral oil, asphalt, coal, or other substances of a like nature, which leads to the forfeiture thereof shall be entitled to any portion of the proceeds therefrom the Governor awards.

No officer to
engage in
mining
enterprise.

104.—(1) Every officer holding a salaried appointment in the department of lands and mines is hereby prohibited from acquiring by any act of his, or holding directly or indirectly, any share or beneficial interest in any claim in the colony, or in any concession granted or licence issued under this Ordinance.

(2) If the share or interest devolves upon the official by will, or inheritance, or from any circumstances beyond his control, he shall, immediately on the fact becoming known to him, report it to the Governor, who shall give any directions in the matter he thinks expedient in the public interest.

(3) If the officer—

- (a) acquires or holds the share or interest contrary to sub-section (1) of this section; or
- (b) fails to report the fact of the share or interest having devolved upon him as required by sub-section (2) of this section; or
- (c) refuses or neglects to comply with any directions given by the Governor in respect of the share or interest which has devolved upon him,

he shall be liable, on conviction thereof before a magistrate, on proceedings taken against him with the consent in writing of the Attorney General, to a penalty not exceeding five hundred dollars for every offence and be subject to dismissal from the public service.

Penalty.

Salaries of
officers.

105. All officers appointed under this Ordinance shall respectively receive the salaries from time to time assigned to them by the Legislative Council.

Moneys
payable
under
Ordinance or
regulations.

106. All royalties, duty on profits, rent, fees, and other moneys payable under this Ordinance, or under the regulations shall be paid over to the Colonial Treasurer for the

Reference
Ord. 99
1933. Sec.
4.

use of the colony so long as the legislature of the colony makes due provision, to the satisfaction of His Majesty, for maintaining the civil list establishment of the colony.

107. The Governor, in any case at any stage of the proceedings may refuse to issue a concession, or lease, ~~but if in any case he so refuses in circumstances not provided for in this Ordinance, all moneys previously paid or deposited by an applicant shall be returned to him.~~

Refund of fees on refusal of application.

Ord 20 of 1931