

# The Goldfields Act, 1895.

(59 Vic., No. 40.)

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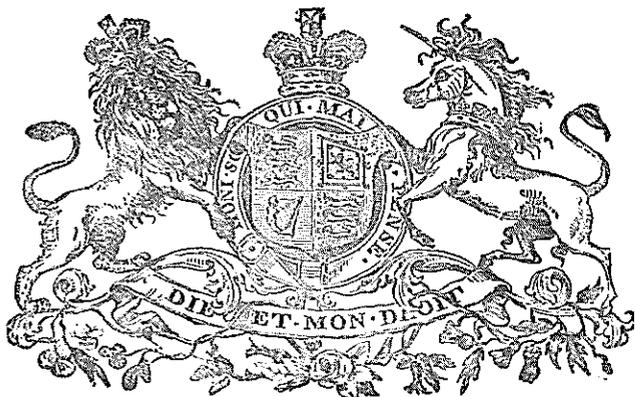
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Western Australia.

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No. XL.

AN ACT to make better provision for the Regulation of Gold Mining and Management of the Goldfields of the Colony.

[Assented to, 12th October, 1895.]

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 Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. THIS Act shall be called and may be cited as "The Goldfields Act 1895" and shall come into force on the First day of January 1896 and shall apply to all Crown Lands.

Short Title.

2. THE several Acts specified in the First Schedule hereto are hereby repealed to the extent in the said Schedule mentioned but such repeal shall not affect any right interest or liability already

First Schedule.

Repeal.

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created existing or incurred nor anything lawfully done or suffered under any enactment hereby repealed or any regulation proclamation or appointment made before the commencement of this Act or prevent applications made before the passing of this Act being dealt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not being inconsistent with the provisions of this Act duly made and proclaimed in pursuance of any of the said repealed Acts shall be and continue in force until altered or repealed by Regulations made under this Act.

Division of Act.

3. THIS Act is divided into parts as follows:—

PART I.—GENERAL, ss. 1-13;

PART II.—MINERS' RIGHTS AND BUSINESS LICENSES,  
ss. 14-31;

PART III.—GOLD MINING LEASES, ss. 32-48;

PART IV.—ADMINISTRATION OF JUSTICE, ss. 49-89;

PART V.—PENALTIES, FORFEITURES, &c., ss. 90-102.

### PART I.—GENERAL.

Interpretation.

4. 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 if not inconsistent with the context or subject matter that is to say—

“Alluvial.”—Any loose soil earth or other substance containing or supposed to contain gold not being a seam lode or quartz vein:

“Authorised holding.”—Any holding of whatever kind other than a lease or claim lawfully held and enjoyed under this Act and the regulations made thereunder:

“Business.”—The selling or disposition of any chattels in any manner except the hawking of farm or garden produce:

“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 their owners but subject to the provisions of Section thirty-five of this Act shall not include any land comprised in any lease granted under this Act or any Act hereby repealed:

“Crown Lands” shall include all lands of the Crown which have not been dedicated to any public purpose or reserved by the Governor or which have not been granted in fee or lawfully contracted to be so granted or which

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are not held under lease or license excepting pastoral and timber leases and licenses and includes all lands situate between high and low water mark on the sea-shore and on the margin of tidal rivers :

- “Dam” or “Reservoir.”—Any artificial storage or accumulation of water :
- “Earth.”—Any rock stone quartz clay sand soil cement 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 :
- “Goldfield.”—Crown lands proclaimed as such before the passing of this Act or which may be proclaimed a goldfield as hereinafter provided :
- “Governor.”—The Governor or officer administering the Government of Western Australia with the advice of the Executive Council :
- “Mine” as a noun includes all Crown lands held occupied or used for mining :
- “Mining” or “To mine” includes all modes of prospecting and mining for and obtaining gold :
- “Miner.”—Any person being the holder of a miner’s right or gold-mining lease issued under the provisions of this Act or any Act hereby repealed :
- “Miner’s Right.”—A miner’s right or consolidated miner’s right lawfully issued under this Act or any Act hereby repealed :
- “Minister.”—The Minister for the time being charged with the administration of this Act :
- “Proclamation.”—A proclamation by the “Governor” published in the *Government Gazette* :
- “Prescribed.”—Prescribed by regulations :
- “Regulations.”—The regulations under this Act or until regulations are made hereunder regulations under the Acts hereby repealed :
- “Person” “holder” “owner” “lessee” shall respectively include any body of persons whether incorporated or not.

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.

*Saving of Royal prerogative.*

6. A DEPARTMENT of Mines under the control of a Minister is hereby established for the purposes of this Act. All

*Department of Mines.*

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powers and authorities and duties in relation to mining on Crown lands for gold heretofore exercised by or vested in the Commissioner of Crown Lands shall on and after the coming into operation of this Act be transferred to and be exercised and performed by a responsible Minister for Mines having the management and control of the Department of Mines. The work of the Department shall be performed by such staff of officers registrars inspectors clerks and servants as may be necessary and shall be appointed by the Governor and subject to the annual vote of Parliament and shall receive such remuneration as the Governor may think fit.

Proclamation of Goldfields and districts.

7. IT shall be lawful for the Governor by proclamation in the *Government Gazette* to declare any Crown lands to be a goldfield within the meaning and operation of this Act and by the same or any subsequent proclamation to divide any goldfield or part thereof into districts and to define the limits and boundaries of any goldfield or district and assign a name or designation thereto respectively and from time to time to alter amend and vary any such limits boundaries and designations.

Partial suspension of pastoral leases on proclamation of goldfield.

8. WHEN any goldfield shall have been proclaimed upon any Crown lands then under lease or license for pastoral purposes the Governor may suspend or cancel wholly or in part such lease or license in respect of the land comprised in such proclamation and shall thereupon remit to the lessee or licensee such portion of the rent of such land as may be reasonable and just.

Application of "The Mineral Lands Act of 1892" to goldfields.

9. THE provisions of Section six of "The Mineral Lands Act of 1892" authorising the inclusion of any proclaimed goldfield within the boundaries of a mining district created under that Act are hereby repealed as set out in the first Schedule hereto and any goldfield now included within the boundaries of a mining district shall be and be deemed to be from and after the passing of this Act excised from the area of such mining district. In the event of any mineral other than gold being discovered within a proclaimed goldfield any person being the holder of a mining license under the before named Act may apply for a lease of or occupy as a claim the land containing such mineral in the form and manner prescribed by the said "Mineral Lands Act of 1892" and the regulations thereunder but no such application for lease shall be approved or occupation as a claim sanctioned until the report of the warden shall have been made thereon. If after such lease is issued or occupation as a claim is sanctioned gold is found in apparently payable quantities upon the land so held or occupied the lessee or occupant shall have a preferent right to forthwith apply for a gold mining lease or claim in the form and manner prescribed by this Act and the Regulations for such leases and claims. If the preferent right hereby allowed

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be not exercised any holder of a miner's right may subject to the regulations occupy the land aforesaid for gold mining purposes and it is hereby enacted that the warden of every goldfield shall be and be deemed to be the registrar under "The Mineral Lands Act of 1892" within such goldfield and have power to issue all licenses under that Act.

**10.** IT shall be lawful for the Governor from time to time to appoint officers to be called wardens who shall have and exercise the jurisdiction hereinafter conferred upon them in Part IV. of this Act and the Regulations. Also from time to time to appoint such and so many mining registrars mining surveyors clerks officers bailiffs and assistants and for such places respectively as the Governor shall think necessary for the efficient performance of the duties of inspection surveying and registration of claims leases and other authorised holdings and of all other duties in connection with gold mining and with the administration of this Act and the Regulations which the Governor may think fit to impose and the Governor may by regulations define the powers and duties of such wardens registrars surveyors officers clerks bailiffs 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 and also the amount and mode of providing the remuneration of such wardens registrars surveyors officers clerks bailiffs and assistants and the time for which the same shall be paid. Provided that no warden registrar or mining surveyor shall during his tenure of office hold either directly or indirectly any share or beneficial interest in any claim gold mining or mineral lease or other mining venture whatsoever in the colony of Western Australia. Provided always that the several persons who at the time of the commencement of this Act shall hold the office of warden or registrar or any other office or appointment under any Act hereby repealed shall continue to hold the same under this Act without any fresh appointment or commission.

Appointment of wardens and other officers.

**11.** (1.) THERE shall be kept at the office of mining registrar under this Act of each goldfield or district a complete record of all leases claims transfers liens or other dealings or matters connected with any lands situate within the goldfield or district and all acts matters and things required by this Act to be done and all notices or other process required to be served at or issued out of the office of the warden in connection therewith shall be sufficiently done issued at or served if done issued or served at or out of the office of such registrar. There shall also be kept in the office of the Minister of Mines in Perth in respect of each goldfield or district a register to be called the Register of Goldmining Leases wherein shall be registered all leases and applications therefor and transfers thereof and of any shares or interests therein respectively

Records to be kept.

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and all liens charges and other dealings and transactions relating thereto respectively.

(2.) No transfer of any lease or of any share or interest therein nor any lien charge or other dealing or transaction relating thereto respectively shall until registered as aforesaid be effectual to pass any share or interest in any such lease or render the same liable to any charge or encumbrance.

**12.** EXCEPT in the case of fraud no person contracting or dealing with or taking or proposing to take a transfer from the registered holder of any lease shall be required or in any manner concerned to inquire or ascertain the circumstances under or the consideration for which such holder or any previous holder thereof was registered or to see to the application of any purchase or consideration money or shall be affected by notice actual or constructive of any trust or unregistered interest any rule of law or equity to the contrary notwithstanding; and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud.

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

**13.** EVERY share or interest in any claim or other authorised holding or portion of land occupied for residence or business under this Act or the Regulations and any right title or interest acquired or created under the provisions of this Act or the Regulations shall be deemed and taken in law to be a chattel interest. And the holder of any share or interest as aforesaid 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 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.

### PART II.—MINERS' RIGHTS—BUSINESS LICENSES.

Miners' Rights.

**14.** IT shall be lawful for the Governor to appoint such persons as he may think fit to issue documents to be called "Miners' Rights" which shall be in force for one year from the date thereof and shall be granted to any person (not being an Asiatic or African alien) applying for the same upon payment of a sum of ten shillings. Every such document shall be dated of the day and at the place of issue thereof and contain the Christian name and surname of the person in whose favour the same shall be issued and shall be signed by the person issuing the same on behalf of the Minister and shall not be transferable. Provided always that no miner's right consolidated miner's right or business license shall be issued to any Asiatic or African claiming to be a British subject without the authority of the Minister first had and obtained.

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15. IT shall be lawful for the Governor to cause other documents to be issued each to be called a "Consolidated Miner's Right" and to be in force for one year and the same on the application of the manager or any trustee or trustees of any co-partnership corporation or corporate body or other legally constituted association of persons who shall have agreed to work in partnership any claim or claims registered under the provisions of this Act shall be granted on payment of a sum of ten shillings for each person which the same is to represent.

Consolidated Miner's  
Right.

16. EVERY holder of a miner's right and any number of persons collectively being each the holder of a miner's right shall subject to the provisions of this Act and the Regulations be entitled (except as against Her Majesty) to take possession of mine and occupy unoccupied Crown lands for gold-mining in accordance with the Regulations in force from time to time.

Privileges conferred  
by a Miner's Right.

To cut construct and use races dams wells and reservoirs roads and tramways which may be required for gold-mining through and upon any Crown land.

To take or divert water from any spring lake pool or stream situate in or flowing through Crown lands and to use such water for gold-mining and for domestic purposes.

To bore sink collect store and convey water from any source for mining and domestic purposes in the manner prescribed by the Regulations and to sell and dispose of the same.

To exercise any rights of the nature of easements upon and over unoccupied Crown lands in connection with gold-mining.

To erect from time to time any building or structure and at any time remove the same.

To cut and remove any live or dead timber stone or gravel for mining or building purposes for his own personal use from any Crown lands not by law exempted from mining occupation nor within the operation of any proclamation or notification prohibiting the cutting or removal of such timber stone or gravel included in any reserve for the preservation of timber.

To take possession of and occupy for the purpose of residence and not for business purposes an area of Crown lands not exceeding one quarter of an acre as shall be provided for by the Regulations.

Provided that it shall be lawful for any holder of a miner's right to take possession of unoccupied Crown lands for the purpose of mining thereon for gold under the provisions of this Act and the Regulations either for himself or if authorised in writing by such persons on behalf of and in conjunction with any number of persons

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not exceeding eight (including himself) being each the holder of a miner's right and any person or persons so taking up and occupying such Crown land as aforesaid shall subject as aforesaid be deemed in law to be possessed (except as against Her Majesty) of such land and the property therein and all gold then being in and upon any such land so taken up and occupied for mining shall (except as against Her Majesty) be the absolute property of the person or persons in lawful occupation of the same.

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

**17.** NO person shall be entitled to institute proceedings in any warden's court to recover possession of any claim or other authorised holding or any share therein or to recover damages for or to restrain the occupation of or encroachment upon such claim or authorised holding or any part thereof or obtain any relief as tenant in common joint tenant or co-partner against his tenant in common joint tenant or co-partner unless such person shall have been the holder of a miner's right or a business license at the time his alleged title to recover possession or damages or interest or to obtain such relief first arose or accrued. No person shall be capable of lawfully taking possession of any claim or other authorised holding or register transfer assign or encumber the same unless he is the holder of a miner's right or a business license (as the case may be).

Incorporated Mining  
Company may obtain  
"miner's right."

**18.** ANY incorporated mining company having a registered office within the Colony as required by "The Companies Act 1893" may apply for and obtain so many rights in the name of the corporation or company as shall be required under the regulations in force to hold the lease claim or other authorised holding. Provided that the locality of the company's office and the name of the manager be registered in the office of the mining registrar of the goldfield or district in which the lease claim or other authorised holding transferred is situate.

Business license.

**19.** (1.) IT shall be lawful for the Governor to appoint such persons as he may think fit to issue documents each of which shall be called a "Business License" which shall be in force for one year from the date thereof and which shall be granted to any person not being an Asiatic or African alien applying for the same upon payment of the prescribed fee.

(2.) Every business license shall subject to this Act and the Regulations entitle the holder thereof during the continuance of such license to occupy upon any goldfield for the purpose of residence and carrying on his business so much Crown lands not exceeding one acre in extent as may be prescribed and for either of the purposes aforesaid to put up any building or other erection and at any time to remove the same.

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(3.) 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 surface of the land he shall occupy by virtue of such license.

(4.) No person shall be entitled by virtue of one business license to occupy more than one such portion of land.

(5.) The holder of any such business license shall be entitled to transfer the same to any other person by an endorsement on the license to be signed by him and attested by a witness specifying the Christian name surname and occupation of the transferee. On the production to the mining registrar of such license so endorsed and the payment to such officer of the prescribed fee the date of such production shall be endorsed on such license by such officer and signed by him and thereupon the license shall for the remaining period of its currency vest in the transferee thereof as fully as if he had been the original grantee thereof.

(6.) Every business license issued under this Act or any Act hereby repealed with the right and interest thereunder shall on the death or bankruptcy of the holder thereof devolve on his personal representative or trustee in bankruptcy.

**20.** IF any person who shall have been the holder of a miner's right consolidated miner's right or a business 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 business license dated of the day of such expiration 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 payment of the sum of Five shillings in the case of a miner's right or in the case of a consolidated miner's right Five shillings for every right represented thereby and Twenty shillings in the case of a business license in addition to the ordinary price of a miner's right consolidated miner's right or business license provided that no such additional sum shall be chargeable where the new right or license shall be applied for within seven days after such expiration.

Miner's right and  
business license.

**21.** NOTWITHSTANDING the provisions herein contained all Crown lands which have been applied or shall be dedicated to any public use or purpose or which shall be reserved by the Governor or shall be lawfully and *bona fide* used as a yard garden cultivated field or orchard or upon which any house shed or other building shall have been erected and shall be in actual use or occupation or any artificial dam or reservoir which shall have been made shall be and the same are hereby excepted from occupation for mining and for residence or business. Provided that any Crown land which has been so lawfully and *bona fide* used

Lands exempted  
from occupation.

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as aforesaid shall upon payment of compensation to be ascertained in the warden's court by a warden and paid in the manner prescribed by the regulations cease to be excepted from such occupation. Provided that the land comprised in any commonage within any goldfield proclaimed or to be proclaimed shall not be deemed to have been or to be applied or dedicated to any public use or purpose within the meaning of this Act.

Governor may  
exempt other lands.

**22.** THE Governor may at any time by proclamation either by a general or particular description except from occupation for mining or for residence or business under any miner's right or business license any specific portion of Crown lands and no land so excepted shall subject to the provisions of the next following section be occupied under any miner's right or business license until such exception be revoked.

Excepted or  
reserved lands may  
be mined upon.

**23.** IT shall be lawful for the Governor upon application being made in the manner provided by the Regulations to authorise any one or more holders of a miner's right or the holders generally of miners' rights to occupy for mining under such miners' rights any Crown lands which are or may be excepted from occupation under the provisions of the last two preceding sections and also to construct drives under any such land also to mine upon and under any street road highway navigable waters common or reserve subject to such conditions and restrictions as may be prescribed by Regulations Provided that where such lands are within any Municipality notice of such application to occupy and mine shall one month before the same shall be made be given to the Mayor of such Municipality by lodging the same at the office of such Mayor in the building used for Municipal business. And the Minister before any decision or order be made under this section shall cause notice of every such application to be published in the *Government Gazette* 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 thirty days after the last publication of such application be lodged with him.

Laying pipes &c. over  
leases.

**24.** IT shall be lawful for the warden to permit any person to make or construct any roads races or drains or lay gas or watermains or other pipes under over across or through any lease claim or other authorised holding held under the authority of this Act or any Act hereby repealed. Provided that before any such permission shall be given fourteen days' notice shall be given by the person applying for permission to the person lawfully in possession of such lease claim or other authorised holding. If any question of compensation shall arise the amount (if any) shall be determined by the warden who shall have power to examine competent persons as to the amount of

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actual damage injury or loss which may be incurred by the works made or constructed under the permission granted.

**25.** THE registered owner or a majority of the registered owners of any claim or other authorised holding 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 or authorised holding hereinafter in this section mentioned actually exists may be granted by such warden suspension of work therein for any period not exceeding six months in any one year. And thereupon such owner or owners shall register such suspension with the mining registrar and shall hold such claim or holding without incurring in any respect thereto any penalty for the breach of any of the provisions of this Act or the regulations relating to the working of claims during the same period.

Suspension of work  
how obtained.

- (1.) That the claim or holding is unworkable from any cause whatsoever.
- (2.) That such owner or owners require to be absent for some sufficient cause from the locality or is or are unable by reason of sickness or other sufficient cause to work in such claim or holding.
- (3.) That the supply of water is insufficient to allow the working of the claim or holding to be profitably carried on.
- (4.) That the owner or owners of two or more adjoining claims desire to concentrate the labour compulsory on such claims on one of such claims and obtain suspension of labour for the other claims.

**26.** THE Minister with the approval of the Governor may subject to this Act and the Regulations grant reward areas to the discoverer of gold.

Reward areas may  
be granted.

**27.** (1.) WHEN any land *bona fide* and legally held for residence or business and registered as prescribed on which any building or erection has been put up shall be about to be sold such building or erection or other *bona fide* improvements that have been made on such land shall be valued.

In case of sale value  
of improvements on  
land held under  
miner's right or  
business license to be  
arbitrated.

(2.) In case the holder of the miner's right or of the business license and the warden shall not agree upon the value the warden may on the application of the Commissioner of Crown Lands order that the same be valued by some competent person to be named in such order and by two other persons one of whom shall be appointed by the holder of such miner's right or business license and the other by such two persons appointed as aforesaid.

Arbitrators how  
appointed.

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Valuation. (3.) Such three valuator or any two of them shall make their valuation in writing (so as the amount of such valuation shall not exceed the cost of constructing such building erection or other *bona fide* improvements (on or before the day to be named for that purpose in the warden's order or on or before such further day as the Warden shall by writing endorsed on such order appoint.

Third Schedule. (4.) Such order shall be in the form contained in the Third Schedule to this Act or to the like effect and shall be filed in the warden's court and every such valuation shall be in the form contained in the Fourth Schedule to this Act or to the like effect and shall be delivered to the warden.

Fourth Schedule.

Appointment of Valuator by holder of right or license. **28.** UPON any valuation under this part of this Act the holder of the miner's right or business license shall within seven days after the service on him of the warden's order deliver to the warden making the order an appointment of a person as valuator signed by himself or his agent and in case of default in making such appointment the valuator named in the warden's order shall act alone and the valuation of any valuator or valutors appointed as aforesaid shall be binding final and conclusive upon Her Majesty and the said holder of the miner's right or business license.

Upset price how ascertained. Holder of right or license to have the value of improvements.

**29.** SUBJECT to the provisions of the next following section the value so ascertained of any such building or erection and improvements shall be added to the upset price of the land without such building erection or improvements and shall together therewith be and constitute the actual upset price of such land and if the said holder of the said right or license shall bid such last-mentioned upset price or more and shall be the highest bidder for such land the value aforesaid shall be deducted from the amount of such bid and the balance shall be the purchase money for such land but if any other person than such holder shall become the purchaser of such land and shall pay for the same such holder shall be entitled to receive out of such purchase money the said value of such building erection and improvements.

Holder of right or license after twelve months possession to have right of pre-emption.

**30.** WHERE it is proved to the satisfaction of a warden that any building or other improvements have been erected or made as aforesaid upon any lands occupied by the holder of a miner's right or business license and duly registered and that the holder has been in possession of such land for a period of at least twelve months he shall have the exclusive right of purchasing the lands on which such buildings or other improvements have been erected or made at the upset price to be determined by the Commissioner of Crown Lands provided that such right shall be exercised within three months after the service upon such holder of a notice signed by the

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said Commissioner or his agent in that behalf that such lands are about to be sold and until such lands are sold such holder shall be entitled to renewal of the right or license by virtue of which the lands are occupied.

**31.** IN the event of the Crown requiring to resume possession for public or other purposes of any residence or business area the holder of such area shall be entitled to payment of the value of any buildings or other improvements erected or made thereon. Such value shall be ascertained and determined in the same manner as the value of buildings erections and *bona fide* improvements is ascertained and determined as aforesaid.

If Crown resume improvements to be paid for.

### PART III.—GOLD MINING LEASES.

**32.** THE Minister with the approval of the Governor may grant to any person subject to this Act and the Regulations a lease of any Crown lands not exempted by the next following section for all or any of the undermentioned purposes that is to say:—

Leases may be granted.

- (a.) For mining purposes or
- (b.) For cutting and constructing thereon water-races drains dams reservoirs roads or tramways to be used in connection with such mining or
- (c.) For erecting thereon any buildings or machinery to be used for mining purposes or
- (d.) For boring sinking for pumping or raising water or
- (e.) For residence thereon in connection with any or all of such purposes.

**33.** (1.) THE undermentioned lands shall be exempted from lease under the aforesaid powers that is to say:—

Exemptions from lease.

- (a.) Lands dedicated to any public purpose or reserved by the Governor.
- (b.) Lands granted in fee or lawfully contracted to be so granted.
- (c.) Lands held under lease or license other than pastoral and timber leases or licenses.
- (d.) Lands lawfully occupied by the holder of a miner's right or business license unless the holder thereof consents to the leasing of such land but without such consent on tender to such holder of compensation for loss or damage of an amount to be determined in the Warden's Court as prescribed by Regulations.

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(e.) Lands which consist exclusively of alluvial ground excepting such as in the opinion of the Minister

(1.) Has already been worked and abandoned or

(2.) Is suitable for leasing on account of its great depth or excessive wetness or on account of the costliness of the appliances required for its profitable development or

(3.) Which for other special reasons ought not to be exempted from lease.

Warden may make temporary reserves.

(2.) Provided always that the Warden may until the assent or dissent of the Governor is ascertained reserve any Crown lands for any public use or purpose or exempt the same from occupation for mining or other purposes under this Act.

Rent to be reserved.

**34.** THE yearly rent to be reserved in any gold-mining lease shall be twenty shillings per acre. All such rents shall be payable in advance at the times and places and in the manner prescribed by the regulations.

Duration and area of lease.

**35.** A LEASE for gold-mining may be granted for any term not exceeding twenty-one years from the time of granting the same and no such lease shall embrace an area exceeding twenty-four acres. Provided that where the workings will be chiefly confined to quartz veins or lodes the area applied for shall not exceed in length along the lode or vein twice the width across the line of lode or vein. Provided also that it shall not be obligatory to grant any such lease to any person applying for the same notwithstanding that he may have complied with the regulations in force and applicable thereto. Any holder of a lease or applicant for a lease may transfer assign or encumber the whole or any part of his share or interest in such lease or application for lease in the manner prescribed by the regulations.

Leases may be transferred &c.

Entry upon lease for alluvial.

**36.** ANY miner may subject to the regulations enter upon any land the subject of any application for lease already or hereafter to be made or the subject of any lease granted after the passing of this Act which is not held under a miner's right to within fifty feet of any reef situate thereon for the purpose of searching for and obtaining alluvial gold. Provided that the applicant or lessee may mark out or otherwise delineate upon such land the line of any reef or reefs situate thereon and it shall be incumbent upon him so to do within forty-eight hours of his being served with a notice in writing to that effect signed by a miner.

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

**37.** WHEN any land a mining lease of which shall be applied for shall be or shall comprise the whole or part of land held by the

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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.

**38.** IF any person shall object to the issue of a lease to the applicant therefor he shall within the prescribed time lodge with the mining registrar and serve such applicant with a written notice of every objection intended to be taken by him against the issue of such lease such notice shall be sufficiently served if transmitted by post to the address of the said applicant or posted on the land applied to lease. If an objection shall have been lodged within the prescribed time the warden shall appoint a place and time for hearing in open court every person who shall have lodged such notice of objection as well as the applicant for the issue of the said lease 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. After the termination of the said inquiry and the decision of the Court of Mining Appeal hereinafter mentioned on any question raised by way of appeal (if any) the warden shall transmit to the Minister for the consideration and decision of the Governor the application and objections and a copy of the decision of the Court of Appeal certified by him together with the surveyor's plan and report (if any) and the evidence taken by him and his report recommending the granting or refusal of the lease applied for.

Objections to applications how lodged.

**39.** (1.) A LEASE may be granted of the lands below the surface of any residence or business area or of any lands in a townsite or any common or reserve to be effectual at such distance below the surface not less than fifty feet as shall in the opinion of the Governor in Council not endanger the safety of any buildings erected or that may be erected on such surface.

Leases below the surface.

(2.) In every such lease there shall be implied a covenant on the part of the lessee his executors administrators and assigns to make good any subsidence caused by mining and to pay to the person or persons entitled to the same damages for all injury caused by such subsidence.

(3.) Every such lease shall confer on the lessee his executors administrators or assigns only such powers and authorities as can be actually or reasonably exercised below such distance of the surface as shall be specified in such lease.

**40.** THERE shall be implied in every lease issued under this Act or the Regulations a condition that if the lessee his executors

Form of lease.  
Special condition.

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General conditions. administrators or assigns fail at any time during the term to fulfil the conditions or terms or to keep the covenants therein contained or to use the land *bona fide* for the purpose for which it shall be demised the lease for any such failure or breach shall be voidable at the will of the Governor and every such lease shall contain such covenants conditions reservations and exceptions as may be prescribed and as the Governor may approve and shall bear the date of the approval thereof by the Minister and shall after execution be delivered to the applicant or his authorised agent or attorney upon payment of a deed fee of Ten shillings. Every such lease shall be registered in the office of the Minister for Mines in Perth.

Registration.

Surrender of lease. **41.** THE holder of any gold-mining lease issued under the provisions of this Act or any Act hereby repealed and the executors administrators or assigns of such holder shall be entitled at any time with the consent of the Governor to surrender the said lease and any such gold-mining lease may with the like consent be renewed. Provided that every such renewed lease shall be for the like term and subject to such rent covenants conditions reservations and exceptions as may be prescribed by any Act or Regulations for the time being in force regulating the management of goldfields.

Renewal of leases.

Ground applied to lease protected. **42.** SUBJECT to the provisions of Section thirty-five of this Act after the making of an application for a gold-mining lease and until the same has been refused it shall not be lawful to mark out as a claim or include within the boundaries of a claim the land applied to lease or any part thereof and no such marking out shall confer any right or title to the said land and no person shall enter upon occupy or in any way interfere with such land during the currency of the application for lease and until and unless the said application has been refused and such refusal published in the *Government Gazette* subject however to the working of the said land in the manner and by the number of men as prescribed and to other the Regulations affecting the same.

Amalgamation of leases. **43.** WHEN it shall appear to the satisfaction of the Minister after report from the warden that any two or more adjoining gold-mining leases can by amalgamation be more efficiently worked as one mine the Minister may authorise such amalgamation upon payment of a fee of Twenty shillings for each lease so amalgamated. Provided that the total area shall not exceed twenty-four acres and the proportion of length to breadth shall be as prescribed and the labour to be employed on or in connection with such amalgamated leases shall be the sum of the labour conditions in each separate lease.

Determination of priority of title. **44.** IN the event of more than one application being made for the same land or any part thereof the applicant who shall have first

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taken possession of and marked out the land in accordance with the regulations shall have priority of title.

45. UPON a complaint to the warden by any holder of a miner's right that the land comprised within any lease or application for lease under this Act or any Act hereby repealed is not being efficiently and continuously worked in the manner and by the number of men as prescribed by the regulations the warden shall in open court inquire into the matter of the complaint and may take such evidence therein on oath as shall be tendered by the complainant or by the person or persons claiming to be in possession of such land as aforesaid. If the evidence taken shall disclose that the number of men employed on the said land or solely in connection therewith is not equal to the number required as aforesaid by the regulations the warden may recommend that the lease or application for lease as the case may be shall be forfeited and the land comprised in such lease or application for lease may be awarded to the complainant who shall be allowed fourteen days from the date of the posting up at the mining registrar's office of the *Gazette* containing the notice of forfeiture within which to take possession and lodge an application for a lease or occupy the land as a claim in accordance with the regulations. Within seven days after the hearing of any such complaint upon which a forfeiture is recommended or in case of an appeal within a like period after the receipt by the warden of the decision of the Court of Appeal the warden shall forward to the Minister for the consideration and decision of the Governor the evidence taken in the complaint together with his report and recommendation on the case with a certified copy of the decision of the court.

Penalty for non-working land leased.

46. THE holder or a majority of the holders of any gold-mining lease or application for lease shall be entitled to register the land comprised therein or any portion thereof for suspension of work thereon for a period of one month on 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 section twenty-five of this Act with regard to claims. Provided that if suspension of work for a longer period than one month be required the same may be granted by the Minister for any period not exceeding six months on application made in the manner provided by the regulations.

Suspension of work on leases.

Section 25.

47. IN case any gold-mining lease granted under the authority of this Act or any act hereby repealed 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 shall and may be recovered on behalf of Her Majesty in such manner

Recovery of possession on behalf of Her Majesty.

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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 warden to order and direct any police constable or constables or other person or persons to take possession of such land immediately and without suit or process of any kind and from time to time as may be necessary to remove therefrom all persons in occupation of any such land provided that any such persons may also be prosecuted for the unlawful occupation of Crown lands under any statute or law in that behalf.

Governor's decision notified in *Gazette*.

48. AS soon as possible after the Governor shall have decided to refuse void or grant any application for lease or void cancel or forfeit any lease issued under this Act or any Act repealed thereby notice of such refusal or intention to grant a lease or the voidance cancellation or forfeiture of any lease shall be published in the *Government Gazette* and such notice in the *Gazette* shall be conclusive evidence that such application was refused or granted or that such lease was void cancelled or forfeited and the land comprised therein open for occupation subject to the provisions of this Act by any holder of a miner's right from the date of the publication of the notice as aforesaid.

## PART IV.—ADMINISTRATION OF JUSTICE.

Establishment of warden's court.

49. IT shall be lawful for the Governor to establish by proclamation on any goldfield or in any district a court to be called the warden's court to be presided over and holden by a warden and every such court shall be a court of record and shall possess such jurisdiction as is hereafter conferred and be held at such places as the Governor may appoint. And for the purposes of this Act the term "warden's court" means equally the warden sitting alone and such warden sitting with assessors as hereinafter provided.

Seal of court.

50. FOR every court there shall be a seal and all summonses certificates warrants and other process issued by the warden registrar or clerk of the said court shall be sealed or stamped with such seal.

Extent of jurisdiction of wardens.

51. EVERY warden shall have and exercise jurisdiction in respect of the matters hereinafter contained throughout Western Australia with power to issue summonses warrants or other process which shall have legal effect and operation throughout the said Colony.

Jurisdiction of wardens' courts.

52. EVERY such warden's court shall have original jurisdiction to hear and determine all actions suits claims demands disputes and

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questions arising wholly or in part within the district and cognisable by a court of law or by a court of equity 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 gold-mining lease or to cut construct use possess occupy or hold any interest in any race drain dam well reservoir or water bore for gold mining or other purposes.
- (2.) The claim of any person holding a miner's right to recover any land race drain dam well reservoir or water bore alleged to have been abandoned or forfeited under this Act or regulations thereunder and to the mesne profits thereof.
- (3.) The claim of any person to the use enjoyment or sale of any water by virtue of a miner's right 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 this Act or the regulations.
- (4.) Any encroachment or trespass upon or unlawful interference with or injury to any such land race drain dam well reservoir or water bore 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 the unlawful ouster or exclusion of any person from any share or interest in any such land race drain dam well reservoir water bore 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 to any holding share or interest authorised by this Act or the regulations or the sale of or transfer of any claim lease or other authorised holding in connection with gold mining.
- (6.) The specific performance of any contract or agreement relating to any lease claim or authorised holding or of any share or interest therein respectively.
- (7.) The claim to any gold in or to be taken out of any land occupied or held under this Act or the regulations and any matter concerning or arising out of any contract relating to such gold.

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- (8.) Concerning or arising out of any partnership for or in relation to mining for gold on any Crown land occupied or held as aforesaid or any partnership in any such land or in any race drain dam well reservoir water-bore water or gold 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 which may arise between tenants in common or joint tenants in and in relation to any such land or water or any share or interest therein.
- (9.) Concerning contributions to calls or to the expense of working or using any such land race drain dam well water-bore or reservoir or any share or interest therein.
- (10.) Concerning or out of any mortgage assignment or lien by way of security of or charge upon any such land race drain dam well water-bore reservoir water or gold vested in any person whether the holder of a miner's right or not or any share or interest therein or in a partnership therein.
- (11.) Concerning the cancellation and delivery up of instruments relating to mortgage charges or encumbrances of or upon any such land race drain dam well water-bore reservoir water or gold 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 or respecting the using of any such reservoir race drain dam well water-bore or water or respecting or in connection with any partnership for mining or in any such land race drain dam well reservoir water-bore water or gold or respecting the dissolving in the whole or in part of any such partnership.
- (12.) Concerning the ascertainment and adjustment of boundaries of land applied for held or occupied under this Act or the regulations where such boundaries shall be in dispute or be confused or doubtful.
- (13.) To hear and determine all suits concerning any Crown lands 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

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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 occupation or possession under such license, any money claimed to be due to the complainant upon any mining partnership adventure or interest and the recovery of any sum of money which any person shall be liable to pay under this section and for which no other mode of recovery is hereby provided.

- (14.) And generally all questions and disputes which may arise in relation to gold mining and the occupation of areas on a goldfield.

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 Two hundred pounds the decision of the warden's court shall be final and without appeal.

**53.** EVERY proceeding in a warden's court shall be commenced by a plaint and summons in such form as may be provided by the regulations and every such summons shall be issued by such warden or by a mining registrar upon the application of any complainant and shall be filled up according 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 an 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 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 the prescribed fee 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.

Proceedings before  
warden to be  
commenced.

**54.** 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

Summary hearing of  
complaints

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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.

Jurisdiction of  
wardens' courts  
as to place.

**55.** (1.) WHEN the hearing of any complaint shall involve the trial of a right to any lease claim business area or other authorised holding or share therein respectively or any money due in respect thereof or in any way connected therewith the same shall subject to the provisions next hereinafter contained take place in the court for the district in which such lease claim business area or other authorised holding is situate: Provided that if the warden shall be satisfied that any cause or matter pending in any one court has been erroneously brought before such court or could be more conveniently dealt with in any other court he may order the registrar of the court to transmit a copy of the record of the proceedings to the registrar of such other court and to give notice thereof to the parties and immediately upon the receipt of any such transmitted record the registrar receiving the same shall give notice thereof to the parties and appoint a day for the further hearing or other consideration of the cause or matter, and the same shall be heard or considered accordingly.

In case of doubt  
application may be  
made to nearest  
registrar.

(2.) Where any doubt shall exist as to the exact position of any lands the subject of any proposed dealing in the office of a registrar, it shall be lawful for the applicant having in all other respects complied with the Regulations to make application at the office of the registrar nearest to such lands. Where after survey it is ascertained that any lands the subject of an application are situate partly within the boundaries of any two or more districts such lands shall be deemed to be within the district of the nearest registrar.

Register of  
complaints.

Second Schedule.

**56.** EVERY warden shall cause a register of complaints to be kept in the form of the Second Schedule hereto in which shall be entered every complaint laid before him together with the names of the parties thereto 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 every year according to the order in which it shall be entered.

Payment into court.

**57.** IT shall be lawful for the defendant in any case in the said court at any time before the hearing thereof to pay into court the amount claimed together with the costs incurred by the com-

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plainant up to the time of such payment into court and to give notice thereof to the complainant or his attorney and the same shall be paid to the complainant 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.

**58.** ANY defendant in any case in the said court whereby a debt or money demand is sought to be recovered may at any time before the hearing thereof pay into court 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 to be given 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 to the warden he shall pay to such defendant the costs incurred by him in the said proceedings after such payment and the warden may decree the same accordingly.

Payment to warden of less than the demand.

**59.** NO complaint shall be dismissed by any warden's court because of any informality either in the plaint or summons itself or in the entry thereof nor shall any objection be taken or allowed to any such summons or complaint for any alleged defect or misnomer or inaccurate description of any person or place or on the ground that the complainant shall appear at the hearing of the summons to be entitled to different relief from that which is sought thereby or therein or for any variance between such summons and the evidence adduced on the part of the complainant but such summons shall be amended by the warden so that the subject matter in dispute between the parties shall plainly appear and the warden's court shall proceed to adjudicate according to the rights of the parties. Provided always that if it shall appear to the warden's court upon the hearing of the case that the defendant has been thereby deceived or misled and that injustice would be done by proceeding at once with the case it shall be lawful for such warden's court on such terms as to costs or otherwise as it shall think fit to adjourn the further hearing of the case to some future day.

Complaints not to be dismissed for informality.

Adjournment.

**60.** ANY affidavit to be used in any warden's court or before a warden may be sworn before any Judge of the Supreme Court or any commissioner of that court for taking affidavits or before any warden or Justice of the Peace.

Who may take affidavits.

**61.** A MINUTE of every decision of a warden's court 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 enter the same in the said register under the said decision and such decision

Decision of court to be recorded.

Second Schedule.

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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. A copy of such minute or order shall on demand be given by the mining registrar or other authorised officer or 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 varied or reversed 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 shall state special case.

**62.** IN any proceeding before a warden's court it shall be lawful for the warden and he shall on the application of either party to the complaint or if he himself shall think fit reserve any question in the form of a special case for the opinion of a judge 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 to the registrar of the Supreme Court who shall cause the same to be set down for argument before a judge whose opinion when given shall be drawn up and transmitted by said registrar 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 on the application of any of the parties interested in such case to make any such order for an injunction or receiver or payment of money into court and upon such terms as such warden shall think proper or otherwise.

In case of a special case an injunction &c. may be had on terms.

Gold auriferous earth &c. may be seized.

**63.** NOTWITHSTANDING any of the provisions hereinbefore contained it shall be lawful for such warden's court if it shall think fit at the time of the making of any decision under this Act or the regulations to order that any gold in the possession of and belonging to the party by whom payment of any sum in respect of any such debt damages or costs 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. Provided that as to the balance the procedure herein otherwise provided shall apply.

Warden may authorise entry on adjacent claim.

**64.** IT shall be lawful for any warden upon the application of any person claiming to be legally or equitably interested in any claim or in any land applied for as a lease or comprised in any gold-mining lease or in any other land adjoining any claim or land comprised as aforesaid by writing under the hand of such warden to authorise the applicant together with a mining surveyor his

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assistants or some experienced miner to enter upon any claim or land (whether at the time of such application alienated from the Crown or not if any mining operations shall be then carried on on such land) adjoining such first-mentioned claim or land or other land for the purpose of ascertaining whether the owner or occupier of the claim or land so to be entered upon is encroaching on said first mentioned claim or land or other land.

**65.** IT shall be lawful for the persons so authorised to enter upon the claim lease or land described in such order as last aforesaid and to descend any shaft or mine and to make the necessary surveys and for such purpose to use the engines and other machinery ordinarily employed for that purpose by the persons whose shaft or mine shall be descended and to make such plans and sections of the claim lease or land entered upon and any of the drives or other works therein as shall be necessary for the purpose aforesaid. And every such surveyor and the other person or persons named in such order shall before entering on such claim lease or land make a statutory declaration before such warden (who is hereby authorised to take the same) that he the said surveyor and the other person or persons will not (except as a witness in a court of justice) without the consent in writing of the owner lessee or occupier of the claim lease 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 lease or land.

Powers given to carry out order in last section.

**66.** (1.) IT shall be lawful for any warden upon the application of any person claiming to be legally or equitably interested in any land lease claim water-race drain dam reservoir or easement or water-bore to hear receive and examine evidence and thereupon if he in his discretion shall think fit and upon such terms if any as he may consider just by order under his hand to enjoin any persons named in such order from encroaching upon occupying using or working such land lease claim water-race drain dam reservoir or easement or water-bore or from seeking for washing out winning extracting or removing any earth or gold taken from such land or from selling or disposing of or damaging or otherwise interfering with such land lease claim water-race drain dam reservoir easement or water-bore or earth or gold or any share or interest therein respectively or from doing any act whereby the right title or interest of such applicant in or to the same might be affected and 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 making the same or by some court of competent jurisdiction.

Warden may grant injunction on notice.

(2.) Such application shall be made on notice served twenty-four hours at least before the time for the making thereof on the

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parties interested in opposing the same or such of them as shall appear to such warden sufficiently to represent the parties so interested or upon such of them as such applicant can by using reasonable diligence or means in the opinion of such warden serve with such notice and in the presence of such parties or such of them as aforesaid or in the absence of any of them upon whom service of such notice shall be proved to the satisfaction of the warden.

(3.) Provided that if the warden shall be satisfied that reasonable attempts have been made to serve notice on the parties aforesaid without success it shall be sufficient service of any such notice if the same be advertised in some newspaper published in the district or if none then by causing such notice to be posted at the warden's office.

Warden may grant injunction for seven days without notice.

**67.** IF by reason of the pressing emergency of any particular case it shall seem proper to the warden so to do he may on the application of any such person as aforesaid but without any notice as aforesaid by order under his hand grant such injunction as aforesaid but to be in force for a period of seven days only inclusive of the day upon which such order shall have been made or until the same shall by the said warden be discharged. 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.

**68.** UPON the granting of any injunction relating to any lease as provided in the last two preceding sections the Warden shall at once notify by telegraph or if there shall be no telegraph by letter to the Minister of Mines the fact of such injunction being granted and the particulars thereof and on receipt thereof a note of such injunction being granted shall immediately be made in the register of goldmining leases.

Beneficiary may enter caveat.

**69.** ANY beneficiary or other person claiming any estate or interest in a lease or land applied for as a lease may subject to the regulations register a *caveat* against dealings with the said land.

Enforcing orders and decisions of warden's court.

**70.** THE warden's court shall as regards all matters and proceedings within its jurisdiction for the time being and for the purpose of enforcing the decisions and orders of the court have power to grant and shall grant in any proceeding before such court such relief redress or remedy or combination of remedies either

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absolute or conditional in as full and ample a manner as might and ought to be done in the like case by the Supreme Court.

### WARDEN'S COURT ASSESSORS.

**71.** IT shall be the duty of the warden of every goldfield or district where a warden's court has been established to cause a roll to be called the "Roll of Mining Assessors" for such goldfield to be compiled and revised from time to time by the addition or cancellation of names as the case may require. Such roll shall be compiled within two months after the date of the coming into force of this Act and shall be revised as aforesaid once every quarter thereafter. The warden shall have the custody of such roll. And a copy thereof to be called the "Mining Assessors' Book" shall duly revised as aforesaid be kept by the mining registrar of each warden's court.

Roll of mining assessors.

**72.** THE number of mining assessors for each goldfield or district shall be not less than twenty nor more than fifty and shall consist of Justices of the Peace leaseholders holders of business licenses and miners' rights resident within the goldfield. Such assessors when summoned to attend the warden's court shall receive the sum prescribed by the regulations for each day they may be in attendance at such court.

Number of qualification and payment of assessors.

**73.** IT shall be lawful for either of the parties previous to the hearing of any complaint to require from the warden or for the warden before such hearing to require that such complaints shall be heard before such warden and two mining assessors to be summoned as hereinafter provided. Provided that no complaint relating to any application for lease or for the breach of any of the covenants or conditions of a lease or for any breach of the regulations to which a money penalty is attached for any breach thereof shall be heard before assessors. Before any assessors shall be so summoned there shall be paid to the warden or mining registrar the sum prescribed by regulations by the person demanding the assessors and each of the assessors summoned shall be entitled to receive thereout such sum as may be prescribed by regulations. Any part of any such sums which shall not be required for the payment of assessors shall be returned to the party to the case who demanded the assessors.

Assessors how demanded and paid.

**74.** WHENEVER mining assessors shall be required to hear any complaint in a warden's court three clear days written notice of such assessors being required shall in all cases where practicable be delivered to the mining registrar by the party requiring the assessors. And upon the receipt of such notice the mining registrar shall summon to attend the warden's court at a time and place to be

Assessors how summoned.

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Fine for non-attendance &c.

mentioned in such summons so many of the persons whose names are on the roll of mining assessors not being less than six nor more than ten to be chosen by lot from the roll of mining assessors in the presence of the warden. Every person so summoned as aforesaid shall attend the court at the time mentioned in the summons and in default of attendance or of refusal to act as assessor shall be fined in such sum of money as the said warden shall direct not being more than five pounds for each default. Provided always that the warden shall have power on sufficient cause being shown to him to remit the whole or any portion of the said fine.

Striking assessors in complaints.

**75.** AT the opening of the warden's court for the hearing of any complaint as aforesaid the warden shall put together into a box to be provided for that purpose pieces of card of equal size containing each the name in full of one assessor of the number summoned as aforesaid and upon the complaint being called on for hearing the warden or other person chosen by him shall in open court draw out the said cards one after the other and read aloud the names thereon and the first two assessors who shall answer to their names and be unchallenged shall be the two assessors who shall sit and hear the complaint with the warden. Provided that either party may challenge as the names are called any number of persons summoned as assessors not exceeding two without assigning cause and any additional number provided he assigns of his challenge a cause certain and the truth of such challenge shall be inquired of by the warden. If two persons who have been summoned cannot be chosen then the warden shall choose two indifferent persons without challenge to act as assessors.

Challenges

Oath or affirmation to be administered by warden to assessors.

**76.** BEFORE such warden's court shall proceed to hear any such complaint such warden shall administer to each of such assessors an oath in the form in the following form—

“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.”

And on such oath being administered such warden's court shall proceed to hear such complaint and the decision of the majority of the said warden's court shall have the same force and effect as the decision of such Warden if acting alone would have had. Provided that in the case of any assessor who may by law make an affirmation in lieu of swearing the warden shall in lieu of the oath hereinbefore mentioned administer the following declaration—

“I A.B. do solemnly sincerely and truly affirm and declare that the taking of an oath is according to my religious

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belief unlawful and I do also solemnly sincerely and truly affirm and declare that I will well and truly try and determine the matters which shall be brought before me and a true judgment give according to the evidence without fear or favour."

**77.** NO decision order or judgment of any warden's court shall be invalidated or affected by any irregularity or informality in the appointment or summoning of any assessors who shall have sat in the complaint in which such decision judgment or order was made or by the fact that any such assessor was disqualified at the time of his sitting. But nothing in this section contained shall be construed to qualify or permit any assessor to sit in any such complaint if he shall have a pecuniary interest in the result thereof.

Decision of court when not invalidated.

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

Interpleader.

**79.** ALL lands held under a miner's right consolidated miner's right business license or mining lease shall on the death or bankruptcy of the holder or holders thereof devolve on his or their personal representatives or assignee or trustee in bankruptcy and shall be liable to seizure and sale under any execution issued from the Supreme Court any local court warden's court or any other competent court in the said Colony. And the proper officer appointed to sell the same shall have full power to give an effectual transfer of the interest sold by him.

Land held under miner's right.

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Enforcing decision  
in case of debt.

**80.** WHEN any sum of money shall be awarded in a warden's court by way of debt damages or costs or otherwise and the same shall not be forthwith paid the warden on the application of the person entitled to receive such sum or of any attorney on his behalf shall grant to the party so applying a writ of execution under his hand and any bailiff of a warden's or local 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 local court in the case of the non-payment of money under a judgment of such court and every such bailiff may by virtue of such writ seize and take such property and dispose thereof in the manner he could seize take and dispose thereof by virtue of a warrant issuing out of a local 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 local court upon a warrant issued therefrom: Provided that no such writ shall except upon special cause shown to the satisfaction of the warden be issued until after the expiration of seven days from the day on which the decision under which such sum of money was awarded shall have been made.

Allowance and taxa-  
tion of costs.

**81.** IT shall be lawful for the warden in all proceedings before him or him and assessors in his discretion to give or refuse to either party the costs of the suit hearing or other proceeding or any part thereof and in case of giving them to give them in his discretion as between the parties. The warden shall tax the costs of such suit hearing or proceedings to be paid by either or any of the parties and such taxed costs shall form part of the decree or order of the warden's court and in default of any special direction each party shall pay his own costs.

Penalty on witnesses  
neglecting to appear.

**82.** ANY person on whom any summons issued by any warden requiring such person to appear as a witness in court or before such warden shall have been served personally or in such other manner as shall be directed by the regulations and to whom at the same time payment or tender of his expenses shall have been made on the fixed scale and who shall refuse or neglect without sufficient cause to appear according to the tenor of such summons or who having so appeared shall refuse to be sworn or answer any lawful question shall on conviction thereof before the warden forfeit and pay any sum not exceeding Ten pounds and in default of immediate payment thereof he shall be liable to imprisonment in the nearest lock-up for any period not exceeding one calendar month unless in the meantime the whole amount shall have been paid and

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the order in writing of the said warden shall be sufficient authority to the keeper of the said lock-up for the detention of the offender but no such conviction shall exempt such person from any proceeding for disobeying such summons.

**83.** IT shall be lawful for any assignee executor or administrator to sue and be sued in the warden's court or take any proceedings by way of appeal or otherwise in like manner as if he were a party in his own right. And it shall be lawful for any person under the age of twenty-one years being the holder of a miner's right to sue and be sued in the warden's court or before a warden in the same manner as if he were of full age.

Minors and representatives may sue.

**84.** IN the event of non-payment any person working on wages shall have a lien upon the claim lease or other authorised holdings wherein he has been employed to the extent of three months wages and the person so working as aforesaid shall within seven days after ceasing to work in the claim lease or other authorised holding be entitled subject to the regulations to register such lien with the mining registrar of the district in which the said claim lease or other authorised holding is situate on production of his miner's right.

Wages men to have lien for unpaid wages.

### APPEALS.

**85.** A COURT of mining appeal is hereby created which shall consist of three Judges of the Supreme Court sitting together at Perth in the said Colony at such times as the said Judges may fix. Such appeal court shall hear and determine all appeals as provided in the next following section and the decision of such court shall be final and conclusive and shall be binding upon all parties and the said court may make such order with respect to costs as it may think proper.

Court of Mining Appeal.

**86.** (1.) 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 such decision be a dismissal of the case or otherwise such party may appeal from the same to the court of mining appeal on any question of law or upon the admission or rejection of any evidence and in any such case proceedings may be stayed upon such terms as the warden shall think fit until such decision shall have been given. Such appeal shall be in the form of a case agreed on and signed by both parties or their solicitors and if they cannot agree the warden on being applied to by either of the parties or their solicitors at the expiration of fourteen days from the hearing shall settle a case and sign it.

Appeals.

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(2.) Every case for appeal after it shall have been signed as aforesaid shall together with a certified copy of the evidence taken in the warden's court be transmitted by the warden to the registrar of the Supreme Court who shall be the registrar of the court of mining appeal and the registrar shall cause the same to be set down for argument before the said court of mining appeal. Provided that the party so appealing shall within seven days from the hearing in the warden's court give to the other party or his solicitor and to the warden a notice in writing of such appeal stating clearly the grounds of his appeal signed by the appellant or his solicitor. The appellant shall also deposit in the hands of the mining registrar such sum as the warden shall direct to answer the costs of appeal if such appeal be dismissed.

(3.) At the trial or hearing of any complaint or proceeding in a warden's court where the decision of the court is not hereby declared to be final the warden at the request of either party before the decision is delivered shall make a note of any question of law raised at such trial or hearing and of the facts in evidence in relation thereto and shall state in writing the decision on such questions and facts and the decision of the complaint or proceeding. Any party to a complaint or proceeding shall upon payment of a sum not exceeding threepence per folio of 72 words be entitled to a copy of the notes of evidence taken by the warden and of the note of any questions and facts raised and found (if any) and of the decision thereon.

Decision of court  
on appeal.

**87.** AS soon as the decision of the court of mining appeal shall have been given on any appeal the registrar of the said court shall cause the same to be transmitted in due form to the warden who shall make his order in accordance with the decision of the said court on such appeal.

Decision may be  
enforced.

**88.** AFTER any appeal against the decision of any warden or warden and assessors shall have been determined and the decision of the court of mining appeal recorded as the decision or order of the warden or warden and assessors in the warden's court 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.

Powers to make  
rules of practice.

**89.** (1.) IT shall be lawful for the Judges of the court of mining appeal or any two of them from time to time but subject to the provisions of this Act and the Regulations to make such general rules as they shall think fit for regulating the practice and procedure of the court of mining appeal holden under this Act the fees to be paid in respect of proceedings in such court and the fees to be

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allowed to legal practitioners practising in the said court and to frame forms for every matter or proceeding in the said court which they shall think necessary and from time to time to rescind or alter any such rules as aforesaid.

(2.) Until such rules are made the rules and scale of fees of the Supreme Court regulating appeals to the Full Court shall as far as applicable apply to appeals under this Act.

### PART V.—PENALTIES, FORFEITURES, &c.

**90.** IF any person shall be found by the warden or his duly authorised officer to be engaged in gold-mining on any Crown land not being the holder of an unexpired or valid miner's right or gold lease under this Act or any Act hereby repealed such person shall be liable for every such offence to a penalty not exceeding Ten pounds and shall be deemed to have abandoned the claim or other authorised holding of which he may be in possession and such claim or holding shall and may be dealt with as an abandoned claim or holding. Provided that this section shall not apply to any person working in any claim lease or other authorised holding for wages.

Penalty for not having a miner's right.

**91.** IF any person shall be found by the warden or his duly authorised officer to be engaged in carrying on any business other than mining on any Crown land not being the holder of an unexpired or valid business license under this Act or any Act hereby repealed he shall be liable for every such offence to a penalty not exceeding Ten pounds and the forfeiture of any business area he may be occupying or be in possession of in the discretion of the warden.

Penalty for not having a business license.

**92.** ANY Asiatic or African alien found mining on any Crown land shall be liable for every such offence to a penalty not exceeding Ten pounds and the warden shall in his discretion cause such person to be removed from any goldfield and whether such person has or has not been prosecuted for an offence against the provisions of this section.

Asiatic or African alien prohibited.

**93.** WHENEVER any warden's court or warden is empowered or required by this Act or the regulations 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 authorised by the warden and in his presence or of any constable or peace officer authorised 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 authorised as aforesaid in the performance of his duty under this Act and the regulations.

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

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Party imprisoned  
may be discharged  
by magistrate of  
local court or Judge  
of Supreme Court.

**94.** IT shall be lawful for any person in custody under any order of commitment made under this Act or the Regulations upon giving reasonable notice to the person (or to one of such persons if more than one) on whose application such order was granted or if such person or none of such persons can be found to the warden by whom such order was made to apply in a summary way on affidavit to the magistrate of any local court or of a Judge of the Supreme Court for his discharge and it shall be lawful for such magistrate or Judge in his discretion and on such terms (if any) as he shall think fit by order under his hand directed to the gaoler or other person in whose custody such applicant may be to direct that such applicant shall be discharged and such applicant shall be discharged accordingly. Provided that when such order of commitment shall have been founded on any previous decree or order it shall not be lawful for such magistrate or Judge of the Supreme Court upon such application to inquire into the merits of such previous decree or order.

Penalty for certain  
offences.

**95.** IF any person shall forge any miner's right consolidated miner's right or any lease license or permit issued or purporting to be issued under the authority of this Act or the regulations or fraudulently use utter or exhibit any such forged miner's right consolidated miner's right lease business license or official receipt 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.

Penalties on warden  
and other officers.

**96.** IF any warden registrar or mining surveyor shall at any time during his appointment hold any interest or share in any claim gold-mining or mineral lease or mining adventure or if any warden shall adjudicate in any matter in which he shall have any pecuniary interest the person so offending in any such case shall be guilty of a misdemeanour and be liable to fine or imprisonment or both in the discretion of the court.

Penalty for ex-  
tortion.

**97.** 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 before two Justices of the Peace forfeit and pay any sum not exceeding Fifty pounds and in default of immediate payment thereof to imprisonment with or without hard labour not exceeding six calendar months.

Assault on warden  
and other offences.

**98.** ANY person who shall assault obstruct or resist any warden or any person duly authorised by any warden in lawfully entering

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upon any lease claim or other authorised holding or in performing any other act authorised 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 lease claim or other authorised holding who 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 shall resist such complainant or his agents in such use or diversion or who upon or in consequence of the decision of any warden's court against him shall assault or threaten to assault any person in whose favour such decision shall have been made shall on 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.

**99.** (1.) IT shall be lawful for the Governor in Council from time to time to make alter and repeal such Regulations as may be necessary for the purpose of giving effect to this Act and for the management of goldfields generally.

Power to make regulations.

(2.) Such regulations may be made for the whole Colony or for any particular part thereof and shall be published in the *Government Gazette* and after publication therein shall have the force and effect of law and shall be judicially noticed in every court of justice. Copies of all regulations made under this Act shall be laid before both Houses of Parliament within fourteen days from the making thereof if Parliament shall be then in session and if not then within fourteen days after the commencement of the next session thereof and such regulations shall in so far as not disallowed by Parliament be deemed to be within the powers conferred by this Act and to have been legally and properly made.

Regulations may be partial or general.

To be published and have effect of law.

To be laid before Parliament.

(3.) It shall be lawful by such regulations to impose for any breach thereof or for any disobedience of a lawful order of the warden or warden's court a fine not exceeding Ten pounds and in default of payment imprisonment with or without hard labour for any period not exceeding three months.

Penalties for breach may be imposed.

**100.** ANY person who shall infringe any regulation made under this Act for the infringement whereof no penalty is prescribed shall on conviction thereof be liable to a penalty not exceeding Ten pounds.

Penalty for breach of regulation not otherwise provided for.

**101.** ANY banker or other person exporting from the Colony any gold gold ore gold dust or gold bullion if such gold gold ore or gold

Declaration as to gold for exportation.

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dust shall have been found in or procured from the soil of the Colony or if the gold contained in such bullion shall have been found in or procured from the soil of the Colony shall at the Customs declare the weight or value of the same at the time of export. Any person failing to comply with the provisions of this section may on summary conviction before any two justices be fined any sum not exceeding Ten pounds or any sum not exceeding an amount equal to five per cent. on the value of the undeclared articles whichever sum shall be the greater. Provided that no person exporting from the Colony articles manufactured of gold although such gold shall have been found in or procured from the soil of the Colony shall be bound to declare the weight or value of such articles.

Fees penalties &c.  
how recoverable.

**102.** 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 the regulations for which no other mode of recovery is provided herein or by the regulations may be recovered or enforced by any warden in the manner in which Justices of the Peace are now by law authorised to enforce any order or award made in any court of petty sessions.

In the name and on behalf of the Queen I hereby assent  
to this Act.

ALEX. C. ONSLOW, Administrator.

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### SCHEDULES.

#### First Schedule.

Section 2.

Year and Number.	Title, or Short Title.	Extent of Repeal.
50 Vic., No. 18 ...	An Act for the Management of Goldfields	The whole.
51 Vic., No. 24 ...	An Act to amend "The Goldfields Act, 1886"	The whole.
52 Vic., No. 8 ...	"The Gold Declaration Act, 1888."	The whole.
55 Vic., No. 3 ...	"The Mineral Lands Act of 1892."	The words in Sub-section (r) of Sec. 6 as follows "and any proclaimed goldfield may be included within the boundaries of a Mining District."
55 Vic., No. 21 ...	An Act to confirm and to amend "The Goldfields Act, 1886."	The whole.
58 Vic., No. 28 ...	"The Goldfields Act, 1886, Amendment Act, 1894."	The whole.

#### Second Schedule.

Sections 56 and 61.

### *Register of Complaints.*

No. of Complaint.	Date of Complaint.	Complainant.		Defendant.		Relief Sought.	Amount of Demand.	Decision and whether by Warden or Warden and Assessors.	Date when and name of person to whom writ granted.	Date of injunction or other order in a suit.	Memorandum.	Date of notice of appeal (if any) received by the Warden.	General Remarks &c. by the Warden.
		Name.	Address.	Name.	Address.								

Warden.

Assessors.

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### Third Schedule.

*In the Warden's Court at*

Section 27.

Upon the application of the Commissioner of Crown Lands I do order that the buildings or erections or other *bonâ fide* improvements on the land occupied by A.B. under his miner's right (*or* business license) at \_\_\_\_\_ shall be valued by C.D. of \_\_\_\_\_ and two other persons to be appointed according to the provisions of "The Goldfields Act 1895" and their award shall be made on or before the \_\_\_\_\_ day of \_\_\_\_\_ 18 .

Given under my hand and the seal of the said Court this \_\_\_\_\_ day of \_\_\_\_\_ 18 .

(Signature of Warden)

L.S.

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### Fourth Schedule.

Section 27.

We A.B. of &c. C.D. of &c. and E.F. of &c. have valued the buildings or erections and other *bonâ fide* improvements on the land occupied by G.H. under a miner's right (*or* business license) and situate at \_\_\_\_\_ at the sum of £ \_\_\_\_\_

In witness whereof we have hereunto set our hands the \_\_\_\_\_ day of \_\_\_\_\_ 18 .

A.B.  
C.D.  
E.F.