

1923
1922

KENYA

3475

MINERAL
RES. BUREAU

DATE
19TH JANUARY 1923

REC-
REC 20 JAN 23

RELATION -

the

SUBJECT

MINING LEGISLATION

Submit comments on bill and draft Regns.

Head
Inspector Smith
Churchill

M

Previous Paper

MINUTES

1 spec. before we have no duplicate
of the d/o Regulation. Ask for
return of Bill and Regulation
3 p.m.

Dft for comment herewith.

19. 1. 23.

~~16 Parkeinson~~

We have no go back with the
Mining Bill & Regⁿ to the M. of Bill
& Regⁿ and are in a position to
answer the Gov's dect. on 57764/22.

In the case of the Mining Bill & Regⁿ

x to go on 4. 11. 22
4. 11. 22
copy
copy to Mr. B. G. B. - 2. 4. 23
copy above (sent) to Mr. R. B.
4. 11. 22
5 SEP 1923
in my possession

Subsequent Paper

6. 6.
4. 11. 22

The comments of the A.T.R.B. do not attract in principle, the general character of the drafts prepared locally. They are mostly on technical points, though some of them are not so, and in one case at least (Note on Sec 2 Para 23 of the Bill) are perhaps hardly necessary, on the meaning of the term "Emulsion" is well understood in Kenya, i.e. persons of Emulsion descent.

But it will be sufficient, in approving the Bill generally as suggested by Mr Battersbee on 5/7/64/22, to send a copy of the correspondence with the Bureau and say that the Govt. will no doubt give careful consideration to the points raised with a view to their incorporation in the Draft. Copy if he has no objection

regard to the

Oil Legislation. (3006/23), the same course might be adopted. As regards Para (1) of the Petroleum Dept's letter, they suggest that the stages should be classified as Exploration, Prospecting, and Lease instead of Prospecting, Protection, and Lease. Unless Kenya have reasons for departing from the general nomenclature it appears that their suggestion might be adopted.

With regard to the reference to 28572/22 Australia in Para (5), it has apparently been considered desirable not to send the Petroleum Dept's letter to Australia as it stood, and a note based on the letter and following the pencil indications you have already made might be sent to Kenya in this connection. Perhaps Downs.

I had got raised this by writing from Pet. Dept. letter in 3006/22 the bracketed portion in para 5.

It is in any case unusual to send to a Govt. copies of departmental correspondence.

We can however in our report to Govt. (with our copy of "A. A. Austri" which is not included in the draft comment of para 5 of Pet. Dept. letter in 3006/22) perhaps mention this.

(1) W. S. ...
(2) W. S. ...

I have been through this with
W. S. ...

We must keep the two Bills
separate.

(1) Oil Production Ordinance 1922

& Regulations

? It will be best to
incorporate in a dip. the
substance of Pet. Dept. letter
in 300723 as representing
views of that dept., writing
parts bracketed & writing
on in my marginal note of
5.3.23 in W. S.'s minute
above. - say that subject
to consent of these officers
Dept. is prepared to approve
generally - but ask that
bill as revised may be
sent in Dept form again
for final decision with clear
indication of alterations made
from the present draft ~~with~~
~~...~~ & with reasons
for not accepting any of the
Pet. Dept's suggestions etc. it
may be thought undesirable
to incorporate in the Bill.

? copy of dip. to Pet. Dept.
for inf. of ref. 300723.

? place duplicate of dip. in

for 300723.

[I think we want
to force the Home
Gov. to help us
properly - if
W. S. ... note
ref. the ... Bill]

Yes - we want to
...
...
...

on 30/1/23 for convenience
of future reference.

2) The imp Ordinance 1922 & Regulations

This is not a good piece of work,
or we are entitled to protest
as at the time many of
the provisions are

I have made some numerical notes
on the Bill. The notes are after speaking
to Mr. [?]. There are ~~two~~ points
particularly respecting your
concern - clauses ~~4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100~~,
in the imp Ordinance comments.
I refer to your observations on these
two points -

1) If Govt. that the Bill have been
carefully considered in C.M. &
by Mr. K. D. - & that the
main points criticised are
shown in memo (i.e. memo. to
be drafted incorporating the
criticisms & Mr. Parkinson's
ideas marked X - these to
be worked up in their proper
places as one continuous
statement) - say that subject
to revision of these points Govt.
is prepared to approve generally.
But ask that Bill as revised
may be sent again in Govt.
form to final review with a
~~reference to the~~ alterations
made from present Govt. Bill
with reasons for
not accepting making alterations,

In any case in which it may
not be thought advisable to
alter the Govt. in spite of
of suggestions in the memo
then observe that Govt. cannot
but regard it as an
unsatisfactory procedure
that a Bill of this nature
has been forwarded
without the Ad. Com.
and the memo. from Ad.
indicating the sources
from which the various
provisions of the Bill
have been taken.

? copy of Dis. & memo.
18.3.23. for imp
Bill of 31/7/23.

Mr. Parkinson to be all of it

all
18.3.23

Jama

A.S.
15/11

Sir H. Road.

These Ordinances involve such a
mass of detail ^{in their} that it is difficult to
get any general view of policy, and
for that reason alone I think it is a
good idea, as Mr. Parkinson proposes,
to ask the Governor to send the amended

Ordinances

back still as drafts.

1) Oil Production Ordinance and Regulations. I have nothing to add to Mr. Parkinson's minute.

(2) Mining Ordinance. I agree with Mr. Ehrhardt's notes, subject to Mr. Parkinson's marginal notes. I entirely

agree that the drafting of the Bill is amateurish and I have no doubt that the amateur is Mr. Martin, the Commissioner for Lands and also Commissioner for Mines. We have other evidence that Kenya is currently only slow to make use of its professional legal advisers, and I should not be surprised to find that the reason why we have no objections by the Attorney-General is that he has had no opportunity of making a view.

Your points remain for special consideration.

Clause 14 and Clause 8 involve the principle of the "Highlands". It is perhaps worth while putting down here the brief history of this question as regards surface land.

Under the 1912 Crown Land Ordinance, grants of land were made by direct allotment by the Government and transfers of land were subject to the Governor's veto in all cases.

In 1908 Lord Elgin definitely decided that grants of land in the Highlands should only be made to Europeans, and the (unpublished) correspondence of the next few years shows that Lord Crewe's policy was to extend this limitation to transfers

of

*I have since noted
the intention of the
Select Com. when report
is in 33 284/12
C.G.S.*

of land as well as original grants.

When, after six years' consideration the Crown Lands Ordinance was finally passed in 1915, it had been decided:

(a) As a general rule, to replace direct grants by the Government by a system of selling Crown land by auction. In order that the principle of reservation for Europeans should be maintained it was provided that in the notice of sale of a particular plot, the Land Officer should be empowered to state whether the bidding was to be confined to Europeans

(b) To dispense with the Governor's veto on transfer as being an unnecessary limitation of the holder's freedom, particularly as regards mortgage, and to replace it by an arrangement which would safeguard the principle of reserving the Highlands to Europeans. When the Governor proposed that this arrangement should be to retain the veto on the transfer of land to Asiatics, Mr. Harcourt refused to agree on the ground of racial discrimination by name, but he accepted the suggestion that the veto should be retained on transfers between persons of different races (European, Asiatic, or African as the case might be), by which, not only would the Highlands be reserved for Europeans, but the individual Arab and semi-Arab landowners of the coast would be protected from land sharks, whether white or brown.

it

disposal of the Crown, there should be ~~no~~ any risk of privileges respecting them being given under this Ordinance, & ~~then~~ ^{the} ~~24~~ ²⁴ ~~proceeds~~ ^{the} ~~the~~

Clause 72.

I agree with Mr.

Ehrhardt that the holder of a claim must be responsible for the omissions of his hired workmen. If he is not personally supervising the work, it is up to him to employ a responsible manager who will keep his eye on the workmen.

Subject to my comments on Clauses 19 and 80, ? proceed as proposed.

W. C. S. 16.3.23

Sir J. ^{H.S.} ~~Butcher~~ ~~Smith~~
Mr. Ormsby - ~~free~~ 22.3.23

You sh^d see ~~me~~ ~~to~~
Cl. 19 & 80 of the Spt. Mining
Ordⁿ ~~ca~~

Proceed as proposed by
Mr. Butcher ?
H. J. R.

H. J. R.

17/3/23

yes. at once W. C. S. 22.3.23

W. C. S.

Notes on the Bill relating to Mining

The drafting of this bill seems to me open to a good deal of criticism and to be amateurish. It should have been accompanied by the observations of the Attorney General indicating the sources from which the wording of the provisions had been taken. Before the bill is again submitted to the Legislative Council, it would be well if it were submitted to the Attorney General for his critical examination in which he will find the observations of the ~~Board of Trade and~~ Imperial Mineral Resources Bureau useful. I draw attention to the following points:-

- X Clause 17 - "for" omitted after "prospecting"
- X Clause 18 - this needs revisions in the light of the observations of the Board of Trade. The classification is logically faulty. An area is not something in pursuance of which mining is permitted but is a part of space in which ~~such~~ mining may take place. The expression "miner's right" has a well known significance in mining legislation and schemes: It is a pity to use the term for something quite different, as is done in this bill.
- X Clause 19 - seems unnecessarily to raise a question of policy. If restrictions on ~~agency~~ ^{non beneficial acquiring} interests in land are imposed by legislation, they can be extended to mining areas. I should omit ~~as~~ ^{this is} unnecessary in this bill and as being easily circumvented. Mining operations are nearly always carried on by limited liability companies to which ~~this~~ ^{the} section is hardly applicable.
- X Clause 20 - "hereof" is amisprint for "thereof".
- X Clause 24 - Unless it is only minerals belonging to the Crown which the holder of a prospecting licence may prospect

regarding the Bill
 shall be further
 subject to the
 of the
 of the Bill
 as an amendment
 in the Bill
 which right
 should
 that unless
 accepted
 X. A. memo
 see?

prospect

prospect ~~law~~, the clause needs altering. "Pegging" does not seem the appropriate word to use for the erection of a notice of a protected area.

X ~~is~~ s.10 of Tanganyika Ordinance (14 of 1920) is a good model for dealing with rights under a prospecting lease.

Clause 26 seems to confer a very wide power on the Governor which he will doubtless be importuned to exercise by persons and agencies of whom he will know little. The proviso seems to me of doubtful utility. It would not, I think, enable a mistake in granting a lease to be rectified, while as ^{delaying a principle to guide the former in issuing this power it would seem to be uncalled for.}

X Clause 28 needs re-arrangement - "for" is left out after "must be" - "Area concerned" is too vague.

Clauses 31-33 need revision in the light of the Board's observations.

X Clause 32 the "holder of a protection" need is not an apt phrase.

Clause 34 - The phrase "owner of a claim" is ambiguous and may refer to the owner of the land on which a claim has been pegged out. The "holder" is referred to in Clause 34 is a better expression.

X Clause 39 - The use of the expression "miner's right" is unhappy.

Clause 41 - is elliptical and obscure. ^{The meaning of} ~~What is meant by~~ "priority" needs elucidating, as also ^{holder} the phrase "prescribed requisites for securing to each the benefit of his claim".

X Clause 49. This is an unusual use of the expression "miners right". cf. cl. 39.

Clause 53 - it is undesirable to give a right to a lease in perpetuity. The Tanganyika Territory precedent might be followed. cf. F. Ordinance (11 of 20) s.29.

Communications on this subject should be addressed to—

THE SECRETARY,

and the following Number quoted—

I/2/14,23

Registered Telegraphic Address:—

IMMEXUK, LONDON

Telephone Number: VICTORIA 9040.

IMPERIAL MINERAL RESOURCES BUREAU,

2, QUEEN ANNE'S GATE BUILDINGS,

DARTMOUTH STREET,

WESTMINSTER,

LONDON, S.W.

3475
REC'D
REL 20 JAN 23

19th January, 1923.

Sir,

With further reference to your letter ⁵⁰⁰ (57764/1922) of the 14th December, 1922, I am directed by the Chairman of the Governors to state that the Mining Bill, together with the Draft Regulations in respect of the Colony of Kenya, has been considered, and, as requested in the last paragraph of your letter, I am to attach herewith some comments thereon.

I am to state that the points raised in some instances involve questions of principle. In others, they deal with a number of cases in which the language employed in the Bill is inconsistent with ordinary mining procedure and is liable to give rise to misconception.

I am, Sir,

Your obedient Servant,

W. H. Hudson

Secretary.

The Under Secretary of State,
Colonial Office,
S.W.1.

Communications on this subject should be addressed to—

THE SECRETARY,

and the following Number quoted:—

I/2/1420

Registered Telegraphic Address:—

LONDON, LONDON

Telephone Number: VICTORIA 3040.

44
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The Under Secretary of State,
Colonial Office,
S.W.1.

MINING BILL

X Section 2; Para 14: "Banket" - This term as described conveys a different meaning to that used in other parts of Africa as it would seem to include any auriferous alluvium, which can surely not be intended.

We would recommend that the words "or foliated" and "or superincumbent on" should be omitted.

X Section 2; Para. 15: This definition is not in accordance with common practice and should be omitted. "Placer" is properly synonymous with alluvium. If it is desired the Ordinance may deal specially with Ancient Alluviums.

X Section 4; Para. 17: Definition of "Mining lease" - This would appear to involve an inconvenient restriction of the term "mining lease". We would suggest that the words "other than common minerals or coal" should be omitted.

Section 2; Para. 13: "Bar person" - Is it intended that this should include negroes or members of other coloured races born in Europe?

X Section 4; Para. (f): This appears ambiguous. Does "property of the Crown" etc. refer to both the building and the land, etc. or only to the latter?

X Section 4; Para. (g): It does not appear clear what is intended. Will this apply to land immediately adjoining a building, dam, etc. but not belonging to the owner thereof?

X Section 26: There should be added to this section, a condition requiring a full survey and investigation of the area and disclosure of the mineral resources and geological structure, and there should be a right reserved to the Government to cancel such an exploration license in case they are of opinion that the conditions mentioned are not being complied with.

X Section 35; It should be noted that the claim mentioned in (c) is about nine times larger than that in (b).

X Section 35; (d); If it is intended to exclude gold and precious stones, which are included in the definition of "mineral", this should be expressly stated.

X Section 39; This use of the term "mining right" is entirely contrary to the ordinary usage, which refers to the grant of a small area for a limited time to a working prospector. It is not stated under this section how long rights under a claim are to last.

X Section 50; These areas should be compared with those shown in paragraph 35 (b) and (c). In 50 (a) there is no distinction between alluvia and other deposits, so that in some cases the limit of the lease is nine times that of the claim.

X Section 53; This lease is practically in perpetuity.

X Section 90; This seems to imply that a Government official can peg an area under an assumed name. We would suggest that the word "interest" should be substituted for "name".

X Section 97; Add after the words "half year", "and full details of any information and samples obtained which the Commissioner of Mines shall require".

REGULATIONS

No. 16. Add to this section "and all other information and samples that the Commissioner of Mines may require".

No. 18. Add to this section "and all other information and samples that the Commissioner of Mines may require".

Recd
22 NOV 22

25th October, 19

48

Sir,

With reference to Sir E. Northey's despatch No. 718 of 6th June, I have the honour to transmit copies of two draft Bills the "Mining Bill 1922" and the "Oil Production Bill 1922" together with draft regulations to be enacted thereunder.

The Bills have been published for information and criticism locally, and prior to their introduction in the Legislative Council, I would request an intimation of your approval of their provisions. They have been framed upon the recommendations of the Select Committee whose report was sent to you in the despatch under reference, coupled with the existing law.

I have the honour to be,

Sir,

Your humble, obedient servant,

R. T. CORYNDON.

GOVERNOR.

THE RIGHT HONOURABLE

WINSTON CHURCHILL, P.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET, LONDON, S. W.,

REC'D
REV. 22 NOV 22

25th October, 19

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THE RIGHT HONOURABLE

WINSTON CHURCHILL, P.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET, LONDON, S. W.,

A Bill

intituled

An Ordinance to Provide for the Exploitation of certain
Lands for Oil.

A Bill

Intituled

An Ordinance to Provide for the Exploitation of certain Lands for Oil.

1. This Ordinance may be cited as the "Oil Production Ordinance, 1922," and shall come into operation on such date as the Governor, by notice in the "Gazette" shall determine.

Short title and commencement.

2. In this Ordinance unless there be something repugnant in the subject or context —

Definitions.

"Commissioner of Mines" shall include any person appointed to act for the Commissioner of Mines.

"Land Owner" includes also a mortgagee, a grantee and lessee, and any person occupying land under a licence for the Crown.

"Minerals" is used in the sense as defined in the Mining Ordinance, 1922.

"Prospecting" includes all modes of prospecting or searching.

"Mineral Oil" includes bitumen, asphalt, and other bituminous substances, with the exception of coal.

"Native Reserves" shall include all land which is considered by the Government to be required by and reserved for natives whether gazetted or not.

"Oil" includes all descriptions of mineral oil and natural gas.

"Private Land" includes lands privately owned and land the subject of a grant, lease or licence from the Crown.

"Salt Licks" means those deposits of salt or other mineral which have been or are being used as salt licks for cattle whether privately owned or not.

Application of
Ordinance.

3. The provisions of this Ordinance shall extend to all land situate within the Colony and Protectorate of Kenya.

Provided, however, that nothing herein contained shall be deemed to authorise any person to prospect or mine on or under:—

(a) Lands dedicated or set apart for any public purpose.

(b) Lands held under any title which gives the holder the rights of working oil, provided that those rights are recognised by the Governor.

(c) Land situate within any township or municipal area except with the consent of the owner and also of the Governor or municipal authority concerned.

(d) Land over which prospecting or mining rights have been granted by the Governor, or by or on behalf of His Majesty under the Mining Ordinance, 1922, or any repealed Mining Ordinance or amending Ordinance, and during such time as such rights shall be subsisting, except by or on behalf of the persons to whom such rights shall have been granted.

(e) Land reserved for the purpose of any railway or within 100 yards of any railway, except with the consent of the Railway Administration.

(f) Land the site of or within 300 yards of any building, or the site of or within 500 yards of any artificial dam or reservoir, the property of the Crown or of the Government, except with the sanction of the Governor.

(g) Private land, where the mineral rights are vested in the Crown, except with the consent of the owner of the land; provided that such exemption shall cease upon payment of compensation to the land-owner for the loss resulting from the cesser of such exemption, such compensation, if not otherwise agreed upon, to be determined by arbitration. The person desiring the cesser of such exemption and the land-owner shall be deemed parties of such arbitration.

(h) Lands declared by the Governor by notice in the Gazette to be exempt from the operations of this Ordinance.

(i) A street, road, highway, or road reserve, without the consent of the Governor or public body having the control thereof.

(j) Closed districts, except with a licence from the proper authority.

(k) Salt licks, except with special permission of the Commissioner of Mines.

Native
Reserves

4. Native Reserves, for the purposes of this Ordinance shall be deemed to be private land, and the administrative authority of each Reserve for the time being shall be deemed to be the owner.

Unauthorized
prospecting

5. Any person who prospecte or mines for oil without being authorised to do so by virtue of this Ordinance or of some enactment theretofore in force or without the licence or authority of the Governor, shall be guilty of an offence, and shall on conviction, be liable to pay for each offence a penalty not exceeding one hundred shillings for every day on which he shall so prospect or mine.

Officers and
powers

6. The officers for the time being appointed under the Mining Ordinance, 1922, or under any Ordinance amending or in substitution thereof, shall be deemed to be the officers appointed for the administration of this Ordinance; and the powers vested in them by virtue of the Mining Ordinance, 1922, shall be taken as full and sufficient authority for the administration of this Ordinance. These powers shall include the holding of the Commissioner of Mines Court, vesting of authority in Wardens, Inspectors, Registrars and other officers, surveys, inspections, recovery of rent fees penalties and monies payable under this Ordinance, and all powers necessary for the full administration of this Ordinance so far as those powers are consistent with the provisions of this Ordinance.

7. The Governor may make regulations to provide for the granting of licences or leases to prospect and mine for oil and for the effective control of any rights granted, and for the better carrying out of the provisions of this Ordinance, and for the following particular purposes:—

Regulations.

- (a) Fees, rents and royalties payable.
- (b) For regulating safety in mining operations, protection of employees, mode of inspection and powers and duties of inspectors, water and timber rights, drainage, pollution of land and water, repair to land on abandonment.
- (c) Working conditions to be observed under prospecting licences, protection licences, or leases.

8. All licences, protection licences, and leases shall be granted only on the implied agreement by the licensee and lessee with the following:—

Rights of His Majesty's Government.

- (a) That His Majesty's Government shall have the right of pre-emption at current commercial prices of all crude oil won from the area concerned and of all products of the refining or treatment of such oil.
- (b) That in the event of war, whether His Majesty's Government is involved or not, the Governor on behalf of His Majesty shall have power to take control of the works and plant in the area granted, or to take control of any refinery or store of oil.
- (c) That the Governor shall have the power to regulate the site of any refinery or place of storage of oil in the Colony and Protectorate of Kenya.

9. The Commissioner of Mines may before the granting of any rights hereunder require any applicant for such rights to enter into a bond with two sureties of reasonable amounts for the due observance and performance of any covenants and conditions to be inserted in any licence protection area or lease or otherwise prescribed by law.

Bond.

MINERAL OIL MINING ORDINANCE, 1922.

53

No. 14 of 1922.

ARRANGEMENT OF SECTIONS.

1. Short title.
2. Interpretation.
3. Prohibition of prospecting or mining for oil without a licence or lease.
4. Power for Governor to grant licences and leases.
5. Power to make regulations.

TANGANYIKA TERRITORY.



A. C. HOLLIS,

Acting Governor.

13TH JULY, 1922.

An Ordinance to regulate the Mineral Oil Mining Industry within the Territory.

No. 14 of 1922.

BE IT ENACTED by the Governor and Commander-in-Chief of the Tanganyika Territory, as follows—

1. This Ordinance may be cited as the Mineral Oil Mining Ordinance, 1922. Short title
2. In this Ordinance, unless the context otherwise requires the expression "Mineral Oil" includes asphalt, bitumen, and bituminous substances other than coal, and includes natural gas. Interpretation.
3. (1) No person shall without a licence or lease from the Governor, prospect, explore, search, mine for, or win any mineral oil in the Territory, whether on or from public land or private land. Prohibition of prospecting or mining for oil without a licence or lease
(2) Any person who contravenes the provisions of this section shall on conviction be liable to a fine not exceeding one thousand shillings for each day during which the offence continues, and, in addition, all mineral oil won in contravention of such provisions shall be forfeited to the Governor.
4. The Governor may, if he thinks fit, from time to time grant licences to prospect, search or explore for, and leases to mine for or win mineral oil to such persons, over such areas, whether of public land or private land, for such periods, and on such conditions as he may deem expedient. Power for Governor to grant licences and leases.
5. (1) The Governor may, if he thinks fit, from time to time by order published in the *Gazette* make regulations as to any matter in connexion with the mineral oil mining industry in the Territory, and, in particular and without prejudice to the generality of the foregoing power, as to all or any of the following matters, viz.— Power to make regulations.
 - (a) the method of making applications for licences and leases, the fees to be paid, and the priorities of applicants;
 - (b) the forms of licences and leases;
 - (c) the pegging, registration, priority, and transfer of claims to mineral oil rights, and the settlement by the Controller of Mines or other person of disputes in connexion therewith;
 - (d) the construction, maintenance, and repair, whether on, over, or under public land or private land, of all or any of the following things (in this Ordinance referred to as "works") which may be necessary or convenient for use in connection with the oil mining industry, viz.—wells, derricks, pumps, sumps, reservoirs, tanks, pipe lines, machinery, houses, roads, railways, and works, of any description, whether similar to those enumerated or not.

- (e) the storage and transport of mineral oil and of water for use in connection with the mineral oil mining industry, whether on, over, or under public or private land, and the terms, conditions, and charges on which the owner of any works for such purposes is to permit their use for the storage or carriage of water or mineral oil belonging to or for the use of other persons, and the giving of power to the Governor to require the owner of any such works to increase their capacity;
 - (f) the conservation, storage, and distribution of water for the use of the oil mining industry, and the compulsory acquisition for that purpose, subject to payment of compensation, of water rights over or under private land;
 - (g) the erection, maintenance, and management of refineries;
 - (h) the inspection of all works constructed or maintained for the purposes of or in connection with the mineral oil mining industry;
 - (i) the compulsory acquisition, subject to payment of compensation, of rights over or under any private land required for the proper working of any oil mining rights, or for the construction of any works necessary or convenient for that purpose;
 - (j) the payment of compensation for any compulsorily acquired right or for any damage to property, whether public or private, done by or in the course of any mineral oil mining operation, or by the refining, treatment, storage, or transport of mineral oil, or any product of mineral oil, or by the storage, transport, or distribution of water for the purpose of the mineral oil mining industry;
 - (k) the precautions to be taken for safety from fire and accidents, and for the prevention of pollution of land or water by mineral oil;
 - (l) the precautions to be taken for the prevention of waste of mineral oil or damage to strata containing mineral oil or other mineral deposits;
 - (m) the manner and form in which all reports, notices, and records of operations shall be made, and
 - (n) the amount of labour, whether European or non-European, to be employed in connection with any mineral oil mining operation, the terms and conditions of labour contracts, and the housing and other accommodation to be provided for labourers.
- (2) Any such regulation may impose a penalty for the breach of any regulation which may extend to a fine not exceeding two thousand shillings, or, in the case of a continuing breach, to a fine not exceeding one thousand shillings for each day during which the breach continues.

- (e) the storage and transport of mineral oil and of water for use in connection with the mineral oil mining industry, whether on, over, or under public or private land, and the terms, conditions, and charges on which the owner of any works for such purposes is to permit their use for the storage or carriage of water or mineral oil belonging to or for the use of other persons, and the giving of power to the Governor to require the owner of any such works to increase their capacity;
 - (f) the conservation, storage, and distribution of water for the use of the oil mining industry, and the compulsory acquisition for that purpose, subject to payment of compensation, of water rights over or under private land;
 - (g) the erection, maintenance, and management of refineries;
 - (h) the inspection of all works constructed or maintained for the purposes of or in connection with the mineral oil mining industry;
 - (i) the compulsory acquisition, subject to payment of compensation, of rights over or under any private land required for the proper working of any oil mining rights, or for the construction of any works necessary or convenient for that purpose;
 - (j) the payment of compensation for any compulsorily acquired right, or for any damage to property, whether public or private, done by or in the course of any mineral oil mining operation, or by the refining, treatment, storage, or transport of mineral oil or any product of mineral oil, or by the storage, transport, or distribution of water for the purpose of the mineral oil mining industry;
 - (k) the precautions to be taken for safety from fire and accidents, and for the prevention of pollution of land or water by mineral oil;
 - (l) the precautions to be taken for the prevention of waste of mineral oil or damage to strata containing mineral oil or other mineral deposits;
 - (m) the manner and form in which all reports, notices, and records of operations shall be made, and
 - (n) the amount of labour, whether European or non-European, to be employed in connection with any mineral oil mining operation, the terms and conditions of labour contracts, and the housing and other accommodation to be provided for labourers.
- (2) Any such regulation may impose a penalty for the breach of any regulation which may extend to a fine not exceeding two thousand shillings, or, in the case of a continuing breach, to a fine not exceeding one thousand shillings for each day during which the breach continues.

A Bill

Intituled

An Ordinance relating to Mining.

A Bill

Intituled

An Ordinance Relating to Mining

PART I.

PRELIMINARY

1. This Ordinance may be cited as the "Mining Ordinance, 1922" and shall come into operation on such date as the Governor by notice in the Gazette shall determine. Short title and commencement

2. In this Ordinance, unless there be something repugnant to the subject or context Definition

"Alluvial" means any loose soil, earth or other substance containing or supposed to contain gold or precious stones, not being a seam, lode, quartz vein, cement or blanket.

"Coal" includes all descriptions of coal, lignite and carbonaceous shale.

"Commissioner of Mines" shall include a person appointed to act for the Commissioner of Mines.

"Common minerals" includes sand, clay, marble, stone, lime, diatomite, murrain, gypsum, mineral waters, salt, soda and such minerals as are declared from time to time to be common minerals by the Commissioner of Mines by notice under this Ordinance.

"Contiguous claims" mean claims adjoining or touching each other at a common point on their boundaries or that the land between any two points on their boundaries is wholly occupied by roads, railways, rivers, dedicated ground, water or land set aside for public purposes.

"Gold" means as well as gold any substance containing gold, or containing gold mixed therewith, or set apart for the purpose of extracting gold therefrom.

"Inspector" means an Inspector of Mines appointed for the purpose of this Ordinance.

"Land owner" includes also a mortgagee, a grantee and lessee and a person occupying land under a licence from the Crown.

"Mine" as a noun, includes all lands and works on, in, or by which mining is carried on.

"Minerals" and "all minerals" includes metals and precious stones, but does not include coal, oil, or common minerals.

"Oil" includes all descriptions of mineral oil, natural gas, bitumen, asphalt and other bituminous substances with the exception of coal.

"Prospecting" includes all modes of prospecting for minerals, common minerals, and coal.

"Basket" means a sedimentary or foliated deposit interbedded among or superincumbent on the strata of the country and containing or supposed to contain gold.

"Placer" means alluvial deposit of ancient date i.e., not now in process of formation, containing or supposed to contain gold.

"Mining" or "to mine" includes all modes of prospecting and mining for obtaining treating and making merchantable minerals, common minerals, and coal.

"Mining lease" means a lease issued under this Ordinance for minerals other than common minerals or coal.

"Native Reserves" includes all land which it is considered by the Government is required by and should be reserved for natives whether gazetted or not.

"Colony" means the Colony and Protectorate of Kenya.

"Prescribed" means prescribed by this Ordinance.

"Private land" shall include lands privately owned and land the subject of a grant, lease or licence from the Crown.

"Salt flats" means those deposits of salt or other mineral or common mineral which have been or are being used as salt flats for cattle whether privately owned or not.

"European" means any person of European birth or descent.

The several enactments mentioned in Schedule A hereto, are hereby repealed, but such repeal shall not affect any right, title or liability already created, existing or incurred, nor anything lawfully done or suffered under any enactment hereby repealed, and any proceedings in respect of such right, interest or liability may be carried on as if such repeal had not taken place.

Mineralisation
and prohibited
areas.

4. The provisions of this Ordinance shall extend to all lands situate in the Colony and Protectorate.

Provided, however, nothing herein contained shall be deemed to authorise any person to prospect or mine on or under—

- (a) Lands dedicated or set apart for any public purpose.
- (b) Lands held under grants or leases giving the holder rights of working the gold, precious stones, minerals, common minerals and coal which are recognised by the Governor.
- (c) Land situate within any township or municipal area except with the consent of the owner of the land, and of the Governor or municipal authority.
- (d) Land over which exclusive prospecting rights have been or may be granted by the Governor or by or on behalf of His Majesty and during such time as such rights shall be subsisting except by, or on behalf of, the persons to whom such rights shall have been granted.
- (e) Land reserved for the purposes of any Railway or situate within 100 yards of any Railway, except with the consent of the Railway Administration.
- (f) Land the site of or within 300 yards of any building or the site of or within 500 yards of any artificial dam or reservoir, the property of the Crown or of the Government, except with the sanction of the Governor.
- (g) Land lawfully and *bona fide* used as a yard, garden, cultivated field or as the site of any building or artificial dam or reservoir, or land within 300 yards of any building or within 500 yards of any artificial dam or reservoir and the property of or leased by the owner of such building, artificial dam or reservoir, except with the consent of the owner and occupier of the land; provided, however, such exemption shall cease upon payment of compensation to the land owner for the loss resulting from the cesser of such exemption, such compensation, if not otherwise agreed upon, to be determined by arbitration. The person desiring the cesser of such exemption and the land owner shall be deemed parties to such arbitration.

- (k) Lands declared by the Governor by notice in the "Gazette" to be exempt from the operation of this Ordinance.
- (l) A street, road or highway without the consent in writing of the Governor or of the Municipal Corporation or other public body having the control thereof.
- (m) Land within a Native Reserve except with the consent in writing of the Commissioner of the Province within which the Reserve is situate and on such conditions as may be prescribed.
- (n) Salt licks, except as proscribed.
- (o) Closed districts, except with a licence from the proper authority.

5. Any person who prospects or mines without being authorised to do so by virtue of this Ordinance or of some enactment theretofore in force or without the licence or authority of the Governor, shall be guilty of an offence, and shall, on conviction, be liable to pay for each offence a penalty not exceeding twenty shillings for every day on which he shall so prospect or mine.

Unauthorized mining

PART II

DEPARTMENTAL AND OFFICIAL

6. There shall be a Commissioner of Mines to be appointed from time to time by the Governor and such Commissioner of Mines or the officer for the time being acting for him shall have charge of the administration of this Ordinance and of the Department of Mines.

Commissioner of Mines

7. The Governor may appoint such Wardens, Inspectors, Registrars, and other officers as may be necessary for the purposes of this Ordinance

Appointment of Wardens, etc.

8. (1) The Commissioner of Mines may hear and determine in a summary way all suits concerning any right, claimed in, under, or in relation to a prospecting claim or prospecting licence, or any advantage thereof or liability thereunder, or any contract in respect thereof.

Jurisdiction of Commissioner in Suits.

(2) The jurisdiction of the Commissioner of Mines shall extend not only to cases where the litigants are the parties originally interested in the cause of suit, but to cases where the title of litigants is derived from or through any of such parties.

9. The Commissioner of Mines may decide any suit, and any matter arising thereon, in such a manner as may be just, and may make and give all orders and directions necessary for enforcing his decisions, and may award reasonable costs.

Power of hearing

10. The mode of proceeding in a suit before the Commissioner of Mines shall be as proscribed.

11. The order or decision of the Commissioner of Mines need not be formally drawn up, but the record in books, which he is hereby required to keep for the purpose, shall be conclusive evidence of the order or decision and any person may obtain a copy of the record on payment to the Commissioner of Mines of the proscribed fee.

Commissioner's order need not be formally drawn up.

12. The Commissioner of Mines, upon the hearing of a suit, may cause any gold or precious stones, minerals, common minerals, coal or oil to be summarily seized and delivered to the person entitled thereto.

Commissioner may order minerals, etc. to be seized.

13. The Commissioner of Mines or any Inspector or any person authorised by the Commissioner of Mines, may at all reasonable times, enter and inspect any mine held under a claim or mining lease, and examine and take extracts from all books, accounts, vouchers, and documents relating thereto, or to any gold or precious stones, minerals, common minerals, coal, or oil obtained therefrom.

Inspection by Commissioner

Law regulating proceedings before, and enforcement of orders of, the Commissioner.

14. The law for the time being regulating proceedings before and the powers of a Magistrate of a Subordinate Court of a First or Second Class in the exercise of its civil jurisdiction shall, so far as practicable, and subject to any modifications, alterations, or additions which may be prescribed, apply to proceedings before the Commissioner of Mines and to the enforcement of his decisions in like manner as if such decisions were the decisions of a Magistrate of a Subordinate Court of a First or Second Class.

Appeal

15. There shall be an appeal from any determination in any suit, of the Commissioner of Mines, or from any order of dismissal, which appeal shall be to the Supreme Court, and shall be conducted in manner provided for an appeal from a Magistrate of a Subordinate Court of a First or Second Class.

Jurisdiction of ordinary Courts not excluded

16. (1) Nothing in the preceding sections contained shall be deemed to prevent the holder of a prospecting licence from bringing in any of the ordinary Court of the Colony and Protectorate any suit which might be heard and determined by the Commissioner of Mines. Provided, however, that whereas it is the intention of this Ordinance that all suits brought by the holder of a prospecting licence concerning any right, claimed in, under, or in relation to a prospecting licence or a prospecting claim or any advantage thereof or liability thereunder, or any contract in respect thereof shall, so far as may be proper and convenient, be heard and determined by the Commissioner of Mines, the Supreme Court or any Court subordinate thereto before which any such suit as aforesaid may be brought, may, on the application of the defendant or if there be more defendants than one, on the application of any one or more of the defendants, and if satisfied that the suit could be properly and conveniently heard and determined by the Commissioner of Mines, direct that the suit be brought before the Commissioner of Mines.

Governor may confer upon a Warden jurisdiction in suits

(2) The Governor may, by notice in the "Gazette," confer upon any Warden the powers and jurisdiction vested in the Commissioner of Mines by Sections 9 to 15 (both inclusive) of this Ordinance, and may in like manner define the area within which such Warden shall exercise such powers and jurisdiction.

PART III

ACQUISITION OF RIGHTS OF PROSPECTING AND MINING

DIVISION I.—GENERAL.

Oil

17. Nothing contained in this Ordinance shall confer any right of searching for, prospecting, obtaining, treating, refining, buying or selling oil.

Rights

18. Prospecting and mining shall be permitted pursuant to this Ordinance by virtue of:—

- (a) A prospecting licence.
- (b) A sole exploration licence.
- (c) A protection area.
- (d) A registered claim.
- (e) A Miner's right.
- (f) A mining lease, or coal lease.

ed / permission to export

Non Europeans

19. Mining rights may be acquired by non-Europeans according to the current land policy of the Colony. That is to say, one race of non-Europeans may acquire mining interests in those districts where that race is permitted by the land law for the time being to acquire interests in land; provided that non-Europeans may acquire mining rights in any locality for common minerals.

DIVISION II.—PROSPECTING LICENCES.

Prospecting licence

20. A prospecting licence, in a prescribed form, to be in force for one year from the date hereof, shall be issued by:—

- (a) The Commissioner of Mines, or
- (b) A Warden.

Applications

21. Applications for prospecting licences shall be in a prescribed form.

22. A prospecting licence shall not be transferable.

Not transferable
Companies

23. When a prospecting licence is issued to an individual representing a Company, Syndicate, Partnership or other body of persons, it shall be so stated on the licence, and the licence shall be deemed to be held by the body represented.

24. A prospecting licence shall authorise the holder thereof—

Privileges

- (a) To prospect for any minerals, common minerals, or coal, the property of the Crown.
- (b) To peg claims and protection areas as prescribed.
- (c) To take action in the Court of the Commissioner of Mines.

25. The Governor may forbid the issue of a prospecting licence to any person, or may cancel a prospecting licence held by any person, on conviction of an offence under this Ordinance.

Black list

DIVISION III - SOLE EXPLORATION LICENCES

26. The Governor may, at his sole discretion, grant sole exploration licences to search for minerals, common minerals, or coal, over any area and subject to such fee terms and conditions as he may think fit, provided that the purpose for which such licence is granted is of great public importance, and that the mineral, common mineral, or coal for which the licence is granted would be, if found, of great public or imperial utility.

Sole licences

27. Every application for a sole exploration licence must be accompanied by proof of means to the extent of one hundred shillings for each square mile of the area under application.

Proof of means

28. Every application for a sole exploration licence must be for the sole right of prospecting within the area concerned for the mineral, common mineral, or coal mentioned in the licence, and the sole right during the currency of the licence as peg claims as prescribed.

29. The Governor may, by notice in the "Gazette", extend the term of any sole exploration licence.

Term

30. Notice of every sole exploration licence granted shall be published in the "Gazette".

Gazette

DIVISION IV - PROTECTION AREAS

31. The holder of a prospecting licence may erect a prospecting notice in the prescribed form. The erection of such a notice shall confer upon the licensee the exclusive right of prospecting and of pegging claims within an area of 1000 feet from the notice in all directions for a period of thirty-one days from the date of erection. The area so affected shall be known as a protection area.

Protection area

32. The holder of a protection area shall cause the same to be registered in the prescribed manner.

Registration

33. No holder of a protection area shall establish another protection area until the protection area already held by him shall have been abandoned as such.

Limitation

DIVISION V - CLAIMS

34. The pegging of any claim shall be invalid in the following circumstances:--

Validity

- (a) If the person pegging does not hold a prospecting licence at the time of pegging.
- (b) If the person in whose name the claim is pegged does not hold a prospecting licence at the time of pegging.
- (c) If the claim is pegged between the hours of 6 p.m. and 6 a.m.
- (d) If the claim pegged is not a rectangular parallelogram, the length of the longer side being not more than twice the length of the shorter side.
- (e) If the claim is not pegged in the prescribed manner.

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under
and within
in area
Bill
and

protected

Size of claims

35. Claims shall not exceed the following dimensions:

- (a) A gold claim, reef or basket, 300 feet in length along the supposed line of the reef or basket, and 600 feet in width across the line.
- (b) A gold or precious stone claim, alluvial or placer, 100 feet by 100 feet.
- (c) A precious stone claim, other than alluvial, twenty acres.
- (d) A mineral claim, forty acres.
- (e) A coal claim, six hundred and forty acres.
- (f) A common mineral claim, as prescribed.

Registration of claim

36. The owner of a claim of whatever nature within 30 days after the claim is first pegged out, or within such additional time (if any) as the Commissioner of Mines may, on the ground of sickness, absence or other like disability of any such owner, or for other reasonable cause, allow shall register the claim in the office of the Senior Commissioner of the Province wherein the claim is situated, or with the prescribed officer.

Penalty for neglect

37. If any person neglects to register his claim in the manner and time aforesaid he shall forfeit all rights in respect thereof.

False registration

38. Any person who shall, by false representations or fraudulent concealment of facts, obtain registration of any claim under this Ordinance shall forfeit his rights in the claim in respect of which such registration has been obtained, and be liable to a penalty not exceeding one thousand five hundred shillings.

Rights of owner

39. The ownership of a claim shall confer the following rights in respect thereof:

- (a) As to a gold, precious stones or mineral claim, the preferential right to a mining lease.
- (b) As to a coal claim, the preferential right to a coal lease.
- (c) As to a common mineral claim, the preferential right to a mineral right.

Rent

40. The holder of a claim of whatever nature shall pay an annual rent at the rate of twenty shillings to the Commissioner of Mines for each claim. Such rent shall be payable in advance on the first of January in each year.

Overlapping

41. No area which is pegged out under one class of claim shall be pegged out, except by the owner of such claim or with his sanction, under the same or any other class of claim unless forfeiture of the first mentioned claim has been declared or such claim has been abandoned.

42. No claim shall be pegged out on any area held under a mining lease except by the lessee or with his permission.

No claim to be pegged out within fifty yards of a shaft

43. No claim shall be pegged out upon any area which is being lawfully mined, so as wholly or partially to come within fifty yards of a shaft or sinking in actual use for the purpose of such mining without the consent in writing of the person mining.

Priority of claims

44. Whenever the same area shall be included in different classes of claims, the different classes shall have priority in the following order:—

- (a) Alluvial or placer gold or precious stones claim.
- (b) A precious stones claim, other than alluvial, a gold claim, reef or basket.
- (c) Mineral and coal claims.

but the owners of all claims shall comply with prescribed requisites for securing to each the benefit of his claim, and for preventing unnecessary interference with any right previously existing.

Working conditions

45. The Governor may prescribe the working conditions to be observed on claims.

46. ~~Excess work on one claim shall be allowed to count towards the working conditions on contiguous claims under the same ownership.~~ ^{Excess work}

47. No mineral, common mineral or coal may be exported ^{away} from a claim except for assay purposes.

48. The Governor may prescribe the number of claims to be ~~owned~~ held by one person.

DIVISION VI — COMMON MINERALS

49. The Governor may make regulations to provide for the issue of a ~~(miner's right which will grant)~~ permission to a claim holder to export common minerals from his claim for any purpose subject to the payment of royalties as prescribed.

DIVISION VII — LEASES

50. The Commissioner of Mines may with the approval of the Governor grant to the holder of a claim a mining lease over the following maximum areas:

- (a) Gold or precious stones: twenty acres
- (b) Minerals other than gold or precious stones: forty acres

51. The Commissioner of Mines may with the approval of the Governor grant to the holder of a coal claim a coal lease over a maximum of six hundred and forty acres.

52. The Governor may prescribe the terms and conditions under which a coal lease may be granted.

53. A mining lease shall be for a term not exceeding ten years, and shall contain a proviso for renewal for further periods of ten years each upon proof by the lessee of compliance with the terms and conditions of the lease.

54. The annual rent under each mining lease shall be at the rate of two shillings per acre, payable in advance on the first of January in each year.

55. The Governor may prescribe the working conditions which are to be observed under a mining lease.

56. The Governor may prescribe the royalties payable under a mining lease.

57. Every application for a mining lease shall be in the prescribed form.

58. So soon as an applicant for a lease is informed that a lease will be granted to him, he shall cause the land to be surveyed at his own cost under the direction of the Director of Surveys and shall supply the Commissioner of Mines also at his own cost with suitable plans for attachment to the lease.

59. A mining lease for gold or precious stones shall confer the right to mine, win and dispose of all minerals, subject to the payment of the prescribed royalties, provided that the mining lease for gold or precious stones is not granted over an area already held under a mining lease for minerals other than gold or precious stones.

PART IV.

PRIVATE LAND, NATIVE RESERVES AND SURFACE RIGHTS

60. For the purpose of this Ordinance Native Reserves shall be deemed to be private land, and the administrative authority for the time being shall be deemed to be the owner, provided that any monies received by that authority by way of compensation, fees or penalties, shall be devoted for the use of the tribe concerned.

Deposits for
Prospecting.

61. Before the holder of a prospecting licence may enter private land to prospect, he shall, if called upon by the owner, deposit with the Commissioner of Mines a sum of ten pounds, as security against the payment of grazing fees or against repair of damage to the land.

Deposit for
claims.

62. So soon as the holder of a prospecting licence shall peg a claim or claims on private land, he shall, if called upon by the owner, deposit with the Commissioner of Mines the sum of two shillings for each acre pegged subject to a minimum deposit of ten pounds and a maximum deposit of fifty pounds. Such deposit shall be held against the payment of grazing fees or compensation for loss of land or against repair of damage to the land on abandonment.

Bond.

63. In lieu of the deposits prescribed in Sections 61 and 62 hereof the holder of a prospecting licence may, with the approval of the land owner, enter into a bond with two sureties to be approved by the Commissioner of Mines in the sum of fifty pounds for himself and twenty-five pounds for each of the two sureties.

Lease.

64. (a) No mining lease shall be granted over private land until the Commissioner of Mines is satisfied that compensation has been paid by the applicant to the land-owner, such compensation, if not otherwise agreed upon, to be determined by arbitration.

Common
minerals.

(b) No claim for common minerals may be pegged on private land except by the owner or with his consent in writing. The registration of a claim for common minerals on private land shall be evidence that the owner has given his consent and shall be sufficient authority for the Commissioner of Mines to issue a miner's right as prescribed.

Surface
rights.

65. A prospecting licence, claim, miner's right or mining lease under this Ordinance shall confer upon the holder surface rights only so far as may be absolutely required for or in connection with bona fide mining purposes. Whenever a disagreement shall arise between the owner, in the case of private land, and the holder of the mining privileges, in connection with surface rights, the same shall be determined by arbitration.

Owner of
private land
entitled to
compensation
for disturbance
etc.

66. An owner of private land who shall be disturbed in his possession, or damaged or injured in any way by reason or in consequence of any right or power conferred by any lease of such land for mining purposes shall be entitled to claim from the lessee compensation in respect of such disturbance, damage or injury, the amount of which compensation shall, in all cases of disagreement, be determined by arbitration.

Additional
rights of
prospector.

67. A prospecting licence, claim, or mining lease shall confer upon the holder the following rights when engaged actively in prospecting or mining, namely:—

(1) On unoccupied Crown land to take fuel and water for his domestic use provided, however, that he shall not have the right to cut any standing timber in any proclaimed forest area, or any reserved tree unless he shall have obtained permission in writing from the Conservator of Forests or other prescribed officer.

(2) On any land on which he is entitled to prospect to take for his domestic use water from any lake, river or stream, and, with the consent of the owner or occupier of private land or on tendering to the owner or occupier a reasonable sum in payment therefor, any fuel other than standing live timber.

Right of
residence and
grazing on
claim.

68. The owner of a claim shall have the right to reside on his claim and of grazing on his claim for six horses or mules, or for sixteen oxen or donkeys free of charge on unoccupied Crown land, and if on any private lands on payment to the owner or occupier of the land where such licence is exercised of fifty cents per diem. Provided, however, that on private land the owner of the claim shall only exercise the rights conferred on him by this section on such portion of the claim as shall be indicated by the owner or occupier.

If any question shall arise between the owner or occupier of the land and the owner of the claim as to the suitability of land indicated by the owner or occupier it shall be determined by the Commissioner of Mines or other prescribed officer.

69. Mining rights granted in respect of private land shall not confer upon the lessee the right to cut timber on the lands the subject of the lease, except the removal of any tree which shall be necessary for or in connection with mining purposes. The holder shall, if required by the owner of the tree cut, pay to him the value of any tree and shall not without the consent of such owner be entitled to use the timber cut, unless and until he has paid or tendered such value.

Mining
lessee's rights
in respect of
cutting
timber.

A lease of land, other than private land or land situate within a proclaimed forest area, for mining, shall confer upon the holder the right to cut and utilise for or in connection with mining purposes any tree growing on the land the subject of the lease, provided, however, that the prescribed royalty shall be paid to the Forest Department in respect of any tree which may be protected by virtue of Rules issued under Section 18 of "The Forest Ordinance, 1911."

Whenever a lease for mining purposes shall be granted in respect of land situate within a proclaimed forest area, the holder may cut down any tree growing on the land the subject of the lease provided the removal of the tree is necessary for or in connection with mining purposes, but the holder shall pay to the Forest Department the prescribed royalty on any such tree. Unless the sole right to cut such tree has been granted under the Forest Ordinance, 1911, to some other person the holder may, on paying such royalty, sell or use the timber cut for any purpose he may think fit. If the sole right to cut such tree has been granted to some other person as aforesaid the holder shall pay to such person the value of the timber cut and on paying or tendering such value shall be at liberty to sell or use the timber for any purpose he may think fit.

70. No prospector claim holder or lessee under a mining lease shall divert water from any stream or lake or take water from any dam, race or reservoir without the sanction of the Commissioner of Mines, nor permit sludge or other noxious matter to flow to any stream, lake, dam, race or reservoir.

No water to
be diverted
without
sanction.

Pollution of
water
prohibited.

PART V

ABANDONMENT OF MINING RIGHTS

71. A claim shall be deemed to be abandoned in the following circumstances:—

Claims when
deemed
abandoned.

(a) If the claim has not been registered in the manner prescribed.

(b) If the Commissioner of Mines has declared forfeiture.

(c) If the holder has not produced satisfactory evidence of compliance with the working conditions prescribed.

(d) If the rent payable is not paid to the Commissioner of Mines within thirty-one days from the date when it became due.

(e) If the holder fails to render any prescribed return when due.

(f) If the holder shall notify the Commissioner of Mines in writing of his intention to abandon the claim.

Nothing in this section contained shall impose any obligation on the Commissioner of Mines to declare forfeiture of a claim.

72. No owner of a claim who employs hired labour to work the same shall be deemed to have abandoned or adjudged to forfeit such claim through any neglect, absence or omission on the part of any workman employed thereon by him, such neglect, absence or omission being without the knowledge of the owner. If after such notice in writing, as the Commissioner of Mines may consider reasonable in the circumstances of any case, to such owner, of the neglect, absence or omission of any hired workman, such neglect, absence or omission be continued, the owner shall be deemed to have abandoned his claim; such notice may be served personally or by sending the same to the last known place of abode of such owner, or by advertising the same in the "Gazette."

Claims not
forfeited by
neglect of
hired
workmen.

Restoration of
surface

73. Any person who shall abandon mining or prospecting operations on any land shall forthwith fill in or secure to the satisfaction of the Commissioner of Mines or other prescribed officer all shafts, pits, holes and excavations in such a manner as to prevent persons or stock inadvertently entering the same. Any person who shall have failed to comply with the provisions of this section shall be liable to pay to the Commissioner of Mines, if on unoccupied Crown land, or to the land-owner if on private land, such sums as the Commissioner of Mines or other prescribed officer shall certify will be the cost of filling up or securing all shafts, pits, holes and excavations on the abandoned land.

Owner may
remove plant

74. The owner of any plant, machinery, engines, or tools of any forfeited or surrendered area shall have three months in which to remove such plant, machinery, engines, or tools, from the date of forfeiture or surrender, but shall not, under a penalty of not more than 8,000 shillings or less than 150 shillings for each such offence, be permitted to remove or to interfere with any timber in any mines.

75. A lessee may surrender a mining lease, subject to the regulations

Third parties

76. All rights of surrender conferred by this Ordinance are subject to the rights of persons claiming from or under the lessee.

PART VI.

TRANSFERS.

Prohibited

77. Prospecting licences and protection areas shall not be transferable.

Claims

78. Claims may be transferred as prescribed by regulation.

Private land

79. In the event of a claim being transferred in respect of which a deposit shall have been made under Sections 61 and 62 hereof, the deposit shall be deemed to have been made by the transferee and shall be held on his account. If a bond has been executed in lieu of a deposit, transfer of a claim shall render the bond null and void, and the transferee shall be required to execute a bond as prescribed, or to make a deposit in lieu thereof, if required by the land-owner.

Different race

80. A claim shall not be transferred to a party of a different race from the holder without the permission of the Governor.

Miner's right

81. A miner's right attached to a claim shall be deemed to be transferred to the transferee of the claim.

PART VII.

INSPECTION OF MINES.

Power of
Inspector.

82. An Inspector at all reasonable times by day or night, but so as not unreasonably to impede or obstruct the working of the mine may:—

- (i) Enter, inspect, and examine any mine;
- (ii) Examine into and make enquiry respecting the condition and ventilation thereof, and all matters relating to the safety and health of the persons employed;
- (iii) Inspect and examine the state of the machinery used upon or in the mine, and the state of all plants, works, and ways;
- (iv) The Inspector shall, in case he finds any mine or any part thereof or any matter, thing, or practice in or connected therewith, to be defective, give notice in writing to the owner, agent, or manager of the mine stating particulars in which he considers such mine or any part thereof, or any matter, thing or practice, to be defective, and requiring the same to be remedied;
- (v) Inspect the storage of explosives upon any mine and direct in what manner the same shall be stored;
- (vi) Exercise all powers necessary for carrying this part of the Ordinance into effect.

83. If the owner, agent, or manager of the mine objects to remedy the matter complained of in any notice under the last preceding section, he may within twenty-one days after the receipt thereof, send his objection in writing stating the grounds thereof, to the Commissioner of Mines, and thereupon the matter shall be submitted to and determined by the Commissioner of Mines, or by such officer as he may appoint on that behalf.

Proceedings on objection to comply with notice.

84. If the owner, agent, or manager of the mine fail to comply with the requisition of the notice, where no objection is sent within the time aforesaid, or with the decision of the Commissioner of Mines or other officer as aforesaid within twenty-one days after the expiration of the time for objection or decision (as the case may be), he shall be liable to a penalty not exceeding ten thousand shillings.

Proceedings on failure to comply with notice.

85. The Court, if satisfied that the owner, agent or manager has taken active measures for complying with the notice or decision of the Commissioner of Mines or other officer, but has not been able with reasonable diligence to complete the work, may adjourn any proceeding for punishing such offence, and if the works are completed within a reasonable time no penalty shall be inflicted.

Adjournment.

86. No person shall be precluded by any agreement from doing such acts as may be necessary to comply with the provisions of the last preceding three sections or be liable under any contract to any penalty or forfeiture for doing such acts.

Agreement not to preclude or exempt.

87. The Commissioner of Mines may direct an Inspector to make a special inquiry and report with respect to an accident in or about a mine causing loss of life or personal injury, and shall cause such report to be made public at such time and in such manner as he thinks expedient.

Special inquiry may be directed.

88. (1) Where in or about a mine, whether above or below ground, loss of life or serious personal injury occurs by reason of any accident whatever, the owner, agent or manager of the mine shall within twenty-four hours next after the accident, send notice in writing of the accident, and of the loss of life or personal injury occasioned thereby, to the Commissioner of Mines or other prescribed officer, and shall specify in such notice the nature of the accident, and the number of persons killed and injured respectively.

Notice of accident to given.

(2) Where any personal injury of which notice is required to be sent under this section results in the death of the person injured, notice in writing of the death shall be sent to the Commissioner of Mines within twenty-four hours after such death comes to the knowledge of the owner, agent or manager.

Notice when death results.

(3) Every owner, agent or manager who neglects to comply with this section shall be liable to a penalty not exceeding one thousand five hundred shillings.

Penalty.

89. Every owner, agent or manager of a mine who refuses or neglects to furnish an Inspector with the means necessary for making an entry, inspection, examination or enquiry under this Ordinance, in relation to such mine, shall be liable to a penalty not exceeding one thousand five hundred shillings or to be imprisoned, with or without hard labour, for any period not exceeding six months.

Penalty for refusing means of inspection.

PART VIII.

GOVERNMENT PROTECTION AREAS.

90. No person in the service of Government may peg a claim in his own name.

Government warrant.

91. Any person in the service of Government may peg a Government Protection Area for any minerals, common minerals, or coal, not exceeding six hundred and forty acres.

By whom pegged.

92. Notice of every Government Protection Area shall be published in the "Gazette" as soon as possible after the date of pegging.

Gazette.

Term.

93. A Government Protection Area shall be for a term of one year from the date of pegging, during which time the Government shall decide whether to work the area or whether to dispose of the rights of working the area.

Work by Government

94. If during the currency of a Government Protection Area the Government decides to work the area, the term of that Government Protection Area shall be deemed to be indefinite and the Government shall have the right of working the area until notice is published in the "Gazette" of abandonment.

Prospect public

95. It shall be unlawful for any person to prospect or mine in a Government Protection Area without the consent of the Commissioner of Mines.

Reward

96. In the event of revenue accruing to Government from a Government Protection Area the Governor may pay from such revenue as a reward to the servant who pegged the area, or to any person who gave information which led to the pegging of the area, such sum as he may think fit, provided that no reward shall be paid to any Government servant who pegs a Government Protection Area in the ordinary course of his duties.

PART IX.

MISCELLANEOUS

Claim holders and lease holders to furnish half yearly returns

97. Every holder of a claim or lease, other than an alluvial claim, shall half yearly, in the months of January and July, furnish to the Commissioner of Mines or other prescribed officer, full and true return, showing the quantity of stone or ore treated, and the quantity of gold, precious stones, minerals, common minerals and coal taken from such claim or lease during the preceding half year, and if default shall be made in compliance with this section, shall be liable, on conviction, to forfeit and pay a sum not exceeding three hundred shillings for every such default.

Rent how recoverable

98. The rent reserved by any mining lease or applicable to any claim may be levied or recovered by or under the authority of the Commissioner of Mines, in like manner as rent is or shall be leviable or recoverable by law in cases where private persons only are concerned, and, in case such rent is leviable by distress, an order under the hand of the Commissioner of Mines shall be sufficient warrant and authority to distrain. This section shall not affect any other remedy for recovery of the rent.

Forfeiture of lease

99. In every case where the rent of land held under a mining lease is unpaid for more than three months after the day on which the rent is payable under such lease, the Governor may cancel such lease, and the Governor shall thereupon insert a notice in the Gazette declaring the lease to be forfeited, and in every case where the Governor has reason to believe that there has been a breach of any of the covenants or conditions contained in such lease, except in the case of non-payment of the rent as aforesaid, and except in cases of non-compliance with the labour conditions of any leases, the Governor shall give written notice to the lessee specifying the covenants or conditions which he has reason to believe are not being complied with, and notifying him that such lease will be liable to forfeiture at the expiration of one month from the date of such notice, unless in the meantime such covenants and conditions are duly complied with; and if at the expiration of such notice such covenants or conditions are still not being complied with by the lessee, the Governor may cancel such lease, and shall thereupon insert a notice in the Gazette declaring the lease to be forfeited. In case of non-payment of rent or the non-compliance with the labour conditions, the Governor may exercise the power of cancellation without giving the written notice herebefore mentioned. Every such notice shall be conclusive evidence that the lease therein mentioned was legally cancelled and forfeited, and the land included therein may be dealt with as if such lease had never been granted.

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93. A Government Protection Area shall be for a term of one year from the date of pegging, during which time the Government shall decide whether to work the area or whether to dispose of the rights of working the area.

Ministry of
Government

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Prospectors &
Mines

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100. Whenever a lease for mining purposes is liable to forfeiture, and in the opinion of the Governor a less penalty than forfeiture would meet the justice of the case, the Governor may extend the period during which the lessee may perform the conditions of his lease, for such time and subject to such terms and conditions as he may think fit; and the terms and conditions so imposed by the Governor shall bind the lessee and all transferees, mortgagees, assignees, and other persons claiming through or under him, and the lease shall thereafter be construed as if such terms and conditions were inserted therein.

Extension after breach.

101. No person under the age of sixteen years shall hold, directly or indirectly, a mining lease or prospecting claim.

Persons under sixteen not to hold mining lease, etc.

102. Every arbitration in pursuance of this Ordinance shall be under the Arbitration Ordinance, 1913, and the parties to the submission shall, for the purposes of such arbitration and of such last mentioned Ordinance, be deemed to have entered into a written agreement to submit the differences in respect of the matter in question to the arbitration of two arbitrators, one to be appointed by each party.

Arbitration.

103. Any person who shall wilfully obstruct hinder or assault, or resist a Warden or Inspector, or any person duly authorised by a Warden or Inspector or a person authorised by this Ordinance to exercise any right or power to execute any duty or shall wilfully disobey a Warden's order or other than an order for the payment of money, or shall be guilty of contempt of the Commissioner of Mines or Warden acting in a judicial capacity, shall be liable to a penalty not exceeding one thousand five hundred shillings, or to imprisonment of either description for any period not exceeding six months.

Obstructing Officer

104. Any person who shall illegally alter, move or remove any monument, post, boundary or survey mark erected in pursuance of this Ordinance or of any Regulations thereunder shall, on conviction, be liable to imprisonment of either description for a term not exceeding three years, or to a fine not exceeding three thousand shillings.

Penalty for removing beacon, etc.

105. Any person who infringes a provision of this Ordinance for the infringement whereof no penalty is prescribed shall be liable for every offence to a penalty not exceeding three hundred shillings.

Infringement of Ordinance

106. In every case of the adjudication of a fine or pecuniary penalty or amends under this Ordinance, and of non payment thereof, the Court may commit the offender or person making default in payment to gaol for a term not exceeding twelve months, the imprisonment to cease on payment of the sum due and any cost which may have been awarded.

Imprisonment in default of payment of penalty

PART X

REGULATIONS

107. In addition to any power by this Ordinance conferred on the Governor to make regulations as to any special matter (which power shall, in every case, be implied for the purposes of any section in this Ordinance in which regulations are referred to, or in which the word "prescribed" is used) the Governor may, subject to the provisions of this Ordinance, make regulations, either of general or limited application. Such regulations may be for any of the purposes following:—

Governor may make Regulations

(i) For enforcing, under a penalty in case of default of not more than three thousand shillings; the proper ventilation and safe construction and timbering or supporting of all mining shafts, tunnels, drives or other mining workings used in mining; for prescribing the mode of inspection of all such mines, shafts, tunnels, drives, or workings, and the powers and duties to be exercised by Inspectors; and for determining and enforcing the distance at which all such shafts and other mining workings are to be kept from public and private roads, ways and passages, and from private land, dwellings, and other buildings;

(ii) For regulating the cutting, constructing, use, and maintenance of races, dams, reservoirs upon Crown land, or upon claims or lands held under leases for mining purposes under this Ordinance or any other Ordinance:

(iii) For prescribing the manner in which, and with what incident rights and obligations, and subject to what liabilities as to forfeiture and otherwise, any claim or class of claims, business or residence areas, race, dam or reservoir or any water taken or diverted by virtue of any licence, shall be taken possession of, held, occupied, used, worked or transferred:

(iv) For determining the order of priority among the holders of claims entitled to the use of any water; how such priority is to be regulated and under what conditions and circumstances:

(v) For enforcing and regulating the drainage of claims and of lands held under leases for mining purposes heretofore or hereafter granted:

(vi) For regulating the mode in which the rights and privileges of the owners of claims, and of races, dams, reservoirs, and easements, and of lands occupied under this Ordinance for business, may be exercised or enjoyed, and limiting, modifying, or restricting the exercise and enjoyments of such rights and privileges, and generally for the protection of such owners in the exercise and enjoyment of the rights, privileges, and interests conferred by this Ordinance:

(vii) For preventing the accumulation, and for the removal to some convenient place, of sludge, tailings and other refuse matter issuing or flowing from or connected with any land held or occupied under this Ordinance, and of waste water, and for the making of channels for any of the purposes aforesaid; and for otherwise regulating as between claims, such issuing, flowing and running to waste:

(viii) For the protection from injury, destruction, and lawless removal of races, drains, dams, and reservoirs used or enjoyed under this Ordinance, and of the water therein, and of gates, posts, fences, and notices, and of plant or appliances used in connection with mining, and for the protection from destruction of such races and dams, and of channels, drains, brooks, and rivers, used for mining purposes:

(ix) For regulating the mode of construction and the material used in construction, and the strength of embankments of dams and reservoirs used or to be constructed for or in connection with mining purposes:

(x) For the construction and keeping in repair of suitable bridges or other crossings over races, channels, or drains used for mining purposes cut across roads or thoroughfares or over such races, channels, or drains over which such roads or thoroughfares shall be carried, and for making proper approaches to such bridges or crossings, and for determining the width of such bridges, crossings, and approaches:

(xi) For making and keeping in repair and for regulating the width and formation of private ways and passages, used for mining purposes over claims or races, or any lands used in connection with mining under this Ordinance, or business carried on under business licences, and for regulating and imposing conditions on the right to change the direction of any such way or passage, and for the protection of the same from injury or obstruction by the leaving of felled or fallen timber or other obstruction, or any waste or injurious matter thereon:

(xii) For the prevention of nuisances in and about residences or places of business held under this Ordinance, and for cleansing and keeping clean the same:

(xiii) For securing the baling of water from mines so as to prevent injury from such water to any mining workings:

(xiv) For preventing the defiling of or wasting of water used for domestic purposes, or in any stream, and for determining whether any and what stream, waterhole, spring, or other depository of water shall be reserved for domestic use, and the mode of such reservation:

(xv) For ensuring the fencing and protection of mines and works for the safety of man and beast:

(ii) For regulating the cutting, constructing, use, and maintenance of races, dams, reservoirs upon Crown land, or upon claims or lands held under leases for mining purposes under this Ordinance or any other Ordinance:

(iii) For prescribing the manner in which, and with what incident rights and obligations, and subject to what liabilities as to forfeiture and otherwise, any claim or class of claims, business or residence areas, race, dam or reservoir or any water taken or diverted by virtue of any licence, shall be taken possession of, held, occupied, used, worked or transferred:

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(vi) For regulating the mode in which the rights and privileges of the owners of claims, and of races, dams, reservoirs, and easements, and of lands occupied under this Ordinance for residence or business, may be exercised or enjoyed, and limiting, qualifying, and otherwise affecting the exercise and enjoyments of such rights and privileges, and generally for the protection of such owners in the exercise and enjoyment of the rights, privileges, and interests conferred by this Ordinance:

(vii) For preventing the accumulation, and for the removal to some convenient place, of sludge, tailings and other refuse matter oozing or flowing from or connected with any land held or occupied under this Ordinance, and of waste water, and for the making of channels for any of the purposes aforesaid; and for the exercise regulating, between claims, such oozing, flowing or running of waste:

(viii) For the protection from injury, destruction, and unlawful removal of races, drains, dams, and reservoirs used or enjoyed under this Ordinance, and of the water therein, and of posts, posts, fences, and notices, and of plant or appliances used or in connection with mining, and for the protection from destruction of such races and dams, and of channels, drains, tracks, and rivers, used for mining purposes:

(ix) For regulating the mode of construction and the material used in construction, and the strength of embankments of dams and reservoirs used or to be constructed for or in connection with mining purposes:

(x) For the construction and keeping in repair of suitable bridges or other crossings over races, channels, or drains used for mining purposes cut across roads or thoroughfares or over such races, channels, or drains over which such roads or thoroughfares shall be carried, and for making proper approaches to such bridges or crossings, and for determining the width of such bridges, crossings and approaches:

(xi) For making and keeping in repair and for regulating the width and formation of private ways and passages, used for mining purposes over claims or races, or any lands used in connection with mining under this Ordinance, or business carried on under business licences, and for regulating and imposing conditions on the right to change the direction of any such way or passage, and for the protection of the same from injury or obstruction by the leaving of felled or fallen timber or other obstruction, or any waste or injurious matter thereon:

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(xiii) For securing the baling of water from mines so as to prevent injury from such water to any mining workings:

(xiv) For preventing the defiling of or wasting of water used for domestic purposes, or in any stream, and for determining whether any and what stream, waterhole, spring, or other depository of water shall be reserved for domestic use, and the mode of such reservation:

(xv) For ensuring the fencing and protection of mines and works for the safety of man and beast:

(xvi) For compelling contributions by parties benefitted of a fair share of the cost of pumping in cases where pumping in one mine benefits other mines:

(xvii) Providing for the survey of claims and of lands applied for under this Ordinance for purposes of mining, business or residence, and prescribing the fees to be paid for such survey by the owner of the claim or applicant:

(xviii) Prescribing the surface rights which shall be conferred upon a lessee under or by virtue of a lease of lands other than private land for mining purposes:

(xix) Prescribing the conditions and restrictions to be imposed for the protection of the rights of a lessee of Crown land for mining purposes, or the purchaser, lessee, or licensee of surface rights over such land:

(xx) Prohibiting or regulating the cutting of timber on land the subject of a mining lease, and prescribing the compensation to be paid to the Governor or to the person having surface or forest rights by a lessee thereby authorised to cut timber:

(xxi) Confering upon the Commissioner of Mines the power to execute for and on behalf of the Governor all or any leases which may be granted under this Ordinance and to exercise all or any power or to do any act or thing which may be exercised or done by the Governor by virtue of this Ordinance, other than the power to make regulations or appointments:

(xxii) For fixing fees, prescribing forms, regulating registration and otherwise fully and effectually carrying out and giving force and effect to the various objects, purposes, powers, and authorities of this Ordinance, and guard against evasion and violations thereof:

(xxiii) For prescribing the duties and powers of Wardens, Inspectors, Mining Peg Officers, and other officers to be appointed under this Ordinance:

(xxiv) For imposing penalties for breaches of the regulations not exceeding three months' imprisonment for any offence:

General words in this section shall not be limited or controlled by particular words.

SCHEDULE A

LAW REPEALED

The Mining Ordinance, 1912

The Mining (Amendment) Ordinance, 1915

Communications on this subject should be addressed to -

The Secretary,

the following Number quoted :-

I.2./142.C.

Registered Telegraphic Address -

IMMERSBUR, LONDON

Telephone Number - VICTORIA 9040

IMPERIAL MINERAL RESOURCES BUREAU,

2, QUEEN ANNE'S GATE BUILDINGS,

DARTMOUTH STREET,

WESTMINSTER,

LONDON, S.W. 1.



RECEIVED
23 FEB 1923
COL. OFFICE

23rd February, 1923.

M. Trevelyan

Sir,

As requested in your letter of the 22nd instant, I am directed by the Chairman of the Governors to return you herewith the Mining Bill and Draft Regulations which were forwarded with your letter No. 57764/22 of the 14th December, 1922.

I am, Sir,

Your obedient Servant,

L. H. Trevelyan
Secretary.

Under Secretary of State,
Colonial Office,
Whitehall,
S.W. 1.

Communications on this subject should
be addressed to—

THE SECRETARY,

the following Number quoted:—

I.2./142.C.

Registered Telegraphic Address

IMMENSEUR, LONDON

Telephone Number — VICTORIA, 9040

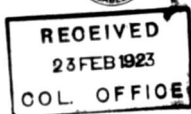
IMPERIAL MINERAL RESOURCES BUREAU,

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of the Governors to return you herewith the
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forwarded with your letter No. 57764/22 of the
14th December, 1922.

I am,

Sir,

Your obedient Servant,

L. H. ...
Secretary.

Secretary.

Under Secretary of State,
Colonial Office,
Whitehall,
S.W. 1.

1 M RB / 3475 / 23 Kenya

20
27 February 1923

DRAFT. 3pm.

Secretary

Mineral Resources Bureau
MINUTE.

Mr. Lushington 19.2.23.

Mr. Ballantine

Mr.

Mr. Davis.

Sir G. Grindle.

Sir H. Rand.

Sir J. Masterton Smith

Mr. Ormsby Gore.

Duke of Devonshire.

Correspondence.

No. 19 pm on
24.2.23 below

Sept
The U. Secy. S. for the 1923
presents his compliments to the

Secretary of the Imperial

Mineral Resources Bureau,
and, ^{with reference to} in acknowledgement

~~Receipt~~ of his letter

No. I / 2 / 142 B of the

14th of January, regarding

Mining Legislation in

Kenya, ^{by} ~~is directed to~~

1702B/3475/23 Kenya

22 February 1923

DRAFT. 3pm.

Secretary

Mineral Resources Bureau
MINUTE.

Secty

The U. Secy. S. for the Colonies
presents his compliments to the

Secretary of the Imperial

Mineral Resources Bureau,

and, ^{with reference to}
in acknowledgement~~the receipt~~ of his letter

No. I/2/142 B of the

19th of January, regarding

Mining Legislation in

Kenya, ^{by} ~~is directed to~~

Mr. Lushington 19.2.23.

Mr. Bullivant

Mr.

Mr. Davis

Sir G. Grindle.

Sir H. Read.

Sir J. Masterton Smith

Mr. Ormsby Gore.

Duke of Devonshire.

cc: ...

L.O. 3pm -
Secty & Secy

request that the Mining Bill and

Draft Regulations which formed

enclosure to Colonial Office

letter No 57764/22 of the 14th

of December, 1922, may be

returned to this Department

~~at an early date.~~

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60

MEMORANDUM

3 23
W. Shaker St 28.3.23
July 28 atome

Clause 2 paragraph 14. - Basket. This term as described conveys a different meaning from that used in other parts of Africa as it would seem to include any auriferous alluvium, which can surely not be intended. It is recommended that the words "or foliated" and "or superincumbent on" should be omitted.

Clause 2 paragraph 15. This definition is not in accordance with common practice and should be omitted. "Placer" is properly synonymous with alluvium.

Clause 2 paragraph 17. Definition of "mining lease". This would appear to involve an inconvenient restriction of the term "mining lease". ^{It is} ~~we would suggest~~ that the words "other than coal or minerals or coal" should be omitted.

Clause 4 paragraph (f). This appears ambiguous. Does "property of the Crown" etc. refer to both the building and the dam, etc. or only to the latter?

Clause 4 paragraph (g). The intention is not clear. Will this apply to land immediately adjoining a building, dam etc., but not belonging to the owner thereof?

Clause 19. ^{Clause 17 "for" is omitted after "property"} This clause appears to raise a question of policy and it should be considered whether the clause should be retained ^{especially} in view of the ^{fact that} ~~the rights now concerned will commonly be held by companies which it would be likely to cause among the Indians.~~

Clause 20. "hereof" is a misprint for "thereof".

Clause 24. "Paging" does not seem to be the appropriate word to use for the erection of a notice of a protected area. Section 10 of the Tanganyika Territory

Copy to J.A. R.B. - 4/4/23. B.P.L.
" You - K in 486, 3/13/23

Ordinance No. 11 of 1920, is a good model for dealing with rights under a prospecting licence.

Clause 26. There should be added to this section a condition requiring a full survey and investigation of the area and disclosure of the mineral resources and geological structure, and there should be a right reserved to the Government to cancel such an exploration licence in case they are of opinion that the conditions mentioned are not being complied with. The clause seems to confer a very wide power on the Governor. The proviso appears to be of doubtful utility and would ^{probably} not enable a mistake in granting a sole licence to be rectified, while as declaring a principle to guide the Governor in exercising this power it would seem to be uncalled for.

Clause 29. The word "for" is left out after "must be". The word "only" should be inserted after "surface rights" and the words "the subject" should be inserted after the word "area".

Clause 35. It is noted that the claim mentioned in (c) is about nine times larger than that mentioned in (b).

Clause 35 (d). If it is intended to exclude gold and precious stones, which are included in the definition of "mineral", this should be expressly stated.

Clause 36. The phrase "owner of a claim" is ambiguous and may refer to the owner of the land on which a claim has been pegged out. The "holder" is referred to in Clause 40 and is a better expression.

Clause 39. The use of the expression "mining right" is entirely contrary to the ordinary usage, which refers to the grant of a small area for

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Clause 35. It is noted that the claim mentioned in (c) is about nine times larger than that mentioned in (b).

Clause 35 (d). If it is intended to exclude gold and precious stones, which are included in the definition of "mineral", this should be expressly stated.

Clause 36. The phrase "owner of a claim" is ambiguous and may refer to the owner of the land on which a claim has been pegged out. The "holder" is referred to in Clause 40 and is a better expression.

Clause 39. The use of the expression "mining right" is entirely contrary to the ordinary usage, which refers to the grant of a small area for

a limited time to a working prospector. It is not stated under this section how long rights under a claim are to last.

Clause 44. The meaning of "priority" needs elucidating, as also that of the phrase "prescribed requisites for securing to each the benefit of his claim".

Clause 50. These areas should be compared with those shown in paragraph 35 (b) and (c). In 50 (a) there is no distinction between alluvial and other deposits, so that in some cases the limit of the lease is nine times that of the claim.

Clause 53. It is undesirable to give a right to a lease in perpetuity. The Tanganyika Territory precedent (of Ordinance No. 11 of 1920 section 29) might be followed.

Clauses 54 and 56. The corresponding sections of the Tanganyika Ordinance, sections 26 and 27, are better worded.

Clause 58 may lead to considerable trouble. The land should be surveyed before the application is made, otherwise the Commissioner may promise to grant a lease which after survey proves to be included in an existing lease. Compare section 24 of the Tanganyika Territory Ordinance for a better clause.

Clause 64 (b). In line 4 the words "prima facie" should be inserted before "evidence".

Clause 65. It would seem that there is no adequate reason why an owner of land adjoining a mine should be deprived of his right to a judicial trial.

Ordinance No. 11 of 1920, is a good model for dealing with rights under a prospecting licence.

Clause 26. There should be added to this section a condition requiring a full survey and investigation of the area and disclosure of the mineral resources and geological structure, and there should be right reserved to the Government to cancel such an exploration licence in case they are of opinion that the conditions mentioned are not being complied with. The clause seems to confer a very wide power on the Governor. The proviso appears to be of doubtful utility and would ^{probably} not enable a mistake in granting a sole licence to be rectified, while in declaring a principle to guide the Governor in exercising this power it would seem to be uncalled for.

Clause 29. The word "for" is left out after "must be". The word "only" should be inserted after "surface rights" and the words "the subject" should be inserted after the word "area".

Clause 35. It is noted that the claim mentioned in (c) is about nine times larger than that mentioned in (b).

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Clause:

Clause 68. The words "owner of the claim" should be "holder of the claim" here and elsewhere.

Clause 72. is open to ~~great~~ objection. An employer must be responsible for his hired labour.

Clauses 75 and 76. appear to be unnecessary, and it is suggested that they should be omitted unless there are special reasons for their retention.

Clause 80. As in the case of Clause 19, it appears doubtful whether the clause should be retained.

Clause 90. This seems to imply that a Government official can claim an area under an assumed name. It is suggested that the word "interest" should be substituted for "name".

Clause 97. After the words "half year" should be added "and full details of any information and samples obtained which the Commissioner of Mines shall require".

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Clause 97. After the words "half year" should be added "and full details of any information and samples obtained which the Commissioner of Mines shall require".

communications on this subject should
be referred to—

THE SECRETARY,

the following Number quoted —
I.2/142.C.

Registered Telegraphic Address —
IMMENSEUR, LONDON.
Telephone Number — VICTORIA 9040.

IMPERIAL MINERAL RESOURCES BUREAU,

2, QUEEN ANNE'S GATE BUILDINGS,

DARTMOUTH STREET,

WESTMINSTER,

LONDON, S.W. 1.



5th April, 1923.

WHS/MJ.

RECEIVED
5 APR 1923
COL OFFICE

Sir,

I am directed by the Chairman of the Governors to acknowledge receipt of your letter (5475/23) of the 4th instant, and to thank you for the enclosed copy of a letter which has been despatched to the Governor of Kenya Colony in respect of the contemplated mining legislation in that Colony.

I am, Sir,
Your obedient Servant,

L. M. Henderson
Secretary.

P. B. ...
attach
914173

The Under Secretary of State,
Colonial Office,
S.W.1.

attach
recd
8.4.23
almer

M. E. U.

Downing Street,

31 March, 1923.

DRAFT.

Amend
42781

H 88

Coryndon

Sir,

MINUTE.

With reference to your

despatch No.1483 of the 26th October

in which you enclosed copies of a

Draft Bill entitled "Oil Production

Bill 1922" and Draft Regulations

to be enacted thereunder, I have etc.

to inform you that I referred the

Draft Bill and the Regulations to

the Petroleum Dept., of the Board

of Trade, whose observations are as

follows:-

(i) It is noted that under

the proposed Regulations operations

are divided into three stages.

- Mr. Jewell 27.3.23
- Mr. Bollen 28.3.23
- Mr. (5776-22)
- Mr.
- Mr. Davis.
- Sir G. Grindle.
- Sir H. Road.
- Sir J. Masterton Smith.
- Mr. Ormsby-Gore.
- Duke of Devonshire.

copy to Pet. Dept. - 4/4/23

CF prepared

2 drafts

- (a) Prospecting Licence
- (b) Oil Protection Licence
- (c) Lease

These apparently correspond to the Exploration Licence, Prospecting Licence, and Lease adopted in Trinidad and elsewhere. If three stages are provided for it appears important to place some limitation on the extent to which underground search can be carried during the first period and to make it clear that apart from the digging of shallow excavations drilling is not permitted but only the making of a geological survey. Similarly under (b) it might with advantage be stated that exploratory drilling is permitted.

(ii) It is felt that the object aimed at in the Regulations should be to give as briefly as possible a general idea of the scope of the licences and leases without going into details which can more appropriately be settled in the terms of

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- (b) Oil Protection Licence
- (c) Lease

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(ii) It is felt that the object aimed at in the Regulations should be to give as briefly as possible a general idea of the scope of the licences and leases without going into details which can more appropriately be settled in the terms of

the agreements themselves. For example a clause such as No.12 might well be left to be dealt with in the licence itself.

(iii) There appears to be no provision making it obligatory on the licensee to submit reports and copies of geological maps to the Govt. in order to show that a serious attempt has been made to prove the existence of oil bearing deposits, but possibly it is intended to include this under the working conditions referred to in Section 21.

(iv) As regards the fees charged under Section 4 (d), it is suggested that the payment of an annual rental based on the number of square miles held under prospecting licence would be preferable to a single payment, as such a method would tend to encourage prospecting companies to carry out their preliminary

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(iv) As regards the fees charged under Section 4 (d), it is suggested that the payment of an annual rental based on the number of square miles held under prospecting licence would be preferable to a single payment, as such a method would tend to encourage prospecting companies to carry out their preliminary

company can be expected to incur them unless assured of the possibility of obtaining leases over a fairly extensive area from which an adequate return can be secured. The effect of thus limiting the area over which the holder of a prospecting licence has a preferential right to a mining lease, can only be to encourage the small speculator who usually attempts to operate without locating his wells on a scientific basis, and without sufficient capital resources, and to deter the larger oil interests, who can provide the necessary capital and technical experts, from taking any part in the development of the country. It is understood that in India the maximum area of an oil mining lease is fixed at 10 square miles, and it is suggested that this would be a more appropriate unit of area for a country

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such

such as Kenya. It should be borne in mind that the Government could always refuse to grant leases up to the maximum in cases where it appeared that a smaller area would be sufficient.

2. Subject to consideration of the above observations I am prepared to approve generally the Draft Bill and Regulations. I desire, however, that the Bill as revised may be again submitted to me in draft form for final consideration, with a clear indication of alterations made from the present draft, and with reasons for not accepting any of the suggestions made by the Petroleum Dept., which it may be thought undesirable to incorporate in the Bill.

I have, etc.

(Signed) DEVONSHIRE

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I have, etc.

(Signed) DEVONSHIRE

ansd
1968
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86

31 March

Sir,

With reference to my despatch no. 12886

of this date, regarding the draft
Mining Bill, I have the honor to
inform you that it is in my opinion
most desirable that, in view of the
further consideration of the Bill
which will be necessary, careful
attention should be devoted to
the provisions of clauses 19 and 20.

2. In view of the controversy which
has arisen both with regard to the
limitation of original grants of
agricultural land in the Highlands
to Europeans and to the retention
of the veto on transfers of
agricultural land between
persons of different races, it
is considered, if it can be
the action with

DRAFT.

King & Co. Ltd.

Sir.

MINUTE.

Mr. Somerset 28/3/68

Mr.

Mr.

Mr. Davis.

Sir G. Grindle.

+ Sir H. Road.

Sir J. Masterton Smith.

Mr. Ormsby-Gore.

Duke of Devonshire.

288

The intention of it best
to refer separate
cases separate
C.C.B.

regard to mineral propositions
which could not fail to produce
a fresh controversy, and which, in
view of the case with which it could be
nullified by the formation of
Sunderland, would probably have little
or no effective result.

(Signed) DEVONSHIRE

M.I./3475/23/Kenya

80



Downing Street,

31 March, 1923.

DRAFT.

Amend
19687
24

London

MINUTE. (5770/22)

Mr. Jewell 27 3.23

Mr. B. 28 3.23

Mr.

Mr. Davis.

Sir G. Grindle.

Sir H. Read.

Sir J. Masterton Smith.

Mr. Ormsby-Gore.

Duke of Devonshire.

Memorandum

copy to J. R. B. - 4/4/23

Sir,

With reference to your
despatch No. 1483 of the 25th October,
1922, I have etc. to inform you that
the Draft Mining Bill, 1922, together
with the Draft Regulations to be
enacted thereunder, which were enclosed
in your despatch, have been carefully
considered by my ^a advisers in conjunc-
tion with the Imperial Mineral Resources
Bureau. The main points ^{which have} criticised
~~called for attention~~
are shown in the enclosed memorandum.

2. Subject to consideration
of the points set out in the memorandum
I am prepared to approve generally the
Bill and the Regulations. I shall

As required

2 drafts, short and

be

be glad, however, if the Bill as revised may be again submitted to me in draft form for final consideration, with a statement by the Attorney General of alterations made from the present draft, and with reasons for not making the alterations in any case in which it may not be thought advisable to alter the draft, in spite of the suggestions in the memorandum.

3. I regret to have to observe that I cannot but regard it as an unsatisfactory procedure that a Bill of this nature should have been forwarded to me without the Attorney General's observations, and without a memorandum from the Attorney General indicating the sources from which the various provisions of the Bill have been taken.

I have, etc.

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