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BUREAU OF MINES

VAN. H. MANNING, DIRECTOR

CALIFORNIA MINING STATUTES  
ANNOTATED

BY

J. W. THOMPSON

INCLUDING ALL CALIFORNIA MINING LAWS



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## PREFACE.

The Bureau of Mines since its establishment has been collecting and publishing the laws relating to mining. The purpose of such publication is to point out the laws and regulations best adapted to increase safety and efficiency in the mineral industry of the United States and to aid legislative bodies in framing uniform mining laws.

In 1915 the bureau published, in two volumes, Bulletin 94, "United States Mining Statutes Annotated." That bulletin includes every section of the United States Revised Statutes and every statute enacted by Congress relating to mines and mining. Following each section and statute, abstracts of decisions of all courts and executive officers construing such sections or statutes were collected and arranged with appropriate title lines and headings in logical order. The bulletin thus shows the status of every Federal mining law by pointing out the defects and uncertainties that were eliminated by the courts and the aid of the courts in the practical application of the mining statutes. The bulletin was published in the hope that it would serve as a guide in the location of claims and in the determination of mining rights and assist the miner in adopting measures that would insure greater safety and efficiency in mining operations.

The purpose of the bureau is to follow Bulletin 94 with others that will contain complete collections of the mining statutes of the several States with appropriate and explanatory annotations consisting of abstracts of the decisions of the State courts, construing and otherwise illuminating such State statutes. These State bulletins will be published successively, either as individual State bulletins or by groups of States, with a view to uniformity in size, and all in style and manner similar to Bulletin 94.

The magnitude of the work and the time necessarily involved in collecting the statutes and abstracting the decisions prevent the work being issued as a single publication.

The plan adopted will result in giving preference to some States, but as a major part of all of the preparation of the work has been performed, the successive volumes will follow without great delay.

The publication of the bulletins in an alphabetical order of the States has not been adopted, as this would not permit desirable grouping of two or more States. The State of California, by reason of its historic interest in mining and by reason of its great extent

of mineral land and its vast mineral deposits, has been selected for the first bulletin of the State series.

This bulletin is submitted to the miners and operators and all persons interested in the mining enterprises in California and in those of other States in the hope that it will be accorded the same generous reception as was given Bulletin 94.

VAN. H. MANNING,  
*Director.*

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# CALIFORNIA MINING STATUTES ANNOTATED.

By J. W. THOMPSON.

[Mining subjects arranged alphabetically.]

## ACTIONS RELATING TO MINING CLAIMS.

### POSSESSORY ACTIONS—MAINTAINING AND DEFENDING.

LAWS 1850, P. 203; APR. 11, 1850.

AN ACT prescribing the mode of maintaining and defending possessory actions on lands belonging to the United States.

The People, etc.

SEC. 1. Any person now occupying and settled upon, or who may hereafter occupy and settle upon any of the public lands belonging to the United States, unoccupied, except upon lands containing mines of any of the precious metals, may commence and maintain any action for interference with, or injuries done to his possession of said land, against any person or persons so interfering with or injuring such land or such possession.

SEC. 2. On the trial of any such cause, the possession or possessory right of the plaintiff shall be considered as extending to the boundaries embraced by the claim of such plaintiff, so as to enable him to have and maintain any action as aforesaid, without being compelled to prove an actual inclosure; provided, that such "claim" shall not exceed in any case one hundred and sixty acres of land.

SEC. 3. Every such claim, to entitle the holder to maintain any action as aforesaid, shall be marked out, so that the boundaries thereof may be readily traced, and the extent of such "claim" easily known, and no person shall be entitled to maintain any such action for possession of, or injury to, any claim, unless he occupy the same, or shall have made improvements thereon to the value of \$100.

SEC. 4. A neglect to occupy or cultivate such "claim," for the period of three months, shall be considered such an abandonment as to preclude the claimant from maintaining any action as hereinbefore mentioned.

SEC. 5. Any person or persons claiming the right of possession to land under this act shall have the right to defend said possession and the claim thereto, and all the rights and privileges given them by this act.

### ANNOTATIONS.

#### ACTIONS RELATING TO MINING CLAIMS.

1. RIGHT TO MAINTAIN AND DEFEND.
2. MINES ON PUBLIC LANDS—AGRICULTURAL LANDS.
3. CODE CIVIL PROCEDURE—APPLICATION TO MINING CLAIMS.

##### 1. RIGHT TO MAINTAIN AND DEFEND.

The owner of a mining claim has, in practical effect, a good vested title to the property and should be so treated until his title is divested by the exercise of a higher

right of the superior proprietor, and his right to protect the property for the time being, under the peculiar circumstances of the case, is as full and perfect as if he was the tenant of such superior proprietor for years or for life.

Merced Min. Co. v. Fremont, 7 Cal. 317, p. 327 (1857). 68 Am. Dec. 262.

See McKeon v. Bisbee, 9 Cal. 137, p. 142 (1858). 70 Am. Dec. 642.

Bakersfield & Fresno Oil Co. v. Kern County, 144 Cal. 148, p. 152, 77 Pac. 892 (1904).

By this statute the State expressly excepts from its operation and refuses to protect any location upon lands containing any of the precious metals.

McClintock v. Bryden, 5 Cal. 97, p. 99 (1855). 63 Am. Dec. 87n.

While the statute may in its strict and literal construction authorize any person to maintain the action whether he had any interest in the property or not, yet the courts limit the right to maintain an action to a person having some interest though nothing more than the right to possession and he may maintain the action if another is claiming an estate or interest adverse to such right, as the language is broad enough to cover every interest or estate in lands of which the law takes cognizance.

Pollock Min., etc., Co. v. Davenport, 31 Mont. 452, p. 453, 78 Pac. 768 (1904).

See Pierce v. Felter, 53 Cal. 18.

Stoddart v. Burge, 53 Cal. 398.

Liebrand v. Otto, 56 Cal. 247.

Lozar v. Neill, 37 Mont. 287, p. 289, 96 Pac. 343 (1908).

Under section 1160, Code of Civil Procedure, the owner of a mining claim may maintain an action for forcible entry and detainer.

Amador Gold Mine v. Amador Gold Mine, 114 Cal. 346, 46 Pac. 80 (1896).

## 2. MINES ON PUBLIC LANDS—AGRICULTURAL LANDS.

This act is plain, positive, and specific in its terms and gives permission to all persons to work the mines upon public lands, notwithstanding they may be in the possession and enjoyment of another for agricultural purposes. Nothing is plainer than the intent of the act and nothing more specific than the right which it gives.

Meyer v. Larkin, 3 Cal. 403, p. 405 (1853).

See McClintock v. Bryden, 5 Cal. 97 (1855).

Tartar v. Spring Creek Water & Mining Co., 5 Cal. 395, p. 398 (1855).

This act in so far as it relates to the question of a license from the State to mine or to work in a mine, refers to mines and working in mines in the public lands alone, and has no reference to mines or working in mines on private property.

Boggs v. Merced Min. Co., 14 Cal. 279, p. 379 (1859).

See Henshaw v. Clark and 103 Chinamen, 14 Cal. 460, p. 464 (1859).

## CODE CIVIL PROCEDURE—APPLICATION TO MINING CLAIMS.

An action may be brought under this section to determine an adverse claim to an undivided part of a mining claim.

Russell v. Brosseau, 65 Cal. 605, 4 Pac. 643 (1884).

An action may be maintained under this section for the purpose of settling conflicting claims to placer mining ground.

Trevaskis v. Peard, 111 Cal. 599, p. 600, 44 Pac. 246 (1896).

An action to quiet title to a mining claim may be maintained under this section of the code.

Bulwer Consolidated Min. Co. v. Standard Consolidated Min. Co., 83 Cal. 589, p. 592, 23 Pac. 1102 (1890).



Bulwer Consolidated Min. Co. v. Standard Consolidated Min. Co., 83 Cal. 613, 23 Pac. 1109 (1890).

Donahue v. Meister, 88 Cal. 121, p. 123, 25 Pac. 1096, 22 Am. St. 283 (1891).

Bernard v. Parmelee, 6 Cal. App. 537, p. 539, 92 Pac. 658 (1907).

McCleary v. Broaddus, 14 Cal. App. 60, p. 66, 111 Pac. 125 (1910).

McLaughlan v. Bonyng, 15 Cal. App. 239, p. 243, 114 Pac. 798 (1911).

An action to quiet title to a mining claim under this section is triable by a jury.

Donahue v. Meister, 88 Cal. 121, p. 124, 25 Pac. 1096, 22 Am. St. 283 (1891).

### PLEADINGS—VERIFICATION—PROOF OF CUSTOMS.

**LAWS 1851, 51, P. 149 (SECOND SESSION); APR. 29, 1851. (COMPILED LAWS 1850-1853, P. 519. GENERAL LAWS 1850-1864, SEC. 5502, 5552. PRACTICE ACT, SEC. 571, 621.)**

AN ACT to regulate proceedings in civil cases in the courts of justice of this State.

The People, etc.

SEC. 571. The pleadings shall be in writing, and verified by the oath of the party, his agent or attorney, when the action is: \* \* \*

3d. To recover possession of a "mining claim." In other cases the pleadings may be oral or in writing.

SEC. 621. In actions respecting "Mining Claims," proof shall be admitted of the  
\* \* \* \* \*  
customs, usages, or regulations established and in force at the bar, or diggings, embracing such claim; and such customs, usages, or regulations, when not in conflict with the constitution and laws of this State, shall govern the decision of the action.  
\* \* \* \* \*

### ANNOTATIONS.

#### MINERS' CUSTOMS.

##### CUSTOMS GOVERN DECISIONS.

In actions respecting mining claims this section permits proof of customs, usages, or regulations, established and in force in the bar and diggings, and such customs, usages, or regulations, when not in conflict with State statutes, shall govern the decision of the action.

Boggs v. Merced Min. Co., 14 Cal. 279, p. 378 (1859).

St. John v. Kidd, 26 Cal. 263, p. 272 (1864).

Morton v. Salambo Copper Min. Co., 26 Cal. 527, p. 532 (1864).

This section makes the customs, usages, and regulations of miners admissible in evidence in actions respecting mining claims.

Lux v. Haggin, 69 Cal. 255, p. 383, 4 Pac. 919, 58 Am. 558 (1886).

Under this section providing that in actions respecting mining claims proof shall be admitted of customs, usages, or regulations established or in force at the bar or diggings embracing any such claim, implies a permission upon the part of the State, to the miner to seek wherever he chooses in the gold-bearing districts for the precious metals and extends to him whatever right the State may have to the mineral when found.

McClintock v. Bryden, 5 Cal. 97, p. 99 (1855). 63 Am. Dec. 87n.

Pralus v. Pacific Gold & Silver Min. Co., 35 Cal. 30, p. 36 (1868).

Harvey v. Ryan, 42 Cal. 626, p. 628 (1872).

See Johnson v. McLaughlin, 1 Ariz. 493, p. 502, 4 Pac. 130 (1884).

**MINING ON AGRICULTURAL LANDS.**

**LAWS 1852, P. 158; APR. 20, 1852. (COMPILED LAWS 1850-1853, P. 896. GENERAL LAWS 1850-1864, SEC. 6790.)**

AN ACT prescribing the mode of maintaining and defending possessory acts on public lands in this State.

The People, etc.

SEC. 1. Any person now occupying and settled upon, or who may hereafter occupy or settle upon, any of the public lands in this State for the purpose of cultivating or grazing the same, may commence and maintain any action for interference with, or injuries done to his or her possession of said land, against any person or persons so interfering with or injuring such land or possession; Provided, That if the lands so occupied and possessed contain mines of any of the precious metals, the possession or claim of the person or persons occupying the same for the purposes aforesaid shall not preclude the working of such mines by any person or persons desiring so to do as fully and unreservedly as they might or could do had no possession or claim been made or grazing or agricultural purposes.

## ANNOTATIONS.

## MINING ON AGRICULTURAL LANDS.

## CONSTRUCTION AND APPLICATION OF STATUTE.

In giving effect to the policy of the legislature as shown by this act, the courts must hold that a miner is not confined to a mere right of entry and egress and a right to dig the soil for gold, but whatever is indispensable to the exercise of the privilege must be allowed him, or the statute would subserve no useful end; and he has a right not merely to dig but to mine, and so to use the land and such elements of the freehold or inheritance, of which water is one, as to secure the benefits designed by the statute; but this use of the mine must be reasonable and with just respect to the rights of the agriculturalist.

Clark v. Duvall, 15 Cal. 85, p. 88 (1860).

The fact that a person settled upon mineral lands, or lands containing minerals, for agricultural purposes before any legislation upon the subject of mining lands, does not prevent the State from giving, by statute, a miner the right to enter upon such land for the purpose of extracting the minerals, where such original settler, from the time of his location, never had any right, derived either from the State or Federal Government, to the possession of mineral lands inclosed by him, to the exclusion of miners who were in good faith proceeding to extract the minerals therein.

McClintock v. Bryden, 5 Cal. 97, p. 100 (1855). 63 Am. Dec. 87n.

While it is the policy of the State of California as well as of the General Government to reserve lands from settlement for agricultural purposes, yet if a person settles for agricultural purposes upon mining lands of the State, he does so subject to the rights of miners who may proceed in good faith to extract any valuable metals there may be found in the lands so occupied by the settler, in the most practical manner in which they can be extracted, and with the least injury to the occupying claimant, according to the express statutes of the State.

McClintock v. Bryden, 5 Cal. 97, p. 102 (1855); 63 Am. Dec. 87n.

In permitting miners to go upon public lands occupied by others, the legislature has legalized what would otherwise have been a trespass, and it can not be extended by implication to a class of cases not specifically provided for.

Fitzgerald v. Urton, 5 Cal. 308, p. 309 (1855).

Tartar v. Spring Creek Water & Min. Co., 5 Cal. 395, p. 398 (1855).

Boggs v. Merced Min. Co., 14 Cal. 279, p. 377 (1859).

See Smith v. Doe, 15 Cal. 100, p. 105 (1860).

The right under these statutes to mine for precious metals can only be exercised upon the public lands; and while this carries with it the incidents to the right, such as the use of wood and water, these incidents must also be of the public domain in like manner as the lands, and a prior appropriation of either to steady individual purposes establishes a quasi private proprietorship which entitles the holder to be protected in his quiet enjoyment against all the world but the true owner, except in the single case provided to the contrary by the statute in response to mining on agricultural lands.

*Tartar v. Spring Creek Water & Min. Co.*, 5 Cal. 395, p. 399 (1855).

See *State v. Moore*, 12 Cal. 56, p. 70 (1859).

*Boggs v. Merced Min. Co.* 14 Cal. 279, p. 377 (1859).

This act authorized suits by settlers on the public lands to maintain actions without interference with or injuries done to their possession, but it contained a proviso that if the lands so occupied include mines of precious metals the possession should not preclude entry thereon by another for working the mines as fully and unreservedly as if there had been no such possession.

*Boggs v. Merced Min. Co.*, 14 Cal. 279, p. 378 (1859).

The possessory act, as this is called, applies only to public lands, and the provision as to the introduction of customs and usages in suits for mining determines nothing beyond the admissibility of certain kinds of evidence.

*Boggs v. Merced Min. Co.*, 14 Cal. 279, p. 378 (1859).

A person entering upon the lands in possession of another for the purpose of mining can justify such entry only by showing that the land is public land, that it contains mines or minerals, and that he entered thereon for the bona fide purpose of mining.

*Lentz v. Victor*, 17 Cal. 271 (1861).

The interests and wants of mining communities demand that some facilities and accommodations should be afforded to the business of mining, and accordingly a person who in good faith settles upon a lot in a mining town and is carrying on business should be reasonably protected and not left at the mercy of any malicious or irresponsible party who may choose to invade such possession, upon the specious pretext of mining, and this statute can not be extended to the point of giving a miner the right to enter upon a small lot in a mining town used for business purposes.

*Fitzgerald v. Urton*, 5 Cal. 308, p. 309 (1855).

The fact that land was inclosed by a settler and not taken up in pursuance of the possessory act is unimportant in determining the right of miners to enter on lands in the possession of another for agricultural purposes, where it is conceded that the land is public mineral land, as the act making such land subordinate, when taken up for agricultural purposes, to the rights of miners, would fail of its purpose if the process of inclosure defeated the rights of the miner.

*Clark v. Duvall*, 15 Cal. 85, p. 88 (1860).

The rule that a claimant in ejectment under this statute must recover upon the strength of his own title does not apply strictly to actions to recover mining claims, for the reason the paramount title is in the Government; and an action for the possession of a mining claim is not to be defeated by proof on the part of the defendant that the superior title is in the Government; but in such actions the plaintiff must prove an actual possession though not necessarily an inclosed one.

*Coryell v. Cain*, 16 Cal. 567, p. 572 (1860).

See *Attwood v. Fricot*, 17 Cal. 37; 76 Am. Dec. 567 (1860).

*Rush v. French*, 1 Ariz. 99, p. 154; 25 Pac. 816 (1874).

The right reserved to the miner by this act is subject to the regulations and restrictions imposed by the act of April 25, 1855.

*Rupley v. Welch*, 23 Cal. 452, p. 456 (1863).

The possession of land by a settler for agricultural purposes is subject to the right of any person to enter upon the land and work mines of precious metal thereon, but this right applies only to the possession of public lands held purely for agricultural and grazing purposes and is not extended beyond these.

Rupley v. Welch, 23 Cal. 452, p. 456 (1863).

A right to enter upon land for mining when such land is already held for agricultural purposes does not give the right to construct ditches over such lands, without the consent of the owner, for conveyance of water to be used in mining under the terms of this statute. Such ditches constitute a nuisance and may be abated on complaint of the occupant of the land.

Stoakes v. Burrett, 5 Cal. 137.

McClintock v. Bryden, 5 Cal. 97.

Fitzgerald v. Urton, 5 Cal. 308.

Burge v. Underwood, 6 Cal. 46.

Wermer v. Lowery, 11 Cal. 104.

A person in the possession of a mining claim may, under this statute, maintain and defend his possession.

Rupley v. Welch, 23 Cal. 452, p. 455 (1863).

See Praylus v. Pacific Gold & Silver Min. Co., 35 Cal. 30, p. 34 (1868).

### AMENDATORY ACT.

**LAWS 1855, P. 196; APR. 28, 1855. (GENERAL LAWS 1850-1864, SEC. 5579.)**

AN ACT amendatory of an act entitled "An act to regulate proceedings in civil cases in the courts of justice of this State," passed April 29, 1851, and also amendatory of an act entitled "An act amendatory of and supplementary to an act entitled 'An act to regulate proceedings in civil cases in the courts of justice in this State,'" passed May 15, 1854.

The People, etc.

SEC. 1. An act entitled "An act to regulate proceedings in civil cases in the courts of justice in this State," (passed April 29, 1851) is hereby amended, as hereinafter prescribed.

\* \* \* \* \*

SEC. 12. Section 63 of said act is hereby amended so as to read as follows:

SEC. 63. In actions respecting miners' claims in a justice's court, the justice shall have power, upon application of the party out of possession of the claim or claims, after notice of one day to the adverse party, to appoint a receiver of the proceeds of the claim, pending the action. If the parties agree upon a person, he shall be appointed such receiver. If the parties do not agree, the justice shall appoint a receiver, who shall take an oath, which shall be filed with the justice, that he is not interested in the action between the parties, and that he will honestly keep an account of all gold dust or metals of any kind, the proceeds of the claim or claims in dispute. After the appointment of such receiver, the justice shall have power to issue a written order to any sheriff or constable to put such receiver into possession of such claim, which order said sheriff or constable shall execute, and the receiver shall remain in possession of the claim or claims so long as said action may remain undetermined in any court. The court in which the action may be pending shall have authority, upon application of either party, with two days' notice to the other, from time to time, to make such orders for the disposition of the proceeds of such claim or claims, for the safety of the same, as may seem proper. The court in which the action may be pending shall also have power, upon application of the receiver, based upon his affidavit, to punish, as for contempt, all persons who have been guilty of disturbing the receiver in the possession of the claim.

**JURISDICTION OF JUSTICES.****LAWS 1863-64, P. 67; FEB. 10, 1864.**

AN ACT to amend an act entitled "An act concerning courts of justice of this State and judicial officers," passed April 20, 1863.

The People, etc.

SEC. 1. Section 48 of said act is amended so as to read as follows:

SEC. 48. These courts shall have jurisdiction, within their respective townships or cities, of the following actions and proceedings:

\* \* \* \* \*

Eighth. Of an action to determine the right to a mining claim, when the value of the claim is less than \$300, and for damages for injury to the same, when the damages claimed are less than \$300.

SEC. 2. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its passage.

NOTE.—The original act was not taken, because it had no reference to mining claims.

**RECOVERY OF POSSESSION—LIMITATION.****LAWS 1863-64, P. 91; FEB. 18, 1864. (GENERAL LAWS 1850-1864, SEC. 4382-3.)**

AN ACT supplementary to the act entitled "An act to amend an act defining the time for commencing civil actions," passed April 22, 1850, approved April 18, 1863.

The People, etc.

SEC. 1. No action for the recovery of property in mining claims, or for the recovery of the possession thereof, shall be maintained unless it appears that the plaintiff, his ancestor, predecessor, or grantor was seized or possessed of the premises in question within two years before the commencement of this action.

SEC. 2. No cause of action or defense to an action, founded upon the title to property in mining claims, or to the rents or profits out of the same, shall be effectual unless it appear that the person prosecuting the action or making the defense, or under whose title the action is prosecuted or the defense is made, or the ancestor, predecessor, or grantor of such person, was seized or possessed of the premises in question within two years before the commencement of the act in respect to which such action is prosecuted or defense made.

SEC. 3. This act shall take effect from and after its passage.

**POSTPONEMENT OF TRIAL.****LAWS 1911, P. 1448; MAY 1, 1911.**

AN ACT to amend section 595 of the Code of Civil Procedure of this State, relating to trials in civil causes.

The People, etc.

SEC. 1. Section 595 of the Code of Civil Procedure of California is hereby amended to read as follows:

SEC. 595. \* \* \* In actions involving the title to mining claims, or involving trespass for damages upon mining claims, if it be made to appear to the satisfaction of the court that, in order that justice may be done and the action fairly tried on its merits, it is necessary that further developments should be made, underground or upon the surface of the mining claims involved in said action, the court shall grant the postponement of the trial of the action, giving the party a reasonable time in which to prepare for trial and to do said development work.

**ACTION—ADVERSE CLAIM.****SEC. 738. CODE OF CIVIL PROCEDURE.**

Sec. 738. An action may be brought by any person against another who claims an estate or interest in real property adverse to him, for the purpose of determining such adverse claim.

## ANNOTATIONS.

## DETERMINATION OF ADVERSE CLAIMS.

Under this section a person in the unqualified, peaceful possession of an oil claim or other valuable mineral deposits on the public land may in a proper action have determined adverse claims to such possession.

Smith v. Union Oil Co., 166 Cal. 217, p. 219, 135 Pac. 966 (1913).

## ARTESIAN WELLS.

### REGULATION OF ARTESIAN WELLS.

LAWS 1875-76, P. 331; MAR. 18, 1876. LAWS 1877-78, P. 195; MAR. 9, 1878.

AN ACT to regulate the use of artesian wells and to prevent the waste of subterranean waters in this State.

The People, etc.

NOTE.—The differences in these acts are shown by words in parentheses or the sections separately copied.

SEC. 1. (Code Supp. 1877-78, 1880, Sec. 15040.) Any artesian well which is not capped, or furnished with such mechanical appliance as will readily and effectively arrest and prevent the flow of water from such well is hereby declared to be a public nuisance. The owner, tenant, or occupant of the land upon which such well is situated who causes, permits, or suffers such public nuisance, or suffers or permits it to remain or continue, is guilty of a misdemeanor.

SEC. 2. Any person owning, possessing, or occupying any land upon which is situated an artesian well, who causes, suffers, or permits the water to unnecessarily flow from such well, or to go to waste, is guilty of a misdemeanor.

SEC. 3. An artesian well is defined, for the purposes of this act, to be any artificial well the waters of which will flow (continuously) over the natural surface of the ground adjacent to such well at any season of the year.

SEC. 4. Waste is defined, for the purposes of this act, to be the causing, suffering, or permitting the waters flowing from such well (whether naturally or artificially raised to the surface) to run into any river, creek, or other natural water-course or channel, or into any bay, lake, or pond, or into any street, road, highway (sewer), or upon the land of any person other than that of the owner of such well, or upon public lands of the United States or of the State of California, unless it be used thereon for the purposes and in the manner that it may be lawfully used upon the land of the owner of such well, provided, that this section shall not be so construed as to prevent the use of such waters for the proper irrigation of trees standing along or upon any street, road, or highway (or for ornamental ponds or fountains, or the propagation of fish).

SEC. 5. Any person violating any of the provisions of this act may be proceeded against for a misdemeanor in any justice's court of the county in which such well is located, and shall, upon conviction, be fined for each offense, not less than \$10 or more than \$50. There shall also, upon conviction had, in addition to such fine, be taxed against such party the cost of prosecution. Such fine and costs may be collected as in other criminal cases, and the justice may also issue an execution upon the judgment therein rendered, and the same may be enforced and collected as in civil cases.

SEC. 6. (Act of March 18, 1876.) It shall be the duty of the roadmaster to examine the artesian wells within their respective districts, and for that purpose may at all proper times enter upon the premises where such well is situated; and it shall be his duty to institute, or cause to be instituted, criminal action for all violations of the provisions of this act, or for all public offenses defined in this act, committed within such district.

SEC. 6. (Act of March 9, 1878.) It shall be the duty of the supervisors or roadmasters, on complaint of any citizen within their respective districts, and for that purpose may at all proper times enter upon the premises where such well is situated; and it shall be his duty to institute, or cause to be instituted, criminal action for all violations of the provisions of this act, or for all public offenses defined in this act committed within such district.

SEC. 7. An act entitled "An act to regulate the use of artesian wells and to prevent the waste of subterranean waters in Santa Clara and Los Angeles Counties," approved March 18, 1876, and all other acts and parts of acts in conflict with the provisions of this act are hereby repealed.

SEC. 8. This act shall not apply to artesian wells in the county of San Bernardino.

SEC. 9. This act shall take effect and be in force on and after the first day of July, A. D. 1878.

LAWS 1887, P. 62; MAR. 9, 1887.

AN ACT making an appropriation for the support and maintenance of the State mining bureau for the thirty-ninth and fortieth fiscal years.

The People, etc.

SECTION 1. (Appropriation) \$60,000.

\* \* \* \* \*

SEC. 3. This act shall take effect immediately.



## ASSAYER.

### OFFICE OF STATE ASSAYER.

LAWS 1850, P. 338; APR. 20, 1850.

AN ACT creating the office of State assayer, melter, and refiner of gold, and defining his duties.

The People, etc.

SEC. 1. There shall be established in the city of San Francisco a State office for assaying, melting, and refining gold.

SEC. 2. The governor of the State shall appoint two competent persons to take in charge and perform the duties of said establishment, one as director, the other as assayer, melter, and refiner of gold. Before entering upon their duties, each of them shall execute a bond, with two or more good and sufficient sureties of \$50,000 each, to be approved by the governor, conditioned for the skillful and faithful performance of all the duties required of them by law, which bonds shall be made payable to the people of the State of California, and deposited with the secretary of state. They, and all persons in their employ, shall take an oath before some judge duly qualified to administer oaths, truthfully and faithfully to perform their trust.

SEC. 3. They shall be appointed and hold office for one year, and until their successors are appointed and qualified. They shall keep their office open daily (Sundays excepted), from 9 o'clock a. m. until 2 o'clock p. m., for the transaction of business.

SEC. 4. It shall be the duty of the State director to procure and safely keep a series of standard weights, corresponding with the troy weights of the United States Mint, consisting of pound weights, and the requisite subdivisions. He shall also receive all gold dust or bullion, in quantity not less than 2 ounces, troy weight, which may be offered him for the purpose of assaying or refining. All such gold dust or bullion shall be weighed, and, when practicable, in the presence of the depositor, and the director shall be responsible on his bond for the safe-keeping and delivery of the same; if the dust or bullion is in such a state as to require melting before its value can be ascertained, the weight after melting shall be considered as the true weight of the dust or bullion so deposited.

SEC. 5. It shall be the duty of the director to keep a record of the weight of all dust or bullion received by him, the time of its reception, the name and residence of the person from whom it is received, and the amount received from each person, and the county from which said dust or metal was taken, and upon delivery of it into the hands of the assayer, he shall take a receipt of the same in a book kept for that purpose.

SEC. 6. The director shall keep a book of receipts, and a receipt shall be given to each depositor of the weight and value of the amount deposited; said receipts shall be regularly numbered in the order in which they are given, and the number of the receipt shall be entered upon the margin of the page from which it is taken, with the date when given, the weight and value of the amount, and the name of the person receiving the receipt.

SEC. 7. It shall be the duty of the State assayer to carefully refine and assay any and all gold dust or bullion placed in his hands by the director for that purpose, and to cause the same to be made into ingots or bars, in the form of an oblong square, and of such weight as shall be desired by the depositor; provided, that no such ingots or bars shall be made or issued of less weight than 2 ounces.

SEC. 8. The State assayer shall keep books of record in which shall be recorded the original weight of all dust or bullion placed in his hands by the director for assaying.

melting, or refining, or either, and the date of receiving it. He shall also keep a record of the weight, value, and fineness of the respective deposits of all dust or bullion assayed, refined, or melted, and the date when delivered to the director.

SEC. 9. The State assayer shall regularly number and stamp upon the ingots or bars thus made, the true value in dollars and cents, and the correct weight and carat fineness thereof, in accordance with the United States Mint standard; also the letters "Cal.," the date, and his own initials in plain letters over the words "State assayer," and upon each end and side of any ingot and bar so issued, some uniform stamp or impression; and shall, as soon as thus prepared, place it in the hands of the director, taking his receipt in a book kept by the assayer for that purpose and the director shall hand it over to the depositor, if demanded, within four days after the deposit of the dust, unless the time shall be prolonged by the depositor by a written agreement, when the weight given shall be returned to the director, who shall cancel and keep the same.

SEC. 10. The State assayer and director shall be entitled to charge and collect from each depositor 1 per cent each upon the value as stamped upon the ingots or bars issued, out of which they shall pay all expenses attending upon their duties as prescribed in this act. The balance shall be equally divided between them. They shall also in addition collect and retain in their possession three-fourths of 1 per cent upon the total amount assayed and issued by them, which sum so retained they shall, at the end and expiration of every 60 days, pay or cause to be paid into the State Treasury for the use of the State.

SEC. 11. The books and papers of the office shall be examined every three months by the attorney general of the State who shall make a report to the governor of each examination. The judge of either county court may institute an examination when requested so to do by any depositor, or the chamber of commerce, or board of trade of either city in the State; and they shall produce all books, records, and papers, when required by any court before whom complaint or suit is brought, against them or either of them for any violation of this act.

SEC. 12. They shall each make a full and correct report under oath to the State treasurer, every 60 days, in detail of all transactions in his official capacity, as recorder or assayer.

SEC. 13. All ingots or bars of gold bearing the stamp of State assayer as provided by this act shall be received in payment of all State and county dues, taxes, and assessments, at the value expressed thereon in dollars and cents; provided, such ingots or bars have not been mutilated nor reduced in size, weight, or value.

SEC. 14. Neither assayer nor director shall loan or use, or cause to be loaned or used for any purpose whatever, any gold dust or bullion in their possession for account of depositors, and no use shall be made of any gold dust or bullion deposited with them otherwise than for the purpose specified in this act. Any violation of this act shall be deemed a misdemeanor, and either of them, on conviction thereof before any competent tribunal, shall be punished for each offense by fine not less than \$1,000, and by imprisonment not less than six months.

SEC. 15. The governor may, when petitioned so to do, direct the director and assayer to establish a branch or branches of their office at Sacramento and Stockton, or Sonora. They shall cause all business of such branch or branches to be conducted in all respects in accordance with the provisions of this act, regulating the office at San Francisco. The director and assayer shall give an additional bond of \$50,000 for each branch formed under the provisions of this act; and all ingots or bars made at either branch shall be stamped, marked, and numbered as directed in section 9. And, in addition, the words "Sacramento," or "Stockton," or "Sonora."

SEC. 16. The director and assayer shall be responsible on his bond for all the acts of their employees and agents.

SEC. 17. Any person or persons who shall alter, mutilate, reduce in weight, clip, file, sweat, alloy, or reduce in value in any way any ingots or bars, made under the provisions of this act, shall be deemed guilty of a misdemeanor, and on conviction thereof before any competent tribunal shall be punished for each offense by fine not less than \$1,000, nor more than \$50,000, and imprisonment not less than six months nor more than two years.

SEC. 18. If any person shall make, or cause or procure to be made, forged, or, counterfeited, or aid or assist in making or circulating any ingots or bars in resemblance or similitude to the ingots or bars which may be made under the provisions of this act he or they shall be considered guilty of counterfeiting, and shall, on conviction thereof, be punished by fine not exceeding \$5,000, and by imprisonment in the State prison for a term not exceeding three years.

SEC. 19. Whenever any branch mint of the United States shall be in operation within this State it shall be the duty of the governor to issue his proclamations stating the fact, and abolishing the office of State assayer and director.

SEC. 20. If there shall be any error, either in weights, quality, or value of the gold or metal so stamped upon the said ingots or bars issued by the said assayer and director they shall forfeit the percentage allowed to them, and shall also be liable to the amount of the difference between the stamp upon said ingots or bars, and its true value at the United States Mint standard, and shall also pay all damages that may accrue by such error, and may be sued upon their bonds or otherwise for the same in any court of record in the district in which they shall reside.

SEC. 21. Section 2 of an "Act to prevent the coining of money by individuals," passed April 8 (20), 1850, reads as follows: "Any person who shall stamp or impress, or shall cause to be stamped or impressed upon any piece of gold of less weight than 4 ounces, troy weight, whether pure or alloyed, any figures, letters, or marks indicating or purporting to indicate its weight, fineness, or value, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as prescribed in the preceding section." So much of this section above recited as may conflict or be inconsistent with any of the provisions of this act is hereby repealed.

#### REPEALING ACT.

**LAWS 1851, P. 307; JAN. 28, 1851.**

AN ACT to repeal "An act concerning the office of State assayer, melter, and refiner of gold, and defining his duties."

The People, etc.

SEC. 1. That the act entitled "An act concerning the office of State assayer, melter, and refiner of gold, and defining his duties," approved April 20, 1850, be, and the same is hereby, repealed.

**BUREAU OF LABOR STATISTICS.**

**MINING STATISTICS.**

**LAWS 1883, P. 27; MAR. 3, 1883.**

AN ACT to establish and support a bureau of labor statistics.

The People, etc.

SEC. 1. As soon as possible after the passage of this act, and every four years thereafter, the governor of the state shall appoint a suitable person to act as commissioner of a bureau of labor statistics. \* \* \*

\* \* \* \* \*

SEC. 3. The duties of the commissioner shall be to collect, assort, systematize, and present, in biennial reports to the legislature, statistical details, relating to all departments of labor in the State, such as the hours and wages of labor, cost of living, amount of labor required, estimated number of persons depending on daily labor for their support, the probable chances of all being employed, the operation of labor-saving machinery in its relation to hand labor, etc. Said statistics may be classified as follows:

\* \* \* \* \*

Third. In mining.

\* \* \* \* \*

## COINAGE.

### COUNTERFEITING COINS.

**LAWS 1850, P. 229, SEC. 74; APR. 16, 1850. (GENERAL LAWS 1850-1864, SEC. 1474.)**

SEC. 74 (1474). Every person who shall counterfeit any of the species of gold or silver coin now current, or that shall hereafter be current in this State, or shall pass or give in payment such counterfeit coin, or permit, cause, or procure the same to be uttered or passed, with intention to defraud any person, body politic or corporate, knowing the same to be counterfeited, shall be deemed guilty of counterfeiting, and upon conviction thereof, shall be punished by imprisonment in the State prison for a term not less than one year, nor more than fourteen years.

**LAWS 1850, P. 274; APR. 20, (8), 1850. (COMPILED LAWS 1850-1853, P. 210.)**

AN ACT to prevent the coining of money by individuals.

The People, etc.

SEC. 1. Any person who shall make or cause to be made, alter or cause to be altered, within this State, or shall make or cause to be made within this State, with intent to utter, either within or without this State, any piece of gold or silver, whether pure or alloyed, in the form of coin, or intended or calculated to circulate as coin, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by fine in any sum not less than \$500, nor more than \$1,000, or be imprisoned in the county jail not more than one year, for each offense.

SEC. 2. Any person who shall stamp or impress, or cause to be stamped or impressed, upon any piece of gold of less weight than 4 ounces, troy weight, whether pure or alloyed, any figures, letter, or mark or marks, indicating or purporting to indicate its weight, fineness, or value, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as prescribed in the preceding section.

(This section repealed. See page —.)

SEC. 3. This act shall take effect on the tenth day after its passage.

### REPEALING ACT.

**LAWS 1851, P. 404; MAR. 25, 1851.**

AN ACT to repeal "An act to prevent the coining of money by individuals."

The People, etc.

SEC. 1. That the act entitled "An act to prevent the coining of money by individuals," approved April 20, 1850, be, and the same is hereby, repealed.

### COINING BY INDIVIDUALS.

**LAWS 1851, P. 171; Apr. 21, 1851.**

AN ACT to regulate the coining of money by individuals.

The People, etc.

SEC. 1. Any person or company who shall make or cause to be made, within this State, any piece of gold or silver, whether pure or alloyed, in the form of coin or otherwise, and intended or calculated to circulate as money, shall be held responsible to the holder thereof, for the marked value thereof, or the rate at which such sum is uttered, and shall, on presentation, redeem all such coins at such rate with legalized coin of the United States.

SEC. 2. If any person making or uttering such coins shall refuse or neglect to redeem the same, in the manner prescribed in section 1, he shall be deemed guilty of a misdemeanor and shall be liable, on conviction, to be punished in each case by fine not less than \$500 nor more than \$5,000, or imprisonment for not less than six months, nor more than three years, or both such fine and imprisonment.

SEC. 3. If any person shall hereafter make or utter any piece of gold or silver, as described in section 1, without stamping upon the same the day, month, and year of its manufacture, he shall be deemed guilty of a misdemeanor and shall be liable on conviction thereof, to the same penalty as is prescribed in section 2.

SEC. 4. If any person shall hereafter make or utter any coin, or piece of gold or silver, such as is described in section 1 of this chapter, of less value than its marked or nominal value, or the value at which it is issued, he shall be deemed guilty of fraud and on conviction thereof shall be liable to the penalties mentioned in section 2.

SEC. 5. This act shall take effect on the fifth day after its passage.

### COUNTERFEITING.

**LAWS 1855, P. 178; APPROVED APR. 28, 1855.**

AN ACT to prevent the counterfeiting of gold dust and other species of gold.

The People, etc.

SEC. 1. If any person shall counterfeit any kind or species of gold dust, gold bullion or bars, lumps, pieces, or nuggets of gold, or any description whatsoever of uncoined gold, currently passing in this State, or shall alter or put off any kind of uncoined gold mentioned in this section, for the purpose of defrauding any person or persons, body politic or corporate, or shall make any instrument for counterfeiting any kind of uncoined gold as aforesaid, knowing the purpose for which such instrument was made; or shall knowingly have in his possession and secretly keep any instrument for the purpose of counterfeiting any kind of uncoined gold as aforesaid, every such person so offending shall be deemed guilty of counterfeiting, and upon conviction thereof shall be punished by imprisonment in the State prison for a term not less than 1 year nor more than 14 years.

SEC. 2. Every person who shall have in his possession, or receive for any other person, any counterfeit gold dust, gold bullion or bars, lumps, pieces, or nuggets of gold, or any description whatsoever of uncoined gold currently passing in this State, or entering in any wise into the circulating medium of the State, with intention to utter, put off or pass the same, or permit, cause, or procure the same to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, knowing the same to be counterfeit, and being thereof duly convicted, shall be punished by imprisonment in the State prison for a term not less than 1 year nor more than 14 years.

SEC. 3. This act shall take effect from and after its passage.

**PENAL CODE, SEC. 477; FEB. 4, 1872.**

477, (74, act Feb. 4, 1872). Every person who counterfeits any of the species of gold or silver coin current in this State, or any kind or species of gold dust, gold or silver bullion, bars, lumps, pieces, or nuggets, or who sells, passes, or gives in payment such counterfeit coin, dust, bullion, bars, lumps, pieces, or nuggets, or permits, causes, or procures the same to be sold, uttered, or passed, with intention to defraud any person, knowing the same to be counterfeited, is guilty of counterfeiting.

## COLLEGE OF MINES.

### ESTABLISHMENT AND MAINTENANCE.

#### COLLEGE OF AGRICULTURE, MINING, ETC.

LAWS 1865-66, P. 504; MAR. 31, 1866. (GENERAL LAWS 1864-1871, SEC. 7458-59-66-70.)

AN ACT to establish an agricultural, mining, and mechanical arts college.

The People, etc.

Sec. 1. A college is hereby established in accordance with section 2 of article 9 of the constitution of this State, and to carry out in good faith the provisions of an act of Congress, passed July 2, 1862, granting to the State lands for maintaining an agricultural and mechanical arts college, which shall be known under the name and style of "The Agricultural, Mining, and Mechanical Arts College." The design of the institution in fulfillment of the injunction of the constitution, is to afford thorough instruction in agriculture, mining, and the natural sciences connected therewith. To effect that object most completely, the institution shall combine physical with intellectual education, and shall be a high seminary of learning, in which the graduate of the common schools can commence, pursue, and finish a course of study terminating in theoretic and practical instruction in those sciences which bear directly upon agriculture, mining, and the mechanical arts.

Sec. 2. That a board of directors is hereby established, which shall be known under the name and style of the State Board of Directors of the Agricultural, Mining, and Mechanical Arts College. It shall consist of the governor of the State, the president of the State agricultural society, the president of the mechanics' institute of the city and county of San Francisco, and five other members. The five members of the board of directors shall be elected by the legislature in joint convention assembled, three of whom shall be residents of the mining counties of this State, the other two from agricultural counties of this State, who shall hold their office for the term of two years and until their successors are duly elected and qualified. They shall receive no compensation for their services, but shall be paid their traveling and other necessary expenses while employed on the business of the board.

\* \* \* \* \*  
Sec. 9. The secretary of the board shall reside and keep his office at or near the said college. It shall be his duty to keep a record of the transactions of the State board of directors of said college, which shall be open at all times to the inspection of any citizen of this State. He shall also have the custody of all books, papers, documents, and other property which may be deposited in his office; also keep and file all reports which may be made from time to time by county, State, and district agricultural societies, horticultural, mechanical, and mining societies; and of all correspondence from other persons and societies appertaining to the business of husbandry, mechanics, and mining; address circulars to societies, and to the best practical farmers, mechanics, and miners in this State and elsewhere, with the view of eliciting information upon the latest and best modes of culture of those products, vegetables, trees, etc., adapted to the soil and climate of our State, and also on all subjects connected with field culture, horticulture, stock raising, and the dairy; he shall also correspond with established schools of mining and metallurgy in Europe, and obtain information respecting the improvements of mining machinery adapted

to California, and publish from time to time such information as will be of practical benefit to the mining interests and the working of all ores and metals.

\* \* \* \* \*

SEC. 13. The course of instruction shall embrace the English language and literature, mathematics, civil, military, and mining engineering, agricultural chemistry, mineralogy, metallurgy, animal and vegetable anatomy and physiology, the veterinary art, etymology, geology, technology, political, rural, and household economy, horticulture, moral and natural philosophy, history, bookkeeping, and especially the application of science and the mechanical arts to practical agriculture in the field and mining.

\* \* \* \* \*

COLLEGE OF MINES IN STATE UNIVERSITY.

LAWS CAL. 1867-68, P. 248; MAR. 23, 1868. (GENERAL LAWS 1864-1871, SEC. 9504-5-9.)

AN ACT to create and organize the University of California.

The People, etc.

SEC. 1. A State university is hereby created, pursuant to the requirements of section 4, article 9, of the constitution of the State of California, and in order to devote to the largest purposes of education the benefaction made to the State of California under and by the provisions of an act of Congress passed July 2, 1862, entitled "An act donating land to the several States and Territories which may provide colleges for the benefit of agriculture and the mechanic arts." The said university shall be called the University of California and shall be located upon the grounds heretofore donated to the State of California by the president and board of trustees of the College of California. The said university shall be under the charge and control of a board of directors, to be known and styled "The Regents of the University of California." The university shall have for its design to provide instruction and complete education in all the departments of science, literature, art, industrial, and professional pursuits, and general education, and also special courses of instruction for the professions of agriculture, the mechanic arts, mining \* \* \*.

SEC. 2. Each full course of instruction shall consist of its appropriate studies, and shall continue for at least four years, and the faculty, instructors, and body of students in each course shall constitute a college, to be designated by its appropriate name. For this purpose there shall be organized, as soon as the means appropriated therefor shall permit: First. The following colleges of arts: \* \* \* A State College of Mines; \* \* \*

\* \* \* \* \*

SEC. 6. The college of mines and the college of civil engineering shall be next established, and such other colleges of arts as the board of regents may be able to establish with the means in their possession or under their control; and in order to fulfil the requirements of the said act of Congress, all able-bodied male students of the university, whether pursuing full or partial courses in any college, or as students at large, shall receive instruction and discipline in military tactics in such manner and to such extent as the regents shall prescribe, the requisite arms for which shall be furnished by the State.

\* \* \* \* \*

UNIVERSITY OF CALIFORNIA.

SEC. 1385-1386, POLITICAL CODE.

1385. The University of California, located in Alameda County, has for its object general instruction and education in all the departments of science, literature, art, industrial and professional pursuits, and special instruction for the professions of agriculture, the mechanic arts, mining, military science, civil engineering, law, medicine, and commerce.



1386. There must be maintained in the university:  
3. Colleges of arts, as follows: Of agriculture, mines, and civil engineering. \* \* \*

AMENDMENTS.

SEC. 1386, POLITICAL CODE, AMENDMENTS, 1873-74; MAR. 30, 1874.

AN ACT to amend the political code.

The People, etc.

\* \* \* \* \*

SEC. 54. Section 1386 is amended to read as follows:  
There must be maintained in the university:

\* \* \* \* \*

2. A college or colleges of science, including agriculture, mechanics, mining, engineering, chemistry, and such other specialties as the board of regents may determine.

APPROPRIATION.

LAWS 1883, P. 72; MAR. 9, 1883.

AN ACT making appropriations for the support of the government of the State of California for the thirty-fifth and thirty-sixth fiscal years.

The People, etc.

SEC. 1. The following sums are hereby appropriated out of any money in the State treasury not otherwise appropriated, for the objects hereinafter expressed, for the thirty-fifth and thirty-sixth fiscal years:

\* \* \* \* \*

For the mechanical and mining arts college at the State university, to continue the operation thereof and advance the instruction therein, \$18,000, of which amount \$10,000 shall be expended for the mechanical and \$8,000 for the mining art college thereof.

LAWS 1885, P. 80; MAR. 10, 1885.

AN ACT making appropriations for the support of the government of the State of California for the thirty-seventh and thirty-eighth fiscal years.

The People, etc.

SEC. 1. The following sums of money are hereby appropriated out of any money in the State treasury not otherwise appropriated, for the objects hereinafter expressed, and for the support of the government of the State of California, for the thirty-seventh and thirty-eighth fiscal years:

\* \* \* \* \*

For use of college of mines, at University of California, \$10,000.

## CONSERVATION COMMISSION.

LAWS 1911, P. 822; APR. 8, 1911.

AN ACT creating and establishing a commission for investigating and gathering data and information concerning the subjects of forestry, water, the use of water, water power, electricity, electrical and other power, mines and mining, mineral and other lands, dredging, reclamation and irrigation, and for revising, systematizing, and reforming the laws of this State upon, concerning, regarding, or appertaining to these said subjects; providing for the appointment of said commission to be known as the "Conservation Commission of the State of California"; prescribing the powers and duties of said commission and its members and providing for the expenses of said commission and appropriating money therefor.

The People, etc.

SEC. 1. A commission consisting of three persons which shall be known and designated as the "Conservation Commission of the State of California," is hereby created and established for the purpose of investigating, etc. (Same as in title).

SEC. 2. Said commission shall be appointed by the governor, and shall enter upon the performance of its duties immediately. The members of said commission shall hold office at the pleasure of the governor. In case of a vacancy in said commission, such vacancy shall be filled by appointment by the governor.

SEC. 3. It shall be the duty of said commission to investigate and examine the laws of the United States, of foreign nations, of the States of the Union, and of this State, and the reports and recommendations of persons, officials, commissions, societies, and associations upon the subjects of forestry, water, the use of water, water power, electricity, electrical and other power, mines and mining, mineral and other lands, dredging, reclamation, and irrigation, and to prepare and recommend to the legislature laws, statutes, and constitutional amendments revising, systematizing, and reforming the laws of this State upon forestry, water, the use of water, water power, electricity, electrical, and other power, mines and mining, mineral and other lands, dredging, reclamation, and irrigation. The said commission is hereby authorized and empowered to do and perform the acts and things required of it by this act, and to adopt all rules and regulations necessary to carry out the provisions of this act.

\* \* \* \* \*

## EMINENT DOMAIN.

### EXERCISE OF RIGHT.

SEC. 1238, CODE CIVIL PROCEDURE. AMENDMENTS 1873-74, P. 353; JULY 1, 1874. LAWS 1891, P. 48; MARCH 10, 1891. LAWS 1893, 146, P. 147; MAR. 11, 1893. LAWS 1905, 637, P. 638; MAR. 21, 1905. LAWS 1911, P. 432; MAR. 22, 1911. LAWS 1913, P. 544; JUNE 10, 1913. LAWS 1915, P. 38; APR. 10, 1915. LAWS 1917, P. 59; APR. 5, 1917.

SEC. 1238. Subject to the provisions of this title, the right of eminent domain may be exercised in behalf of the following public uses:

\* \* \* \* \*

4. \* \* \* Canals, ditches, dams, pounding, flumes, aqueducts, and pipes for irrigation, public transportation, supplying mines and farming neighborhoods with water, and draining and reclaiming lands, and for floating logs and lumber on streams not navigable. \* \* \*

5. Roads, tunnels, ditches, flumes, pipes, and dumping places for working mines; also outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines; also an occupancy in common by the owners or possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines.

6. By-roads leading from highways to residences, farms, mines, mills, factories, and buildings for operating machinery, or necessary to reach any property used for public purposes.

\* \* \* \* \*

10. Oil pipe lines.

\* \* \* \* \*

12. Canals, reservoirs, dams, ditches, flumes, aqueducts, and pipes for supplying and storing water for the operation of machinery for the purpose of generating and transmitting electricity for the supplying of mines, quarries, railroads, tramways, mills, and factories with electrical power, and also for supplying electricity to light or heat mines, quarries, mills, factories, incorporated cities, cities and counties, villages, or towns, together with lands, buildings, and all other improvements in or upon which to erect, install, place, use, or operate machinery for the purpose of generating and transmitting electricity for any of the purposes or uses above set forth.

NOTE.—The amendatory acts of July 1, 1874 (amendments 1873-74, p. 353), of March 10, 1891 (Laws 1891, p. 48), of March 11, 1893 (Laws 1893, p. 146), of February 28, 1901 (Laws 1901, p. 72), and of March 21, 1905 (Laws 1905, p. 637), made no change in the original section as applied to mines and mining interests, except paragraph 12 as shown below.

### AMENDMENTS TO PARAGRAPH 12.

SEC. 1238, CODE CIVIL PROCEDURE. LAWS 1907, P. 742; MAR. 20, 1907. LAWS 1911, P. 432; MAR. 22, 1911. LAWS 1915, P. 38; APR. 10, 1915. LAWS 1917, P. 59; APR. 5, 1917.

12. Canals, reservoirs, dams, ditches, flumes, aqueducts and pipes, and outlets natural or otherwise (from sources other than a navigable lake) for supplying, storing, and discharging water for the operation of machinery for the purpose of generating and transmitting electricity for the supply of mines, quarries, railroads, tramways, mills, and factories with electric power; and also for the applying (supplying) of electricity to light or heat mines, quarries, mills, factories, incorporated cities and counties, villages, or towns, and also for furnishing electricity for lighting, heating, or

power purposes to individuals or corporations, together with lands, buildings, and all other improvements in or upon which to erect, install, place, use, or operate machinery for the purpose of generating and transmitting electricity for any of the purposes or uses above set forth.

NOTE.—The amendatory acts of March 21, 1905 (Laws 1905, p. 637), and of March 22, 1911 (Laws 1911, p. 423), do not affect or change any of the paragraphs of this section relating to mining property as heretofore amended, except the above. The act of March 20, 1907 (Laws 1907, p. 742), amended this section by adding the words in parentheses in paragraph 12, but the acts of March 22, 1911, of April 10, 1915 (Laws 1915, p. 39), and of April 5, 1917 (Laws 1917, p. 59), omitted these words and paragraph 12 stands as amended by the act of March 22, 1911, without the words in parentheses. The act of June 10, 1913 (Laws 1913, p. 544), makes no changes in the amendatory act of March 22, 1911, so far as it relates to mines and mining property.

### CLASSIFICATION.

**SEC. 1239, CODE CIVIL PROCEDURE. AMENDMENTS 1873-74, P. 355; MAR. 24, 1874.**

SEC. 1239. The following is a classification of the estates and rights in lands subject to be taken for public use:

1. A fee simple, when taken for public buildings or grounds, or for permanent buildings, for reservoirs and dams, and permanent flooding, occasioned thereby, or for an outlet for a flow, or a place for the deposit of débris or tailings of a mine.

**SEC. 1239, CODE CIVIL PROCEDURE. LAWS 1913, P. 852; JUNE 14, 1913.**

AN ACT to amend section 1239, Code Civil Procedure, \* \* \* relating to the classification of the estate and right in lands subject to be taken for public use.

The People, etc.

NOTE.—This amendatory act makes no change in this section as the same applies to mines or mining property.

### ANNOTATIONS.

#### EMINENT DOMAIN.

##### MINING PURPOSES—PRIVATE USE.

Subdivision 4 of this section authorizes the appropriation of property among other things for the construction of canals, ditches, flumes, aqueducts, and pipes for supplying mines, and it is sufficient to invoke the provisions of the statute where the proprietor shows that he has mining claims that can not be worked nor the mineral land developed without water brought upon the same by artificial means; but an appropriation can not be made for a mere private use.

Cummings v. Peters, 56 Cal. 593, p. 596 (1880).

Subdivision 5 of section 1238 authorizes the condemnation of roads, tunnels, ditches, flumes, pipes, and dumping places for working mines as well as outlets for the flow, deposit, or conduct of tailings or refuse matter from the mines; but this does not give one miner the right to condemn for his own private use any road, tunnel, or right of way through mining property or mining claims of another.

Amador Queen Min. Co. v. Dewitt, 73 Cal. 482, p. 484, 15 Pac. 74 (1887).

**EMPLOYER'S LIABILITY ACT (WORKMEN'S COMPENSATION ACT).****EMPLOYER AND EMPLOYEE—DUTY AND LIABILITY.****SECS. 1969-1971, CIVIL CODE.**

SEC. 1969. An employer must indemnify his employee, except as prescribed in the next section, for all that he necessarily expends or loses in direct consequence of the discharge of his duties as such, or of his obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying such directions, believed them to be unlawful.

SEC. 1970. An employer is not bound to indemnify his employee for losses suffered by the latter in consequence of the ordinary risks of the business in which he is employed, nor in consequence of the negligence of another person employed by the same employer in the same general business, unless he has neglected to use ordinary care in the selection of the culpable employee.

SEC. 1971. An employer must in all cases indemnify his employee for losses caused by the former's want of ordinary care.

**ANNOTATIONS.**

Under this section a mine operator is not liable to an injured miner where the injury resulted from the negligence of the mine foreman, unless it is shown that the operator neglected to use ordinary care in the selection of the foreman.

*Stephens v. Doe*, 73 Cal. 26, p. 28; 14 Pac. 378 (1887).

The civil code of California (sec. 1970) expressly provides that an employer shall be liable for an injury to an employee when the same results from the wrongful act, neglect, or default of a person employed by such employer having the right to control or direct the services of the injured employee. Under this statute, and by virtue of the authority given by custom to the head driller or tower boss, he has a right to exercise authority over the drilling of an oil well, and is in fact the vice principal, and exercises authority over a tool dresser.

*Arundell v. American Oil Fields Co.*, — Cal. —, 160 Pac. 159, p. 165 (1916).

Under this act the assumption of risk of a known hazard by a miner no longer affords the employer a defense in an action by a miner for damages for injuries sustained while working in a mine.

*Crabbe v. Mammoth Channel Gold Min. Co.*, 168 Cal. 500, p. 504, 143 Pac. 714 (1914).

**ROSEBERRY ACT.****LAWS 1911, P. 796; APR. 8, 1917.**

AN ACT relating to the liability of employers for injuries or death sustained by their employees, providing for compensation for the accidental injury of employees, establishing an industrial accident board, making an appropriation therefor, defining its powers and providing for a review of its awards.

The People, etc.

SEC. 1. In any action to recover damages for a personal injury sustained within this State by an employee while engaged in the line of his duty or the course of his employment as such, or for death resulting from personal injury so sustained, in which recovery is sought upon the ground of want of ordinary or reasonable care of the employer, or of any officer, agent, or servant of the employer, the fact that such employee may have been guilty of contributory negligence shall not bar a recovery therein where his contributory negligence was slight and that of the employer was gross, in comparison. but the damages may be diminished by the jury in proportion to the

amount of negligence attributable to such employee, and it shall be conclusively presumed that such employee was not guilty of contributory negligence in any case where the violation of any statute enacted for the safety of employees contributed to such employee's injury; and it shall not be a defense:

(1) That the employee either expressly or impliedly assumed the risk of the hazard complained of.

(2) That the injury or death was caused in whole or in part by the want of ordinary or reasonable care of a fellow servant.

SEC. 2. No contract, rule, or regulation shall exempt the employer from any of the provisions of the preceding section of this act.

SEC. 3. Liability for the compensation hereinafter provided for, in lieu of any other liability whatsoever, shall, without regard to negligence, exist against an employer for any personal injury accidentally sustained by his employees, and for his death if the injury shall approximately cause death, in those cases where the following conditions of compensation concur:

(1) Where, at the time of the accident, both the employer and employee are subject to the provisions of this act according to the succeeding sections hereof.

(2) Where, at the time of the accident, the employee is performing service growing out of and incidental to his employment and is acting within the line of his duty or course of his employment as such.

(3) Where the injury is approximately caused by accident, either with or without negligence, and is not so caused by the wilful misconduct of the employee.

And where such conditions of compensation exist for any personal injury or death, the right to the recovery of such compensation pursuant to the provisions of this act and acts amendatory thereof shall be the exclusive remedy against the employer for such injury or death, except that when the injury was caused by the personal gross negligence or wilful personal misconduct of the employer, or by reason of his violation of any statute designed for the protection of employees from bodily injury, the employee may, at his option, either claim compensation under this act or maintain an action for damages therefor; in all other cases the liability of the employer shall be the same as if this and the succeeding sections of this act had not been passed, but shall be subject to the provisions of the preceding sections of this act.

SEC. 4. The following shall constitute employers subject to the provisions of this act within the meaning of the preceding section:

(1) The State, and each county, city and county, city, town, village and school districts, and all public corporations, every person, firm, and private corporation (including any public service corporation) who has any person in service under any contract of hire, express or implied, oral or written, and who, at or prior to the time of the accident to the employee for which compensation under this act may be claimed, shall, in the manner provided in the next section, have elected to become subject to the provisions of this act, and who shall not, at the time of such accident, have withdrawn such election, in the manner provided in the next section.

SEC. 5. Such election on the part of the employer shall be made by filing with the industrial accident board, hereinafter provided for, a written statement to the effect that he accepts the provisions of this act, the filing of which statement shall operate, within the meaning of section 3 of this act, to subject such employer to the provisions of this act and all acts amendatory thereof for the term of one year from the date of the filing of such statement, and thereafter, without further act on his part, for successive terms of one year each, unless such employer shall, at least 60 days prior to the expiration of such first or any succeeding year, file in the office of said board a notice in writing to the effect that he withdraws his election to be subject to the provisions of this act.

SEC. 6. The term "employee" as used in section 3 of this act shall be construed to mean:

(1) Every person in the service of the State, or any county, city or county, city, town, village or school district therein, and all public corporations, under any appointment or contract of hire, express or implied, oral or written, except any official of the State, or of any county, city and county, city, town, village or school district therein or any public corporation, who shall have been elected or appointed for a regular term of one or more years, or to complete the unexpired portion of any such regular term.

(2) Every person in the service of another under any contract of hire, express or implied, oral or written, including aliens, and also including minors who are legally permitted to work under the laws of the State (who, for the purposes of the next section of this act, shall be considered the same, and shall have the same power of contracting as adult employees), but not including any person whose employment is but casual and not in the usual course of the trade, business, profession, or occupation of his employer.

#### ANNOTATIONS.

1. LINE OF EMPLOYMENT.
2. DEFENSES ABROGATED.

##### 1. LINE OF EMPLOYMENT.

A miner working in a shaft with directions that when his work was completed he was to go to another shaft and work there, and who, after completing his work, on a day insufferably hot, while passing from the completed shaft to the other in which he was to work, stopped temporarily to rest in the shade of an ore bin and while so resting was killed by the collapse of the bin, can not be charged with wilful misconduct such as to defeat his right to compensation under the California Workmen's Compensation Insurance and Safety Act.

Brooklyn Min. Co. v. Industrial Accident Com., — Cal. —, 159 Pac. 162 (1916).

The civil code of California (sec. 1970) expressly provides that an employer shall be liable for an injury to an employee when the same results from the wrongful act, neglect, or default of a person employed by such employer having the right to control or direct the services of the injured employee. Under this statute, and by virtue of the authority given by custom to the head driller or tower boss, he has a right to exercise authority over the drilling of an oil well, and is, in fact, the vice principal, and exercises authority over a tool dresser.

Arundell v. American Oilfields Co., — Cal. —, 160 Pac., 159, p. 165 (1916).

##### 2. DEFENSES ABROGATED.

Section 1970 of the civil code of California as amended in 1907 took from an employer or a mine operator the benefit of the fellow-servant defense where the negligence was that of an employee having the right to direct and control the injured employee; and the statute of 1911, known as the "Roseberry Act," expressly provides that in actions by employees against employers to recover damages for injuries sustained in the course of the employment it shall not be a defense that the injury was caused by the negligence of a fellow servant.

Gibson v. Kennedy Extension Gold Min. Co., — Cal. —, 156 Pac., 56, p. 60 (1916).

## GEOLOGIST.

**LAWS 1853, P. 144; MAY 8, 1853.**

AN ACT To compensate Dr. John B. Trask for his report on the Geology of the Mineral Districts, and to enable him to make further examinations.

The People, etc.

Sec. 1. The comptroller is hereby required to draw his warrant in favor of Dr. John B. Trask, on the treasurer of state, for the sum of \$2,000 to be paid for the geological report furnished by said Trask, and enable him to prosecute further investigations relative to the same subject, under authority of certain resolutions passed by the senate and assembly.

**LAWS 1860, P. 225; APR. 21, 1860.**

AN ACT to create the office of State geologist and define the duties thereof.

The People, etc.

Sec. 1. J. D. Whitney is hereby appointed State geologist, whose duty it shall be, with the aid of such assistants as he may appoint, to make an accurate and complete geological survey of this State, and to furnish in his report of the same proper maps and diagrams thereof, with a full and scientific description of its rocks, fossils, soils, and minerals, and of its botanical and zoological productions, together with specimens of the same, which specimens shall be properly labeled and arranged, and deposited in such place as shall be hereafter provided for that purpose by the legislature.

Sec. 2. Said State geologist shall, as near as may be, at the beginning of each session of the legislature, present to the governor, who shall lay the same before the legislature, a report of progress, in which the operations of the geological survey during the preceding year shall be set forth, and its more important practical results made public.

\* \* \*

\* \* \* \* \*

Sec. 8. (Appropriations.) \$20,000. \* \* \*

Sec. 9. This act shall take effect from and after its passage.

**LAWS 1862, P. 423; APR. 25, 1862.**

AN ACT supplemental to an act entitled "An act to create the office of State geologist and to define the duties thereof," approved April 21, 1861 (1860).

The People, etc.

Sec. 1. The State geologist is hereby authorized to have printed, and combine in one volume, his first and second annual reports, as required to be made by the section of the act to which this is supplemental, and present the same to the governor and secretary of state, during the session of the legislature of 1863, to be disposed of as already provided for by law.

Sec. 3. (Appropriations.) \$3,000. \* \* \*

\* \* \* \* \*

Sec. 4. This act shall take effect from and after its passage.

**LAWS 1863, P. 751; APR. 27, 1863.**

AN ACT to appropriate money for the geological survey of the State.

The People, etc.

Sec. 1. (Appropriations.) \$20,000. \* \* \*



**LAWS 1863-64, P. 508; APR. 4, 1864. (GENERAL STATUTES 1850-1864, SEC. 3348-3356.)**

AN ACT to create the office of State geologist and to define the duties thereof.

The People, etc.

Sec. 1. J. D. Whitney is hereby appointed State geologist. He shall be commissioned by the governor, and it shall be his duty, with the aid of such assistants as he may appoint, to complete the geological survey of this State, and prepare a report of said survey for publication, and superintend the publication thereof. \* \* \*

Sec. 3. The following sums of money are hereby appropriated, out of any money in the State treasury not otherwise appropriated, for the prosecution of the geological survey of the State for the sixteenth and seventeenth fiscal years: For salary of State geologist \$9,000, to be drawn monthly on the last day of each month. For salary of two assistants \$6,600, to be drawn in the same manner as the salary of the State geologist. For publication of two volumes of report, \$6,000. For office rent, and expenses of survey in mining districts, and experiments on ores, and all incidental expenses of work, \$10,000, to be drawn one-half each fiscal year.

\* \* \* \* \*

**LAWS 1871-72, P. 355; MAR. 13, 1872.**

AN ACT to continue the geological survey of the State of California.

The People, etc.

Sec. 1. It shall be the duty of the State geologist to proceed and with all reasonable diligence complete the geological survey of this State, and the publication of the results thereof.

**LAWS 1871-72, P. 324; APR. 1, 1872.**

AN ACT supplementary to an act entitled "An act to authorize the distribution of the reports of the State geological survey," approved February 2, 1872.

The People, etc.

NOTE.—This act simply provides for the distribution of the reports of the State geologist.

**SEC. 548-554, POLITICAL CODE 1872, P. 108.****DUTIES OF STATE GEOLOGIST.**

548. It is the duty of the State geologist, with the aid of such assistants as he may appoint, to continue and with all reasonable diligence to complete the geological survey of this State. He must also prepare a report of the survey and superintend the publication thereof in the form of a geological, botanical, zoological, and physiological history of the State, with full and scientific descriptions of its rocks, fossils, soils, minerals, mines, climates, and physical geography, together with suitable and accurate geological and topographical maps and diagrams of the same.

549. He must, as near as may be at the beginning of each session of the legislature, present to the governor, who must lay the same before the legislature, a report of progress in which the operations of the geological survey during the interval since his last preceding report must be set forth and its most important results made public.

550. The geological and other specimens collected by the State geological survey must, excepting such as may be required by the State geologist to aid in the preparation of his report, be delivered over to the regents of the State university, to be by them deposited in the cabinet of the same as the property of the university.

551. The annual salary of the State geologist is \$6,000, payable monthly out of any appropriation which may be made by the legislature for the continuation of the work of the survey.

552. His assistants receive such compensation as he may determine, payable in the same manner out of the same fund.

553. The accounts of the State geologist, including salaries and all other expenses of the survey, must be audited by the board of examiners, and, if found correct, must be paid out of the State treasury in such manner as may be provided by law.

554. The volumes and maps of the report must be sold upon such terms as the governor deems to be most advantageous to the State, and any moneys derived from such sales must be applied to the completion of the unfinished publications of the survey, and the surplus, if any, must be paid into the common school fund of the State.

NOTE.—Secs. 548-554 repealed by act following.

**LAWS 1907, P. 582; MAR. 18, 1907. (REPEALING SECS. 548-554.)**

AN ACT to repeal Article XIII of Chapter III of Title I of Part III of the Political Code, relative to State geologist.

The People, etc.

SEC. 1. Article XIII of Chapter III of Title I of Part III of the Political Code and every section in said article contained are hereby repealed.

NOTE.—The sections referred to are sections 548-554.

**LAWS 1885, 80 P. 87; MAR. 10, 1885.**

AN ACT making appropriations for the support of the government of the State of California for the thirty-seventh and thirty-eighth fiscal years.

The People, etc.

SEC. 1. The following sums of money are hereby appropriated out of any money in the State treasury not otherwise appropriated, for the objects hereinafter expressed, and for the support of the government of the State of California for the thirty-seventh and thirty-eighth fiscal years.

\* \* \* \* \*

For department of geology and natural history at University of California, \$18,500.

## HOURS OF LABOR.

### LIMITING HOURS OF LABOR.

LAWS 1867-68, P. 63; FEB. 21, 1868.

AN ACT to limit the hours of labor

The People, etc.

SEC. 1. Eight hours labor shall be deemed and held to be a legal day's work, in all cases within this State, unless otherwise expressly stipulated between the parties concerned.

SEC. 2. Eight hours labor shall constitute a legal day's work in all cases where the same is performed under the authority of any law of this State, or under the direction, control, or by the authority of any officer of this State acting in his official capacity, or under the direction, control, or by the authority of any county or municipal government within this State, or of any officer thereof acting as such; and a stipulation to that effect shall be made a part of all contracts to which the State or any county or municipal government therein shall be a party.

SEC. 3. Any person or persons having in his, her, or their employ, or under his, her, or their control, any minor child or children, either as wards or apprentices, who shall require of such minor child or children more than eight hours labor in one day, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than \$10 nor more than \$100; and in default of payment thereof shall be imprisoned in the county jail for a period not less than 2 days, nor more than 20 days.

SEC. 4. The provisions of this act shall not extend to agricultural, vinicultural, or horticultural labor, or to the services of household or domestic servants, nor to any contracts already made but not yet performed.

SEC. 5. An act entitled "An act to limit the hours of labor" approved May 17, 1853, is hereby repealed.

SEC. 6. This act shall take effect 60 days after its passage.

### WORKING UNDERGROUND.

LAWS 1909, P. 279; MAR. 10, 1909. LAWS 1913, P. 331; MAY 30, 1913.

AN ACT regulating the hours of employment in underground mines and in smelting and reduction wor...

The People, etc.

SEC. 1. That the period of employment for all persons who are employed or engaged in work in underground mines in search of minerals, whether base or precious, or who are engaged in such underground mines for other purposes, or who are employed or engaged in other underground workings whether for the purpose of tunneling, making excavations, or to accomplish any other purpose or design, or who are employed in smelters and other institutions for the reduction or refining of ores or metals, shall not exceed 8 hours within any 24 hours, and the hours of employment in such employment or work day shall be consecutive excluding, however, any intermission of time for lunch or meals; provided, That, in the case of emergency where life or property is in imminent danger, the period may be a longer time during the continuance of the exigency or emergency.

SEC. 2. Any person who shall violate any provision of this act, and any person who as foreman, manager, director, or officers of a corporation, or as the employer or superior

officer of any person, shall command, persuade, or allow any person to violate any provision of this act, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than \$50 nor more than \$300, or by imprisonment of not more than three months. And the court shall have discretion to impose both fine and imprisonment as herein provided.

SEC. 3. All acts and parts of acts inconsistent with this act are hereby repealed.

### AMENDATORY ACT.

LAWS 1913, P. 331; MAY 30, 1913.

AN ACT regulating the hours of employment in underground mines (underground workings, whether for the purpose of tunneling, making excavations, or to accomplish any other purpose or design, or) in smelting and reduction works.

NOTE.—The only change in this amendatory act is in the title by the addition of the words in parentheses. The evident purpose was to make the title broad enough to include all the provisions of the act.

### ANNOTATIONS.

#### HOURS OF LABOR UNDERGROUND.

##### VALIDITY AND PURPOSE OF ACT—CLASSIFICATION.

This act does not deprive persons affected by it of any right conferred by the Federal Constitution.

Martin, Matter of application of, 157 Cal. 51, p. 52, 106 Pac. 235 (1909).

See Holden v. Hardy, 169 U. S. 366, 18 S. Ct. 383.

Martin, Matter of application of, 157 Cal. 59, 106 Pac. 238 (1909).

Martin, Matter of application of, 157 Cal. 60, 106 Pac. 239 (1909).

It may be assumed that only work in mines is covered by the provisions and prohibitions of this act, but it is not thereby rendered obnoxious to the constitutional provision against special legislation, as a discrimination between work in mines and that in other underground diggings is justified by the fact that mining is a permanent business in which men are engaged steadily for long periods of time, whereas other underground diggings are ordinarily temporary and irregular in duration and for that reason do not require the same measure of regulation.

Martin, Matter of application of, 157 Cal. 51, p. 57, 106 Pac. 235 (1909).

See State v. Cantwell, 179 Mo. 245, 78 S. W. 569.

Boyce, Ex parte, 27 Nev. 299, 75 Pac. 1.

The legislature by this act declared that in its judgment the occupation of laboring in smelters or other institutions for the reduction or refining of ores or metals is so dangerous to the health of those engaged in it as to make it a proper subject of regulation; and the legislative judgment upon such a matter of fact is not subject to judicial review unless it clearly appears to have been exercised arbitrarily and without any show of good reason.

Martin, Matter of application of, 157 Cal. 60, p. 62, 106 Pac. 239 (1909).

See Holden v. Hardy, 169 U. S. 366, 18 S. Ct. 383.

Boyce, Ex parte, 27 Nev. 33, 75 Pac. 1.

Kair, Ex parte, 28 Nev. 141, 80 Pac. 65, 113 Am. St. 817.

State v. Holden, 14 Utah 98, 46 Pac. 115.

This act provides that the period of employment of persons working in underground mines shall not exceed 8 hours in any 24, and giving to the words of the act their ordinary and reasonable meaning, the limitation is construed as referring to the time when men are actually engaged in work underground, and not when they are going to or from their work.

Martin, Matter of application of, 157 Cal. 59, 106 Pac. 238 (1909).

The purpose of the act is the protection of the health of men working in underground mines, and the injury to health which seems to have been apprehended is that which would be encountered by a laborer subjected to the strain of performing manual labor under detrimental conditions.

Martin, Matter of application of, 157 Cal. 51, p. 58, 106 Pac. 235 (1909).  
See Martin, Matter of application of, 157 Cal. 59, 106 Pac. 238 (1909).

An ordinary stamp mill used in crushing and pulverizing quartz for the purpose of extracting precious metals therefrom, or an ordinary stamp mill, is embraced within the provisions of this act and the prohibition as to employment applies to any such quartz mill.

Martin, Matter of application of, 157 Cal. 60, p. 61, 106 Pac. 239 (1909).

QUARTZ MILL SAME AS SMELTER.

A quartz mill comes as clearly within the meaning of an "institution for the reduction or refining of ores or metals," as does a smelter; and the use of the word "smelter" at the beginning of the phrase used in the statute does not limit the application of the statute to institutions wherein ores are reduced by smelting.

Martin, Matter of application of, 157 Cal. 60, p. 62, 106 Pac. 239 (1909).

## MINERS' HOSPITAL.

LAWS 1881, P. 82; MAR. 14, 1881.

AN ACT to provide a State hospital and asylum for miners.

The People, etc.

SEC. 1. There shall be erected, as soon as conveniently may be, upon some suitable site, to be determined and obtained as is hereinafter provided, a public hospital and asylum, for the reception, care, medical and surgical treatment, and relief of the sick, injured, disabled, and aged miners, which shall be known as the "California State Miners' Hospital and Asylum."

SEC. 2. The governor shall nominate, and by and with the advice and consent of the senate, appoint five persons to serve as trustees of the said institution, who shall be a body politic and corporate, by the name and style of the "Trustees of the California State Miners' Hospital and Asylum," and shall manage and direct the concerns of the institution, and make all necessary by-laws and regulations, and shall have power to receive, hold, dispose of, and convey all real and personal property conveyed to them by gift, devise, or otherwise, for the use of said institution, and shall serve without compensation. Of those first appointed, two shall serve for two years, and three for four years; and at the expiration of the respective terms, each class thereafter shall be appointed for four years. A vacancy in said board, from any cause, shall be filled by appointment by the governor for the unexpired term.

SEC. 3. The said trustees shall have charge of the general interests of the institution: they shall appoint the superintendent, who shall be a skillful physician and surgeon, subject to removal or reelection no oftener than in periods of ten years, except by infidelity to the trust reposed in him, or for incompetency.

SEC. 4. The trustees, by and with the consent of the governor, shall make such by-laws and regulations for the government of the institution as shall be necessary; they shall appoint a treasurer, who shall give bonds to the people of the State of California for the faithful discharge of his duties: and they shall fix the compensation of all officers, assistants, and attachés, who may be necessary for the just and economical administration of the affairs of said institution.

SEC. 5. Indigent miners shall be charged for medical attendance, surgical operations, board, and nursing while residents in the hospital and asylum, no more than the actual cost; paying patients, whose friends can pay their expenses, and who are not chargeable upon townships and counties, shall pay according to the terms directed by the trustees.

SEC. 6. The several boards of supervisors of counties, or any constituted authority in the State having care and charge of any indigent, sick, or aged person, or persons, if satisfactorily proven by them to have been miners, shall have authority to send to the "California State Miners' Hospital and Asylum" such persons, and they shall be severally chargeable with the expenses of the care, maintenance, and treatment, and removal to and from the hospital and asylum of such patients.

SEC. 7. The trustees shall, annually, at such time as the governor may designate, report to him, for transmission to the legislature, such a statement as he may require as to the management of the said hospital and asylum.

SEC. 8. This act shall take effect immediately.

**MINERS' LICENSE.**  
**FOREIGN MINER'S LICENSE.**

LAWS 1850, P. 221; APR. 13, 1850.

AN ACT for the better regulation of the mines, and the government of foreign miners.

The People, etc.

SEC. 1. No person who is not a native or natural born citizen of the United States, or who may not have become a citizen under the treaty of Guadalupe Hidalgo (all native California Indians excepted), shall be permitted to mine in any part of this State, without having first obtained a license so to do according to the provisions of this act.

SEC. 2. The governor shall appoint a collector of licenses to foreign miners for each of the mining counties, and for the county of San Francisco, who, before entering upon the duties of his office, shall take the oath required by the constitution, and shall give his bond to the State with at least two good and sufficient sureties, conditioned for the faithful performance of his official duties, which bond shall be approved by the governor, and filed in the office of the secretary of state.

SEC. 3. Each collector of licenses to foreign miners shall be commissioned by the governor.

SEC. 4. It shall be the duty of the comptroller to cause to be printed or engraved a sufficient number of licenses, which shall be numbered consecutively, and shall be in form following, to wit:

“Number ———. (Date.)  
“A. B., a citizen of ———, age ——— years, complexion ———, is hereby licensed to work in the mines of California for the period of 30 days.”

The comptroller shall countersign each of such licenses and shall transfer them to the treasurer, keeping an account of the number so transferred.

SEC. 5. The treasurer shall sign and deliver to each collector of licenses to foreign miners so many of the licenses mentioned in the preceding section as he shall deem proper, and shall take his receipt for the same and charge him therewith. Such collector and his sureties shall be liable upon his bond for the number so furnished him, either for their return or the amount for which they may be sold; and the moneys collected, as herein provided, shall be paid into the treasury as prescribed in this act.

SEC. 6. Every person required by the first section of this act to obtain a license to mine shall apply to the collector of licenses to foreign miners, and take out a license to mine, for which he shall pay the sum of \$20 per month; and such foreigners may from time to time take out a new license, at the same rate per month, until the governor shall issue his proclamation announcing the passage of a law by Congress, regulating the mines of precious metals in this State.

SEC. 7. If any such foreigner or foreigners shall refuse or neglect to take out such license by the second Monday of May next, it shall be the duty of the collector of licenses to foreign miners of the county in which such foreigner or foreigners shall be, to furnish his or their names to the sheriff of the county, or to any deputy sheriff whose duty it shall be to summon a posse of American citizens, and, if necessary, forcibly prevent him or them from continuing such mining operations.

SEC. 8. Should such foreigner or foreigners, after having been stopped by a sheriff or deputy sheriff from mining in one place, seek a new location and continue such mining operations, it shall be deemed a misdemeanor, for which such offender or

offenders shall be arrested as for a misdemeanor, and he or they shall be imprisoned for a term not exceeding three months, and fined not more than \$1,000.

SEC. 9. Any foreigner who may obtain a license in conformity with the provisions of this act shall be allowed to work the mines anywhere in this State, under the same regulations as citizens of the United States.

SEC. 10. It shall be the duty of each collector of licenses to foreign miners to keep a full and complete register of the names and descriptions of all foreigners taking out licenses, and a synopsis of all such licenses to be returned to the treasurer.

SEC. 11. Each license, when sold, shall be indorsed by the collector selling or issuing the same, and shall be in no case transferable; and the collector may retain, out of the money received for each license, the sum of \$3, which shall be the full amount of his compensation.

SEC. 12. Each collector of licenses to foreign miners shall, once in every two months and oftener, if called upon by the treasurer, proceed to the seat of government, settle with the treasurer, pay over to that officer all moneys collected from foreigners not before paid over, and account with him for the unsold licenses remaining in his hands.

SEC. 13. If any collector shall neglect or refuse to perform his duty as herein provided, it shall be the duty of the comptroller, upon receiving a notice thereof from the treasurer, to give information thereof to the district attorney in whose district said officer may have been appointed, who shall bring an action against such collector and his sureties upon his bond, before any court of competent jurisdiction; and upon recovery had thereon, the said district attorney shall receive for his services 10 per cent upon the amount collected, the balance to be paid by him into the treasury in the manner provided by law for like payments.

SEC. 14. It shall be the duty of the governor, so soon as he shall have been officially informed of the passage of a law by the United States Congress, assuming the control of the mines of the State, to issue his proclamation, requiring all collectors of licenses to foreign miners to stop the issuing of licenses.

SEC. 15. It shall be the duty of the secretary of state immediately after the passage of this act, to have 2,000 copies each, in English and Spanish, printed and sent to the mining districts for circulation among the miners, and also to have the same published for 30 days in the Pacific News at San Francisco, and in some newspaper at Sacramento City and at Stockton.

## ANNOTATIONS.

### MINERS' LICENSES.

1. CONSTITUTIONALITY OF STATUTE.
2. APPLICATION TO PUBLIC LANDS.
3. COLLECTION OF TAX.
4. PARTNERSHIP LIABILITY.

#### 1. CONSTITUTIONALITY OF STATUTE.

The statute requiring foreigners, in order to entitle them to the privilege of mining in California, to procure a license for that purpose, and prohibiting all foreigners who had not such license from working mines in that State, is valid and constitutional; and it can not be deemed a rule or regulation respecting the public lands from the fact that it may affect them indirectly and may, to a limited extent, operate to prevent the working of them and thereby diminish the revenue which might otherwise be derived from them by the United States.

People v. Naglee, 1 Cal. 232, pp. 233-239, 52 Am. Dec. 312n (1850).

A law requiring foreigners to obtain a license and to pay a license fee for working mines in the State of California is in effect a tax law upon mining and such a law is constitutional where a tax law would be constitutional.



People v. Naglee, 1 Cal. 232, p. 242 (1850). 52 Am. Dec. 312n.

This act by necessary implication gives whatever right the State may have in the mineral in the soil and the right to mine the same to all native born or naturalized citizens of the United States who may wish to toil in the gold placer.

McClintock v. Bryden, 5 Cal. 97, p. 99 (1855). 63 Am. Dec. 87n.

See Merced Min. Co. v. Fremont, 7 Cal. 317, p. 324 (1857). 68 Am. Dec. 262.

The foreign miners' license tax is a special contribution laid on a certain class of foreigners for the support of the Government and created by special act of the legislature.

Attorney General v. Squires, 14 Cal. 12, p. 18 (1859).

## 2. APPLICATION TO PUBLIC LANDS.

This was the first statute in California respecting mines and provides for the issuing of licenses to foreign miners; but there is nothing in the act restricting in express terms the license to mine the public lands, but such was evidently the intention of the legislature as shown by the fourteenth section of the act, providing that the governor as soon as he shall be officially informed of the passage of a law by Congress assuming control of the mines of the State to issue his proclamation that collectors of licenses of foreign miners shall stop the issuance of such licenses; the legislation anticipated by this manifestly had reference to the public lands.

Boggs v. Merced Min. Co. 14 Cal. 279, p. 377 (1859).

This act in so far as it relates to the question of a license from the State to mine or to work in a mine refers to mines and working in mines in the public lands alone, and has no reference to mines or to working in mines on private property.

Boggs v. Merced Min. Co., 14 Cal. 279, p. 379 (1859).

See Henshaw v. Clark and 103 Chinamen, 14 Cal. 460, p. 464 (1859).

Notwithstanding the broad terms of this act, yet the legislature must have intended the prohibition against mining without a license to apply only to mining on public lands as this intention is evident from the fourteenth section of the act.

Ah Hee v. Crippen, 19 Cal. 491, p. 498 (1861).

The acts authorizing licenses from foreign miners subsequent to this original act do not contain the express provision as to mining on the public lands; but in their passage the legislature only adopted a municipal regulation to govern the conduct of a certain class of persons for the purpose of raising revenue from them and did not undertake to dispose of any proprietary interest which the State possessed in the mines

Boggs v. Merced Min. Co., 14 Cal. 279, p. 378 (1859).

## 3. COLLECTION OF TAX.

The service or duty of collecting foreign miners' license taxes did not originally belong to the sheriff or his office, but was attached to the office of tax collector by legislative act and by the same authority it may be detached.

Attorney General v. Squires, 14 Cal. 12, p. 16 (1859).

The general bond of a sheriff covers his liability as tax collector, but it does not cover his liability as collector of taxes on foreign miners' licenses.

Attorney General v. Squires, 14 Cal. 12, p. 15 (1859).

## 4. PARTNERSHIP LIABILITY.

An individual partner, and not the partnership, is alone liable for the license tax, where he personally employs a foreign miner, subject to a license tax, to work in mines which were partnership property.

Meyer v. Larkin, 3 Cal. 403, p. 405 (1853).

REPEALING ACT.

LAWS 1851, P. 424; MAR. 14, 1851.

AN ACT to repeal "An act for the better regulation of the mines, and the government of foreign miners" approved April 13, 1850

The People, etc.

SEC. 1. That the act entitled "An act for the better regulation of the mines, and the government of foreign miners," approved April 12 (13), 1850, be and the same is hereby repealed.

LAWS 1852, P. 84; MAY 4, 1852.

AN ACT to provide for the protection of foreigners, and to define their liabilities and privileges: Whereas, great prejudices exist in the mining districts in relation to the propriety of foreigners being permitted to work placer and quartz diggings, inasmuch as they are not liable to the same duties as American citizens whilst they enjoy the same privileges; and whereas these contests produce great expenditure by the State in the maintenance of order, and whereas, in consideration of the protection and privileges extended and secured to them by the constitution and laws of our country, therefore,

The People, etc.

NOTE.—This act is combined with the act following. The section numbers and the changes and amendments of this act are in parentheses.

LAWS 1853, P. 62; MAR. 30, 1853. (COMPILED LAWS 1850-1853, P. 218.)

AN ACT to provide for the protection of foreigners, and to define their liabilities and privileges.

The People, etc.

SEC. 1 (1). That from and after the 1st day of June next, and until the Congress of the United States shall by law assume control of the mining lands of California (passage of this act), no person not being a citizen of the United States (California Indians excepted) shall be allowed to take gold from any of the mines of this State, unless he shall have a license therefor as hereinafter provided.

SEC. 2 (2). It shall be the duty of the comptroller of state to procure a sufficient number of blank licenses, which shall be substantially in the following form: and numbered consecutively, and a record thereof be filed in his office. He shall deliver said licenses to the treasurer of state, and take his receipt for the same, upon the books of his office.

FORM OF LICENSE.

No. —  
COUNTY, (date), 185—  
— has paid three  
(four) dollars mining li-  
cense, which entitles him  
to labor (work) in the  
mines one month.

No. — COUNTY, (date).  
This certifies that — has this day paid  
the sheriff of — County three (four) dollars,  
which entitles him to labor (work) in the mines  
of this State for one month from date.  
\_\_\_\_\_  
Comptroller of State.  
By \_\_\_\_\_, Sheriff.

(Every subsequent license after the first shall be dated from the expiration of the former license issued by the sheriff or his deputy to any foreign miner who shall have been engaged in mining, from the expiration of such former license.) (Amended. See page 40.)

SEC. 3 (3). The sheriff of each county shall be the collector of license tax, under the provisions of this act, who, before entering upon the duties herein provided for, shall enter into bond to the State, with two or more sureties, to be approved by the board of supervisors, if any such board exists in his county; if there be no such board, then by the county judge, in the sum of \$15,000, conditioned for the faithful performance of the duties required of him by this act, which bond shall be filed in the office of the clerk of said county.

To be renewed upon expiration of term.

To be renewed upon expiration of term.

SEC. 4 (4). The treasurer of state shall fill the blanks for the numbers and counties which have been left in the printed form, and shall be liable on his bond for all licenses delivered to him by the comptroller, except for such as he may have issued to the recorders of counties, under the provisions of the following section. (Repealed. See page 40.)

SEC. 5 (5). The treasurer of state shall issue, as soon as practicable, to the recorder of each mining county, and thereafter previous to the 15th of December of each year, such number of licenses as may be deemed sufficient for the use of said county, taking a receipt therefor, which receipt shall be recorded by the treasurer, in a book to be provided for that purpose, and shall stand as a charge against said recorder; and said recorder shall execute a bond to the State, conditioned for the faithful performance of all the duties required of him by this act, in the sum of \$10,000; said bond to be approved by the governor and comptroller. (Amended. See page 41.)

SEC. 6 (6). The amount to be paid for each license shall be at the rate of \$4 per month, and said license shall in no case be transferable. (Amended. Reenacted.)

SEC. 7. (Act May 4, 1852.) The recorder shall deliver to the sheriff of his county such number of licenses as said sheriff may require, charging him therewith and taking his receipt therefor. The sheriff shall make monthly returns to the board of supervisors, if any such board exist in his county; if there be no such board, then to the county judge, of the number of licenses issued, and to whom; the amount of money received, and accompanying which returns shall be a list of the names of those to whom licenses have been issued by him, with the age of each, and the county from which he has migrated. The first returns shall be made on the first Monday in June, next, and thereafter a return shall be made on the first Monday of each succeeding month, as herein specified.

SEC. 7. (Act Mar. 30, 1853.) The recorder shall deliver to the sheriff of his county such number of licenses as said sheriff may require, charging him therewith, and taking his receipt therefor. The sheriff shall make monthly returns to the recorder of his county, of the number of licenses issued, and to whom, and the amount of money received. The first returns shall be made to the recorder on the first Monday of May next, and thereafter a return shall be made on the first Monday of each succeeding month as herein specified.

SEC. 8. (Act May 4, 1852.) The sheriff shall have power to appoint a sufficient number of deputies to assist him in the performance of his duties who shall be paid by the sheriff out of the percentage provided for in this act, the said sheriff to be responsible for the acts of his deputies, and may require from them such bond and surety as he may deem proper for his own indemnification.

SEC. 8. (Act Mar. 30, 1853.) It is hereby made the duty of the treasurer of each county to which licenses have been issued to report to the treasurer of state on the first Monday of August next, and on the first Monday of every third month thereafter, the amount of money received by him on account of foreign miners' licenses.

SEC. 9 (9). Fifty per cent of the net proceeds of all moneys collected under the provisions of this act, shall be paid into the State treasury, and shall constitute a part of the general fund; the remaining 50 per cent of the net proceeds shall be paid into the general fund of the county; and it shall be the duty of the sheriff to pay over to the county treasurer, monthly, the amounts specified in this section.

SEC. 10. (Act May 4, 1852.) No foreign miner, who shall not have a license under the provisions of this act, shall be allowed either to prosecute or defend any action in any of the courts of this State.

SEC. 10. (Act Mar. 30, 1853.) The collector may seize the property of any person liable to, and refusing to pay, such tax, and sell at public auction on one hour's notice, by proclamation, and transfer the title thereof to the person paying the highest price therefor, and after deducting the tax and necessary expenses incurred by reason

of such refusal and sale of property, the collector shall return the surplus of the proceeds of the sale, if any, to the person or persons whose property was sold; provided that should any person liable to pay such tax in any county of this State, escape into any other county with intent to evade the payment of such tax, then and in that event it shall be lawful for the collector to pursue such person and enforce the payment of such tax in the same manner as if no such escape had been made. Any foreigner representing himself to be a citizen of the United States shall, in the absence of his certificate to that effect satisfy the collector of the correctness of his statement by affidavit or otherwise, and that the collector be and is empowered to administer such oath or affirmation. All foreigners residing in the mining districts of this State shall be considered miners under the provisions of this act, unless they are directly engaged in some other lawful business avocation.

SEC. 11 (11). Immediately preceding the time provided by law for the final settlement of the county treasurer with the treasurer of state, it shall be the duty of each recorder to whom licenses have been issued to report to the comptroller of state the number of licenses on hand in his office, as also the number in the hands of the sheriff, who is hereby required to report to said recorder the number of licenses not disposed of, for which he has received to the said recorder.

SEC. 12 (12). The treasurer and comptroller of state shall, as soon as practicable, compare the returns of the sheriff with the reports of the county recorder, and if there shall be any discrepancy in the statements it shall be the duty of the comptroller to immediately inform the prosecuting attorney of the county in which such delinquent resides, who shall commence suit against such delinquent and his sureties forthwith. (Amended, see page 41.)

SEC. 13 (13). Any sheriff or his deputy who shall neglect or refuse to pay over the money collected by him or them under the provisions of this act, or shall appropriate any part thereof to his or their use, other than the percentage they are entitled to retain by the provisions of this act, shall be deemed guilty of embezzlement, and upon conviction thereof shall be punished by imprisonment in the State prison any time not less than 1 year nor more than 10 years.

SEC. 14 (14). Any officer charged with the collection of the tax provided to be collected by this act, who shall give any receipt other than the receipt prescribed in this act, or receive money for such license without giving the necessary receipt, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not exceeding \$1,000, and be imprisoned in the county jail not exceeding six months.

SEC. 15 (15). It shall be the duty of the different sheriffs to return all unsold licenses to the county recorder prior to the 15th day of December of each year, and receive new licenses, and the county recorders shall immediately transmit to the comptroller of state said licenses, who shall deliver them to the treasurer of state. Such (said) licenses so returned shall be placed to the credit of the different county recorders on the books of the treasurer, and the licenses destroyed in the presence of the comptroller of state, who shall also make a record of the same. (Amended, see page 41.)

SEC. 16 (16). Any person who shall make any alteration, or cause the same to be made, in any license, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum not exceeding \$1,000 and imprisonment in the State prison not exceeding six months.

SEC. 17 (17). Any person or company hiring foreigners to work in the mines of this State, shall be liable for the amount of the licenses for each person so employed.

SEC. 18. (Act May 4, 1852.) These licenses shall be printed in English, Spanish, and French.

SEC. 18. (Act Mar. 30, 1853.) The sheriff shall have power, and it is hereby made his duty, to appoint a sufficient number of deputy collectors to assist him in the collection of the tax provided to be collected by this act, said deputy collectors to be paid

not less than 15 per cent on all sums collected by them; and the sheriff shall be responsible for the acts of said deputy collectors, and may require from them such bond and surety as he may deem proper for his own indemnification and for such service he shall be entitled to receive 3 per cent on all sums collected by them. Should the board of supervisors, or in the event of there being no such board, then the county judge, deem the percentage to be paid to deputy collectors by the provisions of this section to be insufficient, an order may be entered by the board of supervisors or the county judge providing that an additional sum shall be paid such deputy collector, not to exceed in all 25 per cent to be paid as herein provided. The county recorder of each county shall receive 3 per cent on all sums collected under the provisions of this act.

SEC. 19. (Act May 4, 1852.) This act shall take effect from and after June 1, 1852.

SEC. 19. (Act Mar. 30, 1853.) That the sheriff be required to receive good clean gold dust when tendered at \$17 per ounce in payment for licenses, and be required to pay the same into the treasury at the same rate.

SEC. 20. (Act Mar. 30, 1853.) That the act entitled "An act to provide for the protection of foreigners, and to define their liabilities and privileges," approved May 4, 1852, and all laws or parts of laws conflicting with the provisions of this act be, and the same are hereby, repealed.

NOTE.—This act is in part amended, repealed, and supplemented. See page 40.

### AMENDATORY ACTS.

#### LAWS 1854, P. 55; MAY 13, 1854.

AN ACT amendatory of "An act to provide for the protection of foreigners, and to define their liabilities and privileges," passed March 30, 1853. (Passed May 13, 1854.)

The People, etc.

SEC. 1. Section 1 of "An act to provide for the protection of foreigners, and to define their liabilities and privileges," passed March 30, 1853, is hereby amended so as to read as follows:

SEC. 1. No person, not being a citizen of the United States, or who shall not have declared his intention to become such, prior to the passage of this act (California Indians excepted) shall be allowed to take gold from the mines of this State, unless he shall have a license therefor as hereinafter provided. (Amended.)

#### LAWS 1855, P. 216; APR. 30, 1855.

AN ACT to amend "An act to provide for the protection of foreigners, and to define their liabilities and privileges," passed March 30, 1853.

The People, etc.

SEC. 1. Section 6 of "An act to provide for the protection of foreigners, and to define their liabilities and privileges," passed March 30, 1853, is hereby amended so as to read as follows:

SEC. 6. The amount to be paid for each license by each foreigner eligible to become a citizen of the United States shall be at the rate of \$4 per month, and the amount to be paid for each license by each foreigner ineligible to become a citizen of the United States shall be at the rate of \$4 per month until October 1, A. D. 1855, and \$6 per month from October 1, A. D. 1855, to October 1, A. D. 1856, and \$8 per month, from October 1, A. D. 1856, to October 1, A. D. 1857, and so on, increasing the license \$2 per month from and after the 1st day of October, each year, to be paid by all foreigners ineligible to become citizens; said licenses shall be substantially in the form set out in section 2 of this act (the amount per month being changed to correspond with the year herein set forth), and shall in no case be transferable; provided that no foreigner shall be entitled to hold or work in any mining claim, unless he pays his monthly tax as herein provided for. (Repealed.)

**LAWS 1856, P. 141; APR. 19, 1856. (REPEALING ACT.)**

AN ACT to repeal an act entitled "An act to amend 'An act to provide for the protection of foreigners, and to define their liabilities and privileges,'" passed March 30, 1853, approved April 30, 1855, and to revise the original act.

The People, etc.

SEC. 1. The act entitled "An act to amend 'An act to provide for the protection of foreigners and to define their liabilities and privileges,'" passed March 30, 1853, approved April 30, 1855, is hereby repealed, and section 6 of said original act is hereby reenacted. Said section reads as follows:

SEC. 6. The amount to be paid for each license shall be at the rate of \$4 per month, and said license shall in no case be transferable.

SEC. 2. This act shall take effect from and after May 1, 1856.

**LAWS 1857, P. 60; MAR. 5, 1857.**

AN ACT amendatory of "An act amendatory of an act to provide for the protection of foreigners, and to define their liabilities and privileges, passed March 30, 1853," passed May 13, 1854.

The People, etc.

SEC. 1. Section 1 of an act amendatory of "An act to provide for the protection of foreigners, and to define their liabilities and privileges," is hereby amended so as to read as follows:

No person, not being a citizen of the United States, or who shall not have declared his intention to become such prior to the passage of this act (California Indians excepted), shall be allowed to take gold from the mines of this State, unless he shall have a license therefor, as hereinafter provided.

**LAWS 1857, P. 182; APR. 7, 1857.**

AN ACT amendatory of and supplemental to an act entitled "An act to provide for the protection of foreigners, and to define their liabilities and privileges," approved March 30, 1853.

The People, etc.

SEC. 1. The act entitled "An act to provide for the protection of foreigners, and to define their liabilities and privileges," approved March 30, 1853, is hereby amended as follows:

SEC. 2. The second section of the said act is hereby amended so as to read as follows:

It shall be the duty of the comptroller of state to procure a sufficient number of blank licenses, which shall be substantially in the following form, and numbered consecutively, and a record thereof be filed in his office.

Every subsequent license after the first shall be dated from the expiration of the former license, issued by the sheriff or his deputy, to any foreign miner, who shall have been engaged in mining from the expiration of such former license.

SEC. 3. The fourth section of said act is hereby repealed.

SEC. 4. The fifth section of said act is hereby amended so as to read as follows:

The comptroller of state shall fill the blanks for the counties, which have been left in the printed form, and shall issue to the recorder of each mining county such number of licenses as may be required for the use of said county, taking a receipt therefor, which receipt shall be recorded in a book provided for that purpose, and shall charge the same against said recorder; and said recorder shall execute a bond to the State, conditioned for the faithful performance of all the duties required of him by this act, in the sum of \$10,000, to be approved by the governor and comptroller, and filed in the office of the comptroller.

SEC. 5. The twelfth section of said act is hereby amended so as to read as follows:

The comptroller of state shall, as soon as practicable, compare the returns of the sheriff with reports of the county recorder; and if there should be any discrepancy in the statements it shall be the duty of the comptroller to immediately inform the

prosecuting attorney of the county in which such delinquent resides, who shall commence suit against such delinquent and his sureties forthwith.

SEC. 6. The fifteenth section of said act is hereby amended so as to read as follows:

It shall be the duty of the different sheriffs to return all unsold licenses to the county recorder, prior to the 15th day of December of each year, and receive new licenses, and the county recorder shall immediately transmit to the comptroller of state said licenses; such licenses so returned shall be placed to the credit of the different county recorders on the books of the comptroller, and the licenses destroyed.

SEC. 7. Immediately upon the passage of this act, the treasurer of state shall transfer to the comptroller of state all books and papers in his office connected with the issuance of foreign miners' licenses, and when entries have been made on books containing other entries of the business of the treasury department he shall deliver to the comptroller certified copies of all such entries respecting the issuance of foreign miners' licenses; and it shall be the duty of the comptroller of state to make the necessary settlement with the different officers for licenses heretofore issued.

SEC. 8. It is hereby made the duty of the treasurer of each county to which licenses have been issued to report to the comptroller of state on the first Monday of August next, and on the first Monday of every third month thereafter, the amount of money received by him on account of foreign miners' licenses.

**LAWS 1858, P. 302; APRIL 26, 1858.**

AN ACT Amendatory of and supplementary to an act entitled "An act amendatory of an act to provide for the protection of foreigners and to define their liabilities and privileges," of March 13, 1853, May 13, 1854, and March 5, 1857.

The People, etc.:

SEC. 1. No person not a citizen of the United States, or who have shall declared his intention to become such prior to the passage of this act, according to law (California Indians excepted), shall be allowed to take gold from the mines of this State, or hold a mining claim therein, unless he shall first procure and pay a license therefor, as hereinafter provided.

NOTE.—Section 2 of this act is the same as section 97, page 45.

**APPLICATION TO CALAVERAS COUNTY.**

**LAWS 1859, P. 45; FEB. 26, 1859.**

AN ACT concerning the officers of Calaveras County and the collection of poll taxes, license taxes, and foreign miners' license taxes, in said county.

The People, etc.

SEC. 1. The sheriff of Calaveras County, who is now ex officio collector of foreign miners' license tax in said county, shall cease to be collector of said tax on the 1st day of March in the year 1859; and the assessor of Calaveras County shall cease to be collector of poll taxes, either for State or county purposes, and all other taxes, licenses, or dues, on the 1st day of March, A. D. 1859; and the county treasurer of Calaveras County shall cease to be collector of State and county license or licenses, taxes, or dues, for any purpose whatever, on the 1st day of March, A. D. 1859.

SEC. 2. All foreign miners' license taxes, and all poll taxes, for either State or county purposes, or for county purposes alone, and all State and county licenses, in and for the county of Calaveras, shall, from and after the 1st day of March, A. D. 1859, be collected in each of the townships of said county by an officer in each township of said county, who shall be known as collector in said township.

SEC. 3. There shall be appointed, in each township in the county of Calaveras, by the board of supervisors, at their regular meeting, in February, A. D. 1859, a collector who shall be collector of foreign miners' license taxes, poll taxes for State and county purposes, or for county purposes alone, and State and county licenses in his

township, who shall hold his office for 12 months, and until his successor is elected and qualified, unless sooner removed from his said office in pursuance of law; and there shall be elected at the next general election, and annually thereafter, in said county of Calaveras, a collector for each township in said county, by the qualified electors of each township, to be voted for as other township officers, and who shall enter upon the duties of their office on the first Monday of March succeeding said election, and shall hold their office for 12 months, or until their successors are elected and qualified, unless sooner removed, in pursuance of law. And any vacancy occurring in said office, by death, resignation, removal, or otherwise, shall be filled by appointment of the board of supervisors of said county.

SEC. 4. Each collector shall, before he enters upon the discharge of the duties of his office, make and file his bond, with two or more sureties, in the penal sum of \$5,000, conditioned for the true and faithful performance of the duties of his office, that he will well and truly pay over to the treasurer of the county of Calaveras, on the first Monday of each month, all moneys belonging to the State of California, or county of Calaveras, or both of them, that may have been collected by him in the preceding month, from any source whatever; and that he will at the same time surrender to the county treasurer all licenses for State and county purposes in his hands unsold, and make a final settlement of the State and county license account with said treasurer for the preceding month; and that he will, at each monthly settlement with the county treasurer, immediately present the treasurer's receipts for all moneys paid to him at each monthly settlement with the county treasurer, to the clerk of the board of supervisions (supervisors), and the county auditor, and surrender to them all unsold foreign miners' licenses and poll tax receipts, and all other tax receipts received from them and make a final settlement on the first Monday of each month with the said clerk of the board of supervisors; and the bonds of said collector shall be approved by the supervisors of said county as other bonds are required by law to be approved, and it shall be the especial duty of said supervisors to be satisfied of the sufficiency of the sureties on said bonds.

SEC. 5. It shall be the duty of each collector to collect from each person within the township liable to pay the same all poll taxes for State and county purposes, and for county purposes only, and all foreign miners' license taxes, and all other license taxes, and other dues now collected by the assessor or county treasurer.

\* \* \* \* \*

#### AMENDATORY SECTION 6.

LAWS 1865-66, P. 814; APR. 2, 1866.

AN ACT to amend an act entitled "An act concerning the officers of Calaveras County, and the collection of poll taxes, license taxes, and foreign miners' license taxes in said county," approved February 26, 1859.

The People, etc.

SEC. 1. Section 6 of said act is hereby amended to read as follows:

SEC. 6. Each collector shall keep a book, in which he shall enter:

First. The name of each person or persons from whom he shall have collected any tax or license, the amount so collected, and for what particular tax or license the same was collected.

Second. The names of all persons who are engaged in any business, the carrying on of which is by law required to be done under a license from either State or county, and shall correct said list from time to time as any person or persons cease to be engaged in such business, or any person or persons shall engage in any business, trade, occupation, or profession for which, before engaging therein, they should have procured a license.

\* \* \* \* \*

SEC. 2. All acts or parts of acts inconsistent herewith are hereby repealed so far as they conflict with the provisions of this act.



ANNOTATIONS.

LICENSES.

COLLECTION IN CALAVERAS COUNTY.

This act authorizing the board of supervisors of Calaveras County to appoint a collector of foreign miners' licenses tax is constitutional and valid.

Attorney General v. Squires, 14 Cal. 12, p. 17 (1859).

This act requires the sheriff of Calaveras County, who is ex officio collector of foreign miners' license taxes, to cease to collect such tax on the 1st day of March, 1859, and provides that the board of supervisors shall appoint a collector of such taxes in each township in the county.

Attorney General v. Squires, 14 Cal. 12, p. 15 (1859).

LICENSE REQUIRED.

LAWS 1860, P. 365 (390); APR. 30, 1860. (GENERAL LAWS 1850-1864, SEC. 6239-6244.)

AN ACT to provide revenue for the support of the government of this State.

The People, etc.

\* \* \* \* \*

SEC. 64. No person, not being a citizen of the United States, or who shall not have declared his intention to become such, prior to the passage of this act (California Indians excepted), shall be allowed to take gold from the mines of this State or hold a mining claim therein, unless he shall have a license therefor as hereinafter provided.

SEC. 65. It shall be the duty of the comptroller of state to procure a sufficient number of blank licenses, which shall be substantially in the following form, and numbered consecutively, and a record thereof be filed in his office:

To be renewed upon expiration of term.	No. —. ——— District, ——— County, ———, 18—. ———, has paid four dollars mining license, which entitles him to work in the mines one month.	FOREIGN MINER'S LICENSE.  No. —. ——— County, ———, 18—.  This certifies that — has this day paid the collector of ——— district, of this county, four dollars, which entitles him to work in the mines of this State one month from date.  _____, Comptroller of State.  _____, Collector.	To be renewed upon expiration of term.
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Every subsequent license after the first shall be dated from the expiration of the former license issued by the collector to any foreign miner who shall have been engaged in mining from the expiration of the former license.

\* \* \* \* \*

SEC. 71. Any person or company hiring foreigners, or interested with them as partners, or renting, or on shares, or in any manner connected with any foreigner or foreigners, in working or in possession of any mining ground in this State, shall be

held liable for the amount of license of each and every foreigner with whom such person or company is so connected or interested; all mining ground worked or possessed, all improvements, all tools, and machinery, used in working such ground by said person or company, shall be subject to sale for the payment of said license tax, in the manner provided in section 67 of this act.

ANNOTATIONS.

LICENSES.

APPLICATION TO PUBLIC LANDS.

The license required of a foreigner by the act of 1860 (sec. 64, revenue act), only applies to foreigners working in mines on the public lands, and a foreigner employed by a private citizen or working in mines on private property is not subject to the tax.

Ah Hee v. Crippen, 19 Cal. 491, p. 497 (1861).  
 Ah Yew v. Choate, 24 Cal. 562, p. 566 (1864).

LAWS 1861, P. 419, 447; MAY 17, 1861. (GENERAL LAWS 1850-1864, SEC. 6239-49.)

AN ACT to provide revenue for the support of the government of this State.

The People, etc.

\* \* \* \* \*

FOREIGN MINERS.

SEC. 90. No person, unless he is a citizen of the United States, or shall have declared his intention to become such (California Indians excepted), shall be allowed to take, or extract, gold, silver, or other metals from the mines of this State, or hold a mining claim therein, unless he shall have a license therefor, as hereinafter provided.

NOTE.—Sec. 6239-6249 are same as sec. 90-100, Laws 1861, p. 419-447.

SEC. 91. It shall be the duty of the comptroller of state to procure a sufficient number of blank licenses, which shall be substantially in the following form; these licenses shall be numbered consecutively, and a record thereof be made and filed in his office:

No. — _____ County, _____, 18— _____ has paid four dollars, mining license, which entitles him to work in the mines one month.	To be renewed on expiration of term.	FOREIGN MINER'S LICENSE. No. — _____ County, _____, 18— This certifies that _____ has this day paid the tax collector of _____ County four dollars, which entitles him to work in the mines of this State one month from date. _____ Comptroller of State. _____ Collector.
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\* \* \* \* \*

SEC. 93. The collector shall collect the foreign miners' license tax provided for in this act, from all persons liable to pay the same, and may seize the property of any such person refusing to pay such tax, and sell the same at public auction, on one hour's notice by proclamation, and shall deliver the property to the purchaser,

together with a bill of sale with the license attached, which shall transfer the title thereof to the person paying the highest price therefor; \* \* \* All foreigners not eligible to become citizens of the United States, residing in any mining district in this State, shall be considered miners under the provisions of this act. Every subsequent license after the first, when issued to the same person, shall be dated from the expiration of the former license.

\* \* \* \* \*

SEC. 96. (Act 1857, p. 360.) Any tax collector who shall sell, or cause to be sold, any foreign miners' license with the date of the sale left blank, or which shall not be dated and signed, and blanks filled with ink by the comptroller, auditor, and the tax collector, and any person who shall make any alteration, or cause the same to be made, in any license, shall be guilty of felony, and, upon conviction, shall be fined in a sum not exceeding \$1,000, and imprisoned in the State prison not exceeding (six months) three years; and the license so sold with blank date, or which shall not be signed and dated, and blanks filled with ink, as aforesaid, or which shall have been altered, shall be received in evidence in any court of competent jurisdiction.

NOTE.—This section is substantially the same as the amendatory act of April 30, 1857, Laws 1857, p. 360, amending act of March 30, 1853.

SEC. 97. (Act 1858, p. 302.) Any person, or company, hiring foreigners, or interested with them as partners, or renting, on shares, or in any manner connected with any foreigner, or foreigners, in working, or in possession of, any mining ground in this State, shall be held liable for the amount of license of each and every foreigner with whom such person, or company, is so connected, or interested. All mining ground worked, or possessed, all improvements, all tools and machinery used in working such ground by said person, or company, shall be subject to sale for the payment of said license tax, in the manner provided in section (7) 93 of this act. The collector shall have power to require any person, or company, believed to be indebted to, or to have money, gold dust, or property of any kind, belonging to any foreigner, or in which any foreigner is interested, in his, or their, possession, or under his, or their, control, to answer, under oath, as to such indebtedness, or the possession of such money, gold dust, or other property. In case a party is indebted, or has possession or control of any moneys, gold dust, or other property as aforesaid of such foreigner, or foreigners, he may collect from such party the amount of such license, and may require the delivery of such money, gold dust, or other property, as aforesaid; and in all cases the receipt of the collector to said party shall be a complete bar to any demand made against said party, or his legal representative, for the amounts of money, gold dust, or property, embraced therein; and, provided, that whenever, from any cause whatever, the collector shall be unable to collect the foreign miners' license from any person liable to pay the same, he shall certify to the road overseer of the district, the name, or description, of the person, and the amount due; and such person shall, upon the requisition of the overseer, work upon the public roads of the district a sufficient number of days to exhaust said sum, by crediting against it one dollar for each day's work; and every person so liable to work, and refusing so to do, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by imprisonment for not less than 5, nor more than 30, days.

NOTE.—This section is substantially the same as the amendatory act of April 26, 1858, Laws 1858, p. 302. See page 41.

SEC. 98. (Act 1858, p. 302.) Any person, or company, hiring foreigners to work in the mines of this State, shall be liable for the amount of the license for each person so employed.

NOTE.—This section is the last sentence of the amendatory act of April 26, 1858, Laws 1858, p. 302.

SEC. 99. All licenses mentioned in this act, for State and county purposes (except where the entire amount received is paid into the county treasury for county pur-

poses), all poll-tax receipts, and all foreign miners' licenses, shall be issued from the comptroller's office, and such foreign miners' licenses shall be numbered, consecutively, commencing with number one, on the second Monday in November of each year; and all such licenses for State and county purposes, and all foreign miners' licenses, and all poll-tax receipts shall be signed by the comptroller of state, or by a deputy appointed by him especially for that purpose.

SEC. 100. The comptroller of state shall prepare printed forms of each class, kind, and description, of licenses, poll-tax receipts, and foreign miners' licenses, where such forms are not herein specially provided for, upon such paper and in such manner, as he shall think advisable; and he shall, from time to time, furnish such licenses and poll-tax receipts to the officers of the several counties as herein directed, when the same shall be required, and charge the respective officers therewith.

#### ANNOTATIONS.

##### MINERS' LICENSE.

1. CONSTRUCTION OF STATUTE.
2. FOREIGNER RESIDING IN MINING DISTRICT. ●

###### 1. CONSTRUCTION OF STATUTE.

The provisions of this act are substantially the same as those of the act of 1860 and must receive the same construction, and both are limited in their application to mines on public lands.

Ah Yew v. Choate, 24 Cal. 562, p. 566 (1864).

###### 2. FOREIGNER RESIDING IN MINING DISTRICT.

The license imposed by this tax can not be imposed upon a Chinaman merely because he resides in a mining district.

Ah Pong, Ex Parte, 19 Cal. 106 (1861).

##### IMPROVING ROAD.

**LAWS 1865-66, P. 374; MAR. 24, 1866.**

AN ACT to aid the county of Klamath in repairing and improving a road and trail from Trinidad to Sawyers Bar, in said county.

The People, etc.

SEC. 1. The county treasurer of Klamath County shall on the 1st day of April, A. D. 1866, and on the first day of each month thereafter, for a term of two years from and after the passage of this act, retain and set aside the State's portion of all money collected in said county arising from the sale of foreign miners' licenses during the preceding month; provided, the amount so retained and set aside shall not exceed in the aggregate the sum of \$6,000.

\* \* \* \* \*

##### REGULATIONS.

**LAWS 1865-66, P. 380; MAR. 24, 1866. (GENERAL LAWS 1864-1871, SEC. 8957-59.)**

AN ACT supplementary to the various acts now in force respecting foreign miners' licenses.

The People, etc.

SEC. 1. The county treasurer of each county to whom any foreign miners' licenses shall be issued and delivered by the comptroller of state, shall, before delivering any such license to the county auditor, countersign the same, and the county auditor shall also himself sign every such license before delivering the same to the tax collector; and, after the 15th day of June next, no foreign miners' licenses shall be delivered to any tax collector, or be used, except such as shall be signed by the county treasurer and the auditor as aforesaid.

SEC. 2. Every foreign miner's license or other license or poll tax receipt which shall be issued and forwarded or delivered by the comptroller of state to the county treasurers, pursuant to the requirements of law, shall be signed by the comptroller personally, with his own proper signature, or by such regular clerk in his office as may be by him designated and appointed for that purpose, who shall sign the same with his own proper name and signature, and with the official description "license clerk" attached, under the printed or written name or proper signature and official designation of the comptroller.

SEC. 3. The comptroller shall cause to be prepared and printed from time to time a sufficient number of blank licenses and receipts which shall conform to the provisions of this act, and shall notify and require the several county treasurers who have been furnished and charged with foreign miners' licenses to return all unsold licenses on or before the fifteenth day of June next.

Sec. 4. This act shall take effect from and after its passage.

### COUNTY FUND.

LAWS 1867-68, P. 173; MAR. 16, 1868. (General Laws, 1864-71, Secs. 9266-9270.)

AN ACT granting to the mining counties of this State the foreign miners' tax collected in said counties severally.

The People, etc.

SEC. 1. All moneys hereafter collected for foreign miners' license, except when otherwise specially appropriated by law to special use, less the percentage allowed for collection, shall be paid into the county treasury of the county in which they are collected; 10 per cent of which shall be accredited to and become a part of the county school fund, and the remainder shall be paid into the general fund of said county.

SEC. 2. Foreign miners' licenses shall be hereafter issued and signed by the county auditor and countersigned by the district attorney of the county and shall be placed in the hands of the county collector for collection in the same manner and under like regulations and restrictions as are now provided by law for the collection of foreign miners' licenses upon certificates issued by the comptroller of state.

SEC. 3. The county auditor shall keep a book, in which he shall charge the collector with all licenses issued to him from time to time, and credit him with all licenses returned and not sold by him and also credit him with the percentage due him for collecting, and for all moneys paid into the county treasury; and said collector shall be accountable on his bond for any deficiency in his accounting.

SEC. 4. The county auditor shall make a quarterly report to the board of supervisors of the county of the number of licenses issued to the collector, the number by him sold for each month, and the amount paid into the general and school funds therefor; and he shall require the collector, on the first Monday of each month, to render his account of sales for the previous month, and to settle his accounts with the county therefor.

SEC. 5. All acts and parts of acts in conflict with the provisions of this act, except acts heretofore passed granting the foreign license funds for counties for specific purposes, are hereby repealed; and in all cases of special grants, said licenses shall be collected in the manner and under the authority of this act.

SEC. 6. This act shall take effect 60 days after its passage.

### COUNTY FUND—PLACER COUNTY.

LAWS 1867-68, P. 563; MAR. 30, 1868.

AN ACT concerning the foreign miners' license tax in the county of Placer.

The People, etc.

SEC. 1. The treasurer of Placer County is hereby authorized and directed to place the money hereafter received from the foreign miners' license, which was granted

said county by an act entitled "An act granting to the mining counties of this State the foreign miners' tax collected in said counties, severally, approved March 16, 1868, in the following funds in the treasury of said county, to wit: Fifty per cent thereof in the common school fund and 50 per cent thereof in the railroad fund.

SEC. 2. This act shall take effect from and after its passage.

#### DEALING IN GOLD DUST.

LAWS 1852, P. 90; MAY 4, 1852. LAWS 1854, P. 88-91; MAY 15, 1854. (GENERAL LAWS 1850-1864, SEC. 6223.)

AN ACT concerning licenses.

The People, etc.

SEC. 1. Licenses shall be obtained by the person or persons, private association or corporation, doing business in this State, engaged in any one or all of the following occupations, to wit: \* \* \* In buying or selling gold dust, gold or silver coin or bullion, or engaged as common carriers in transmitting or conveying gold dust, gold or silver coin or bullion, from any place in this State to any place without this State, or from one to another place within this State, for profit, \* \* \* or engaged in receiving general or special deposits of gold dust, gold or silver coin or bullion, for profit; said licenses to be obtained as hereinafter specified.

\* \* \* \* \*

## MINERS' LIENS.

### CREATION OF MINER'S LIEN.

**LAWS 1853, P. 202; MAY 17, 1853. (COMPILED LAWS 1850-1853, P. 811.)**

AN ACT supplementary to "An act to provide for the lien of mechanics, and others," passed April 12, 1850.

The People, etc.

NOTE.—The original act did not in terms apply to mines, and is not given. This act is amended.

SEC. 1. The act entitled "An act to provide for the lien of mechanics, and others," passed April 12, 1850, shall be extended so as to include in its provisions bridges, ditches, flumes, or aqueducts, constructed to create hydraulic power, or for mining purposes; and all master builders, mechanics, lumber merchants, contractors, journeymen, or laborers, and all other persons performing labor, or furnishing materials for, or employed in the construction or repair of, any bridge, ditch, flume or aqueduct aforesaid, shall have the same lien, subject to the same provisions and regulations as in and by said act, as is provided for liens upon buildings and wharves.

**LAWS 1857, P. 84; MAR. 18, 1857.**

AN ACT supplementary to "An act for securing liens to mechanics and others," passed April 19, 1856

The People, etc.

SEC. 1. An act entitled "An act for securing liens to mechanics and others, passed April 19, 1856," shall be and is hereby extended, so as to include in its provisions bridges, ditches, flumes or aqueducts, to create hydraulic power, or for mining purposes and all master builders, mechanics, lumber merchants, contractors, journeymen or laborers, and all other persons performing labor, or furnishing materials for, or employed in the construction or repair of any bridge, ditch, flume or aqueduct aforesaid, shall have the same lien, subject to the same provisions and regulations, as in and by said act are provided for liens upon buildings, wharves, and other superstructures.

NOTE.—The original act did not in terms apply to mines, and is not given.

### MINERS' LIENS—REVISED ACT.

**LAWS 1862, P. 384; APR. 26, 1862. (GENERAL LAWS 1850-1864, SEC. 4471-4495.)**

AN ACT in relation to liens of mechanics and others.

The People, etc.

SEC. 1. All original contractors, artisans, machinists, builders, mechanics, lumber merchants, and other persons making original contracts for the construction, or part of the construction, repair, or furnishing materials for the construction or repair, of any building, wharf, superstructure, or any bridge, ditch, flume, tunnel, fence, machinery, or aqueduct, to create hydraulic power, or for mining purposes, shall have a lien upon said materials, and upon the building, wharf, superstructure, bridge, ditch, flume, tunnel, fence, machinery, or aqueduct aforesaid, for the work and labor done, or materials furnished by each, respectively, upon the terms, for the uses and benefits and upon the trusts, hereinafter mentioned, to the extent of the original contract price; and such contract shall operate as a lien in favor of all subcontractors, laborers, and material men, who shall perform labor, or furnish material for the construction or repair of such building, wharf, superstructure, bridge, ditch, flume, tunnel, fence, machinery, or aqueduct, to the extent of the original contract price.

NOTE.—Repealed by act of March 30, 1868, Laws 1867-68, p. 589. See page 52.

SEC. 2. All such contracts shall be in writing when the amount agreed to be paid thereunder exceeds \$200 and shall be subscribed by the parties to be charged thereby, otherwise they shall be wholly void, and no recovery shall be had thereon, by either party thereto.

SEC. 3. The lien created by such contract shall be and inure primarily to the benefit of all persons, who, as employees of the original contractor, or his assigns, shall perform work and labor, or furnish material for the construction or repair of any such building, wharf, superstructure, bridge, ditch, flume, tunnel, fence, machinery, or aqueduct, pro rata, according to their respective rights and interests. After the payment of such material men, workmen, and laborers, such lien shall inure to the benefit of the original contractor or his assigns.

SEC. 4. The land upon which any building, wharf, superstructure, bridge, ditch, flume, tunnel, fence, machinery, or aqueduct, aforesaid, shall be erected or constructed together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof, shall also be subject to the lien created by this act, if, at the time the contract was made, and the work upon such building, wharf, superstructure, bridge, ditch, flume, tunnel, fence, machinery, or aqueduct was commenced, or the materials for the same had been commenced to be furnished, the said land belonged to the person who caused the said building, wharf, superstructure, bridge, ditch, flume, tunnel, fence, machinery, or aqueduct to be constructed or repaired. But if such person owned less than a fee simple estate in such land, then only his interest therein shall be subject to such lien. And the liens created by this act shall be preferred to every other lien or encumbrance which shall have attached upon said property subsequent to the time at which the work was commenced, or the materials furnished. But nothing herein contained shall be construed as affecting any valid encumbrance upon the said land, duly made and recorded, before said work was commenced, or materials furnished, unless the original contract shall have been acknowledged or proved, and recorded, in the same manner as conveyances are required to be acknowledged, proved, and recorded, prior to the recording of such valid incumbrance, in which case the lien of such original contract shall take precedence from the time of its record.

\* \* \* \* \*

SEC. 16. Whenever any materials shall have been furnished and delivered by any material man, to be used in the construction or repair of any building, wharf, superstructure, bridge, ditch, flume, tunnel, fence, machinery, or aqueduct aforesaid, such materials shall not be subject to attachment, execution, or other legal process, to enforce any debt due by the purchaser of such materials, so long as, in good faith, the same are about to be applied to the construction or repair of such building, wharf, superstructure, bridge, ditch, flume, tunnel, fence, machinery, or aqueduct.

SEC. 17. Whenever any person shall proceed to erect, or construct, or repair, or cause to be constructed, erected, or repaired any building, wharf, superstructure, bridge, ditch, flume, tunnel, fence, machinery, or aqueduct aforesaid, without making a contract in writing, for such construction or repairs, every person who shall perform labor or furnish materials for such building, wharf, superstructure, bridge, ditch, flume, tunnel, fence, machinery, or aqueduct shall have a lien to the full extent of all labor performed upon, or materials furnished by him for the use of, such building, wharf, superstructure, bridge, ditch, flume, tunnel, fence, machinery, or aqueduct upon the interest of the person causing the same to be constructed or repaired, on the thing so caused to be constructed or repaired, and on the land for a convenient space around the same, or so much as may be required for the convenient use and occupation thereof, which lien shall relate to the time of the commencement of the work. It may be enforced in the same manner as other liens herein above provided for.

SEC. 18. Any person or persons who shall fraudulently and wilfully induce or persuade any lumber dealer, or other material man, to sell to him or them, upon credit,



any lumber or other building materials, to be used in the erection, construction, or repair of any building, wharf, superstructure, bridge, ditch, flume, tunnel, fence, machinery, or aqueduct aforesaid, not intending, at the time of said sale, so to use the same, but meaning to apply the same to other uses and purposes, shall be guilty of a misdemeanor, and, on conviction, shall be punished, by imprisonment in the county jail, for a term not exceeding one year, or by fine, not exceeding \$500 or by both such fine and imprisonment.

SEC. 19. No lien provided for in this act shall bind any building, wharf, superstructure, bridge, ditch, flume, tunnel, fence, machinery, or aqueduct aforesaid for a longer period than six months after the completion or repair thereof, unless suit be brought in a proper court, within that time, to enforce the same; or, if a credit be given, then six months after the expiration of such credit. But no lien shall be continued in force for a longer time than two years from the time the work is completed or the materials furnished, by any agreement to give credit.

\* \* \* \* \*

SEC. 25. Every subcontractor, or other person other than the original contractor, who shall acquire any lien under the provisions of this act, shall, within 30 days after the completion or repair of any such building, wharf, or superstructure, bridge, ditch, flume, tunnel, fence, machinery, or aqueduct file in the office of the county recorder a just and true account of the demand due to him, after deducting all proper credits and offsets, and shall verify the same by his own oath, or the oath of some other person, and shall also file at the same time a description of the property to be charged by said lien, and in default thereof shall lose his lien. The original contractor having a lien shall file the such (said) verified account and description within sixty days after the completion or repair of such building, wharf, superstructure, bridge, ditch, flume, tunnel, fence, machinery, or aqueduct, otherwise the benefit of such lien, so far as he is concerned, shall be lost, but the same shall continue and remain in force, for the benefit of all other parties, in the same manner and to the same extent as if the original contractor had filed such verified account and description within the time aforesaid.

#### AMENDING SECTION 25.

LAWS 1863-64, P. 269; APR. 1, 1864.

AN ACT to amend an act entitled "An act in relation to liens of mechanics and others," approved April 26, 1862.

The People, etc.

SEC. 3. Section 25 of said act is hereby amended so as to read as follows:

SEC. 25. Every subcontractor, or other person other than the original contractor who shall acquire any lien under the provisions of this act, shall, within 30 days after the completion or repair of any such building, wharf, or superstructure, bridge, ditch, flume, tunnel, fence, machinery, or aqueduct, have a just and true account of the demand due to him, after deducting all proper credits and offsets, verified by his own oath or the oath of some one on his behalf, recorded in the office of the recorder of the county, and shall at the same time have a description of the property sought to be charged by said lien recorded with the same, and in default of such record such lien shall be deemed waived and lost. The original contractor shall have a like verified account and description so recorded within 60 days after the completion or repair as aforesaid, otherwise the benefit of such lien, so far as he is concerned, shall be lost, but the same shall continue and remain in force for the benefit of all other parties in the same manner and to the same extent as if the original contractor had had such verified account and description recorded within the time aforesaid; Provided, They shall have complied with the provisions of the former part of this section,

**AMENDATORY ACT.****LAWS 1863-64, P. 465; APR. 4, 1864.**

AN ACT amendatory of and supplementary to "An act in relation to liens of mechanics and others," approved April 26, 1862.

The People, etc.

SEC. 1. All original contractors, artisans, machinists, builders, mechanics, lumber merchants, and other persons making original contracts for the construction, repair, or furnishing materials for the construction or repairs of any wagon road or railroad, shall have a lien upon said material, and upon the wagon road or railroad aforesaid, for the work and labor done or materials furnished by each, respectively, upon the terms, for the uses and benefits, and upon the trusts hereinafter mentioned, to the extent of the original contract price; and such contract shall operate as a lien in favor of all subcontractors, laborers, and material men, who shall perform labor or furnish material for construction or repair of such wagon road or railroad, to the extent of the original contract price; and all the provisions of an act entitled "An act in relation to liens of mechanics and others," approved April 26, 1862, are hereby declared to be in full force and effect in so far as it relates to wagon roads and railroads, the same as to any building, wharf, superstructure, bridge, ditch, flume, tunnel, fence, machinery, or aqueduct, as though they had been in the original bill relating to the liens of mechanics and others, approved April 26, 1862.

SEC. 2. This act shall be in force from and after its passage.

**NEW ACT WITH REPEALING CLAUSE.****LAWS 1867-68, P. 589; MAR. 30, 1868. (SECS 1183, 1185-1190, CODE CIVIL PROCEDURE.)**

AN ACT for securing liens of mechanics and others.

The People, etc.

SEC. 1. (Sec. 1183, Code Civil Procedure. Amendments 1873-74, p. 49.) Every mechanic, artisan, machinist, builder, contractor, lumber merchant, miner, laborer, and other person performing labor upon, or furnishing materials of any kind to be used in the construction, alteration, or repair, either in whole or in part, of any mining claim, building, wharf, bridge, ditch, flume, tunnel, fence, machinery, railroad, wagon road, aqueduct to create hydraulic power for mining or other purposes, or any other structure or superstructure, or who shall perform labor in any mining claim, shall have a lien upon the same for the work or labor done or materials furnished by each respectively, whether done or furnished at the instance of the owner of the building or other improvement, or his agent; and every contractor, subcontractor, architect, builder, or other person having charge of any mining, or of the construction, alteration, or repair, either in whole or in part, of any building or other improvement, as aforesaid, shall be held to be the agent of the owner for the purposes of this act.

SEC. 2. (Sec. 1185, Code Civil Procedure.) The land upon which any building or other improvement as aforesaid shall be constructed, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof, shall also be subject to the liens created by this act, if, at the time the work was commenced or the materials for the same had commenced to be furnished, the said land belonged to the person who caused said building or other improvement to be constructed, altered, or repaired; but if such person owned less than a fee simple estate in such land, then only his interest therein shall be subject to such lien; and in case such interest shall be a leasehold interest, and the holder thereof shall have forfeited his right thereto, the purchaser of such building or improvement and leasehold term, or so much thereof as remains unexpired, at any sale under the provisions of this act, shall be held to be the assignee of such leasehold term, and as such shall be entitled to pay the lessor all arrears of rent or other money and cost due under said lease,

unless the lessor shall have regained possession of the said land and property, or obtained judgment for the possession thereof, prior to the commencement of the construction, alteration, or repair of the building or other improvement thereon; in which event said purchaser shall have the right only to remove the building or other improvement within 30 days after he shall have purchased the same; and the owner of the land shall receive the rent due him, payable out of the proceeds of the sale, according to the terms of the lease, down to the time of such removal.

SEC. 3. (Sec. 1186, Code Civil Procedure.) All liens created by this act upon any land or mining claim shall be preferred to any lien, mortgage, or other incumbrance which may have attached to said land or mining claim subsequent to the time when the building or other improvement was commenced or the materials were begun to be furnished; also, to any lien, mortgage, or other incumbrance which was unrecorded at the time when said building or other improvement was commenced, or the materials for the same were commenced to be furnished; and all liens created by this act upon any building or other improvement shall be preferred to all prior liens, mortgages, or other incumbrances upon the land upon which said building or other improvement shall have been constructed or situated when altered or repaired; and in enforcing such lien such building or other improvement may be sold separately from said land; and when so sold the purchaser may remove the same, within a reasonable time thereafter, not to exceed 30 days, upon the payment to the owner of the land of a reasonable rent for its use from the date of his purchase to the time of removal: Provided, That if such removal be prevented by legal proceedings, said 30 days shall not begin to run until the final determination of such proceedings in the court of first resort, or in the appellate court, if appeal be taken.

SEC. 4. Every building or other improvement mentioned in the first section of this act, constructed upon any lands with the knowledge of the owner or the person having or claiming any interest therein, shall be held to have been constructed at the instance of such owner or person having or claiming any interest therein; and the interest owned or claimed shall be subject to any lien filed in accordance with the provisions of this act, unless such owner or person having or claiming an interest therein shall, within 3 days after he shall have obtained knowledge of the construction, alteration, or repair, or the intended construction, alteration, or repair, give notice that he will not be responsible for the same, by posting a notice in writing to that effect in some conspicuous place upon said land, or upon the building or other improvement situated thereon.

SEC. 5. (Sec. 1187, Code Civil Procedure.) It shall be the duty of every original contractor within 60 days after the completion of his contract, and of every mechanic, artisan, machinist, builder, lumber merchant, miner, laborer, or other person, save the original contractor, claiming the benefit of this act, within 30 days after the completion of any building, mining claim, or other improvement, or the performance of any labor in any mining claim, or after the completion of the alteration or repair thereof, to file with the county recorder of the county in which such building or other improvement, or some part thereof, shall be situated, a claim containing a true statement of his demand after deducting all just credits and offsets, with the name of the owner or reputed owner, if known, and also the name of the person by whom he was employed or to whom he furnished the material, and also a description of the property to be charged with said lien sufficient for identification, which claim shall be verified by the oath of himself or of some other person.

SEC. 6. (Sec. 1189, Code Civil Procedure.) The county recorder shall record said claim in a book kept by him for that purpose, which record shall be indexed as deeds and other conveyances are required by law to be indexed, and for which he shall receive the same fees as are allowed by law for recording deeds and other instruments.

SEC. 7. (Sec. 1188, Code Civil Procedure.) In every case in which one claim shall be filed under the provisions of this act against two or more buildings, mining

claims, or other improvements owned by the same person, the person filing such joint claim shall, at the same time, designate the amount due to him on each of such buildings, mining claims, or other improvements; otherwise, such claim shall be postponed to other lienholders; and the lien of such claimant shall not extend beyond the amount so designated, as against other creditors having liens by judgment, mortgage, or otherwise upon either of such buildings or other improvements, or upon the land upon which the same are situated; provided, that no joint claim shall be filed upon two or more buildings unless they are contiguous to or adjoining each other.

SEC. 8. (Sec. 1190, Code Civil Procedure.) No lien provided for in this act shall bind any building, mining claim, or other improvement for a longer period than 90 days after the same shall have been filed, unless suit be brought in a proper court within that time to enforce the same; or, if a credit be given, then 90 days after the expiration of such credit; but no lien shall be continued in force for a longer time than two years from the time the work is completed by any agreement to give credit.

\* \* \* \* \*

SEC. 12. Whenever any mechanic, artisan, machinist, builder, lumber merchant, contractor, miner, laborer, or other person shall have furnished or procured any materials for use in the construction, alteration, or repair of any building or other improvement, such materials shall not be subject to attachment, execution, or other legal process to enforce any debt due by the purchaser of such materials, except a debt due for the purchase money thereof, so long as in good faith the same are about to be applied to the construction, alteration, or repair of such building, mining claim, or other improvement.

\* \* \* \* \*

SEC. 14. The words "building or other improvement," whenever the same are used in this act, shall be held to include and apply to any wharf, bridge, ditch, flume, tunnel, fence, machinery, railroad, wagon road, aqueduct to create hydraulic power or for mining or other purposes, and all other structures (and) superstructures, whenever the same can be made applicable thereto; and the words "construction, alteration, or repair," whenever the same are used therein, shall be held to include partial construction and all repairs done in and upon any building or other improvement.

\* \* \* \* \*

SEC. 17. An act entitled "An act for securing liens of mechanics and others," approved April 27, 1855; an act entitled "An act for securing liens of mechanics and others," approved April 19, 1856; an act entitled "An act in addition to and explanatory of an act for securing liens to mechanics and others," approved April 19, 1856, approved March 4, 1857; an act entitled "An act supplementary to an act for securing liens to mechanics and others," passed April 19, 1856, approved March 18, 1857; an act entitled "An act to amend an act for securing liens to mechanics and others," passed April 19, 1856, approved April 22, 1858; an act entitled "An act to amend an act entitled "An act for securing liens of mechanics and others," passed April 19, 1856, approved May 17, 1861; an act entitled "An act in relation to liens of mechanics and others," approved April 26, 1862, are hereby repealed.

NOTE.—These repealed acts for the most part relate to mechanics, and do not name miners.

**AMENDATORY ACT.**

**LAWS 1880, P. 62; APR. 15, 1880. (SEC. 1183, CODE CIVIL PROCEDURE).**

SEC. 1183. Mechanics, material men, artisans, architects, and laborers of every class performing labor upon or furnishing material to be used in the construction, alteration, or repair of any mining claim, building, wharf, bridge, ditch, flume, aqueduct, tunnel, fence, machinery, railroad, wagon road, or other structure, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished. This lien shall not be affected

by the fact that no money is due or to become due, on any contract made by the owner with any other party.

**LAWS 1887, P. 152; MAR. 15, 1887. (SEC. 1183-1184-1187, CODE CIVIL PROCEDURE).**

AN ACT to amend sections 1183, 1184, 1187, 1191, and to repeal section 1203 of an act of the legislature of the State of California entitled "An act to establish a code of civil procedure," approved March 11, 1872, all relating to liens of mechanics and others.

The People, etc.

SEC. 1. Section 1183 of the Code of Civil Procedure is amended so as to read as follows:

1183. Mechanics, material men, contractors, subcontractors, artisans, architects, machinists, builders, miners, and all persons and laborers of every class, performing labor upon or furnishing materials to be used in the construction, alteration (addition to), or repair, either in whole or in part, of any building, wharf, bridge, ditch, flume, aqueduct (well), tunnel, fence, machinery, railroad, wagon road, or other structure, shall have a lien upon the property upon which they have bestowed labor, or furnished materials, for the value of such labor done and materials furnished, whether at the instance of the owner or of any other person acting by his authority, or under him, as contractor or otherwise; and any person who performs labor in any mining claim or claims, has a lien upon the same, and the works owned and used by the owners for reducing the ores from such mining claim or claims, for the work or labor done, or materials furnished by each, respectively, whether done or furnished at the instance of the owner of the building or other improvement, or his agent; and every contractor, subcontractor, architect, builders, or other persons having charge of any mining, or the construction, alteration, addition to, or repair, either in whole or in part, of any building or other improvement as aforesaid, shall be held to be the agent of the owner, for purposes of this chapter. \* \* \*

SEC. 2. Section 1184 of the Code of Civil Procedure is hereby amended so as to read as follows:

SEC. 1184. \* \* \* Any of the persons mentioned in section 1183, except the contractor, may at any time give to the (reputed) owner a written notice that they have performed labor or furnished materials, or both, to the contractor, or other person acting by authority of the (reputed) owner, or that they have agreed to do so, stating in general terms the kind of labor and materials, and the name of the person to or for whom the same was done or furnished, or both, and the amount in value, as near as may be, of that already done or furnished, or both, and of the whole agreed to be done or furnished, or both. Such notice may be given by delivering the same to the (reputed) owner personally, or by leaving it at his residence or place of business, with some person in charge, or by delivering it to his architects, or by leaving it at their residence or place of business, with some person in charge, or by posting it in a conspicuous place upon the mining claim (building, wharf, bridge, ditch, flume, aqueduct, tunnel, fence, machinery, railroad, wagon road, or other structure), or improvement. \* \* \*

SEC. 3. Section 1187 of the Code of Civil Procedure is amended so as to read as follows:

SEC. 1187. Every original contractor, within 60 days after the completion of his contract, and every person, save the original contractor, claiming the benefit of this chapter, must, within 30 days after the completion of any building, improvement, or structure, or after the completion of the alteration (addition to), or repair thereof, or the performance of any labor in a mining claim, file for record with the county recorder of the county in which such property, or some part thereof, is situated, a claim containing a statement of his demand, after deducting all just credits and offsets, with the name of the owner or reputed owner, if known, and also the name of the person by whom he was employed, or to whom he furnished the materials, with a

statement of the terms, time given, and conditions of his contract, and also a description of the property to be charged with the lien, sufficient for identification, which claim must be verified by the oath of himself, or of some other person; \* \* \*

**SECTION 1183, AMENDED BY ACTS MARCH 1, 1899, MARCH 5, 1903,  
AND MAY 1, 1911.**

**LAWS 1899, P. 33; MAR. 1, 1899. (SEC. 1183, CODE CIVIL PROCEDURE.)**

AN ACT to amend section 1183 of the Code of Civil Procedure relating to liens of mechanics and others upon real property.

The People, etc.

SEC. 1. Section 1183 of the Code of Civil Procedure of the State of California is hereby amended to read as follows:

SEC. 1183. Mechanics, material men, contractors, subcontractors, artisans, architects, machinists, builders, miners, and all persons and laborers of every class, performing labor upon or furnishing materials to be used in the construction, alteration, addition to, or repair, either in whole or in part, of any building, wharf, bridge, ditch, flume, aqueduct, well, tunnel, fence, machinery, railroad, wagon road, or other structure, shall have a lien upon the property upon which they have bestowed labor or furnished materials, for the value of such labor done and material furnished, whether at the instance of the owner or of any other person acting by his authority, or under him, as contractor or otherwise; and any person who performs labor in any mining claim or claims has a lien upon the same and the works owned and used by the owners for reducing the ores from such mining claim or claims, for the work or labor done, or materials furnished by each, respectively, whether done or furnished at the instance of the owner of the building or other improvement, or his agent, and every contractor, subcontractor, architect, builder, or other person having charge of any mining, or of the construction, alteration, addition to, or repair, either in whole or in part, of any building or other improvement as aforesaid, shall be held to be the agent of the owner for the purposes of this chapter. In case of a contract for the work, between the reputed owner and his contractor, the lien shall extend to the entire contract price, and such contract shall operate as a lien in favor of all persons, except the contractor, to the extent of the whole contract price; and after all such liens are satisfied, then as a lien for any balance of the contract price in favor of the contractor. All such contracts shall be in writing when the amount agreed to be paid thereunder exceeds \$1,000, and shall be subscribed by the parties thereto, and the said contract, or a memorandum thereof, setting forth the names of all the parties to the contract, a description of the property to be affected thereby together with a statement of the general character of the work to be done, the total amount to be paid thereunder, and the amounts of all partial payments, together with the times when such payments shall be due and payable, shall, before the work is commenced, be filed in the office of the county recorder of the county, or city and county, where the property is situated, who shall receive \$1 for such filing; otherwise, they shall be wholly void and no recovery shall be had thereon by either party thereto; and, in such case, the labor done and materials furnished by all persons aforesaid, except the contractor shall be deemed to have been done and furnished at the personal instance of the owner, and they shall have a lien for the value thereof.

**SEC. 1183, CODE CIVIL PROCEDURE. (LAWS 1903, P. 84; MAR. 5, 1903.)**

AN ACT to amend an act entitled "An act to establish a code of civil procedure," approved March 11, 1872, by amending section 1183 thereof, relating to liens of mechanics and others upon real property.

The People, etc.

SEC. 1. Section 1183 of an act entitled, "An act to establish a code of civil procedure," approved March 11, 1872, is hereby amended so as to read as follows:

SEC. 1183. Mechanics, materialmen, contractors, subcontractors, artisans, architects, machinists, builders, miners, and all persons and laborers of every class per-

forming labor upon or furnishing materials to be used in the construction, alteration, addition to, or repair, either in whole or in part, of any building, wharf, bridge, ditch, flume, aqueduct, well, tunnel, fence, machinery, railroad, wagon road, or other structure shall have a lien upon the property upon which they have bestowed labor or furnished materials, for the value of such labor done and materials furnished, whether at the instance of the owner, or of any other person acting by his authority or under him, as contractor or otherwise; and any person who performs labor in any mining claim or claims, or in or upon any real property worked as a mine, either in the development thereof or in working thereon by the subtractive process, has a lien upon the same, and the works owned and used by the owners for reducing the ores from such mining claim or claims, or real property so worked as a mine, for the work or labor done or materials furnished by each respectively, whether done or furnished at the instance of the owner of such mining claim or claims or real property worked as a mine or of the building, or other improvement, or his agent; and every contractor, subcontractor, architect, builder, or other person having charge of any mining or work and labor performed in and about such mining claim or claims, or real property worked as a mine, or the construction, alteration, addition to, or repair, either in whole or in part of any building or other improvement as aforesaid, or of such mining claim or claims, either as lessee or under a working bond or contract thereon, with the privilege of purchase, or otherwise, shall be held to be the agent of the owner for the purposes of this chapter. In case of a contract for the work between the reputed owner and his contractor, the lien shall extend to the entire contract price, and such contract shall operate as a lien in favor of all persons, except the contractor, to the extent of the whole contract price, and after all such liens are satisfied, then as a lien for any balance of the contract price in favor of the contractor. All such contracts shall be in writing when the amount agreed to be paid thereunder exceeds \$1,000, and shall be subscribed by the parties thereto; and the said contract, or a memorandum thereof, setting forth the names of all the parties to the contract, a description of the property to be affected thereby, together with a statement of the general character of the work to be done, the total amount to be paid thereunder, and the amounts of all partial payments, together with the times when such payments shall be due and payable, shall, before the work is commenced, be filed in the office of the county recorder of the county, or city and county, where the property is situated, who shall receive \$1 for such filing; otherwise, they shall be wholly void, and no recovery shall be had thereon by either party thereto; and in such case the labor done and materials furnished by all persons aforesaid, except the contractor, shall be deemed to have been done and furnished at the personal instance of the owner, and they shall have a lien for the value thereof.

**LAWS 1911, P. 1313; MAY 1, 1911. (SEC. 1183-1185, 1187, 1190, 1192-1195, 1197, 1202, 1203, Code Civil Procedure.)**

AN ACT to amend sections 1183, 1184, 1185, 1187, 1190, 1192, 1193, 1194, 1195, 1197, 1202, and 1203 of the Code of Civil Procedure of the State of California and to repeal sections 1183a, 1200, and 1203a of said code, all relating to the liens of mechanics and others.

The People, etc.

SEC. 1. Section 1183 of the Code of Civil Procedure is hereby amended to read as follows:

SEC. 1183. Mechanics, material men, contractors, subcontractors, artisans, architects, machinists, builders, miners, teamsters, and draymen, and all persons and laborers of every class performing labor upon, or bestowing skill or other necessary services, or furnishing materials to be used or consumed in or furnishing appliances, teams, and power contributing to the construction, alteration, addition to or repair, either in whole or in part, of any building, wharf, bridge, ditch, flume, aqueduct, well, tunnel, fence, machinery, railroad, wagon road, or other structure, shall have a lien upon the property upon which they have bestowed labor or furnished materials for

the value of such labor done and materials furnished and for the value of the use of such appliances, teams, or power, whether at the instance of the owner, or of any other person acting by his authority or under him, as contractor or otherwise; and every contractor, subcontractor, architect, builder, or other person having charge of the construction, alteration, addition to or repair either in whole or in part of any building, or other improvement as aforesaid shall be held to be the agent of the owner for the purposes of this chapter. Any person who performs labor in any mining claim or claims, or in or upon any real property worked as a mine, either in the development thereof or in working thereon by the subtractive process or furnishes materials to be used or consumed therein, has a lien upon the same and the works owned and used by the owners for milling or reducing the ores from the same, for the value of the work or labor done or materials furnished by each respectively, whether done or furnished at the instance of the owner of such mining claim or claims or real property worked as a mine, or his agent, and every contractor, subcontractor, superintendent, or other person having charge of any mining or work or labor performed in and about such mining claim or claims or real property worked as a mine, either as lessee or under a working bond or contract thereon shall be held to be the agent of the owner for the purposes of this chapter. The liens in this chapter provided for shall be direct liens, and shall not in the case of any claimants, other than the contractor be limited, as to amount, by any contract price agreed upon between the contractor and the owner except as hereinafter provided; \* \* \* \* it is the intent and purpose of this section to limit the owner's liability, in all cases, to the measure of the contract price where he shall have filed or caused to be filed in good faith with his original contract a valid bond with good and sufficient sureties in the amount and upon the conditions as herein provided. It shall be lawful for the owner to protect himself against any failure of the contractor to perform his contract and make full payment for all work done and materials furnished thereunder by exacting such bond or other security as he may deem satisfactory.

SEC. 2. Section 1184 of the Code of Civil Procedure is hereby amended to read as follows:

SEC. 1184. Any of the persons mentioned in the preceding section, except the contractor, may at any time give to the owner a notice that they have performed labor or furnished materials, or both, to the contractor or other person acting by the authority of the owner, or that they have agreed to do so, stating in general terms the kind of labor and materials and the name of the person to or for whom the same was done or furnished, or both, and the amount in value, as near as may be, of that already done or furnished, or both, and of the whole agreed to be done or furnished, or both, and any of said persons who shall on the written demand of the owner refuse to give such notice shall thereby deprive himself of the right to claim a lien under this chapter. \* \* \*

SEC. 3. Section 1185 of the Code of Civil Procedure is hereby amended to read as follows:

SEC. 1185. The land upon which any building, improvement, well, or structure is constructed, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof, to be determined by the court on rendering judgment, is also subject to the lien, if at the commencement of the work, or of the furnishing of the material for the same, the land belonged to the person who caused said building, improvement, well, or structure to be constructed, altered, or repaired, but if such person, owned less than fee simple estate in such land, then only his interest therein is subject to such lien, except as provided in section 1192 of this code.

(Section 1186, Code Civil Procedure. This section not changed since original code. See page 53.)



SEC. 4. Section 1187 of the Code of Civil Procedure is hereby amended to read as follows:

SEC. 1187. Every original contractor, claiming the benefit of this chapter, within 60 days after the completion of his contract, and every person save the original contractor claiming the benefit of this chapter, within 30 days after he has ceased to labor or has ceased to furnish materials, or both; or at his option, within 30 days after the completion of the original contract, if any, under which he was employed, must file for record with the county recorder of the county or city and county in which such property or some part thereof is situated, a claim of lien containing a statement of his demand after deducting all just credits and offsets, with the name of the owner or reputed owner, if known, also the name of the person by whom he was employed, or to whom he furnished the materials, with a statement of the price, if any, agreed upon for the same and when payable, and of the work agreed to be done and when the same was to be done, if agreed upon, and also a description of the property to be charged with the lien, sufficient for identification, which claim must be verified by the oath of himself or of some other person. \* \* \*

(Section 1188, Code Civil Procedure. This section not changed since original code. See page 53.)

(Section 1189, Code Civil Procedure. This section not changed since original code. See page 53.)

SEC. 5. Section 1190 of the Code of Civil Procedure is hereby amended to read as follows:

SEC. 1190. No lien provided for in this chapter binds any property for a longer period than 90 days after the same has been filed, unless proceedings be commenced in a proper court within that time to enforce the same; or, if a credit be given, then 90 days after the expiration of such credit, but no lien continues in force for a longer time than 1 year from the time the work is completed, by any agreement to give credit, and in case such proceedings be not prosecuted to trial within two years after the commencement thereof, the court may in its discretion dismiss the same for want of prosecution, and in all cases the dismissal of such action (unless it be expressly stated that the same is without prejudice) or a judgment rendered therein that no lien exists, shall be equivalent to the cancellation and removal from the record of such lien.

(Section 1191, Code Civil Procedure. This section has no application to mining or mining claims.)

SEC. 6. Section 1192 of the Code of Civil Procedure is hereby amended to read as follows:

SEC. 1192. Every building or other improvement or work mentioned in any of the preceding sections of this chapter constructed, altered, or repaired upon any land with the knowledge of the owner or of any person having or claiming any estate therein, and the work or labor done or materials furnished mentioned in any of said sections with the knowledge of the owner or persons having or claiming any estate in the land, shall be held to have been constructed, performed, or furnished at the instance of such owner or person having or claiming any estate therein, and such interest owned or claimed shall be subject to any lien filed in accordance with the provisions of this chapter, unless such owner or person having or claiming any estate therein shall, within 10 days after he shall have obtained knowledge of such construction, alteration or repair, or work or labor, give notice that he will not be responsible for the same by posting a notice in writing to that effect in some conspicuous place upon the property, and shall also, within the same period, file for record a verified copy of said notice in the office of the county recorder of the said county in which said property or some part thereof is situated. Said notice shall contain a description of the property affected thereby sufficient for identification, with the name and the nature of the title or interest of the person giving the same, said copy so recorded may be verified by anyone having a knowledge of the facts, on behalf of the owner or person for whose protection the notice is given.

SEC. 7. Section 1193 of the Code of Civil Procedure is hereby amended to read as follows:

SEC. 1193. Any contractor shall be entitled to recover, upon a lien filed by him, only such amount as may be due him according to the terms of his contract, after deducting all claims of other parties for work done and materials furnished as aforesaid, and embraced within his contract; and in all cases where a lien shall be filed under this act for work done or for materials furnished to any contractor, he shall defend any action brought thereon at his own expense; and during the pendency of such action, the owner may withhold from the contractor the amount of money for which such lien is filed; and in case of judgment against the owner or his property upon the lien, the said owner shall be entitled to deduct from any amount due, or to become due by him to the contractor, the amount of such judgment and costs; and if the amount of such judgment and costs shall exceed the amount due by him to the contractor, or if the owner shall have settled with the contractor in full, he shall be entitled to recover back from the contractor, or his bondsmen or sureties on any bond given for the faithful performance of his contract, any amount so paid by him, the said owner, in excess of the contract price, and for which the contractor was originally the party liable. No act done by such owner in compliance with any of the provisions of this chapter shall be held to be a prevention of the performance of any such contract by the contractor, or to have exonerated the sureties on such or any bond given for faithful performance, or for the payment of liens of persons performing labor or furnishing materials, or both; provided, that such act was done in good faith and without design to injure or harass any one.

SEC. 8. Section 1194 of the Code of Civil Procedure is hereby amended to read as follows:

SEC. 1194. Whenever on the sale of the property subject to any of the liens provided for in this chapter, under the judgment or decree of foreclosure of such lien, there is a deficiency of proceeds, judgment for the deficiency may be docketed against the party personally liable therefor in like manner and with like effect as in action for the foreclosure of mortgages.

SEC. 9. Section 1195 of the Code of Civil Procedure is hereby amended to read as follows:

SEC. 1195. Any number of persons claiming liens may join in the same action and when separate actions are commenced, the court may consolidate them. The court must also allow, as a part of the costs, the money paid for verifying and recording the lien, such costs to be allowed to each claimant whose lien is established, whether he be plaintiff or defendant, or whether they all join in one action or separate actions are consolidated.

#### ANNOTATIONS.

##### MINERS' LIENS (SEC. 1183).

1. MINING CLAIM—MEANING.
2. EXTENT OF LIEN.
3. STRUCTURES SUBJECT TO LIEN.
4. SEPARATE CLASSES OF LIENS.
5. PERSONS ENTITLED TO LIENS—CHARACTER OF WORK.
6. LIEN ON LEASED MINE.
7. EMPLOYEES OF INDEPENDENT CONTRACTOR.
8. PROPERTY NOT AFFIXED TO MINE.
9. EMPLOYMENT BY AGENT.
10. NOTICE OF LIEN—SUFFICIENCY—DESCRIPTION.
11. ENFORCING LIEN—PARTIES—PLEADING AND PROOF.
12. APPLICATION OF AMENDATORY ACT.

## 1. MINING CLAIM—MEANING.

A mining claim within the provisions of this section, and as the term is used in the statutes of the United States, is a portion of a vein or lode and of the adjoining surface, or of the surface and subjacent material, to which a claimant has acquired the right of possession by virtue of compliance with the laws of the United States and the local rules and customs of the miners.

*Williams v. Santa Clara Min. Association*, 66 Cal. 193, p. 196, 5 Pac. 85 (1884).  
*Morse v. De Ardo*, 107 Cal. 622, p. 623, 40 Pac. 1018 (1895).

The words "mining claim," as used in this statute have no reference to the different stages in the acquisition of the government title and include all mines, whether the title is inchoate, as in the case of a mining claim in its strict sense, or perfect, as in the case of a fee simple title; and a miner is entitled to a lien on a mining claim held under a patent.

*Bewick v. Muir*, 83 Cal. 368, p. 372, 23 Pac. 389 (1890).  
*Morse v. De Ardo*, 107 Cal. 622, p. 625, 40 Pac. 1018 (1895).  
 See *Berentz v. Belmont Oil Min. Co.*, 148 Cal. 577, 582, 84 Pac. 47, 113 Am. St. 308 (1906).

A large tract of mineral land, title to which is held under Spanish or Mexican grants, is not a mining claim within the meaning of these sections 1183 and 1185, although mines may be open within the borders of such tract.

*Williams v. Santa Clara Min. Association*, 66 Cal. 193, p. 198, 5 Pac. 85 (1884).  
 See *Morse v. De Ardo*, 107 Cal. 622, 40 Pac. 1018 (1895).  
*Johnson v. California Lustral Co.*, 127 Cal., 283, p. 287, 59 Pac. 595 (1899).

This section is the practical application of section 15, article 20, of the constitution of California, by which the legislature is charged with the duty of providing for the enforcement of liens to mechanics and others for the value of their labor, and undertakes to give all persons performing labor upon any mining claim a lien thereon; and this statute uses the term "mining claim" in the well-defined meaning which has attached to it, both by popular acceptance and authority of judicial decisions, at the time the statute was enacted. The lien is not given upon a mine but upon the mining claim, that portion of the public mineral land which a miner, for mining purposes, takes up and holds in accordance with the mining law.

*Morse v. De Ardo*, 107 Cal. 622, p. 623, 40 Pac. 1018 (1895).

From the language of the second clause of this section and from all the forms the section has assumed since the amendment of 1880, the mining claims referred to, and the mines included by the last amendment, refer to mines of ore exclusively and it was never intended until the amendment of 1899 that the act should have any reference to the sinking of oil or other wells.

*Berentz v. Kern King Oil & Development Co.*, 7 Cal. Unrep. Cas. 214, p. 217, 84 Pac. 45 (1905).

An 80-acre tract of land being developed as an oil claim is a mining claim within the meaning of that expression as used in this section of the statute.

*Berentz v. Belmont Oil Min. Co.*, 148 Cal. 577, p. 579, 84 Pac. 47, 113 Am. St. 308 (1906).

Agricultural land held under a patent as such, is not a mining claim within the meaning of this section, and is not subject to a lien for the wages of miners employed by a lessee in a mine discovered and worked subsequent to the issuance of the patent.

*Morse v. De Ardo*, 107 Cal. 622, p. 623, 40 Pac. 1018 (1895).  
*Johnson v. California Lustral Co.*, 127 Cal. 283, p. 287, 59 Pac. 595 (1899).  
 See *Berentz v. Belmont Oil Min. Co.*, 148 Cal. 577, p. 582, 84 Pac. 47, 113 Am. St. 308 (1906).

## 2. EXTENT OF LIEN.

The lien given by the statute is upon the mining claim as a whole and not upon the separate pieces of the work done in its repair.

*Silvester v. Coe Quartz Min. Co.*, 80 Cal. 510, p. 513, 22 Pac. 217 (1889).

*Williams v. Mountaineer Gold Min. Co.*, 102 Cal. 134, p. 142, 34 Pac. 702, 36 Pac. 388 (1894).

A person who works upon or in a mining claim may secure a lien for the value of his labor on the whole claim.

*William v. Santa Clara Min. Association*, 66 Cal. 193, 5 Pac. 85 (1884).

*Morse v. De Ardo*, 107 Cal. 622, p. 623, 40 Pac. 1018 (1895).

This section does not provide for a lien upon mines but upon "mining claims," and if a lien exists at all it extends to the whole claim; but while the mining claim can not be constructed, altered, or repaired, the intention of the law makers seems to have been to give a lien upon the whole claim for labor performed on, and for materials furnished for and used in, any structure, or on or in the alteration or repair of any structure on or in the mining claim.

*Helm v. Chapman*, 66 Cal. 291, p. 292, 5 Pac. 352 (1885).

*Williams v. Mountaineer Gold Min. Co.*, 102 Cal. 134, p. 141, 34 Pac. 702, 36 Pac. 388 (1894).

*Morse v. De Ardo*, 105 Cal. 622, p. 623, 40 Pac. 1018 (1895).

*Castagnetto v. Coppertown Min. & Smelting Co.*, 146 Cal. 329, p. 333, 80 Pac. 74 (1905).

Any interest owned by a person or corporation in the land or mining claim on which a miner claims a lien for labor or for material furnished, is subject to the lien; and a court in the foreclosure of the lien may adjudge the lien only upon such interest as a defendant may have.

*Parke & Lacy Co. v. Inter Nos Oil & Development Co.*, 147 Cal. 490, p. 494, 82 Pac. 51 (1905).

## 3. STRUCTURES SUBJECT TO LIEN.

The code does not specifically provide for all the cases which may arise in regard to liens upon mining claims and the courts can only follow the procedure so far as applicable; and it is necessary to make the mining claim stand in place of the structure as the property to be charged with a lien.

*Williams v. Mountaineer Gold Min. Co.*, 102 Cal. 134, p. 139, 34 Pac. 702, 36 Pac. 388 (1894).

The words "other structure" used in this section show that the word "structure" comprehends all the property specifically enumerated and is broad enough to include any similar thing constructed should the enumeration prove incomplete; and this followed with the language "and any person who," would show that a mining claim was not included in the structures upon which liens are allowed. And the procedure provided for acquiring liens upon structures is not, in all respects, applicable to those claiming liens upon mining claims, as they can not all date back to the commencement of the work; and in the case of a mine the work is always going on, commenced doubtless in some cases before the laborers were born and may continue indefinitely, and hence there are no special 30 days within which lienors must record their notices and claim of lien; yet, notwithstanding these distinctions, under the peculiar statutory provisions and the failure of the statute to provide for enforcing a lien against a structure, it seems that the lien for labor or material in the construction of any such structure must be against the mining claim.

*Williams v. Mountaineer Gold Min. Co.*, 102 Cal. 134, p. 139, 34 Pac. 702, 36 Pac. 388 (1894).

A material man who furnishes material for some particular structure erected or constructed upon a mining claim or in a mine can not, under the statute, charge the very structure he has contributed to make for the value of his materials. A number of workmen and material men performing labor or furnishing materials for different structures upon a mining claim, or for performing services in a particular part of the mine, can not under the statute claim separate liens upon the particular structure or work to which their labor or material contributed in the erection or construction, as in such case if the liens were separately foreclosed and the several structures or parts of the mine sold, the several purchasers might find themselves the owners of property utterly valueless without the other parts. Such a result was not contemplated by the statute, but the intention was that the lien or the several liens should be upon or against the entire mining claim.

*Williams v. Mountaineer Gold Min. Co.*, 102 Cal. 134, p. 140, 34 Pac. 702, 36 Pac. 388 (1894).

See *Jordan v. Myres*, 126 Cal. 565, p. 567, 58 Pac. 1061 (1899).

The fact that material was furnished for a mill before the mill was used in connection with the mine does not make the mill an appurtenance under the statute and give the material man a right to a lien thereon as a separate structure; but in such case, as in other cases, the lien must be upon the mining claim as a whole, and its further use as a part of the mining claim may be anticipated for the purpose of a lien; and the rule applies though the title to that portion of the mining claim upon which the mill was located was not acquired until after the lien attached.

*Williams v. Mountaineer Gold Min. Co.*, 102 Cal. 134, p. 142, 34 Pac. 702, 36 Pac. 388 (1894).

These sections contain express provisions as to "mining claims" to the effect that a miner working on the claim or a mechanic erecting reduction works or other structure useful in connection with mining operations thereon, has a lien upon the entire claim for the value of his services or of material furnished; but with respect to other lands the lien attaches only to ground upon which the building or structure stands, together with a convenient space about the same, or so much as may be found by the court necessary for the convenient use and occupation of the building or structure.

*Berentz v. Belmont Oil Min. Co.*, 148 Cal. 577, p. 580, 84 Pac. 47, 113 Am. St. 308 (1906).

See *Williams v. Mountaineer Gold Min. Co.*, 102 Cal. 134, 34 Pac. 702, 36 Pac. 388 (1894).

A material man, under this statute, is entitled to a lien for materials furnished under a contract with the owner of a mining claim and it is not essential that the materials be furnished at or upon the mining claim; but it is sufficient if the materials are furnished for a building or structure on the mining claim and delivered at any other place pursuant to the contract with the owner.

*Tibbetts v. Moore*, 23 Cal. 208, p. 214 (1863).

#### 4. SEPARATE CLASSES OF LIENS.

This section contains two distinct and separate provisions allowing distinct classes of liens. The provision in the first clause allows a lien for work done and materials supplied in the construction of buildings or excavations on the land, made in the way of improvements to enhance its value or make it more useful or valuable for a new use; and the provision of the second clause gives a lien for work done in or upon mines which may result either in the construction of an improvement thereto, or in the partial or total destruction thereof by the extraction of the ore which gives it value; but the extent of the lien in each case and the method of enforcing them are the same.

*Higgins v. Carlotta Gold Min. Co.* 148 Cal. 700, p. 702, 84 Pac. 758, 113 Am. St. 349 (1906).

See *Williams v. Mountaineer Gold Min. Co.*, 102 Cal. 134, 34 Pac. 702, 36 Pac. 388 (1894).

This section provides for two separate classes or categories of liens, one for labor performed or for materials furnished and used in the construction of a building, flume, tunnel, or other structure, and the other for labor performed in a mining claim and the works owned and used for reducing ores, and a lien for services performed in the drilling or construction of an oil well on a tract of 80 acres of land belongs to the first class of liens enumerated.

*Berentz v. Kern King Oil & Development Co.*, 7 Cal. Unrep. Cas. 214, p. 216, 84 Pac. 45 (1905).

#### 5. PERSONS ENTITLED TO LIENS—CHARACTER OF WORK.

The character of the work for which a lien on a mine is claimed should not be scrutinized too strictly and it is sufficient within the meaning of the lien law if the labor performed has a legitimate connection with the working of the mine. (Act 1880).

*Malone v. Big Flat Gravel Min. Co.*, 76 Cal. 578, p. 586, 18 Pac. 772 (1888).

This section is sufficiently broad to entitle miners to a lien on a mining claim for work in a quartz mine in taking out ore or breaking down and tearing away from the face of the drifts the quartz and substance of the mine, though in fact the work and labor tend to destroy the property rather than improve it.

*Chappius v. Blankman*, 128 Cal. 362, p. 366, 60 Pac. 925 (1900).

This section prescribes the class of persons entitled to a lien and the purpose for which the labor is to be performed in the case of a mining claim or real property worked as a mine.

*McClung v. Paradise Gold Min. Co.*, 164 Cal. 517, p. 519, 129 Pac. 774 (1913).

A foreman and superintendent employed and working in the construction of certain work and improvements and in the installation of power and milling plants for a mining claim is entitled to a lien upon the mining property for such services.

*Kritzer v. Tracy Engineering Co.*, 16 Cal. App. 287, p. 293, 116 Pac. 700 (1911).

*Capron v. Strout*, 11 Nev. 310.

See *Cullins v. Flagstaff Silver Min. Co.*, 2 Utah 219.

*Mining Co. v. Cullins*, 104 U. S. 176.

*Palmer v. Uncas Min. Co.*, 70 Cal. 614, 11 Pac. 666 (1886).

*Williams v. Hawley*, 144 Cal. 97; 77 Pac. 762 (1904).

This section implies that the labor to be performed upon any mining claim and for which a lien is given is labor performed in the course of the actual work of mining or development in a mining claim, and it does not include the services of a watchman engaged in caring for a mine while it is lying idle.

*Williams v. Hawley*, 144 Cal. 97, p. 107, 77 Pac. 762 (1904).

*Danoldson v. Orchard Crude Oil Co.*, 6 Cal. App. 641, p. 645, 92 Pac. 1046 (1907).

A miner or laborer engaged as a watchman upon an oil claim and employed a part of the time in pumping oil is entitled to enforce a claim for the value of his services for pumping oil, but can not enforce a lien for services as watchman where the claim remained idle; but there can be no recovery if he improperly joins the two without any notice or statement as to the claim for services for pumping oil.

*Danoldson v. Orchard Crude Oil Co.*, 6 Cal. App. 641, p. 645, 92 Pac. 1046 (1907).

#### 6. LIEN ON LEASED MINE.

The purpose of this statute is to allow a lien for mining work done upon a mine against the estate or interest therein of the person benefited thereby, whether done directly for him at his request or indirectly for his benefit and at the request of some other person; and if the lessor or owner fails to post notice disclaiming a liability for labor performed then his estate stands charged with a lien for the value of such labor.

*Higgins v. Carlotta Gold Min. Co.*, 148 Cal. 700, p. 703, 84 Pac. 758, 113 Am. St. 349 (1906).

See *Lamb v. Goldfield Lucky Boy Min. Co.*, 37 Nev. 9, p. 15, 138 Pac. 902 (1914).

## 7. EMPLOYEES OF INDEPENDENT CONTRACTOR.

A miner working for a contractor in a mine who was employed to run a tunnel in the mine at a stipulated price is entitled to enforce a lien against the mine for the value of his services.

*Parker v. Savage Placer Min. Co.*, 61 Cal. 348 (1882).

A workman or miner who at the time of doing the work knows that the person employing him was not the owner of the mine and was not working in the mine as the owner's representative or agent, and that he was employed by such person on his own account, that the employer paid his wages and at no time assumed to act on behalf of the owner, is not entitled to charge the mine with a lien for his labor.

*Jurgenson v. Diller*, 114 Cal. 491, p. 492, 46 Pac. 610 (1896).

*Reese v. Bald Mountain Consolidated Gold Min. Co.*, 133 Cal. 285, p. 290, 65 Pac. 578 (1901).

A contract between the owner of an oil mining claim and a contractor employed to develop the claim by drilling wells, the consideration of which is more than \$1,000, if not recorded as required by the statute, is void as against employees of the contractor seeking to enforce a lien for services or materials against the mining claim; and the contract being void, payment by the owner to the contractor is no defense to the enforcement of the liens of the miners or employees of the contractor.

*Berentz v. Belmont Oil Min. Co.*, 148 Cal. 577, p. 584, 84 Pac. 47, 113 Am. St. 308 (1906).

The purpose of the statute is to allow a lien for mining work done upon a mine against the estate or interest therein of the person who has been benefited thereby, whether done directly for him and at his request or indirectly for his benefit at the request of some other person operating in pursuance of some express or implied contract with him, and this interest may arise where the benefit is direct, as where the ore extracted or some part of it, remains the property of the owner, or it may be indirect, as where the ore when extracted is the property of such person in charge but is to be by him sold and a part of the proceeds paid to the owner.

*Higgins v. Carlotta Gold Min. Co.*, 148 Cal. 700, p. 703, 84 Pac. 758, 113 Am. St. 349 (1906).

See *Jurgenson v. Diller*, 114 Cal. 491, 46 Pac. 610 (1896).

*Reese v. Bald Mountain Consolidated Gold Min. Co.*, 133 Cal. 285, 65 Pac. 578 (1901), explained and distinguished.

## 8. PROPERTY NOT AFFIXED TO MINE.

This section contemplates that the lien provided for shall attach to the property of the owner and not to the property of some other person; and the lien provided for can not be extended to personal property of a third person though attached to the realty, as the mere attachment does not make it the property of the mine owner, and the lien of the laborers or miners can only extend to property belonging to the owner of the mine.

*Jordan v. Myres*, 126 Cal. 565, p. 568; 58 Pac. 1061 (1899).

See *Best Mfg. Co. v. Cohn*, 3 Cal. App. 657, p. 659; 86 Pac. 997 (1906).

Machinery, hoisting works, tools, and appliances not erected upon or affixed to or used in or upon mining ground, but remaining unattached and unused, and not used in the working or developing of a mine, are no part of the realty and are not subject to liens of miners for work done on a mine or mining claim.

*Hamilton v. Delhi Min. Co.*, 118 Cal. 148, p. 154; 50 Pac. 378 (1897).

*Jordan v. Myres*, 126 Cal. 565, p. 567; 58 Pac. 1061 (1899).

## 9. EMPLOYMENT BY AGENT.

The agent referred to in this section must be the agent of the owner of the building, mining, or improvement; and when the statute says that certain persons are "deemed to be the agent of the owner," it means the agent of the owner of the building, mining, or improvement; and these facts must be established before a miner, employed by an alleged agent, can enforce his lien against a mining claim.

*Reese v. Bald Mountain Consolidated Gold Min. Co.*, 133 Cal. 285, p. 287, 65 Pac. 578 (1901).

A person not expressly authorized by the owner of a mine to act in his behalf can not be held to be the constructive agent of such owner, unless he is a person having charge of "mining" as provided in the statute, and that he is doing some work upon the mine for the purpose of extracting ores therefrom.

*Williams v. Hawley*, 144 Cal. 97, p. 103, 77 Pac. 762 (1904).

The provision in this section to the effect that every contractor, subcontractor, architect, builder, or other person having charge of any mining, or of the construction, alteration, addition to, or repair of any building or other improvement shall be held to be the agent of the owner for the purposes of this chapter, refers to both classes of liens mentioned in the preceding part of the section, and the phrase "any mining" refers solely to the working of a mine, and its effect is that the person in charge of any "mining" is made the agent of the owner, although the work he is prosecuting does not in the least improve the property or add thereto, but destroys or lessens its inherent value by removing the ore therefrom.

*Higgins v. Carlotta Gold Min. Co.*, 148 Cal. 700, p. 703, 84 Pac. 758, 113 Am. St. 349 (1906).

See *Williams v. Hawley*, 144 Cal. 97, p. 103, 77 Pac. 762 (1904).

In order to make a person having charge of any mining the agent of the owner of the mining claim, such person must be in charge with the consent of the owner, and must be prosecuting or controlling the mining operations, either wholly or in part, for the benefit of the owner.

*Higgins v. Carlotta Gold Min. Co.*, 148 Cal. 700, p. 703, 84 Pac. 758, 113 Am. St. 349 (1906).

See *Jurgenson v. Diller*, 114 Cal. 491, 46 Pac. 610 (1896).

Miners and laborers performing work on a mining claim are entitled to liens under the mechanics' lien law where the mine was owned by a foreign mining corporation and worked in its name, its superintendent buying costly machinery, constructing a mill, extracting and reducing ores, employing miners, mill men, and laborers, taking up water right and mining claims, borrowing money, acknowledging service of process in civil cases, and generally by word and act holding himself out and conducting himself as the duly and regularly appointed superintendent of such foreign corporation.

*Donohoe v. Trinity Consolidated Gold & Silver Min. Co.*, 113 Cal. 119, p. 122, 45 Pac. 259 (1896).

In order to establish a miner's lien it is not sufficient to prove that the miner was employed by a person in possession of the premises under a contract with the owner by which he was empowered to make improvements and prosecute development work thereon, but the person making the employment must be engaged in the actual work of mining and the services contracted for by him must be services in aid of such mining in order to constitute the person in charge of the mining the agent of the owner to contract for such services, and in order to give a lien therefor against the mining claim.

*Williams v. Hawley*, 144 Cal. 97, p. 103, 77 Pac. 762 (1904).

*Reese v. Bald Mountain Consolidated Gold Min. Co.*, 133 Cal. 285, p. 287, 65 Pac. 578 (1901).



Proof that a third person was in charge of a mine with the consent of the owner and was controlling the mining operations in part at least for the benefit of the owner is sufficient to make such person the statutory agent of a mining corporation within the meaning of this section.

*McClung v. Paradise Gold Min. Co.*, 164 Cal. 517, p. 521, 129 Pac. 774 (1913).

*Higgins v. Carlotta Gold Min. Co.*, 148 Cal. 700, 84 Pac. 758, 113 Am. St. 344 (1906).

While ordinarily an agency can not be established by the declaration and acts of the alleged agent, yet open declarations and continued acts of alleged agents are admissible in evidence under this section to show the person in charge of the mine, and this showing if not dispelled or overcome, prima facie establishes the agency; but the owner or principal may overcome this prima facie case by proof of his want of knowledge and nonemployment of the alleged agent, coupled with a showing that he had exercised ordinary care in the premises.

*Donohoe v. Trinity Consolidated Gold & Silver Min. Co.*, 113 Cal. 119, p. 123, 45 Pac. 259 (1896).

*Jurgenson v. Diller*, 114 Cal. 491, p. 492, 46 Pac. 610 (1896).

#### 10. NOTICE OF LIEN—SUFFICIENCY—DESCRIPTION.

A notice of an intention to hold a mechanics' lien on a mining claim is sufficient where it follows the terms of the statute and describes the mining claim or quartz mill by location and name; and in the foreclosure of the lien the court in its decree may define the amount and extent of land connected with the mining claim or mill which is properly subject to the lien.

*Tibbetts v. Moore*, 23 Cal. 208, p. 213 (1863).

The fact that the notice of a mechanics' lien as filed stated that the timber was furnished to "Moore and Co." will not defeat the lien where the material was in fact furnished to Moore, the owner of the property, and was actually used in the construction of the building for which the lien is claimed, as it is immaterial whether the owner purchased the materials in his own or in the firm name.

*Tibbetts v. Moore*, 23 Cal. 208, p. 215 (1863).

In the notice by a miner of an intention to hold a lien upon a mining claim the description of the claim by name is sufficient, and any other description may be disregarded.

*Tredinnick v. Red Cloud Consolidated Min. Co.*, 72 Cal. 78, p. 82, 13 Pac. 152 (1887).

It is sufficient where a notice of an intention to hold a lien and a statement are to the effect that the mining corporation entered into a contract with the lienor by virtue of which the labor was performed and to the effect that the lienor was "to work at general blacksmithing in and upon said premises for a definite time, at the rate of \$75 per month, payable on demand."

*Malone v. Big Flat Gravel Min. Co.*, 76 Cal. 578, p. 583, 18 Pac. 772 (1888).

A miner giving notice of his intention to hold a lien on a mine is not required to give in his statement the name of a mere agent or servant as the person by whom he was employed; but the purpose and intention of the statute is that the claimant should put enough in his notice of lien to enable the mine owner to understand whether the claimant was an original or a subcontractor, and to show whether the claimant was asserting a contract with the owner and had a personal claim against him or whether he contracted with an independent contractor and looked only to him and the property, as it is important for the owner to know which attitude the claimant assumed. (Act 1880.)

*Malone v. Big Flat Gravel Min. Co.*, 76 Cal. 578, p. 584, 18 Pac. 772 (1888).

A laborer employed by the month to work in a mine or in repairing machinery in a mine does not terminate his employment at the end of each month, and separate notices of his intention to hold a lien are not required to be filed at the end of each month. But the lien is to be filed within 30 days after the performance of the labor. (Act 1880.)

Malone v. Big Flat Gravel Min. Co., 76 Cal. 578, p. 586, 18 Pac. 772 (1888).

A notice of lien against a mining claim where the contract for the several items of improvements is entire is sufficient if filed within 30 days after the completion of the whole work.

Silvester v. Coe Quartz Min. Co., 80 Cal. 510, p. 512, 22 Pac. 217 (1889).

A notice of a material man's intention to hold a lien should be against the mining claim as an entirety, though the materials were furnished and used in repairing improvements on the mining claim; and the claimant is not limited to a lien on the separate structures in the repair of which the materials were used.

Silvester v. Coe Quartz Min. Co., 80 Cal. 510, p. 511, 22 Pac. 217 (1889).

Williams v. Mountaineer Gold Min. Co., 102 Cal. 134, p. 142, 34 Pac. 702, 36 Pac. 388 (1894).

A court is bound by the recitals in the statement to the effect that the notices of liens were duly sworn to, and the recorder's endorsement on the paper is prima facie evidence of their filing and the date of their recording.

Silvester v. Coe Quartz Min. Co., 80 Cal. 510, p. 512, 22 Pac. 217 (1889).

The statute requires that the notice must describe the property on which the work was done, and a notice that the property to be charged is the property where the claimant worked does not take the first step toward compliance with the statute, and the mere name of the mine is not sufficient.

Fernandez v. Burselson, 110 Cal. 164, p. 168, 42 Pac. 566, 52 Am. St. 78 (1895).

#### 11. ENFORCING LIEN—PARTIES—PLEADING AND PROOF.

Liens of miners may be asserted by virtue of the statute relating to liens of mechanics and others upon real property.

Miller v. Carlisle, 127 Cal. 327, p. 328, 59 Pac. 785 (1899).

The lien of a miner is the creation of the statute, and the statute creating it must be looked to both for the right to the lien and the mode by which it may be enforced, and a miner seeking to hold and enforce a lien upon the property or mining claim of a person who did not employ him must bring his case clearly within the terms of the statute.

Reese v. Bald Mountain Consolidated Gold Min. Co., 133 Cal. 285, p. 290, 65 Pac. 578 (1901).

See Spinnery v. Griffith, 98 Cal. 151, 32 Pac. 974 (1893).

In an action to enforce a mechanic's lien, the lien holder is not required to make other holders of liens parties by name, but they are brought in by publishing the required notice, and the court hears and determines the claims in a summary way, and papers filed by lien holders exhibiting their claims are not governed by strict rules relating to pleadings in ordinary actions.

Tibbets v. Moore, 23 Cal. 208, p. 214 (1863).

In an action to enforce a lien for materials furnished a contractor working in a mine, it is sufficient to show that the material was sold to be used in a structure to be erected on the mining claim, but it must appear that the materials were actually used in the construction of the structure.

Silvester v. Coe Quartz Min. Co., 80 Cal. 510, p. 513, 22 Pac. 217 (1889).

Hamilton v. Delhi Min. Co., 113 Cal. 148, p. 153, 50 Pac. 378 (1897).

A complaint in an action to enforce a miner's lien against a mining claim, on the theory that the miner was employed by the agent of the owner of the mining claim, must aver that the building or improvement was constructed upon the lands of the owner of the mining claim with his knowledge; and a finding by the court to the effect that the owner of the mining claim had full notice and knowledge of the contract under which the miner was employed and of all work being done by the miner thereunder, is a finding outside of the issue.

*Reese v. Bald Mountain Consolidated Gold Min. Co.*, 133 Cal. 285, p. 288, 65 Pac. 578 (1901).

In an action to enforce a miner's lien, the miner must allege and prove that the labor was performed at the instance of the agent of the owner or operator of the mine, within the definition of this section as to whom shall be held such agent.

*Reese v. Bald Mountain Consolidated Gold Min. Co.*, 133 Cal. 285, p. 286, 65 Pac. 578 (1901).

A complaint to foreclose a mechanic's lien on a mining claim for materials furnished in the drilling of a well for "the convenient use, occupation, and operation thereof," is sufficient to bring it within the provisions of this section, though it does not show that the "well" was, in fact, an oil well.

*Parke & Lacy Co. v. Inter Nos Oil & Development Co.*, 147 Cal. 490, p. 492, 82 Pac. 51 (1905).

A complaint in an action to foreclose a miner's lien for material used in the drilling of an oil well is sufficient, where it avers that on a certain-named day, "within 30 days after the completion of the said well," the plaintiff filed for record a notice of his intention to hold a lien, as the allegation must be taken to refer to the actual completion of the work.

*Parke & Lacy Co. v. Inter Nos Oil & Development Co.*, 147 Cal. 490, p. 493, 82 Pac. 51 (1905).

In an action by a miner to enforce a lien for service performed in a mine under an averment that the miner employed by one of the defendants, naming him, not the owner of the mining claim, a finding to the effect that at the time of the performance of the labor the defendant named was in possession of the premises, the mining claim, under a contract theretofore entered into between such defendant and the mining corporation, under which contract the defendant named was authorized and empowered to occupy and hold possession of the premises, and make extensive improvements, and prosecute development work and prospecting thereon and therein, is insufficient to enforce the lien against the mining claim because of the failure to find that the defendant was the agent of the mining corporation, or that he was a contractor, a subcontractor, architect, or builder, nor is it a finding that he was a person having charge of any mining or construction, alteration, addition to, or repair of any building or other improvement on or connected with the mining claim.

*Reese v. Bald Mountain Consolidated Gold Min. Co.*, 133 Cal. 285, p. 287, 65 Pac. 578 (1901).

An assignee of the claims of miners has a right to a lien on mining property and may enforce the same in his own name, though the assignments were made before the notices of the liens were recorded, but where, by the terms of the assignments they were not to take effect until after the recordation of the claims; but an assignee of such claims can not file the liens in his own name, as the lien has practically no existence for the purposes of assignment until the notices have been duly filed by the lien claimant in his own name.

*McClung v. Paradise Gold Min. Co.*, 164 Cal. 517, p. 523, 129 Pac. 774 (1913).

## 12. APPLICATION OF AMENDATORY ACT.

The amendatory act of March 5, 1903, can have no application where miners' liens are claimed for labor performed or material furnished and liens filed before the enactment of the amendatory statute.

Higgins v. Carlotta Gold Min. Co., 148 Cal. 700, p. 703, 84 Pac. 758, 113 Am. St. 349 (1906).

## CONSTRUCTION OF SECTION 1185.

1. APPLICATION TO MINES.
2. APPLICATION TO OIL WELLS.

## 1. APPLICATION TO MINES.

This section treats the "buildings, improvements, or structures," as separate and distinct from the land on which it is erected or constructed.

Helm v. Chapman, 66 Cal. 291, p. 292, 5 Pac. 352 (1885).

A mine or pit sunk within a mining claim is properly a structure within the meaning of this section, and a person who performs labor in any pit, shaft, or gallery of a mine is entitled to a lien on the whole mining claim.

Helm v. Chapman, 66 Cal. 291, p. 292, 5 Pac. 352 (1885).

Silvester v. Coe Quartz Min. Co., 80 Cal. 510, p. 512, 22 Pac. 217 (1889).

Williams v. Mountaineer Gold Min. Co., 102 Cal. 134, p. 142, 34 Pac. 702, 36 Pac. 388 (1894).

Morse v. De Ardo, 107 Cal. 622, p. 623, 40 Pac. 1018 (1895).

Hines v. Miller, 122 Cal. 517, p. 519, 55 Pac. 401 (1898).

The true meaning of such expressions as shafts, tunnels, levels, shoots, stopes, uprisings, crosscuts, and inclines, when applied to mines, signify instrumentalities whereby and through which such mines are opened, developed, prospected, improved, and worked, and the person engaged in the construction of these prime requisites upon or in a mine is engaged in mining and such a laborer is protected by the statute giving a lien upon any structure in connection with the operation of a mine.

Hines v. Miller, 122 Cal. 517, p. 519, 55 Pac. 401 (1898).

Johnson v. California Lustral Co., 127 Cal. 283, p. 288, 59 Pac. 595 (1899).

## 2. APPLICATION TO OIL WELLS.

This act amendatory of section 1185 of the Code of Civil Procedure was intended to amend the mechanics' lien law and give laborers and material men a lien for drilling oil wells on an oil location.

Parke & Lacy Co. v. Inter Nos Oil & Development Co., 147 Cal. 490, p. 493, 82 Pac. 51 (1905).

While the word "well" was inserted in the original miners' lien act by this amendment and in section 1185 of the Code of Civil Procedure at the same time (Acts of 1899, p. 24), it was intended thereby to include oil wells.

Parke & Lacy Co. v. Inter Nos Oil & Development Co., 147 Cal. 490, p. 493, 82 Pac. 51 (1905).

The act of March 1, 1899, was an amendment to the miners' lien law by inserting the word "well" and showing that it was intended to give a miner a lien upon a mining claim for services in sinking or constructing an oil well.

Berentz v. Kern King Oil & Development Co., 7 Cal. Unrep. Cas. 214, p. 217, 84 Pac. 45 (1905).

If a tract of land upon which a well is being drilled for the purpose of extracting mineral ore is a mining claim, the well, notwithstanding the inclusion of wells in the enumeration of structures upon which separate liens are allowed, is an essential part of the mine, and for that reason the lien of those who have made it extends to the entire claim, though an 80-acre tract, and would be lost if less than that was described in the lien or notice.

Berentz v. Belmont Oil Min. Co., 148 Cal. 577, p. 581, 84 Pac. 47, 113 Am. St. 308 (1906).

Williams v. Mountaineer Gold Min. Co., 102 Cal. 134, 34 Pac. 702, 36 Pac. 388 (1894).

A miner's lien for services performed in drilling or constructing an oil well does not extend to the entire tract of land but only to a convenient space around the well or so much as may be required for the convenient use and occupation thereof, and this must be determined by the court in an action to enforce the lien.

Berentz v. Kern King Oil & Development Co., 7 Cal. Unrep. Cas. 214, p. 217, 84 Pac. 45 (1905).

See Berentz v. Belmont Oil Min. Co., 148 Cal. 577, 84 Pac. 47, 113 Am. St. 308 (1906).

The statute does not in fact contain two rules for determining what is subject to a laborer's or material man's lien but it contains one rule only and that is the rule of the constitution which fastens a lien upon the property improved or benefited; and oil claims, being within the reason as well as the letter of the law, are governed by the same rule, and when labor or material is expended in developing an oil claim the lien attaches to the claim, whether it is a single location of 20 acres or a consolidated claim of several locations, and the lien will cover the whole of the consolidated claims if it is being worked as a whole.

Berentz v. Belmont Oil Min. Co., 148 Cal. 577, p. 583, 84 Pac. 47, 113 Am. St. 308 (1906).

#### CONSTRUCTION OF SECTION 1186.

##### PRIORITY OF LIEN OVER CONVEYANCES.

The effect of section 1186 is to give priority or rather recognize priority obtained under other sections of the mechanics' lien law; and the fact that an instrument made is a deed of trust does not extend the interest of the grantee in the eye of a court of equity and does not affect the priority of a valid lien of a mechanic or material man.

Williams v. Santa Clara Min. Association, 66 Cal. 193, p. 199, 5 Pac. 85 (1884).

This section in effect provides that a mortgagee whose mortgage is duly recorded shall have preference of any lien arising out of work subsequently done or materials subsequently furnished; but a mortgagee can not be deprived of his priority by his failure to do an act imposed upon him by the subsequent conduct of another.

Williams v. Santa Clara Min. Association, 66 Cal. 193, p. 201, 5 Pac. 85 (1884).

#### CONSTRUCTION OF SECTION 1187—NOTICE OF LIEN.

1. SUFFICIENCY OF STATEMENT OF CLAIM.
2. INSUFFICIENT NOTICE.
3. VERIFICATION OF NOTICE.
4. CHARACTER OF WORK.
5. TIME OF FILING.
6. INVALID LIEN—REMEDY.

## I. SUFFICIENCY OF STATEMENT OF CLAIM.

A miner seeking to fasten a lien upon a mine must file with the county recorder his claim containing, among other things, a statement of the terms, time given, and conditions of his contract, and also a description of the property to be charged with the lien sufficient for identification.

*Tredinnick v. Red Cloud Consolidated Min. Co.*, 72 Cal. 78, p. 79, 13 Pac. 152 (1887).

*Malone v. Big Flat Gravel Min. Co.*, 76 Cal. 578, p. 583, 18 Pac. 772 (1888).

One of the most important requirements of the statute governing the creation of such liens is that the notice shall contain a description of the property to be charged sufficient for identification, as without such description the notice would be of no value to the owner and could rarely be of any use to creditors, purchasers, or other lien claimants dealing with the land.

*Fernandez v. Burleson*, 110 Cal. 164, p. 167, 42 Pac. 566, 52 Am. St. 78 (1895).

Under this section the mining claim is the property which should be described in the notice and claim of lien, although the work was done or the material furnished in the erection or construction of some particular structure upon the claim.

*Williams v. Mountaineer Gold Min. Co.*, 102 Cal. 134, p. 140, 34 Pac. 702, 36 Pac. 388 (1894).

See *Berentz v. Belmont Oil Mining Co.*, 148 Cal. 577, 84 Pac. 47, 113 Am. St. 308 (1906).

A notice of an intention to hold a lien on a mining claim must be sufficient to identify the claim upon which the work was done with reasonable certainty, and monuments and lines by which the property is said in the notice to be particularly described can not be expunged from the notice but must be read as a part of it; and if when so read it is misleading in a particular where it should be substantially true the notice is insufficient, though it states the name of the mining claim.

*Fernandez v. Burleson*, 110 Cal. 164, p. 165, 42 Pac. 566, 52 Am. St. 78 (1895).

This section only requires that a notice of a laborer's lien shall state the name of the owner or reputed owner if known, and also the name of the person by whom the lienor was employed; but the statute does not require the lien claimant to state in his notice the relation that exists between the person occupying or in possession of the property and the owner.

*Castagnetto v. Coppertown Min. & Smelting Co.*, 146 Cal. 329, p. 332, 80 Pac. 74 (1905).

The statute does not require a strict compliance with the provisions as to the contents of the notice of a miner's lien, but a substantial statement of the facts required by the statute is sufficient.

*Castagnetto v. Coppertown Min. & Smelting Co.*, 146 Cal. 329, p. 332, 80 Pac. 74 (1905).

This statute is remedial in its character, and for the purpose of carrying it into effect—the object for which it was enacted—it is to receive a liberal construction, and the notices which under its provisions are required to be given have regard to substance rather than form.

*Castagnetto v. Coppertown Min. & Smelting Co.*, 146 Cal. 329, p. 334, 80 Pac. 74 (1905).

A notice of a miner's intention to hold a lien is sufficient as to the terms and conditions of a contract where it states that the labor was performed by the day at an agreed stated price per day and between certain stated days of different months and that the amount is justly due and owing.

Castagnetto v. Coppertown Min. & Smelting Co., 146 Cal. 329, p. 332, 80 Pac. 74 (1905).

See Blackman v. Marsicano, 61 Cal. 638 (1882).

Tredinnick v. Red Cloud Consolidated Min. Co., 72 Cal. 78, 13 Pac. 152 (1887).

McClung v. Paradise Gold Min. Co., 164 Cal. 517, p. 519, 129 Pac. 774 (1913).

Ascha v. Fitz, 5 Cal. Unrep. Cas. 481, 46 Pac. 298 (1896).

## 2. INSUFFICIENT NOTICE.

A miner's notice of a lien or claim that states the name of the owner of the mining claim on which the services were performed, but which fails to state by whom he was employed, is insufficient, as such an omission is fatal.

Ascha v. Fitz, 5 Cal. Unrep. Cas. 481, p. 483, 46 Pac. 298 (1896).

See Wood v. Wrede, 46 Cal. 637 (1873).

Baker v. Lake Land Canal, etc., Co., 7 Cal. App. 482, p. 484; 94 Pac. 773 (1908).

## 3. VERIFICATION OF NOTICE.

This section does not require that the verification of a claim for lien shall be in form like that attached to a pleading and it is sufficient where the affiant states that the claim "is true" and the omission to state "of his own knowledge" is not a defect.

Arata v. Tellurium Gold & Silver Min. Co., 65 Cal. 340, p. 341, 4 Pac. 195 (1884).

This section requires that the claim or notice of a lien must be verified by the oath of the claimant himself or "of some other person;" and a miner's claim of lien is sufficient where it is verified by one who declares in the verification that he is the agent and manager of such claimant; and under the statute a claim of lien may be verified by any person who is possessed of sufficient knowledge upon the subject to make the verification, and the particular relation that he bears to the claimant is immaterial.

Parke & Lacy Co. v. Inter Nos Oil & Development Co., 147 Cal. 490, p. 494, 82 Pac. 51 (1905).

## 4. CHARACTER OF WORK.

A person performing work in a blacksmith shop in making pipe and sharpening picks and drills used in mining operations is work upon the mine for which such laborer may hold a lien.

Malone v. Big Flat Gravel Min. Co., 76 Cal. 578, p. 583, 18 Pac. 772 (1888).

See Castagnetto v. Coppertown Min. & Smelting Co., 146 Cal. 329, p. 333, 80 Pac. 74 (1905).

This section provides for the preparation of the claim for a miner's lien and its recordation, but does not require the claimant to state the particular character of his labor, though he must show by his proof that it was of such kind as is made lienable by the statute.

McClung v. Paradise Gold Min. Co., 164 Cal. 517, p. 520, 129 Pac. 774 (1913).

## 5. TIME OF FILING.

An original contractor within the meaning of this section must file his claim for a lien within 60 days after the completion of his contract.

Sparks v. Butte County Gravel Min. Co., 55 Cal. 389, p. 391 (1880).

A miner's claim of lien for services performed filed prematurely and not according to the provisions of the statute can not be enforced.

A laborer employed by a mine owner or an original contractor or a material man furnishing material to a mine owner or to an original contractor, for the improvement of a mine, must file his claim for a lien within 30 days, as such laborers and material men are not "original contractors" within the meaning of this section or of section 1194.

Sparks v. Butte County Gravel Min. Co., 55 Cal. 389, p. 391 (1880).

See Schwartz v. Knight, 74 Cal. 432, p. 433; 16 Pac. 235 (1887).

#### 6. INVALID LIEN—REMEDY.

Where a miner for any reason fails to establish his lien, he may under the evidence be entitled to a personal judgment against the mine owner for the amount due him.

Ascha v. Fitz, 5 Cal. Unrep. Cas. 481, p. 485, 46 Pac. 298 (1896).

#### CONSTRUCTION OF SECTION 1188.

##### STATE OF ACCOUNT—DISTINCT MINING CLAIMS.

Section 1188 applies only to cases in which one claim is filed against two or more separate and distinct "buildings, mining claims, or other improvements owned by the same person," and not to a case where all of the work was performed upon one and the same piece of property, although upon different portions of it.

Dickenson v. Bolyer, 55 Cal. 285 (1880).

Williams v. Mountaineer Gold Min. Co., 102 Cal. 134, p. 141, 34 Pac. 702, 36 Pac. 388 (1894).

See Kritzer v. Tracy Engineering Co., 16 Cal. App. 287, p. 291, 116 Pac. 700 (1911).

Section 1188 requires a claim for a mechanic's lien to contain a statement of the demand, the name of the owner or reputed owner if known, and the name of the person by whom the claimant was employed or to whom he furnished the materials; and a mechanic's lien stating that the Tellurium Gold & Silver Mining Company, a California corporation, is the name of the owner and reputed owner of the premises, and that a certain-named person, the agent and superintendent of the mining company, did on a certain date contract with the claimant for the services rendered and the materials furnished, is sufficient.

Arata v. Tellurium Gold & Silver Min. Co., 65 Cal. 340, p. 341, 4 Pac. 195 (1884).

Section 1188 does not apply to a miner's lien on a mining claim where two or more mining claims have been consolidated into one claim and thereafter treated and worked as one, as after such consolidation the different locations ceased to constitute different claims and to become in law and in fact only parts of one claim, and where the miner performs labor upon the property as a whole he is entitled to claim liens upon it as a whole.

Tredinnick v. Red Cloud Consolidated Min. Co., 72 Cal. 78, p. 84, 13 Pac. 152 (1887).

Malone v. Big Flat Gravel Min. Co., 76 Cal. 578, p. 583, 18 Pac. 772 (1888).

Hamilton v. Delhi Min. Co., 118 Cal. 148, p. 151, 50 Pac. 378 (1897).

Castagnetto v. Coppertown Min. & Smelting Co., 146 Cal. 329, p. 333, 80 Pac. 74 (1905).

Where improvements are made or work done upon a mine and mill site constituting one plant and for which the owner agreed to pay a gross sum for the work performed as a whole, it is under such circumstances impossible to designate the amount due for work and labor performed upon each of such properties as required by this section; and under such circumstances nothing is in fact due the contractor upon each of such separate properties, but his claim is upon the entire property covering all improvements. But if there are no other lien claimants whose rights can be affected, it is not a matter which concerns the owner of a mining claim, as the provisions of this section are intended for the benefit of other lien claimants.

Kritzer v. Tracy Engineering Co., 16 Cal. App. 287, p. 291, 116 Pac. 700 (1911).



## CONSTRUCTION OF SECTION 1192—OWNER'S NOTICE OF NONLIABILITY.

1. NOTICE BY OWNER—POSTING.
2. APPLICATION OF SECTION—CHARACTER OF WORK.
3. AUTHORITY OF PERSON MAKING EMPLOYMENT.
4. OWNER'S KNOWLEDGE OF WORK—FAILURE TO POST NOTICE.
5. INTEREST SUBJECT TO LIEN—MORTGAGE—PRIORITY.
6. LIEN OF CONTRACTOR—LABORER NOT CONTRACTOR—PRIORITY.
7. ENFORCING LIENS—LIENORS JOINING.

## 1. NOTICE BY OWNER—POSTING.

While under this section the owner of a mining claim may relieve himself from liability for materials furnished a contractor by posting a notice, yet the liability may attach where the person furnishing the material to a contractor had no actual knowledge that the required notice had been posted and where it appeared that the notice was not posted in a conspicuous place, as required by the statute.

*Silvester v. Coe Quartz Min. Co.*, 80 Cal. 510, p. 513, 22 Pac. 217 (1889).

The owner of mining machinery who made a contract of sale with a mine owner and operator and permitted the operator to place the same in his mine is not required to give the notice provided for by this section in order to prevent such machinery from becoming subject to liens of miners or laborers working in the mine, as such owner of the machinery is not the owner of the mine and has no interest in it and is not such an owner or person as is contemplated by this section. Such personal property can not be treated as a part of the realty so far as the owner or operator of a mine and the miners working thereon are concerned.

*Jordan v. Myres*, 126 Cal. 565, p. 567, 58 Pac. 1061 (1899).

See *Hendy v. Dinkerhoff*, 57 Cal. 3, 40 Am. St. 107 (1899).

*Best Mfg. Co. v. Cohn*, 3 Cal. App. 657, p. 659, 86 Pac. 997 (1906).

## 2. APPLICATION OF SECTION—CHARACTER OF WORK.

Section 1192 mentions every building or improvement constructed upon land with the knowledge of the owner and likewise provides for a case where notice is not given within three days after the owner obtains knowledge of the construction, alteration, or repair, by posting a notice in some conspicuous place on the land, building, or improvement; but the section can not apply to a claim by a miner for labor in a mine, as labor in a mine is not a building constructed upon lands.

*Reese v. Bald Mountain Consolidated Gold Min. Co.*, 133 Cal. 285, p. 288, 65 Pac. 578 (1901).

Section 1192 has no application to mining work, which consists of removing ore solely by the "subtractive process," but by its express terms applies only to "every building or other improvement mentioned in section 1183 of this code constructed upon any lands," and does not include or apply to mining work which does not constitute for any purpose an improvement to the mine or to the land.

*Higgins v. Carlotta Gold Min. Co.*, 148 Cal. 700, p. 704, 84 Pac. 758, 113 Am. St. 349 (1906).

See *Williams v. Santa Clara Min. Association*, 66 Cal. 193, p. 200, 5 Pac. 85 (1884).

A lien wholly or in part for work done for the "purpose of opening up new ore bodies and discovering better ore," if such work consisted in making an improvement to the mine apart from or in addition to its effect in obtaining ore from the rock excavated, would come within the provisions of this section.

*Higgins v. Carlotta Gold Min. Co.*, 148 Cal. 700, p. 704, 84 Pac. 758, 113 Am. St. 349 (1906).

## 3. AUTHORITY OF PERSON MAKING EMPLOYMENT.

A mining corporation whose officers and directors have knowledge that work is done in a mine owned by it is not required to post the notice of its nonliability as required by this section where the contract of employment was made by one of the directors, who notified the laborer at the time of his employment that he was acting solely on his individual responsibility and not for the corporation in any way; that the corporation had no means and would do nothing, and that whatever work was done the individual director must pay for it out of his own private means; and where the evidence shows that the transaction was carried on and the services performed by a laborer with perfect knowledge that he was dealing with an individual and wholly apart from any official relation he bore to the mining corporation, and that he looked to such person alone for the payment of his share of the contract price of the work.

*Ayers v. Green Gold Min. Co.*, 116 Cal. 333, p. 335, 48 Pac. 221 (1897).

See *Reese v. Bald Mountain Consolidated Gold Min. Co.*, 133 Cal. 285, p. 290 (1901).

In an action to foreclose a mechanics' lien upon a mine a complaint is sufficient without an allegation as to notice to the owner of the performance of the labor upon the mine, where it avers that the plaintiffs performed the labor at the special instance and request of a person named who was in charge of and superintending the work and who was, as the plaintiffs are informed and believed, during the time of the performance of the work, the agent of the defendant, the owner, in the working of such mining claim, as in such case the requirement of notice to the owner has no application.

*Hines v. Miller*, 122 Cal. 517, p. 518, 55 Pac. 401 (1898).

Miners and persons employed to work in a mine by an executor are not entitled to a lien on the mining claim for work done, as an executor has no power to make any contract which would give such laborers and miners a right to file liens upon the property of the estate represented by him.

*Chappius v. Blankman*, 128 Cal. 362, p. 364, 60 Pac. 925 (1900).

Laborers and miners employed in operating a mine by a trustee or executor who held the legal title to the mining property are entitled to hold and enforce a lien against the mining claim where they performed the labor upon the knowledge that the employer was the owner of the property and did the work in good faith without notice that the equitable title was held by an estate, where the settlement of the estate was in a county different from that in which the mine was located.

*Chappius v. Blankman*, 128 Cal. 362, p. 365, 60 Pac. 925 (1900).

## 4. OWNER'S KNOWLEDGE OF WORK—FAILURE TO POST NOTICE.

A lien for labor in a mine can not be enforced by a miner against the owner of a mine where the miner was employed by a lessee of independent contractor, on the ground that the owner had knowledge that the miner was so working and failed to post a notice of nonliability, where the only service the owner knew the miner was performing was that of "drifting in a tunnel," as the work of drifting in a tunnel means the taking of earth or gravel or ore from ground made accessible by means of a tunnel, and is not the same as "running a tunnel," and is not the construction, alteration, or repair of any building or improvement on or in a mine, the knowledge of which must be brought home to the owner before any duty becomes incumbent upon him under this section.

*Jurgenson v. Diller*, 114 Cal. 491, p. 492, 46 Pac. 610, 55 Am. St. 83 (1896).

See *Reese v. Bald Mountain Consolidated Gold Min. Co.*, 133 Cal. 285, p. 289, 65 Pac. 578 (1901).

Where owners of mining claims as a consolidated property are cognizant of the fact that the property was being developed as a single mine or claim and that improvements and labor thereon were placed with the purpose and effect of enhancing the value of each of the several locations embraced in the consolidated property, the owners are, within the provisions of this section, deemed to have authorized the improvements for that purpose and on failure to post the required notice they are responsible for such work and estopped from subsequently raising an objection to the enforcement of a lien against the consolidated property.

*Hamilton v. Delhi Min. Co.*, 118 Cal. 148, p. 152, 50 Pac. 378 (1897).

The owners of a mine and mining claim who leased the same by a written lease to certain-named persons, his heirs, associates, or assigns, with authority to enter into the immediate possession of the mine and work and develop the same in such manner as may be most expedient or advisable, by sinking shafts, running tunnels, or otherwise, the lessors to receive one-fourth of the gross products taken from the mine, must be deemed to have knowledge of subsequent work done by employees of the lessee in sinking a shaft on the mine, and in the absence of a notice on the part of such lessors that they would not be responsible for work done in operating the mine, as provided by this section, the mining claim is subject to the liens of the laborers in sinking the shaft or in the construction of any building or improvement upon the mining claim.

*Hines v. Miller*, 122 Cal. 517, p. 520, 55 Pac. 401 (1898).

*Higgins v. Carlotta Gold Min. Co.*, 148 Cal. 700, p. 705, 84 Pac. 758, 113 Am. St. 349 (1906).

*McClung v. Paradise Gold Min. Co.*, 164 Cal. 517, p. 521, 129 Pac. 774 (1913).

The language of this section relating to buildings and improvements, and to knowledge of construction thereof, does not apply to a case of a laborer performing labor in a mine; and the term "owner or person having or claiming an interest" in the lands on which an improvement is erected is not the person referred to in section 1186 as having a "lien, mortgage, or incumbrance."

*Williams v. Santa Clara Min. Association*, 66 Cal. 193, p. 200, 5 Pac. 85 (1884).

##### 5. INTEREST SUBJECT TO LIEN—MORTGAGE—PRIORITY.

As a mortgage is only a lien on land and passes by simple assignment and not by a conveyance of the land, a mortgagee of a mining claim is not one having "an interest in the land" on which a building or improvement may be constructed within the meaning of this section.

*Williams v. Santa Clara Min. Association*, 66 Cal. 193, p. 201, 5 Pac. 85 (1884).

This section of the code refers to an estate or interest in land which may be sold and conveyed and does not provide that a mere lien shall become "subject" to another subsequent lien, in the sense that the latter lien shall acquire precedence over the prior.

*Williams v. Santa Clara Min. Association*, 66 Cal. 193, p. 201, 5 Pac. 85 (1884).

##### 6. LIEN OF CONTRACTOR—LABORER NOT CONTRACTOR—PRIORITY.

If laborers and material men performing labor and furnishing materials for the improvement of a mine are to be regarded as original contractors, then each would be entitled to recover, upon a lien filed by him, only such amount as might be due him under his contract, after deducting all claims of other parties for work done and materials furnished.

*Sparks v. Butte County Gravel Min. Co.*, 55 Cal. 389, p. 392 (1880).

The lien of an original contractor under this section is subject to all other liens, and any such original contractor is required to defend any action brought at his own expense.

Sparks v. Butte County Gravel Min. Co., 55 Cal. 389, p. 392 (1880).

#### 7. ENFORCING LIENS—LIENORS JOINING.

The provisions of section 1195 to the effect that any number of persons claiming liens may join in the same action seem to imply that the liens must all be on the same property; but where several claims adjoin each other with a ditch as a backbone and are all owned by the same owner and used and operated as one mine they may be considered as one piece of property under these provisions.

Malone v. Big Flat Gravel Min. Co., 76 Cal. 578, p. 583, 18 Pac. 772 (1888).

This section authorizes any number of persons or miners claiming liens to join in the same action and if any number of joint plaintiffs fail to establish their lien, and the right of recovery in each is less than \$300, the superior courts have no jurisdiction and the plaintiffs must fail. The fact that the sum total of the claims of all the plaintiffs exceeds \$300 will not give a superior court jurisdiction as the claims are separate and distinct and judgments must be entered for the amount due each of the several claimants.

Miller v. Carlisle, 127 Cal. 327, p. 328, 59 Pac. 785 (1899).

Separate miners having several liens for labor performed upon a mining claim may unite in an action to enforce the same.

Ascha v. Fitz, 5 Cal. Unrep. Cas. 481, p. 482, 46 Pac. 298 (1896).

See Skym v. Weske Consolidated Co., 5 Cal. Unrep. Cas. 551, 47 Pac. 116 (1896).

## MINERS' PROPERTY—EXEMPTION.

LAWS 1851, 51, P. 86; APR. 29, 1851. LAWS 1854, P. 59, 63; MAY 15, 1854. LAWS 1862, P. 573; MAY 15, 1862.

AN ACT to regulate proceedings in civil cases in the courts of justice of this State.

The People, etc.

\* \* \* \* \*

SEC. 219. The following property shall be exempt from execution, except as herein otherwise specially provided: \* \* \*

Fifth. The tent and furniture, including a table, camp stools, bed and bedding of a miner; also his rocker, shovels, spade, wheelbarrows, pumps, and other instruments used in mining, with provisions necessary for his support for one month:

\* \* \* \* \*

NOTE.—The fifth paragraph was not changed by either of the amendatory acts.

### FIRST AMENDATORY ACT.

LAWS 1863-64, P. 523; APR. 4, 1864. (GENERAL LAWS 1850-1864, SEC. 5155.)

AN ACT to amend an act entitled "An act to regulate proceedings in civil cases in courts of justice in this State," approved April 29, 1851.

The People, etc.

SEC. 1. Section 219 of the above entitled act is hereby amended so as to read as follows:

SEC. 219. The following property shall be exempt from execution, except as herein otherwise specially provided: \* \* \*

Fifth. The cabin or dwelling of a miner, not exceeding in value the sum of \$500; also, his sluices, pipes, hose, windlass, derrick, cars, pumps, tools, implements, and appliances necessary for carrying on any kind of mining operations, not exceeding in value the aggregate sum of \$500; and two horses, mules, or oxen, with their harness, and food for such horses, mules, or oxen, for one month, when necessary to be used for any whim, windlass, derrick, car, pump, or hoisting gear.

\* \* \* \* \*

### AMENDATORY ACT OF APRIL 1, 1876.

AMENDMENTS TO CODE 1875-76, P. 94; APR. 1, 1876. (SEC. 10690, CODES AND STATUTES VOL. 2. SEC. 690, CODE OF CIVIL PROCEDURE.)

AN ACT to amend section 690 of the Code of Civil Procedure, and for other purposes.

The People, etc.

NOTE.—Section 219 of the original act became section 690, Code of Civil Procedure

SEC. 1. Section 690 of the Code of Civil Procedure is hereby amended to read as follows:

690. The following property is exempt from execution, except as herein otherwise specially provided: \* \* \*

Fifth. (Similar to amendatory act of April 4, 1864, except the following clause is added): and, also, his mining claim, actually worked by him, not exceeding in value the sum of \$1,000.

\* \* \* \* \*

**AMENDATORY ACTS OF MARCH 10, 1903, AND MARCH 22, 1907.**

**LAWS 1903, P. 114; MAR. 10, 1903. LAWS 1907, P. 882; MAR. 22, 1907. (SEC. 690, CODE CIVIL PROCEDURE.)**

AN ACT to amend section 690 of the Code of Civil Procedure, relating to property exempt from execution.

The People, etc.

SEC. 1. Section 690 of the Code of Civil Procedure is hereby amended so as to read as follows:

690. The following property is exempt from execution, except as herein otherwise specifically provided: \* \* \*

16. All material, not exceeding \$1,000 in value, purchased in good faith for use in the construction, alteration, or repair of any building, mining claim or other improvement, as long as in good faith the same is about to be applied to the construction, alteration, or repair of such building, mining claim, or other improvement,

17. All machinery, tools, and implements, necessary in and for boring, sinking, putting down, and constructing surface or artesian wells; also the engines necessary for operating such machinery, implements, tools, etc.; also all trucks necessary for the transportation of such machinery, tools, implements, engines, etc.: Provided, That the value of all the articles exempted under this subdivision shall not exceed \$1,000.

\* \* \* \* \*

NOTE.—The amendment of March 10, 1903 (Laws 1903, p. 114), does not change paragraph 5 of section 690, as already amended. The act of March 22, 1907 (Laws 1907, p. 882), does not change paragraph 5 of section 690, as already amended.

**ANNOTATIONS.**

**MINER'S EXEMPTION.**

**MINING CLAIMS AND HOMESTEADS EXEMPT.**

The right of a miner, under subdivision 5 of this section, to have his cabin or dwelling, and also his mining claim, exempt from execution is not inconsistent with other sections of the code as to the exemption of a homestead, and does not prevent a miner from selecting, as exempt from execution, a mining claim as a homestead, though the dwelling may be of a value greater than \$500, and the claim of a value greater than \$1,000, but when they are properly selected and filed upon as a homestead, they are entitled to be protected.

Gaylord v. Place, 98 Cal. 472, p. 479, 33 Pac. 484 (1893).

## MINERS' WAGES.

### WAGES OF MINERS PROTECTED.

LAWS 1867-68, P. 213; MAR. 21, 1868. LAWS 1871-72, P. 205; MAR. 2, 1872. (CODE CIVIL PROCEDURE, SEC. 1204-1206.)

AN ACT to protect the wages of labor.

The People, etc.

NOTE.—This act was amended by the act of March 2, 1872 (Laws 1871-72, p. 205). These amendments are shown in parentheses, and the parts omitted in brackets. The original sections 1-3 are now sections 1204-1206, Code Civil Procedure.

SEC. 1. (Sec. 1204, Code Civil Procedure.) That in all assignments of property, whether real or personal, which shall hereafter be made by any persons, or chartered company or corporation, or by any person or persons owning or leasing real or personal property, to trustees or assignees, on account of inability at the time of the assignment to pay his, her, or their debts, or in proceedings in insolvency, the wages of the miners, mechanics, salesmen, servants, clerks, or laborers employed by such person or persons, or chartered company or corporation, shall be held and deemed preferred claims, and paid by such trustees or assignees before any other creditor or creditors of the assignor; provided, that the claims of each miner, mechanic, salesman, servant, clerk, or laborer thus preferred shall not exceed in value \$100 (\$250) of gold coin of the United States, and the services shall have been rendered or labor performed within 40 (90) days next preceding said assignment or the filing of said proceeding in insolvency.

SEC. 2. (Sec. 1205, Code Civil Procedure.) That in all cases of the death of any employer or employers, the wages of each miner, mechanic, salesman, clerk, servant, and laborer, for services rendered within the 40 (90) days next preceding the death of the employer [not exceeding \$100 of gold coin of the United States], shall rank after the funeral expenses of the last sickness, the charges and expenses of administering upon the estate, and the allowance to the widow and infant children, and be paid pro rata before all other claims against the estate of the deceased person or persons: Provided, This act shall in no way affect the homestead or other property exempted by law from forced sale in payment of debts, or any mortgage or lien lawfully obtained on the property of the deceased before his death.

SEC. 3. (Sec. 1206, Code Civil Procedure.) In all cases of executions, attachments, and writs of a similar nature [hereafter to be issued] against any person or persons, or chartered company or corporation, it shall be lawful for such miners, mechanics, salesmen, servants, clerks, and laborers to give notice of their claim or claims, and the amount thereof, duly certified and sworn to by the creditor or creditors making the claim, to the officer executing either of such writs, at any time before the actual sale of property levied on; and such officers shall pay to such miners, mechanics, salesmen, servants, clerks, or laborers, out of the proceeds of the sale, the amount each is justly and legally entitled to receive for services rendered, within the 40 (90) days next preceding the levy of the writ of execution, attachment, or other writ, not exceeding \$100 (\$250) of gold coin of the United States: Provided, If any or all of the claims so presented and claiming preference under this section shall be disputed by either the debtor or the creditor [the miner, mechanic, salesman, servant, clerk, or laborer] (the person) presenting the same shall commence an action within 10 days for the recovery thereof, and shall prosecute his action with due diligence or be forever barred from any claim of priority of payment thereof; but in case action is rendered necessary by the act, as aforesaid, of either debtor or creditor, and judgment

shall be had for said claim, or any part thereof, carrying costs, the costs attending the prosecution of said action, and legally taxable therein, shall likewise be a preferred claim, with the same rank as the original claim: And provided further, If the amount of assets, after deducting costs of levy and sale, shall not be adequate to the payment of all of the preferred claims of this class, they shall be paid pro rata out of the fund hereby made applicable thereto: And provided further, That nothing in this act contained shall be construed to affect any homestead claims, mortgage, or lien of any description, created and existing before the claim of such laborer accrued.

#### AMENDED SECTION 1206.

**LAWS 1893, P. 87; MAR. 9, 1893. SEC. 1206, CODE CIVIL PROCEDURE.**

AN ACT to amend section 1206 of the Code of Civil Procedure, relating to certain liens for salaries and wages, and to persons preferred in cases of executions and attachments.

The People, etc.

SEC. 1. Section 1206 of the Code of Civil Procedure is hereby amended so as to read as follows:

SEC. 1206. In cases of executions, attachments, and writs of a similar nature, issued against any person, except for claims for labor done, any miners, mechanics, salesmen, servants, clerks, and laborers, or any other person who renders services or performs work, who have claims against the defendant for labor done or work performed may give notice of their claims, and the amount thereof, sworn to by the person making the claim, to the creditor and the officer executing either of such writs, at any time before the actual sale of property levied on, or in the event of a levy upon money, at any time before the transfer of such money under execution; \* \* \* If any or all of the claims so presented and claiming preference under this section are disputed by either the debtor or a creditor, the person presenting the same must commence an action within 10 days for the recovery thereof, and must prosecute his action with due diligence, or be forever barred from any claim or priority of payment thereof; and the officer shall retain possession of so much of the proceeds of the sale or money as may be necessary to satisfy such claim until the determination of such action; and in case judgment be had for the claim, or any part thereof, carrying costs, the costs taxable therein shall likewise be a preferred claim with the same rank as the original claim.

#### AMENDED SECTIONS 1204-1208.

**LAWS 1907, P. 321; MAR. 16, 1907. (SEC. 1204-1208, CODE CIVIL PROCEDURE.)**

AN ACT to repeal Chapter III, etc. (same as in sec. 1).

The People, etc.

SEC. 1. Chapter III of Title IV of Part III of the Code of Civil Procedure and each and every section of said Chapter III are repealed, and a new Chapter III is substituted to take the place thereof in said code to read as follows:

SEC. 1204. When any assignment, whether voluntary or involuntary, is made for the benefit of the creditors of the assignor, or results from any proceeding in insolvency commenced against him, the wages and salaries of miners, mechanics, salesmen, servants, clerks, laborers, and other persons, for services rendered for him within 60 days prior to such assignment, or to the commencement of such proceeding, and not exceeding \$100 each, constitute preferred claims, and must be paid by the trustee or assignee before the claim of any other creditor of the assignor or insolvent.

SEC. 1205. Upon the death of any employer, the wages, not exceeding \$100 in amount, of each miner, mechanic, salesman, clerk, servant, laborer, or other employee, for work done or services rendered within 60 days prior to such death must be paid before any other claim against the estate of such employer, except his funeral expenses, and expenses of the last sickness, the allowance to the widow and infant children, and the charges and expenses of administration.



SEC. 1206. Upon the levy of any attachment or execution, not founded upon a claim for labor, any miner, mechanic, salesman, servant, clerk, laborer, or other person who has performed work or rendered services for the defendant within 60 days prior to the levy, may file a verified statement of his claim therefor with the officer executing the writ, and give copies thereof to the debtor and the creditor, and such claim not exceeding \$100 unless disputed must be paid by such officer from the proceeds of such levy remaining in his hands at the filing of such statement. If any claim is disputed, within the time and in the manner prescribed in section 1207, the claimant must within 10 days thereafter commence an action for the recovery of his demand, which action must be prosecuted with due diligence, or his claim to priority of payment is forever barred. The officer must retain in his possession until the determination of such action so much of the proceeds of the writ as may be necessary to satisfy the claim, and if the claimant recovers judgment the officer must pay the same, including the costs of suit, from such proceeds.

SEC. 1207. Within five days after receiving a copy of the statement provided for in the preceding section, either the debtor or the creditor may file with the officer a verified statement denying that any part of such claim is due for services rendered within 60 days next preceding the levy of the writ, or denying that any part of such claim, beyond a sum specified is so due. If a part of the claim is admitted to be due, and the claimant nevertheless brings suit and does not recover more than the amount so admitted, he can not recover costs, but the costs must be adjudged against him, and the amount thereof deducted from the sum found due him.

SEC. 1208. If the claims presented under section 1206 and not disputed, or, if disputed, established by judgment, exceed the proceeds of the writ not disposed of before their presentation, such proceeds must be distributed among the claimants in proportion to the amount of their respective claims.

#### ANNOTATIONS.

##### LEVY ON MINING PROPERTY.

###### CLAIMS FOR LABOR—PRESENTATION AND PAYMENT.

Miners who have performed labor in and about a mine may, when an execution is levied and the mine advertised for sale, make out and present their duly verified claims, cause the same to be certified by the mine superintendent, and copies of the same to be sent to the sheriff, to the attorney of the plaintiff in the action, and to the defendant, the mining corporation, or its superintendent; and this is sufficient where the claims are not disputed by the mining corporation to protect the liens of the miners and to give them the preferred right to the proceeds of the sale.

Carter v. Green Mountain Gold Min. Co., 83 Cal. 222, p. 223, 23 Pac. 317 (1890).  
See Johnson v. Goodyear Min. Co., 127 Cal. 4.

The purpose of the notice provided for in section 1206 is to divert from the execution or attaching creditor money which he would otherwise be entitled to claim and receive by virtue of his levy; but a miner or laborer is not required to commence an action to establish his claim unless it is disputed, and if he is a party to the proceedings and the notice is not the initiation of a new and independent proceeding and to be effective is not required to be served like a summons upon the parties and not their attorneys.

Carter v. Green Mountain Gold Min. Co., 83 Cal. 222, p. 224, 23 Pac. 317 (1890).

Money in the hands of a sheriff at the time of demands made on the part of lien holders, in accordance with the provisions of this section, does not become subject to their liens necessarily, and may thereafter be exhausted by a proper nunc pro tunc order of court made subsequent to the time of the intervention of such lien holders. The rights of such lien holders are purely of statutory origin and there can be no trust fund created in the hands of the sheriff of the proceeds of the sale of mining property,

that could not be subjected to any lawful order of the court and applied by such order in payment to the sheriff for keepers' fees in the nature of costs.

*Legg & Shaw Co. v. Worthington*, 157 Cal. 488, p. 491, 108 Pac. 284 (1910).

The rights of lien holders to the proceeds of the sale of mining property do not attach to the property in the sheriff's hands or upon sale, to the fund realized therefrom, by the mere serving of the notice prescribed in this section; but their rights under this section are mere priorities entitling them, under certain circumstances, to enjoy the fruits of the attachment and sale in preference to the plaintiff in the attaching suit, and the lien holders are treated as intervenors and have no superior rights to those of the plaintiff except that of the first recourse to the moneys realized from the sale, and they can not wait until such action of the court as would bind the other parties to the suit becomes final and then review the whole case upon an appeal from an order, which is merely a logical result of the previous action of the court from which no appeal has been taken.

*Legg & Shaw Co. v. Worthington*, 157 Cal. 488, p. 493, 108 Pac. 284 (1910).

### MINERS' WAGES—PAYMENT.

LAWS 1891, P. 195; MAR. 31, 1891.

AN ACT to provide for the payment of the wages of mechanics and laborers employed by corporations.

The People, etc.

SEC. 1. Every corporation doing business in this State shall pay the mechanics and laborers employed by it the wages earned by and due them weekly or monthly on such day in each week or month as shall be selected by said corporation.

SEC. 2. A violation of the provisions of section 1 of this act shall entitle each of the said mechanics and laborers to a lien on all the property of said corporation for the amount of their wages, which lien shall take preference over all other liens, except duly recorded mortgages or deeds of trust; and in any action to recover the amount of such wages or to enforce said lien the plaintiff shall be entitled to a reasonable attorney's fee, to be fixed by the court, and which shall form part of the judgment in said action, and shall also be entitled to an attachment against said property.

### ANNOTATIONS.

#### PAYMENT OF MINERS' WAGES.

##### CONSTRUCTION AND APPLICATION OF ACT.

This act does not apply to all corporations, but only to corporations that employ laborers and mechanics by the week or month, and whose wages, under the terms of their employment, are payable weekly or monthly. The act does not purport to impose upon such corporations any duty or liability toward all the mechanics or laborers whom it may employ, or to create a right in favor of those of its employees whose wages are not earned or payable by the week or month. The statute applies to mining corporations which so employ laborers or miners, as well as to other corporations.

*Ackley v. Black Hawk Gravel Min. Co.*, 112 Cal. 42, p. 44 (1896).

*Spaulding v. Mammoth Spring Min. Co.*, 5 Cal. Unrep. Cas. 712, p. 713, 49 Pac. 183 (1896).

See *Johnson v. Goodyear Min. Co.*, 127 Cal. 4. (Construing similar act of Mar. 29, 1897.)

## MINERALS.

### QUICKSILVER—DUTIES RELATING TO.

LAWS 1865-66, P. 191; MAR. 10, 1866. (GENERAL LAWS 1864-1871, SEC. 8944-8945.)

AN ACT to secure to the miners of this State pure and unadulterated quicksilver

The People, etc.

SEC. 1. Every company or person within this State engaged in the production of quicksilver by mining for the purposes of sale, and every firm, company, or person importing into this State quicksilver for the purpose of sale, shall cause to be prepared a metallic stamp, of such form and character as may enable such company or person to impress upon wax or other plastic material the seal hereinafter provided. Such stamp shall be so constructed that either by characters engraved upon the same, or movable types and dies connected therewith, there may be impressed a seal, showing:

First. The name of the company, firm, or person producing or importing the quicksilver;

Second. The date at which such seal is applied to each tank or vessel of quicksilver;

Third. The amount of quicksilver contained in such tank or vessel.

SEC. 2. Before any tank of quicksilver shall leave the works of any mining company engaged in the production of the same for sale, or the warehouse of any firm or person importing such quicksilver for sale, such company, firm, or person shall cause a seal of wax or other plastic material adapted to the purpose to be applied to the tap, plug, or orifice through which such tank is filled, and in such manner that such tap or plug can not be removed or disturbed or such orifice opened without breaking or displacing such seal. Such seal when thus applied shall be impressed with the stamp above provided, in such manner that such seal shall exhibit plainly all the characters required of such stamp.

SEC. 3. Any person who shall forge or falsely fabricate the stamp or seal of any company, firm, or person, as herein provided, or attach the same to any tank or vessel of quicksilver, shall be deemed guilty of forgery, and, upon conviction, shall be punished by imprisonment in the State prison for the period of not less than one nor more than five years.

SEC. 4. Any person who shall willfully and knowingly adulterate and debase any quicksilver designed for sale or that may hereafter be offered for sale, by mixing with such quicksilver any lead, antimony, or other base metal, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in a sum not exceeding \$1,000, or imprisonment in the county jail not exceeding one year, or both such fine and imprisonment.

SEC. 5. Any vendor of quicksilver who shall vend or sell to any person any quicksilver debased or adulterated by mixture with the same of any lead, antimony, or other base metals, shall be liable to the purchaser of such quicksilver for all the damages and injury sustained from such debasement, to be recovered by such purchaser in a civil action. And such damages, when ascertained by the court or jury, shall be at once quadrupled by the court, or by the clerk, by order of the court, and judgment for four times the damages proven shall be entered in favor of the plaintiff and against such defendant; provided, that nothing contained in this section shall be taken to apply to any person selling quicksilver that has been already employed in mining or the mechanical arts, and who when selling the same shall state to the purchaser that such quicksilver has been thus employed.

**COUNTERFEITING AND DEBASING.****SEC. 366, 367, PENAL CODE (1872), P. 89.**

SEC. 366. Every person who counterfeits, or who willfully uses the counterfeited seal or stamp of any person engaged in manufacturing or selling quicksilver, is guilty of a felony.

SEC. 367. Every person who willfully sells, or offers for sale as pure, any debased or adulterated quicksilver is guilty of a misdemeanor.

**LARCENY OF MINERALS.****LAWS 1871-72, P. 435; MAR. 20, 1872.**

AN ACT supplementary to an act entitled "An act concerning crimes and punishments," passed April 16, 1850.

The People, etc.

SEC. 1. Every person who shall feloniously steal, take, and carry away, or attempt to take, steal, and carry from any mining claim, tunnel, sluice, under current, rifle-box, or sulphurate machine any gold dust, amalgam, or quicksilver, the property of another, shall be deemed guilty of grand larceny and upon conviction thereof shall be punished by imprisonment in the State prison for any term of not less than 1 year nor more than 14 years.

SEC. 2. This act shall be in force from and after its passage.

**MINERAL CABINET.****CREATION.****LAWS 1871-72, P. 824; APR. 1, 1872.**

AN ACT to provide for the establishment of a cabinet department in the State library.

The People, etc.

SEC. 1. It shall be the duty of the State librarian to receive, arrange, and properly display, and take charge of, in the State library, the minerals, precious metals, mineralogical, geological, and fossiliferous specimens, and precious stones herein-after mentioned and referred to, or which may hereafter become the property of the State by purchase or by presentation.

SEC. 2. (Appraisers to purchase cabinet of J. M. Frey.)

SEC. 3. (Appropriations.) \$13,000.

SEC. 4. This act shall take effect from and after its passage.

**TRANSFER OF SPECIMENS.****LAWS 1881, P. 103; MAR. 4, 1881.**

SENATE CONCURRENT RESOLUTION No. 10, relative to the transfer of mineralogical specimens to the mining bureau.

Resolved by the senate, the assembly concurring, That the collection of mineralogical specimens in the State library of the State of California be transferred to the mining bureau; that the State mineralogist shall, after such transfer, have the custody of said collection.

**REMOVAL.****LAWS 1887, P. 74; MAR. 9, 1887.**

AN ACT to provide for the removal of the mineral cabinet from the State library.

The People, etc.

SEC. 1. Within 30 days after the passage of this act the governor shall appoint a board of trustees consisting of three persons which shall be known as the trustees of the mineral cabinet.

SEC. 2. It shall be the duty of said board of trustees, within 30 days after their appointment, to select a place in the Crocker Art Gallery building, where the said cabinet shall be located, and to remove the same there. The location shall be made with a view to the safety of said cabinet from destruction, and to keeping the same open for inspection by the public; but no expense to the State shall be incurred either for room rent or care of the same.

SEC. 3. This act shall take effect from and after its passage.

MANAGEMENT AND PROTECTION.

LAWS 1889, P. 131; MAR. 11, 1889.

AN ACT making an appropriation for the management and protection of the State mineral cabinet under direction of the trustees thereof.

The People, etc.

SEC. 1. (Appropriation for protection of State mineral cabinet \$350.)

\* \* \* \* \*

REPAIRS.

LAWS 1889, P. 438-447; MAR. 21, 1889.

AN ACT making appropriations, etc., for the forty-first and forty-second fiscal years.

The People, etc.

SEC. 1. The following sums of money are hereby appropriated out of any money in the State treasury not otherwise appropriated, for the objects hereinafter expressed and for the support of the government of the State of California for the forty-first and forty-second fiscal years.

\* \* \* \* \*

For repairs to State mineral cabinet at Sacramento, \$200.

\* \* \* \* \*

APPROPRIATIONS.

LAWS 1893, P. 524; MAR. 25, 1893.

AN ACT making appropriations for the support of the government of the State of California for the forty-fifth and forty-sixth fiscal years

The People, etc.

SEC. 1. The following sums of money are hereby appropriated out of any money in the State treasury not otherwise appropriated, for the support of the government of the State of California for the forty-fifth and forty-sixth fiscal years:

\* \* \* \* \*

For uses of trustees of mineral cabinet, \$500.

\* \* \* \* \*

LAWS 1907, 859, P. 874; MAR. 22, 1907.

AN ACT making appropriations, etc., for the fifty-ninth and sixtieth fiscal years.

The People, etc.

SEC. 1. The following sums of money are hereby appropriated, etc., for the fifty ninth and sixtieth fiscal years: \* \* \*

For the restoration of the exhibit of minerals at the Crocker Art Gallery, \$200.

ANALYZING MINERALS.

LAWS 1885, P. 43; MAR. , 1885.

AN ACT to provide for analyzing the minerals, mineral waters, and other liquids, and the medicinal plants of the State of California, and of foods and drugs, to prevent the adulteration of the same.

The People, etc.

SEC. 1. The governor of the State of California shall appoint one of the professors of the State university of California of sufficient competence, knowledge, skill, and

experience, as State analyst, whose duty it shall be to analyze all articles of food, drugs, medicines, medicinal plants, minerals, and mineral waters, and other liquids or solids which shall be manufactured, sold, or used within this State, when submitted to him, as hereinafter provided.

\* \* \* \* \*

SEC. 6. It shall be competent for the mineralogist of the State of California to submit to the State analyst any minerals of which he desires an analysis to be made: Provided, That the cost of the same shall be defrayed by the mineralogical bureau.

\* \* \* \* \*

## DISCOVERY AND OWNERSHIP.

### SEC. 1985, CIVIL CODE.

SEC. 1985. Everything which an employee acquires by virtue of his employment, except the compensation, if any, which is due to him from his employer, belongs to the latter, whether acquired lawfully or unlawfully, or during or after the expiration of the term of his employment.

### ANNOTATIONS.

#### OWNERSHIP.

##### 1. DISCOVERY BY EMPLOYEE.

##### 2. TITLE OF STATE.

##### 1. DISCOVERY BY EMPLOYEE.

A laborer employed by the owner of a mine to excavate and grade a quartz mill site on public land and who while so working for the defendants discovered gold and dug out the gold not in the course of his work, but independently of it, but for the sole purpose of extracting the metal, is entitled to the gold thus obtained by him under this section of the code and is entitled to recover the value thereof from his employer who wrongfully took and converted the gold to his own use.

Burns v. Clark, 133 Cal. 634, p. 636, 66 Pac. 12, 85 Am. St. 233 (1901).

##### 2. TITLE OF STATE.

The rule laid down in Hicks v. Bell, 3 Cal. 227, Stoakes v. Barrett & Co., 5 Cal. 36, Irwin v. Phillips, 5 Cal. 140, Merced Min. Co. v. Fremont, 7 Cal. 317, Boggs v. Merced Min. Co., 14 Cal. 279, to the effect that mines of gold and silver in the public lands are the property of the State, is without foundation and not justified under the statute.

Moore v. Smaw, 17 Cal. 199, p. 217, 79 Am. Dec. 123 (1861).

Doran v. Central Pac. R. Co., 24 Cal. 245, p. 257 (1864).

## TAKING MINERALS FROM STREAMS AND WATERS—CONDITIONS—LEASES.

### LAWS 1911, P. 904; APR. 14, 1911.

AN ACT regulating the extraction of minerals from the waters of any stream or lake and prohibiting the extraction of minerals from said waters except under lease from or express permission of the State for a period not exceeding 25 years.

The People, etc.

SEC. 1. Minerals contained in the waters of any stream or lake in this State shall not be extracted from said waters except upon charges, terms, and conditions prescribed by law. No person, firm, corporation, or association shall hereafter gain the right to extract or cause to be extracted said minerals from said waters by user, custom, prescription, appropriation, littoral rights, riparian rights, or in any manner other than

by lease from or express permission of the State as prescribed by law; and no such lease or permission shall be granted for a longer period than 25 years.

SEC. 2. All acts or parts of acts in conflict herewith are hereby repealed.

SEC. 3. This act shall take effect immediately.

**LAWS 1911, P. 1154; APR. 27, 1911.**

AN ACT relating to lakes and streams, the waters of which contain minerals in commercial quantities; withdrawing State lands within the meander lines thereof from sale; prescribing conditions for taking such minerals from said waters and lands, and providing for the leasing of lands uncovered by the recession of the waters of such lakes and streams.

The People, etc.

SEC. 1. There is hereby withdrawn from selection and sale all of the lands embraced within the original meander lines of streams and lakes belonging to the State, the waters of which contain minerals in commercial quantities, and all such lands which may hereafter inure to the State by virtue of its sovereignty, excepting such lands now contracted to be sold under sections 3493m to 3493t, both inclusive, of the political code.

SEC. 2. No person, firm, or corporation shall take water from such streams or lakes containing minerals and extract from such waters such minerals, except under the terms and conditions of this act; and no person, firm, or corporation may lease any and herein referred to and extract therefrom minerals deposited therein or thereon, except under the terms and conditions of this act.

SEC. 3. Every person, firm, or corporation taking from the waters of such stream, lakes, or lands any minerals shall file, on or before the last Monday in January of each year, with the county assessor of the county in which any such stream or lake is situated, and also with the State comptroller, a written statement, duly verified, showing in tons of 2,000 pounds, the amount of mineral taken by such person, firm, or corporation from such water or land during the year ending December 31 last preceding and sold by said person, firm, or corporation during the said year preceding. Any such person, firm, or corporation neglecting or refusing to furnish such statement shall be subject to a fine of \$100 for each day after the said last Monday in January such person, firm, or corporation shall fail to furnish such statement, and, in addition to said fine, shall forfeit all leases granting the right to extract such minerals from said water and said land. Any person who shall, either on behalf of himself or any firm or corporation, verify any such statement which shall be untrue in any material part shall be deemed guilty of a misdemeanor.

SEC. 4. In case either the assessor or the State comptroller shall not be satisfied with the statement as returned he may make an examination of the matters necessary to verify or correct said statement, and, for that purpose, may subpoena witnesses and call for and compel the production of necessary books and papers belonging to the person, firm, or corporation making the returns.

SEC. 5. The county assessor of the county shall, after examination and approval by him and the State comptroller of such statement, proceed to collect from such person, firm, or corporation a royalty of 25 cents for each ton of 2,000 pounds of mineral taken from such water or land by such person, firm, or corporation and sold during the preceding year, in the manner provided for the collection of personal property taxes: Provided, that the royalty on sodium bicarbonate and sodium hydrate so taken shall be fifty (50) cents for each ton of 2,000 pounds.

SEC. 6. Any person, firm, or corporation desiring to lease any lands under this act must make application therefor to the surveyor general of the State, describing the lands sought to be leased by legal subdivisions, or, if the legal subdivisions are unknown to the applicant, by metes and bounds. The application must be accompanied by a filing fee of \$10.

SEC. 7. Upon the receipt of such application, the surveyor general shall direct the county surveyor of the county in which such lands are situated to survey the land

sought to be leased. The county surveyor shall make an actual survey of the land at the expense of the applicant, establishing the four corners to each quarter section, and connecting the same with a United States survey; and within 30 days file with the surveyor general a copy, under oath, of his field notes and plat. If the county surveyor fails to make the survey as herein provided, the surveyor general shall immediately direct another person to make the survey at the expense of the applicant, and said survey shall be made and completed within 30 days after the authorization, and the field notes and plats or copies thereof shall be sworn to by the surveyor making them and shall be filed with the surveyor general.

SEC. 8. All applications to lease land under this act shall be approved or rejected by the surveyor general within 90 days after the receipt thereof. Immediately after the approval of the application, the surveyor general shall execute and deliver to the applicant a lease of the lands described in the application.

SEC. 9. The lands designated in this act shall be leased at the rate of \$2.50 per acre per year, payable yearly in advance. All moneys received as rental for such lands and as royalty upon the mineral product of the waters of the lakes, streams, or lands above mentioned, shall be paid into the State school-land fund.

SEC. 10. Whenever any lease is delivered to the applicant by the surveyor general, the lessee shall, within 15 days thereafter, present said lease to the treasurer of the State of California, and make payment of the first annual rental. The treasurer shall receive the money and give a receipt therefor. All subsequent annual payments of rental must be paid to the State treasurer, in like manner, within 15 days after they become due. In case payments are not made as herein provided, the lease and all rights thereunder shall cease and terminate. No lease shall run for more than 25 years: Provided, that upon the expiration of any lease, such lease may be extended for a period of 25 years upon such terms and conditions as may then be prescribed by law.

SEC. 11. All leases made under the authority of this act shall contain a reservation to the State of a right to locate rights of way across such leased lands, subject only to the requirements that the rights of way shall be located in such manner as to cause the least injury to the leased lands across which the same may be located, and that any damage suffered by the lessee of such lands shall be compensated by the lessee of the lands for whose benefit the right of way is required; and every such lease shall be subject to, and shall contain a reservation of, the right of any city and county or incorporated city or town of this State to at any time appropriate and take, under the laws of this State relative to the appropriation of waters, water from any stream or lake tributary to or discharging into any stream or lake of the character mentioned in section 1 of this act for any use or uses within the authorized powers of such city and county or incorporated city or town.

SEC. 12. Leases of rights of way, not exceeding 100 feet in width, for access to any waters or lands designated by this act may be applied for and granted in the manner herein provided for leasing lands. Such rights of way shall be leased at an annual rental of \$2.50 an acre, and the same shall be paid as herein provided for leased lands.

SEC. 13. All leases of mineral lands provided for by this act shall cease and terminate on December 31 of any year if the lessee or assigns has not, during the year preceding, extracted or removed from such land and water an amount of mineral equal, in the aggregate, to a minimum of 5 tons per acre of land leased: Provided, that when a lease is not delivered to the lessee until after the 15th day of January of any year, the minimum tonnage for such year shall be less than 5 tons, and shall be proportional to the number of days remaining in such year after the completion of the works.

SEC. 14. The surveyor general is hereby authorized to prepare, make, execute, and deliver all papers, instruments, and documents, and to do any and all things necessary to carry out the provisions of this act.



SEC. 15. The legislature shall have the right to change, from time to time, the royalty per ton of minerals extracted and the annual rental per acre of land, and such change shall apply to all persons, firms, or corporations holding leases hereunder; Provided, that no lease given under this act shall be subject to any change, as to the royalty or rental provided for in said lease, subsequent to the execution of such lease until after 10 years from the passage of this act.

SEC. 16. Any lessee hereunder may abandon and surrender a lease at the expiration of any calendar year by filing with the county assessor of the county in which is situated the lands described in said lease, and with the surveyor general and the State comptroller, notices of said abandonment or surrender; but said notices must be filed at least 60 days before the expiration of said calendar year; and said abandonment and surrender shall not absolve the said lessee from the payment of any royalty which may be due at the end of said fiscal year for mineral extracted from the waters or lands in this act specified.

SEC. 17. This act shall take effect immediately.

### LANDS UNCOVERED BY DRAINS—MINERALS.

LAWS 1911, P. 903; APR. 14, 1911. SEC. 3493m, POLITICAL CODE.

AN ACT to amend section 3493m of the Political Code relating to land uncovered by the recession or drainage of the waters of inland lakes.

The People, etc.

SEC. 1. Section 3493m of the Political Code is hereby amended to read as follows:

SEC. 3493m. Any person desiring to purchase any of the lands now uncovered or which may hereafter be uncovered by the recession or drainage of the waters of inland lakes, and inuring to the State by virtue of her sovereignty, or the swamp and overflowed lands not segregated by the United States, must make an application therefor to the surveyor general of the State, which application must be accompanied by the applicant's affidavit that he is a citizen of the United States, or has declared his intention to become such, a resident of this State, of lawful age, that he desires to purchase such lands (describing them by legal subdivisions, or by metes and bounds, if the legal subdivisions are unknown), under the provisions of this article, for his own use and benefit, and for the use and benefit of no other person whomsoever, and that he has made no contract or agreement to sell the same, and that he does not own any State lands which, together with that now sought to be purchased, exceeds 640 acres. The provisions of this section shall not affect or apply to any land uncovered by the recession or drainage of the waters of any lake or other body of water, the waters of which are so impregnated with minerals as to be valuable for the purpose of extracting therefrom such minerals; but the land uncovered by the recession or drainage of such waters shall be subject to lease for periods of not longer than 25 years upon such charges, terms, and conditions as may be prescribed by law.

SEC. 2. All acts or parts of acts in conflict herewith are hereby repealed.

SEC. 3. This act shall take effect immediately.

### JOINT RESOLUTIONS.

#### MINERAL RESOURCES—MINERAL LAND BILL.

LAWS 1873-74, P. 972; JAN. 30, 1874.

SENATE CONCURRENT RESOLUTION No. 32, instructing our senators and representatives in Congress to oppose the passage of a certain bill pending in the House of Representatives of the United States.

Resolved by the Senate of the State of California, the Assembly concurring, That our Senators in the Congress of the United States are hereby instructed and our Representatives requested to vote against and oppose the passage of the bill introduced into the House of Representatives by the Hon. J. D. Ward, of Illinois, and known as an

act supplemental to and amendatory of the act entitled "An act to promote the development of the mining resources of the United States," approved May 10, 1872.

**MINERAL EXHIBIT.**

**LAWS 1885, P. 227; FEB. 11, 1885.**

ASSEMBLY CONCURRENT RESOLUTION No. 11, relative to sending the mineral collection of the State mining bureau to the World's Fair and Cotton Centennial Exposition at New Orleans.

Resolved by the Assembly, the Senate concurring, That the State mineralogist be, and he is hereby, authorized and directed to carefully pack and ship to New Orleans so much of the cabinet of minerals now in the State Mining Bureau at San Francisco as will secure a proper representation of the mineral wealth and resources of California in the World's Industrial and Cotton Centennial Exposition, now open in New Orleans, said exhibit to be under the charge and control of the State mineralogist, and at the close of said exposition, or sooner if by him deemed expedient or proper, to be returned to its present quarters in the State mining bureau. \* \* \*

**CONSIDERATION MINERAL-LAND BILL.**

**LAWS 1899, P. 496; MAR. 6, 1899.**

SENATE JOINT RESOLUTION No. 21 relative to the mineral-land bill.

Resolved by the Senate and Assembly of the State of California, jointly, That we earnestly urge immediate consideration of the mineral land bill now pending in Congress, and respectfully request Hon. T. B. Reed, speaker of the House of Representatives, to recognize some member of the California delegation to call the same up for consideration before the close of the present session.

Resolved, That the secretary of the senate be instructed to transmit by telegraph a copy of the foregoing resolution to the Speaker of the House of Representatives at Washington, D. C.

## MINERAL LANDS AND MINES—SALE AND CONVEYANCE.

### SHERIFF'S SALES OF MINERAL LANDS.

LAWS 1853, P. 19; JAN. 22, 1853.

AN ACT explanatory of the duties of sheriffs and rights of redemptioners under the thirty-seventh section of the "Act to provide for the levying, assessing, and collecting public revenue," passed April 23, 1852.

The People, etc.

SEC. 1. In exposing real or personal property as described in this act, it shall be the duty of the sheriff, or other officer, to sell only so much thereof, or interest therein as will be sufficient to pay the amount of the tax levied thereon, or for which the same shall be liable, together with such costs and charges as are or may be allowed by law.

SEC. 2. The real or personal property embraced in the provisions of this act shall be the following: \* \* \*

Fourth. Mining interests or claims.

SEC. 3. The sheriff or other officer selling any of the before-described real or personal property or estate for taxes, shall immediately thereafter execute to the purchaser a certificate and deed thereof in the manner provided by law, on the sale of real estate under execution, and the purchaser thereof shall be vested with the same rights in reference thereto as appertain to purchasers from sales of real estate under execution.

SEC. 4. Any real estate so sold for taxes, which is at the time of such sale the property of, or in which minor heirs may be interested, shall be subject to redemption any time within one year after such minor heirs shall have attained the age of majority, by such minor heirs or their legal representatives, on the payment as herein provided of the amount of the taxes, costs, and charges thereon.

### SCHOOL LAND WARRANTS.

LAWS 1859, P. 338; APR. 16, 1859.

AN ACT to provide for the issuance of patents to lands located with State school-land warrants, and for land purchased under the act of April 23, 1858.

The People, etc.

SEC. 1. In all cases where school-land warrants have been issued, in pursuance of the act approved May 3, 1852, entitled "An act to provide for the disposal of the 500,000 acres of land donated to this State for school purposes, by act of Congress, approved April 4, 1841," and the same shall have been, or may be, hereafter located upon any of the public lands within this State, subject to such location, and in conformity with the provisions of said act, or of an act approved April 30, 1857, providing for the location and patenting of school lands, or where parties have purchased lands under the act of April 23, 1858, and obtained the certificate of purchase of the register of the State land office, the holder of such warrant, or certificate of purchase, his, her, or their heirs or assigns, upon complying with the provisions of this act, shall be entitled to receive a patent from the State for the lands thus located or purchased. \* \* \*

\* \* \* \* \*  
SEC. 8. Nothing in this act shall be construed so as to authorize or confirm the location or purchase of any of the mineral, swamp, or overflowed lands in this State, as school lands.

NOTE.—The act of April 30, 1857, made no exceptions as to mineral lands.

ANNOTATIONS.

SCHOOL LANDS.

SUBSEQUENT DISCOVERY OF MINERALS—EFFECT ON TITLE.

Where school lands are properly located and the purchase money paid and a patent issued after investigation and determination by the proper State officers, and the conditions and characteristics of the land are not such as to constitute it mineral lands within the meaning of this statute, the verity of this record can not be overthrown on proof of the fact that the patentee has subsequently discovered gold in the land in some considerable and paying quantities.

Ah Yew v. Choate, 24 Cal. 562, p. 566 (1864).

SALE OF STATE LANDS.

LAWS 1863, P. 591; APR. 27, 1863.

AN ACT to provide for the sale of certain lands belonging to the State.

The People, etc.

\* \* \* \* \*

SEC. 17. When a certificate of purchase has been issued by the register, the same shall be deemed prima facie evidence of legal title to the land for which the certificate of purchase is issued: Provided, Such certificates of purchase shall not be so construed as to affect the working of mineral lands for mining purposes. \* \* \*

\* \* \* \* \*

ANNOTATIONS.

STATE LANDS.

AGRICULTURAL LANDS SUBJECT TO MINING.

While according to the strict terms of this act a purchaser of mineral lands in sections 16 and 36 holds them under his certificate of purchase, subject to be entered and worked for mining purposes, yet it seems that the legislature intended that such purchaser under his patent, though absolute in form, should still hold such lands subject to be entered upon and worked for mining purposes, as it was the evident intention of the legislature to conserve the policy of the State in the matter of mines and mining as settled at the beginning of its political history.

Higgins v. Houghton, 25 Cal. 252, p. 261 (1864).

By this act the State assumed that it was the owner of mineral lands in sections 16 and 36 in each township, and that as such owner it had the right to sell and convey them; but it was the intention of the act that the parties by whom such mineral lands should be purchased, or to whom they should be certified, should hold them subject to be entered upon and worked for mining purposes.

Higgins v. Houghton, 25 Cal. 252, p. 261 (1864).

The rights of agriculturists are made to yield to those of the miner, where gold is discovered in lands settled by him and that are still a part of the public domain.

Tartar v. Spring Creek Water & Min. Co., 5 Cal. 396, p. 398 (1855).

The act of May 3, 1852, makes no reservation of mineral lands, and a party is not prohibited either by that law or any other from locating school-land warrants on any mineral lands of the State.

Nims v. Johnson, 7 Cal. 110, p. 113 (1857).

**SUMMARY SALES—LANDS OF ESTATES.****LAWS 1865-66, P. 359; MAR. 22, 1866. (GENERAL LAWS 1864-1871, SEC. 9215-9219.)**

AN ACT to provide for the summary sale of mines or mining interests belonging to the estates of deceased persons.

The People, etc.

SEC. 1. Whenever it shall appear from the inventory of the estate of any deceased person that said estate consists in whole or in part of any mines or interests in mines, or of shares, interests, or stocks in any mining corporation, such mines, interests, stocks, or shares may be sold under the order of the probate court having jurisdiction of said estate, and as hereinafter provided.

SEC. 2. The executor, administrator, or any heir at law of such estate, any creditor having a claim against the estate, any partner or member of any mining company in which such interests or shares are held, the president of any mining corporation in which stocks or shares are held or owned by such estate, may file in the probate court a petition in writing, setting forth therein the general facts of such estate being then in due course of administration, and particularly describing the mine, interest, stock, or shares owned by such estate, and which it is desired to sell. Such petition shall further set forth particularly the condition and situation of the mines, mining interests, or of the mining company or corporation in which such interests or shares are held, and especially the reasons for such sale.

SEC. 3. Upon the presentation of such petition, the probate judge shall make an order directing all persons interested to appear before him at a time and place specified, not less than 4 nor more than 10 weeks from the time of making such order, to show cause why an order should not be granted to the executor or administrator to sell such mines, mining interests, shares, or stocks, as are set forth in such petition, and as belong to such estate. A copy of such order to show cause shall be personally served on all persons interested in the estate at least 10 days before the time appointed for hearing the petition, or shall be published at least four successive weeks in such newspaper as the court shall order: Provided, however, If all persons interested in the estate shall signify in writing their assent to such sale, the notice may be dispensed with.

SEC. 4. If, upon the hearing of such petition, it shall appear to the satisfaction of the probate judge that it is to the interest of the estate that such mining property or interests of the estate should be sold, or if it be made to appear to his satisfaction that an immediate sale is necessary in order to secure the just rights or interests of the mining partners, tenants in common, or mining corporations in which such mining shares, stocks, or property are held, such probate judge shall thereupon make an order of sale authorizing the executor or administrator to sell such mining interests, mines, stocks, or shares, as hereinafter provided.

SEC. 5. After such order of sale shall be made by the probate judge, all further proceedings for the sale of such mining property shall be in conformity with the laws providing for the sale of other real property under the orders of the probate court. And whenever such mining interest shall consist of stocks or shares held and owned as personalty, such further proceedings for the sale thereof, after the order of the sale, shall be in conformity with the law providing for the sale of the other personal property of an estate.

**AMENDATORY ACT.****CODE SECTIONS SHOWN.****LAWS 1880, P. 93; APR. 16, 1880; SEC. 1529-1533, CODE CIVIL PROCEDURE.**

SEC. 1529. When it appears from the inventory of the estate of any decedent that his estate consists in whole or in part of mines, or interests in mines, such mines or interests may be sold under the order of the court having jurisdiction of the estate, as hereinafter provided.

SEC. 1530. The executor or administrator, or any heir at law, or creditor of the estate, or any partner or member of any mining company, in which interests or shares are held or owned by the estate, may file in the court a petition, in writing, setting forth the general facts of the estate being then in due course of administration, and particularly describing the mine, interest, or shares which it is desired to sell, and particularly the condition and situation of the mines or mining interests, or of the mining company in which such interests or shares are held, and the grounds upon which the sale is asked to be made.

SEC. 1531. Upon the presentation of such petition, the court, or a judge thereof, must make an order directing all persons interested to appear before such court, at a time and place specified, not less than 4 or more than 10 weeks from the time of making such order, to show cause why an order should not be granted to the executor or administrator to sell such mine, mining interests, shares, or stocks, as are set forth in the petition and belonging to the estate. A copy of the order to show cause must be personally served on all persons interested in the estate, at least 10 days before the time appointed for hearing the petition, or published at least four successive weeks in such newspaper as such court or judge shall specify. If all persons interested in the estate signify in writing their assent to such sale, the notice may be dispensed with.

SEC. 1532. If, upon hearing the petition, it appears to the satisfaction of the court that it is to the interest of the estate that such mining property or interests of the estate should be sold, or that an immediate sale is necessary in order to secure the just rights or interests of the mining partners, or tenants in common, such court must make an order authorizing the executor or administrator to sell such mining interests, mines, or shares, as hereinafter provided.

SEC. 1533. After the order of sale is made, all further proceedings for the sale of such mining property, and for the notice, report, and confirmation thereof, must be in conformity with the provisions of article 4 of this chapter.

#### ANNOTATIONS.

##### SALE OF MINERAL LANDS.

###### SUMMARY SALE BY ADMINISTRATOR.

These sections are headed "Summary sales of mines and mining interests," and relate to summary sales of mines or mining interests by administrators.

Byrne, *In re*, 112 Cal. 176, p. 178, 44 Pac. 467 (1896).

A mine or an interest in a mine, belonging to the estate of the decedent, where the only title is that of possession, which may be lost by abandonment or by a failure to comply with local regulations, is subject to sale under the provisions of these sections, but it does not follow that the piece of real estate may be sold under the provisions of these sections merely because there is thought to be mining ground within its boundaries.

Byrne, *In re*, 112 Cal. 176, p. 178, 44 Pac. 467 (1896).

A petition by an administrator, or by an interested person, to require an administrator to sell lands under the provisions of these sections, is insufficient to authorize a sale under these sections where there is no direct statement in the petition that the property is either a mine or an interest in a mine, and where it is not even stated that there is any mining ground upon the tract of land described; and a reference to the land in the petition by a name indicating a mining claim or by the name of a mining claim, is not evidence that the property is a mine.

Byrne, *In re*, 112 Cal. 176, p. 179, 44 Pac. 467 (1896).

A petition asking for a summary sale of a mine or mining claim by an administrator must show that the property is either a mine or a mining interest within the meaning of these sections.

Byrne, *In re*, 112 Cal. 176, p. 179, 44 Pac. 467 (1896).

**SUMMARY SALE—NEW SECTIONS.****LAWS 1909, P. 465; MAR. 19, 1909. SEC. 1577, 1580, CODE CIVIL PROCEDURE.**

AN ACT to amend section 1577 of the Code of Civil Procedure, relating to the sale of property of an estate and to add a new section to said Code of Civil Procedure, to be numbered 1580, providing for a procedure for the sale of property belonging to an estate.

NOTE.—A new article, sections 1577, 1578, 1579, was added to the Code of Civil Procedure by the act of March 15, 1887 (Laws 1887, p. 115). This act was amended March 3, 1893 (Laws 1893, p. 72), and was again amended March 31, 1891 (Laws 1891, p. 247). Section 1579 was amended in 1887 (Laws 1887, p. 117). Neither the original sections nor any of the amended sections made any reference to mining or mining claims.

**LAWS 1913, P. 16; APR. 5, 1913. SEC. 1577, 1580, CODE CIVIL PROCEDURE.**

AN ACT to amend section 1577 of the Code of Civil Procedure, relating to the sale of property of an estate, and to amend section 1580 of the Code of Civil Procedure, relating to the procedure for the sale of mining property belonging to an estate.

NOTE.—The act of March 19, 1909, amending sections 1577 and 1580 and the act of April 5, 1913, amending the same sections, are given together; the amendments and additions made by the act of April 5, 1913, are shown in parentheses.

SEC. 1. Section 1577 of the Code of Civil Procedure is hereby amended to read as follows:

SEC. 1577. Whenever, in any estate now being administered, or that may hereafter be administered (or in any guardianship proceeding now pending, or that may hereafter be pending), it shall appear to the superior court, or a judge thereof, to be for the advantage of the estate to raise money upon a note or notes to be secured by a mortgage of the real property of any decedent, or of a minor, or an incompetent person, or any part thereof, or to make a lease of said real property, or any part thereof, or to agree to sell (or give an option to purchase) a (mining) claim, or mining claims, or real property worked as a mine, the court or judge, as often as occasion therefor shall arise in the administration of any estate (or in the course of any guardianship matter) may on a petition, notice, and hearing as provided in this article (and section 1580 of this code), authorize, empower, and direct the executor or administrator, or guardian of such minor or incompetent person, to mortgage such real property, or any part thereof, and to execute a note or notes to be secured by such mortgage, or to lease such real estate, or any part thereof, or to enter into an agreement to sell such real estate, or any part thereof (or to give an option to purchase such real estate or any part thereof).

SEC. 2. Section 1580 of the Code of Civil Procedure is hereby amended to read as follows:

SEC. 1580. To obtain an order to enter into an agreement for the sale of (or for an option to purchase), a mining claim, or claims, or real property, worked as a mine, the proceedings to be taken and the effect thereof shall be as follows:

First. The executor, administrator, or guardian of a minor, or of an incompetent person, or any person interested in the estate of such decedents, minors, or incompetent persons, may file a verified petition showing:

1. The advantage or advantages that may accrue to the estate from entering into such agreement (or option).
2. A general description of the property affected by said agreement (or option).
3. The terms and general conditions of the proposed agreement (or option).
4. The names of the legatees and devisees, if any, and of the heirs of the deceased, or of the minor, or of the incompetent person, so far as known to the petitioner.

Second. Upon filing such petition an order shall be made by the court or judge requiring all persons interested in the estate to appear before the court or judge at a time and place specified, not less than two or more than four weeks thereafter, then and there to show cause why an agreement for the sale (or an option) for the purchase of the realty should not be made, and referring to the petition on file for further particulars.

Third. The order to show cause must be personally served on the persons interested in the estate at least 10 days before the time appointed for hearing the petition, or it may be published for four consecutive weeks in a newspaper of general circulation in the county if there be one, and if there is none, then in some newspaper of general circulation in an (adjoining) county.

Fourth. At the time and place appointed to show cause, or at such other time and place to which the hearing may be postponed, the power to make all needful postponements being hereby vested in the court or jury (judge), the court or judge having first received satisfactory proof of personal service or publication of the order to show cause, must proceed to hear the petition, and any objections that may have been filed or presented thereto. If, after a full hearing, the court or judge is satisfied that it will be for the advantage (or best interest) of the estate to enter into the proposed agreement for the sale (or option for the purchase) of the mines or real property (worked as a mine), an order must be made authorizing, empowering, and directing the executor, administrator, or guardian to make such agreement (or option to purchase). The order may prescribe the terms and conditions of such agreement or (option to purchase). (The court or judge may, at the time of making said order authorizing such agreement to sell or option to purchase, fix the amount of bond to be given by the executor, administrator, or guardian, and may provide for the payment into court of the proceeds from said agreement to sell or option to purchase, and that the said executor, administrator, or guardian shall give the bond required before obtaining an order of the court for the payment to him of such proceeds from said agreement to sell or option to purchase).

Fifth. After making the order to enter into said agreement (or option to purchase), the executor, administrator, or guardian of a minor or of an incompetent person shall execute, acknowledge, and deliver an agreement (or option to purchase) containing the conditions specified in the order, setting forth in the agreement (or option to purchase) that it is made by authority of the order, and giving the date of such order. A certified copy of such order shall be recorded in the office of the county recorder of every county in which the land affected by the agreement (or option to purchase), or any portion thereof, is situated. (If the party of the second part to said agreement to sell or option to purchase neglects or refuses to comply with the terms of the agreement to sell or option to purchase, the court may, on motion of the executor or administrator or guardian, and after notice to the purchaser, order such agreement to sell or option to purchase canceled.)

(Sixth. The executor or administrator, or the guardian, after the terms of said agreement to sell, or said option to purchase, have been complied with by the party of the second part thereto, and all payments mentioned in the same have been made according to the terms of said agreement to sell or option to purchase, must make a return of his proceedings to the court, which must be filed in the office of the clerk at any time subsequent to the compliance with said conditions and the making of said payments. A hearing upon the return of the proceedings may be asked for in the return or by petition subsequently, and thereupon the clerk must fix the day for the hearing, of which notice of at least 10 days must be given by the clerk, by notices posted in three public places in the county, or by publication in a newspaper, and must briefly indicate the land or lands mentioned in the agreement to sell or option to purchase, and must refer to the return for further particulars. Upon the hearing, the court must examine the return and witnesses in relation to the same. If it appears to the court that the terms of the said agreement to sell or option to purchase, including all payments to be made, have been complied with, the court must make an order confirming the sale, and directing conveyances to be executed. The sale, from that time, is confirmed and valid, and a certified copy of the order confirming it and directing conveyances to be executed, must be recorded in the office of the recorder of the county in which the land sold is situated. Conveyances must thereupon be executed to the purchaser by the executor or administrator, or the guardian, and they must refer to the orders of the court



authorizing and confirming the sale of the property of the estate, and directing conveyances thereof to be executed and to the record of the order of confirmation in the office of the county recorder, either by the date of such recording, or by the date, volume, and page of the record, and such reference shall have the same effect as if the orders were at large inserted in the conveyance. Conveyances so made convey all the right, title, interest, and estate of the decedent, in the premises, at the time of his death; if prior to the sale, by operation of law or otherwise, the estate has acquired any right, title, or interest in the premises, other than or in addition to that of the decedent at the time of his death, such right, title, or interest also passes by such conveyances.)

### METHOD AND FORM OF CONVEYANCE OF MINING CLAIMS.

LAWS 1860, P. 175; APR. 13, 1860.

AN ACT to provide for the conveyance of mining claims.

The People, etc.

SEC. 1. Conveyances of mining claims may be evidenced by bills of sale or instruments in writing not under seal, signed by the person from whom the estate or interest is intended to pass, in the presence of one or more attesting witnesses; and also all conveyances of mining claims heretofore made by bills of sale or instruments in writing, not under seal, shall have the same force and effect as prima facie evidence of sale, as if such conveyances had been made by deed under seal: Provided, That nothing in this act shall be construed to interfere with or repeal any lawful local rules, regulations, or customs of the mines in the several mining districts of this State: And provided further, Every such bill of sale or instrument in writing shall be deemed and held to be fraudulent and void as against all persons except the parties thereto, unless such bill of sale or instrument in writing be accompanied by an immediate delivery to the purchaser of the possession of the mining claim or claims therein described, and be followed by an actual and continued change of the possession thereof, or unless such bill of sale or instrument in writing shall be acknowledged and recorded as required by law in the case of conveyances of real estate.

SEC. 2. This act shall apply to gold mining claims only. (Repealed.)

### REPEALING SECTION 2.

LAWS 1863, P. 98; MAR. 26, 1863. (REPEALING ACT.)

AN ACT to repeal section 2 of an act entitled "An act to provide for the conveyance of mining claims," approved April 13, 1860.

The People, etc.

SEC. 1. Section 2 of said act is hereby repealed.

### CODE SECTIONS.

#### SEC. 1091, 1092, CIVIL CODE.

SEC. 1091. An estate in real property, other than an estate at will or for a term not exceeding one year, can be transferred only by operation of law, or by an instrument in writing, subscribed by the parties disposing of the same, or by his agent thereunto authorized by writing.

SEC. 1092. A grant of an estate in real property may be made in substance as follows: \* \* \*

(Ordinary short form of conveyance.)

## ANNOTATIONS.

## TRANSFER OF MINING CLAIMS.

1. METHOD—INSTRUMENTS IN WRITING.
2. SUFFICIENCY OF DESCRIPTION.
3. PRESUMPTION OF OWNERSHIP.

## 1. METHOD—INSTRUMENTS IN WRITING.

The legislature recognized a proprietary interest in the possessor of mining claims by authorizing their hypothecation.

State v. Moore, 12 Cal. 56, p. 70 (1859).

This act provides that mining claims may be conveyed by bills of sale or instruments in writing not under seal and makes all conveyances of mining claims theretofore made by bill of sale or instrument of writing not under seal of the same force and effect as prima facie evidence of sale as if made by deed under seal.

St. John v. Kidd, 26 Cal. 263, p. 269 (1864).

Prior to the passage of this act title to a mining claim passed by verbal sale if accompanied by actual transfer of the possession.

Patterson v. Keystone Min. Co., 30 Cal. 360, p. 363 (1866).

See Jackson v. Feather River Water Co., 14 Cal. 18, p. 22 (1859).

Table Mountain Tunnel Co. v. Stranahan, 20 Cal. 198.

Gatewood v. McLaughlin, 23 Cal. 178; 83 Am. Dec. 87 (1863).

Patterson v. Keystone Min. Co., 23 Cal. 575, p. 576 (1863).

Hardenbergh v. Bacon, 33 Cal. 356, p. 381 (1867).

Patterson v. Doe, 130 Cal. 333; 62 Pac. 569 (1900).

Omar v. Soper, 11 Colo. 380, p. 389; 18 Pac. 443; 7 Am. St. 246 (1888).

A mine is real estate and section 1091 of the civil code provides that an interest therein, either an estate at will or for a term not exceeding one year, can be transferred only by operation of law or by an instrument in writing subscribed by a party disposing of the same or by his agent thereto authorized by writing.

Melton v. Lambard, 51 Cal. 258, p. 260 (1876).

See Moore v. Hammerstag, 109 Cal. 122; 41 Pac. 805.

Anderson v. Caughey, 3 Cal. App. 22, p. 27; 84 Pac. 223 (1906).

Prior to the adoption of this act a verbal transfer of a mine was good when accompanied with a change of possession.

Garthe v. Hart, 73 Cal. 541, p. 544; 15 Pac. 93 (1887).

A mining claim could be transferred by parol or verbal conveyance accompanied by a change of possession until the statute of California provided otherwise.

Doe v. Waterloo Mining Co., 70 Fed. 455, p. 459.

Min. Co. v. Taylor, 100 U. S. 37.

It seems under the provisions of this act and since its enactment transfer of mining claims must be by written instrument; and this intention is evidenced by the fact that prior to this act title to a mining claim would pass by a verbal sale if accompanied by a transfer of possession and unless it was intended to require a sale evidenced by a written instrument, then no legislation upon the subject was necessary and it seems that the word "may" as used in the act means "must" or "shall."

Patterson v. Keystone Min. Co., 30 Cal. 360, p. 363 (1866).

The provision of this act to the effect that "conveyances of mining claims may be evidenced by bills of sale or instruments in writing not under seal" is mandatory and

it was intended that such method of conveying mining claims should exclude conveyances by parol, even though accompanied by delivery of possession.

*Patterson v. Keystone Min. Co.*, 30 Cal. 360, p. 363 (1866).

*Goller v. Fett*, 30 Cal. 481, p. 484 (1866).

*King v. Randlett*, 33 Cal. 318, p. 321 (1867).

*Hardenbergh v. Bacon*, 33 Cal. 356, p. 381 (1867).

*Felger v. Coward*, 35 Cal. 650, p. 652 (1868).

See *Meyers v. Farquharson*, 46 Cal. 190, p. 198 (1873).

By this act owners of gold mines were prevented from transferring their mines by parol or by a verbal sale.

*Garthe v. Hart*, 73 Cal. 541, p. 544; 15 Pac. 93 (1887).

The second section of this act limited its provisions to gold mines only and had no reference to any other mines, but this section was repealed by the act of 1863, p. 98.

*Patterson v. Keystone Min. Co.* 30 Cal. 360, p. 363 (1866).

The act of March 26, 1863, repeals section 2 of the act of April 13, 1860 (p. 175), and extends the operation of the act to all kinds of minerals, but it can not apply to or affect a sale of a mine that was made before the date of this repealing act.

*Patterson v. Keystone Min. Co.*, 30 Cal. 360, p. 363 (1866).

The act of March 26, 1863, extended the act of 1860 (p. 175) to all mines and this was construed to do away with oral transfers of mines of all classes.

*Garthe v. Hart*, 73 Cal. 541, p. 544; 15 Pac. 93 (1887).

This section requires a writing for the transfer of any mining claim and an oral agreement can not operate as a transfer.

*Garthe v. Hart*, 73 Cal. 541, p. 544; 15 Pac. 93 (1887).

## 2. SUFFICIENCY OF DESCRIPTION.

The conveyance of a mining claim as well as the record of a location describing the claim by a descriptive name by which it was known is sufficient.

*Carter v. Bacigalupi*, 83 Cal. 187, p. 193; 23 Pac. 261 (1890).

Parol evidence is admissible to aid in the description of a mining claim.

*Carter v. Bacigalupi*, 83 Cal. 187, p. 193; 23 Pac. 261 (1890).

## 3. PRESUMPTION OF OWNERSHIP.

Where the owner of mining ground conveys to another the "one-half undivided interest in and to" the property described, together with the dips, spurs, angles, and all metals, ores, gold, and silver bearing rock, the conclusive presumption under this section is that the grantor was at the time of the conveyance the absolute owner of the one-half interest in the mine or mining ground described.

*Shaw v. Caldwell*, 16 Cal. App. 1, p. 9; 115 Pac. 941 (1911).

## SALE OF STATE MINERAL LANDS.

**LAWS 1873-74, P. 766; MAR. 28, 1874. (REPEALED BY ACT APR. 1, 1897, LAWS 1897, P. 438.)**

AN ACT regulating the sale of mineral lands belonging to the State.

The People, etc.

SEC. 1. Any person desiring to purchase from this State any portion of any sixteenth or thirty-sixth section, that shall have been designated by United States survey as of a mineral character, or which is so in fact, shall make an affidavit before some officer authorized to administer oaths that he or she is a citizen of the United States, or, if a foreigner, that he has filed his intention to become a citizen of the United States; that he or she is of lawful age, and desires to purchase said land, giving a description

thereof by legal subdivisions; that he or she has not entered any portion of such mineral lands which, together with that applied for in such affidavit, will exceed 40 acres; that there is no occupation of said land adverse to that which he or she holds, or, if there be any adverse occupation thereof, then he or she must state the name of such adverse occupant, together with the fact that the plat of the township has been on file 6 months or over, and that such adverse occupant has been in such occupation 6 months or over.

SEC. 2. Any person that shall be in the actual possession of any of said lands described in section 1, at the time of the survey thereof by the United States, or at the time of the passage of this act, shall be considered a preferred purchaser thereof: Provided, he or she make his or her application for the purchase of the same within six months after the filing of the plat of such survey in the United States Land Office or within 10 months after the passage of this act.

SEC. 3. When a contest shall arise as to the mineral character of the lands applied for, or from any other cause, the surveyor general, or the register before whom the contest is made, must, within 30 days after the adverse application is filed, unless sooner referred at the request of either claimant, make an order referring such contest to the district court of the county within which the land is situated, and must enter such order in the proper book of his office, and forward a copy thereof to the clerk of the court to which the reference is made. Upon the filing of a copy of such order with the clerk of the court, either party may commence an action in said court to determine the conflict, and the court shall have full and complete jurisdiction to hear and determine the same. Unless an action shall be commenced within 90 days after the copy of the order of reference shall have been filed with the clerk of the court, the party making such demand, or the adverse claimant, if the case is referred without demand, shall be deemed to have waived and surrendered his or her right to purchase, and the surveyor general or register shall proceed as though his or her application had not been made.

SEC. 4. All lands sold under the provisions of this act shall be sold for the sum of \$2.50 per acre, in United States gold coin, payable to the treasurer of the county in which the lands are situated within 50 days from the date of the approval by the surveyor general; and in case said payment is not made within said 50 days, the land described in the location shall revert to the State without suit, and said location shall be and become null and void. All payments made to the county treasurer, as above provided, shall be paid over and accounted for as other moneys received for State lands are required to be paid over and accounted for.

SEC. 5. The surveyor general and register shall, in the matter of approving locations, issuing certificates of purchase or patents, or in other proceedings relating to the sale of lands of a mineral character, which proceedings are not provided for in this act, proceed in the same manner as is now provided for the sale of sixteenth and thirty-six sections which are not of a mineral character.

SEC. 6. All patents issued by the State to any portion of any sixteenth or thirty-sixth section, shall be subject to any vested and accrued water rights, ditches, and reservoirs, used in connection therewith, acquired by priority of possession under local customs, and the decisions of the courts, and the right of way for the construction of ditches and canals, for mining and other purposes, over all of the sixteenth and thirty-sixth sections owned by the State, is hereby granted and confirmed.

SEC. 7. After the passage of this act, no patent shall be issued by the State for any of the lands described in this act, upon which, at the time of the application therefor, there was and still is any actual bona fide mining claim, except to the person who is the owner of such mining claim, under local mining customs, and not to such owner in excess of 40 acres; and when an applicant for such lands, not owning such mining claim, shall have paid the purchase money therefor, in whole or in part, he may present his certificate of purchase and receive in exchange therefor, from the register, a

certificate showing the whole amount paid; and the comptroller, upon the surrender of such certificate, must draw his warrant in favor of the person surrendering such certificate for the amount therein specified on the treasurer of state, who must pay the same out of the fund into which the purchase money was paid: Provided, That the owner of such mining claim, under such mining customs, shall apply to purchase the same within 6 months after the plat of the township containing such land shall have been filed in the local United States land office, or within 10 months after the passage of this act: and, provided further, That any owner of a bona fide mining claim, who shall have entered into an agreement with the applicant for any portion of the sixteenth or thirty-sixth section upon which said mining claim is situated, for the procurement of a title for the same, shall not avail himself of the provisions of this section. The governor of this State shall not sign any patent contrary to the provisions of this act.

SEC. 8. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 9. This act shall take effect and be in force from and after its passage.

#### AMENDATORY ACTS.

LAWS 1875-76, P. 20; FEB. 3, 1876. (REPEALED BY ACT APR. 1, 1897, LAWS 1897, P. 438.)

AN ACT to amend an act entitled "An act regulating the sale of mineral lands belonging to the State," approved March 28, 1874.

The People, etc.

SEC. 1. Section 2 of said act is hereby amended so as to read as follows:

SEC. 2. Any person that shall be in the actual possession of any said lands, described in section 1, at the time of the survey thereof by the United States, or at the time of the passage of this act, shall be considered a preferred purchaser thereof to the extent of his or her mining claim, provided he or she make application for the purchase of the same on or before the first day of January, 1877, if the plat of such survey be already filed in the United States Land Office; and if not so filed, then within 6 months after the filing of such plat, as aforesaid.

SEC. 2. Section 7 of said act is hereby amended so as to read as follows:

SEC. 7. After the passage of this act no patent shall be issued for any of the lands described in this act upon which, at the time of the application therefor, there was and still is any actual bona fide mining claim, except to the person who is the owner of such mining claim under local mining customs; and when an applicant for such lands, not owning such mining claim, shall have paid the purchase money therefor, in whole or in part, he may present his certificate of purchase and receive in exchange therefor, from the register, a certificate showing the whole amount paid; and the comptroller, upon the surrender of such certificate, must draw his warrant in favor of the person surrendering such certificate, for the amount therein specified, on the treasurer of state, who must pay the sum out of the fund into which the purchase money was paid: Provided, That the owner of such mining claim, under such mining customs, shall apply to purchase the same within 6 months after the plat of the township containing such land shall have been filed in the local United States land office, or on or before the 1st day of January, 1877: and provided further, That any owner of a bona fide mining claim who shall have entered into an agreement with the applicant for any portion of sixteenth or thirty-sixth section upon which said mining claim is situated, for the procurement of a title for the same, shall not avail himself of the provisions of this section. The governor of this State shall not sign any patent contrary to the provisions of this act.

SEC. 3. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 4. This act shall take effect and be in force from and after its passage.

**LAWS 1880, P. 26; APR. 6, 1880. POLITICAL CODE (AMENDMENTS), SEC. 3503. (REPEALED BY ACT APR. 1, 1897, LAWS 1897, P. 438.)**

AN ACT to amend an act entitled "An act regulating the sale of mineral lands belonging to the State," approved March 28, 1874.

The People, etc.

SEC. 1. Section 3 of "An act regulating the sale of mineral lands belonging to the State, approved March 28, 1874," is hereby amended so as to read as follows:

SEC. 3. When a contest shall arise as to the mineral character of the lands applied for, or from any other cause, the surveyor general, or the register before whom the contest is made, must, within 30 days after the adverse application is filed, unless sooner referred, at the request of either claimant, make an order referring such contest to the superior court of the county within which the land is situated, and must enter such order in the proper book of his office and forward a copy thereof to the clerk of the court to which the reference is made. Upon the filing of a copy of such order with the clerk of the court, either party may commence an action in said court to determine the conflict, and the court shall have full and complete jurisdiction to hear and determine the same. Unless an action shall be commenced within 90 days after the copy of the order of reference shall have been filed with the clerk of the court, the party making such demand, or the adverse claimant, if the case is referred without demand, shall be deemed to have waived and surrendered his or her right to purchase, and the surveyor general or register shall proceed as though his or her application had not been made.

SEC. 2. This act shall take effect and be in force from and after its passage.

#### REPEALING AND AMENDATORY ACT.

**LAWS 1897, P. 438; APR. 1, 1897.**

AN ACT to repeal an act entitled "An act regulating the sale of mineral lands belonging to the State," approved March 28, 1874, and the acts amendatory thereof, and to provide for the sale of mineral lands under United States laws.

The People, etc.

SEC. 1. The following entitled acts of the legislature are hereby repealed, to wit:

First. An act entitled "An act regulating the sale of mineral lands belonging to the State," approved March 28, 1874.

Second. An act entitled "An act to amend an act entitled 'An act regulating the sale of mineral lands belonging to the State,' approved March 28, 1874," approved February 3, 1876.

Third. An act entitled "An act to amend an act entitled 'An act regulating the sale of mineral lands belonging to the State,' approved March 28, 1874," approved April 6, 1880.

SEC. 2. When it shall be shown by affidavits or otherwise, to the satisfaction of the surveyor general, that any portion of a sixteenth or thirty-sixth section belonging to the State is valuable for its mineral deposits, the surveyor general shall not approve any application to purchase the same, nor shall the register of the State land office issue a certificate of purchase therefor, until the question of the character of the land has been referred for determination to a court of competent jurisdiction, in the manner provided by section 3414 of the Political Code, and adjudged not to be valuable as mining land.

NOTE.—The original section made no reference to mining claims.

SEC. 3. The sixteenth and thirty-sixth sections belonging to the State, in which there may be found valuable mineral deposits, are hereby declared to be free and open to exploration, occupation, and purchase of the United States, under the laws, rules, and regulations passed and prescribed by the United States for the sale of mineral lands.

SEC. 4. This act shall take effect from and after its passage.

**AGRICULTURAL ENTRIES ON MINERAL LANDS.****LAWS 1915, P. 70; APR. 14, 1915.**

AN ACT to authorize the surveyor general of the State of California to consent to the provisions of the act of Congress approved July 17, 1914, entitled "An act to provide for agricultural entry of lands withdrawn, classified, or reported as containing phosphate, nitrate, potash, oil, gas, or asphaltic minerals." (38 U. S. Stats. L., 509.)

The People, etc.

SEC. 1. The surveyor general of the State of California is hereby authorized and empowered to accept the benefits of the act of Congress approved July 17, 1914, entitled "An act to provide for agricultural entry of lands withdrawn, classified, or reported as containing phosphate, nitrate, potash, oil, gas, or asphaltic minerals," and on behalf of the State of California, or of any assignee of the State of California, to accept and receive lists and patents to lands selected by the State of California as agricultural lands, which were subsequently withdrawn, classified, or reported as being valuable for phosphate, nitrate, potash, oil, gas, or asphaltic minerals, and containing a reservation to the United States of all deposits on account of which the lands were withdrawn, classified, or reported as being valuable, together with the right to prospect for, mine, and remove the same, as provided in said act of Congress.

**MINERAL LANDS BILL—RESOLUTION.****LAWS 1897, P. 591; MAR. 4, 1897.**

ASSEMBLY JOINT RESOLUTION No. 30, relative to and advocating the passage of the California Mineral Lands Bill.

Whereas, There is now pending in the Congress of the United States the California mineral lands bill; and

Whereas, The speedy enactment thereof is a matter of vital importance to California; Therefore, be it

Resolved, That our Senators be instructed, and our Representatives in Congress be requested, to use all honorable means to secure the passage of the same; be it further

Resolved, That the governor transmit a copy of this resolution by telegraph to the California delegation in Congress.

## **MINES AND MINING.**

### **INJURING MINING PROPERTY—CRIMINAL ACTS.**

**LAWS 1853, P. 32; MAR. 3, 1853. LAWS 1863, P. 58; MAR. 16, 1863. PENAL CODE (1872), P. 143.**

SEC. 607 (140). Every person who willfully and maliciously cuts, breaks, injures, or destroys any bridge, dam, canal, flume, aqueduct, levee, embankment, reservoir, or other structure erected to create hydraulic power or to drain or reclaim any swamp and overflowed, tide, or marsh land, or to conduct water for mining, manufacturing, reclamation, or agricultural purposes, or any embankment necessary to the same, or either of them; or willfully or maliciously makes, or causes to be made, any aperture in such dam, canal, flume, aqueduct, reservoir, embankment, levee, or structure, with intent to injure or destroy the same; or draws up, cuts, or injures any piles fixed in the ground, and used for securing any sea bank or sea walls, or any dock, quay, or jetty, lock, or sea wall, is punishable by a fine not exceeding \$1,000, or by imprisonment in the State prison not exceeding two years, or by both.

NOTE.—The original act made no reference to the use of the structures named for mining purposes. The first amendatory act of March 3, 1853, Laws 1853, p. 32, is substantially the same, except the last amendment is more inclusive, but the additional matter has no reference to mining.

### **PROTECTION TO IMPROVEMENTS.**

**LAWS 1855, P. 145; APR. 25, 1855. (GENERAL LAWS 1850-1864, SEC. 4646.)**

AN ACT to protect owners of growing crops, buildings, and other improvements in the mining districts of this State.

The People, etc.

SEC. 1. No person shall for mining purposes destroy or injure any growing crops of grain or garden vegetables growing upon the mineral lands of this State, nor undermine or injure any house, building improvement, or fruit trees standing upon mineral lands and the property of another, except as hereinafter provided.

SEC. 2. Whenever any person, for mining purposes, shall desire to occupy or use any mineral lands of this State, then occupied by such growing crops of grain, garden vegetables, fruit trees, houses, buildings, or other improvements, property of another, such person shall first give bond to the owner of the growing crop, building, fruit trees, or other improvement, to be approved by a justice of the peace of the township, with two or more sufficient sureties, in a sum to be fixed by three disinterested citizens, householders of the township, one to be selected by the obligor, one by the obligee, and one by a justice of the peace of the township, conditional that the obligor shall pay to the obligee any and all damages which said obligee may sustain in consequence of the destruction by the obligor, or those in his employ, of the growing crops, fruit trees, improvements, or buildings of the obligee: Provided, That the word improvements in this act shall be construed to mean any superstructure on said farm, ranch, or garden, and nothing more.

SEC. 3. If any person or persons shall violate the provisions of the first and second sections of this act, he or they shall be deemed guilty of a misdemeanor, and on conviction thereof before any court of competent jurisdiction shall be fined in a sum not exceeding \$200 nor less than \$50, or by imprisonment in the county jail of said county not exceeding three months, either or both, at the discretion of the court: Provided, Nothing in this act shall prevent miners from working any mineral lands in the State, after the growing crops on the same are harvested.



## ANNOTATIONS.

## MINING OPERATIONS.

1. CONSTRUCTION AND VALIDITY OF STATUTE.
2. REGULATIONS AND RESTRICTIONS IMPOSED ON MINER.
3. BOND—ASSESSMENT OF DAMAGES.
4. WATER RIGHTS—APPROPRIATION.

## 1. CONSTRUCTION AND VALIDITY OF STATUTE.

This act, so far as it purports to give a right of entry upon the mineral lands of the State in cases where no such right existed anterior to its passage, is invalid.

Gillan v. Hutchinson, 16 Cal. 153, p. 156 (1860).

In the passage of this act the legislature proceeded upon the idea that the right of the miner to enter upon the possession of another for mining purposes was absolute and unconditional, and the intention was to limit the exercise of this supposed right and not to give a right to entry in cases where any such right previously existed, but the legislature acted under the misapprehension of the law upon the subject, and while, as a general rule, the public mineral lands of the State are open to the possession and occupancy of every person desiring in good faith to enter thereon for public purposes, yet there are exceptions to this rule and these exceptions embrace small tracts of inclosed land employed in the cultivation of fruit trees and garden vegetables; and it is the duty of the courts to enforce these restrictions and to protect private rights of to property.

Gillan v. Hutchinson, 16 Cal. 153, p. 155 (1860).

See Smith v. Doe, 15 Cal. 100 (1860).

Slade v. Sullivan, 17 Cal. 102 (1860).

Dabenspeck v. Gear, 18 Cal. 443 (1861).

Enslinger v. McIntire, 23 Cal. 593 (1863).

## 2. REGULATIONS AND RESTRICTIONS IMPOSED ON MINER.

The provisions of this act are only regulations and restrictions imposed by the legislature under the right reserved to a miner by the act of April 20, 1852.

Rupley v. Welch, 23 Cal. 452, p. 456 (1863).

Persons who do not desire to enter or occupy agricultural lands in the possession of a settler for the purpose of mining are not entitled to claim any authority, right or privilege conferred by this act.

Gibson v. Puchta, 33 Cal. 310, p. 316 (1867).

## 3. BOND—ASSESSMENT OF DAMAGES.

So far as this act relates to growing crops, such as are usually raised upon lands used exclusively for agricultural or grazing purposes, it merely regulates a right previously vested in the miner and to which the settler's possession was subject, and is a valid regulation in this respect; but a miner intending to enter upon agricultural public land in possession of another, can not do so by merely tendering a bond, because the act requires the same to be fixed by three disinterested persons; but if the settler, the person in possession of the land, refuses to select a disinterested person as an appraiser and refuses to receive any bond, then the miner may enter upon the land for mining purposes and can not be treated as a trespasser, but he is liable for damages to the growing crops caused by his acts; and if the settler should then demand of him the bond required by statute, or if the miner should refuse to pay the damages caused by him, he might be restrained from the further working of the mine.

Rupley v. Welch, 23 Cal. 452, p. 456 (1863).

4. WATER RIGHTS—APPROPRIATION.

However much the policy of California, as enacted by her legislature, has conferred the privilege to work the mines, it has equally conferred the right to divert the streams from their natural channel, as these two rights stand upon an equal footing, and when they conflict, they must be decided by the fact of priority.

Irwin v. Phillips, 5 Cal. 140, p. 147. 63 Am. Dec. 113 (1855).  
Tartar v. Spring Creek Water & Min. Co., 5 Cal. 395, p. 398 (1855).

This act does not authorize or justify a miner though complying with its provisions in entering upon the public land in the possession of another for the purpose of mining or working mines thereon, and in connection with such working of the mines to divert water from a reservoir or otherwise use water which the settler was using by virtue of a prior appropriation.

Rupley v. Welch, 23 Cal. 452, p. 455 (1863).

TIMBER CUTTING.

LAWS 1863-64, P. 136; MAR. 2, 1864.

AN ACT to prevent the destruction of timber on the public lands in this State.

The People, etc.

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SEC. 5. This act shall not apply to persons who cut trees in good faith for the purpose of manufacturing the same into lumber, firewood, tanning, for agricultural, mining or tannery purposes: Provided, That where timber is wanted for tunnels and for mining uses generally, the persons having such wants may cut down and work up, economically, from time to time, so many trees as may suffice; but it shall not be lawful for any person to fall trees on the public lands in anticipation of future needs, and which may not be required for immediate use. Nor shall any person fall trees for the sake of the limbs for firewood, for the purpose of manufacturing charcoal, while having no use for the trunk or body of the tree. Whoever may violate the provisions of this section shall become liable to the pains and penalties as set forth in section 2 of this act.

SEC. 6. This act shall not be held to apply to the clearing of mineral lands for the purpose of working the same, or to the cutting of timber for lumbering purposes.

SEC. 7. This act shall take effect from and after the 15th day of March, 1864.

FIXTURES.

PROPERTY IN GENERAL—NATURE OF PROPERTY.

SEC. 661, CIVIL CODE 1872, P. 157-158.

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SEC. 661. Sluice boxes, flumes, hose, pipes, railway tracks, cars, blacksmith shops, mills, and all other machinery or tools used in working or developing a mine, are to be deemed affixed to the mine.

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ANNOTATIONS.

MINE FIXTURES—LIEN.

1. LIEN ON FIXTURES.
2. FIXTURES—REMOVAL ON SALE.

1. LIEN ON FIXTURES.

Section 661, Civil Code, provides that all machinery or tools used in working or developing a mine are to be deemed affixed to the mine, and this gives a laborer a lien

for work in repairing iron pipes, giants, and machinery in the operation of a mine, whether they are attached to the mine or not.

Malone v. Big Flat Gravel Min. Co., 76 Cal. 578, p. 583, 18 Pac. 772 (1888).

Materials furnished for use in a mine can not be deemed affixed to the mine within the meaning of section 661 of the Civil Code and can not be held to be a part of the realty and subject to be taken in satisfaction of miners' liens.

Hamilton v. Delhi Min. Co., 118 Cal. 148, p. 153, 50 Pac. 378 (1897).

See Roebbling's Sons Co. v. Humboldt Electric Light & Power Co., 112 Cal. 288, 44 Pac. 568 (1896).

Williams v. Mountaineer Gold Min. Co., 102 Cal. 134, p. 142, 34 Pac. 702, 36 Pac. 388 (1894).

Material men furnishing material used in repairing improvements on a mining claim are entitled to a lien upon the whole claim, including the added improvements.

Silvester v. Coe Quartz Min. Co., 80 Cal. 510, p. 512, 22 Pac. 217 (1889).

Williams v. Mountaineer Gold Min. Co., 102 Cal. 134, p. 142, 34 Pac. 702, 36 Pac. 388 (1894).

## 2. FIXTURES—REMOVAL ON SALE.

Where the owner of a mine gave an option agreement to purchase the same to a prospective buyer and such prospective buyer gave a like option contract to a second prospective buyer, and such second prospective buyer thereupon placed and used in and upon such mining ground and mine electrical machinery and motors, lighting transformers, and pumps, all of which was permanently attached and affixed to the land, such second buyer can not, in the absence of a provision in both option contracts, remove such machinery and fixtures on the termination of the contract of the owner with such first prospective buyer, and where such first prospective buyer failed to comply with the option agreement of purchase; and the owner of the mining ground may, by injunction, prevent the removal of any such machinery or fixtures.

Conde v. Sweeney, 16 Cal. App. 157, p. 160, 116 Pac. 319 (1911).

## MINES—REGULATION OF OPERATIONS.

LAWS 1871-72, P. 413; MAR. 16, 1872.

AN ACT for the protection of miners.

The People, etc.

SEC. 1. It shall not be lawful for any corporation, association, owner or owners of any quartz mining claims within the State of California, where such corporation, association, owner or owners employ 12 men daily, to sink down into such mine or mines any perpendicular shaft or incline beyond a depth from the surface of 300 feet without providing a second mode of egress from such mine, by shaft or tunnel, to connect with the main shaft at a depth of not less than 100 feet from the surface.

SEC. 2. It shall be the duty of each corporation, association, owner or owners of any quartz mine or mines in this State, where it becomes necessary to work such mines beyond the depth of 300 feet, and where the number of men employed therein daily shall be 12 or more, to proceed to sink another shaft or construct a tunnel so as to connect with the main working shaft of such mine as a mode of escape from underground accident or otherwise. And all corporations, associations, owner or owners of mines, as aforesaid, working at a greater depth than 300 feet, not having any other mode of egress than from the main shaft, shall proceed as herein provided.

SEC. 3. When any corporation, association, owner or owners of any quartz mine in this State shall fail to provide for the proper egress as herein contemplated, and where any accident shall occur, or any miner working therein shall be hurt or injured, and from such injury might have escaped if the second mode of egress had existed, such corporation, association, owner or owners of the mine where the injuries shall have occurred, shall be liable to the person injured in all damages that may accrue by reason

thereof; and an action at law in a court of competent jurisdiction may be maintained against the owner or owners of such mine, which owners shall be jointly or severally liable for such damages. And where death shall ensue from injuries received from any negligence on the part of the owners thereof by reason of their failure to comply with any of the provisions of this act, the heirs or relatives surviving the deceased may commence an action for the recovery of such damages as provided by an act entitled "An act requiring compensation for causing death by wrongful act, neglect, or default," approved April 26, 1862.

SEC. 4. This act shall take effect and be in force 6 months from and after its passage.

### HYDRAULIC MINING.

**LAW 1893, P. 337; MAR. 24, 1893. (CIVIL CODE (1872), SEC. 1424-1425.)**

AN ACT to amend an act entitled "An act to establish a Civil Code, approved March 21 (12), 1872, by adding thereto two sections, to be known as sections 1424 and 1425, being title 9, part 4, division 2, of said code, concerning the manner of conducting the business of hydraulic mining."

The People, etc.

SEC. 1. The Civil Code of the State of California is hereby amended by adding thereto a new title, to be known as title 9, of part 4, division 2, of said code, to read as follows:

SEC. 1424. The business of hydraulic mining may be carried on within the State of California wherever and whenever the same can be carried on without material injury to the navigable streams, or the lands adjacent thereto.

SEC. 1425. Hydraulic mining, within the meaning of this title, is mining by means of the application of water, under pressure, through a nozzle, against a natural bank.

### ANNOTATIONS.

#### HYDRAULIC MINING.

##### NATURE—USE OF WATER PROTECTED.

Hydraulic mining is defined by statute to be mining by means of the application of water under pressure through a nozzle against a natural bank; and water is not superfluous but is of the essence of the work and does not become superfluous even when it has aided in the extraction of the last particle of gold, as it must still serve the necessary purpose of clearing the ground for further operations.

Jacob v. Day, 111 Cal. 571, p. 576, 44 Pac. 243 (1896).

The use of water for the purpose of carrying off the tailings and the construction of a ditch to aid this purpose are as essential to the successful conduct of hydraulic mining as is the first use to which the water is put in washing down the natural bank; and every use of water for purposes of legitimate mining, sanctioned by local custom and law, is recognized as a right and protected as such, and within such protection is embraced a ditch by which the use is made practical.

Jacob v. Day, 111 Cal. 571, p. 577, 44 Pac. 243 (1896).

The use of water in a ditch constructed to convey water is an essential feature of hydraulic mining, but must not be confounded with the discharge of superfluous water encountered in quartz and drift mines: and it is an easement for the incidental requirement of drainage of such a mine that is contemplated by section 2338 of the United States Revised Statutes. But in a hydraulic mine, water must be present and must be used for the enumerated purposes, and it can only follow that if Congress, in protecting and conferring rights to the use of water and rights of way for ditches for mining purposes, did not include a ditch used as a tail race, then hydraulic mining, as universally understood and conducted in the State of California, is not within the protection afforded by the act of Congress.

Jacob v. Day, 111 Cal. 571, p. 577, 44 Pac. 243 (1896).

See Eastlick v. Wright, 121 Cal. 309, 53 Pac. 654 (1898).

The statutes of the United States expressly recognize and protect the right to the use of water for mining purposes; and the use of water for the purpose of carrying off tailings from a mine, and the construction of a ditch to aid such purpose, are essential to the successful conduct of hydraulic mining and are protected by both State and United States statutes.

Jacob v. Day, 111 Cal. 571, p. 576, 44 Pac. 243 (1896).

### COAL MINES—REGULATION.

LAWS 1873-74, P. 726; MAR. 27, 1874.

AN ACT for the protection of coal mines and coal miners.

The People, etc.

SEC. 1. The owner or agent of every coal mine shall make, or cause to be made, an accurate map or plan of the working of such coal mine, on a scale of 100 feet to the inch.

SEC. 2. A true copy of which map or plan shall be kept at the office of the owner or owners of the mine, open to the inspection of all persons, and one copy of such map or plan shall be kept at the mines by the agent or other person having charge of the mines, open to the inspection of the workmen.

SEC. 3. The owner or agent of every coal mine shall provide at least two shafts, or slopes, or outlets, separated by natural strata of not less than 150 feet in breadth, by which shafts, slopes, or outlets distinct means of ingress and egress are always available to the persons employed in the coal mine: Provided, That if a new tunnel, slope, or shaft will be required for the additional opening, work upon the same shall commence immediately after the passage of this act and continue until its final completion with reasonable dispatch.

SEC. 4. The owner or agent of every coal mine shall provide and establish for every such mine an adequate amount of ventilation, of not less than 55 cubic feet per second of pure air, or 3,300 feet per minute, for every 50 men at work in such mine, and as much more as circumstances may require, which shall be circulated through to the face of each and every working place throughout the entire mine, to dilute and render harmless and expel therefrom the noxious, poisonous gases, to such an extent that the entire mine shall be in a fit state for men to work therein, and be free from danger to the health and lives of the men by reason of said noxious and poisonous gases, and all workings shall be kept clear of standing gas.

SEC. 5. To secure the ventilation of every coal mine and provide for the health and safety of the men employed therein otherwise and in every respect, the owner, or agent, as the case may be, in charge of every coal mine, shall employ a competent and practical inside overseer, who shall keep a careful watch over the ventilating apparatus, over the air ways, the traveling ways, the pumps and sumps, the timbering, to see as the miners advance in their excavations that all loose coal, slate, or rock overhead is carefully secured against falling; over the arrangements for signaling from the bottom to the top, and from the top to the bottom of the shaft or slope, and all things connected with and appertaining to the safety of the men at work in the mine. He, or his assistants, shall examine carefully the workings of all mines generating explosive gases, every morning before the miners enter, and shall ascertain that the mine is free from danger, and the workmen shall not enter the mine until such examination has been made and reported, and the cause of danger, if any, be removed.

SEC. 6. The overseer shall see that the hoisting machinery is kept constantly in repair and ready for use to hoist the workmen in or out of the mine.

SEC. 7. The word "owner" in this act shall apply to lessee as well.

SEC. 8. For any injury to person or property occasioned by any violation of this act, or any willful failure to comply with its provisions, a right of action shall accrue to the party injured for any direct damages he or she may have sustained thereby, before any court of competent jurisdiction.

SEC. 9. For any willful failure or negligence on the part of the overseer of any coal mine, he shall be liable to conviction of misdemeanor and punished according to law: Provided, That if such willful failure or negligence is the cause of the death of any person, the overseer upon conviction, shall be deemed guilty of manslaughter.

SEC. 10. All boilers used for generating steam in and about coal mines shall be kept in good order, and the owner or agent thereof shall have them examined and inspected, by a competent boilermaker as often as once in three months.

SEC. 11. This act shall not apply to opening a new coal mine.

SEC. 12. This act shall take effect immediately.

### MINE BELL SIGNALS.

LAWS 1893, P. 82; MAR. 8, 1893. (REPEALED.)

AN ACT to establish a uniform system of mine bell signals, to be used in all the mines operated in the State of California, and for the protection of miners.

The People, etc.

SEC. 1. Every person, company, corporation, or individual operating any mine within the State of California—gold, silver, copper, lead, coal, or any other metal or substances where it is necessary to use signals by means of bell or otherwise for shafts, inclines, drifts, crosscuts, tunnels, and underground workings—shall, after the passage of this bill, adopt, use, and put in force the following system or code of mine bell signals, as follows:

- 1 bell, to hoist. (See rule 2.)
- 1 bell, to stop if in motion.
- 2 bells, to lower. (See rule 2.)
- 3 bells, man to be hoisted; run slow. (See rule 2.)
- 4 bells, start pump if not running, or stop pump if running.
- 1-3 bells, start or stop air compressor.
- 5 bells, send down tools. (See rule 4.)
- 6 bells, send down timbers. (See rule 4.)
- 7 bells, accident; move bucket or cage by verbal orders only.
- 1-4 bells, foreman wanted.
- 2-1-1 bells, done hoisting until called.
- 2-1-2 bells, done hoisting for the day.
- 2-2-2 bells, change buckets from ore to water, or vice versa.
- 3-2-1 bells, ready to shoot in the shaft. (See rule 3.)

Engineer's signal that he is ready to hoist is to raise the bucket or cage 2 feet and lower it again. (See rule 3.)

Levels shall be designated and inserted in notice hereinafter mentioned. (See rule 5.)

SEC. 2. For the purpose of enforcing and properly understanding the above code of signals, the following rules are hereby established:

Rule 1. In giving signals make strokes on bell at regular intervals. The bar (—) must take the same time as for one stroke of the bell, and no more. If timber, tools, the foreman, bucket, or cage are wanted to stop at any level in the mine, signal by number of stokes (strokes) on the bell the number of the level, first before giving the signal for timber, tools, etc. Time between signals to be double bars (— —).

Examples:

- 6 — — 5, would mean stop at sixth level with tools.
- 4 — — 1 — 1 — 1 — — 1, would mean stop at fourth level, man on, hoist.
- 2 — — 1 — 1, would mean stop at second level with foreman.

Rule 2. No person must get off or on the bucket or cage while the same is in motion. When men are to be hoisted, give the signal for men. Men must then get on bucket or cage, then give the signal to hoist. Bell cord must be in reach of man on the bucket or cage at stations.

Rule 3. After signal "Ready to shoot in shaft," engineer must give his signal when he is ready to hoist. Miners must then give the signal of "Men to be hoisted," then "spit fuse," get into the bucket, and give the signal to hoist.

Rule 4. All timbers, tools, etc., "longer than the depth of the bucket," to be hoisted or lowered, must be securely lashed at the upper end to the cable. Miners must know they will ride up or down the shaft without catching on rocks or timbers and be thrown out.

Rule 5. The foreman will see that one printed sheet of these signals and rules for each level and one for the engine room are attached to a board not less than 12 inches wide by 36 inches long, and securely fasten the board up where signals can be easily read at the places above stated.

Rule 6. The above signals and rules must be obeyed. Any violation will be sufficient grounds for discharging the party or parties so doing. No person, company, corporation, or individuals operating any mine within the State of California shall be responsible for accidents that may happen to men disobeying the above rules and signals. Said notice and rules shall be signed by the person or superintendent having charge of the mine, who shall designate the name of the corporation or the owner of the mine.

SEC. 3. Any person or company failing to carry out any of the provisions of this act shall be responsible for all damages arising to or incurred by any person working in said mine during the time of such failure.

SEC. 4. This act shall take effect immediately.

## ANNOTATIONS.

### MINE BELL SIGNALS.

1. PURPOSE OF STATUTE—SYSTEM OF SIGNALS.
2. BREACH OF STATUTORY DUTY—LIABILITY.

#### 1. PURPOSE OF STATUTE—SYSTEM OF SIGNALS.

The purpose of this act was to establish a uniform system of signals and accompanying rules to put into operation and use in all mines of the State so that miners would find the same system of signals and rules in operation in every mine and not be required to learn a new system of signals and rules; secondly, the system of signals and rules established was intended to afford an additional protection to the miners in the operation of a mine.

Manning v. App. Consolidated Gold Min. Co., 149 Cal. 35, p. 46, 84 Pac. 657 (1906).

The signals and rules provided for by this act were intended to afford an additional security to the miners in their operation of a mine among themselves, after the operator has discharged the duties cast upon him of furnishing for their own protection, among other things, the proper appliances for doing so.

Manning v. App. Consolidated Gold Min. Co., 149 Cal. 35, p. 46, 84 Pac. 657 (1906).

All the signals prescribed by this act are signals which are to be given by the employees in the mine, either from levels or shaft, to their coemployees in the engine room or at the mouth of the shaft, as to their wants below, mainly as to hoisting or sending down tools or materials into the mine; and the rules provided are not formulated as independent provisions, but as the act says, for the purpose of enforcing and properly understanding the code of signals and the signals and rules constitute one system, designed to be used among the employees with regard to their common employment and as an additional protection against the carelessness or negligence of

fellow employees, particularly in the use of or failure to use the proper appliances which the employer has furnished for the work.

Manning v. App. Consolidated Gold Min. Co., 149 Cal. 35, p. 46, 84 Pac. 657 (1906).  
See Elkton Consolidated Min. & Milling Co. v. Sullivan, 41 Colo. 241, p. 251, 92 Pac. 679 (1907).

It is apparent from rule 6 that all signals and rules provided for are for the government of the employees, as it expressly provides for discharging employees disobeying them and relieves the mine operator from responsibility for accidents to employees disobeying the rules and signals, clearly indicating that all the signals and rules are designed for the use and government of the employees, imposing duties upon them, and that none of the rules or signals imposes any personal obligation upon the mine operator.

Manning v. App. Consolidated Gold Min. Co., 149 Cal. 35, p. 48, 84 Pac. 657 (1906).

It is to be assumed that the legislature intended by this system of signals and rules designed for the benefit of the employees in a mine, to be used in relation with each other in prosecuting their common employment to enforce with the general rule of law to the effect that the duty of an employer is discharged when he furnishes to his employees suitable and proper appliances to do their work, and that it is their negligence, and not his, if one of the fellow employees neglects to use them; and a clear expression of intention was required to show that as to this particular matter and in its application to mining operations the general rule of liability of the employer should be changed and a different rule of liability established; but this statute, rule 4, expresses no such intention, directly or inferentially.

Manning v. App. Consolidated Gold Min. Co., 149 Cal. 35, p. 47, 84 Pac. 657 (1906).

The California statute (Stats. 1893, p. 82) providing a code of signals for mining operations does not prohibit the use of additional signals to indicate that men are to be hoisted or lowered; but if in fact such signals were used, the engineer operating the hoist was bound, in the exercise of due care, to act upon them when they were actually given him, and if by any means he was advised that a miner was about to ride up on the bucket, it was his duty to act upon such information.

Gibson v. Kennedy Extension Gold Min. Co., ——— Cal. ———, 156 Pac. 56, p. 59 (1916).

The fact that signals given an engineer in hoisting a bucket in a mine carrying a miner were not the signals defined by the statute (Stats. 1893, p. 82), but were the signals commonly used in the mine for this particular purpose and did convey to the engineer knowledge that a man was in the bucket, the engineer was not justified in ignoring the fact thus brought to his attention and hoisting the bucket at a speed in excess of that to be used when miners were carried.

Gibson v. Kennedy Extension Gold Min. Co., ——— Cal. ———, 156 Pac. 56, p. 59 (1916).

## 2. BREACH OF STATUTORY DUTY—LIABILITY.

The failure on the part of a mine operator to perform any of the duties imposed upon him by this act, where such failure proximately contributes to an injury, is to be considered as evidence of negligence.

Manning v. App. Consolidated Gold Min. Co., 149 Cal. 35, p. 44, 84 Pac. 657 (1906).

Section 3 of the act making any person or company failing to carry out any of the provisions of the act responsible for all damages arising to or incurred by any person working in the mine during the time of such failure, can have no application to the failure of a mine operator to discharge some duty it owed to an employee imposed by



the terms of rule 4; but the section has reference to the particular duties imposed on a mine operator under the entire act, this duty being to adopt and put in force the system or code of mine bell signals designated, and to see that a copy of such code of signals and accompanying rules is posted at each level in the mine and in the engine room; and for a failure to discharge this imposed duty, the mine operator is responsible under this section rule.

Manning v. App. Consolidated Gold Min. Co., 149 Cal. 35, p. 48, 84 Pac. 657 (1906).

Rule 4, as provided in this act, imposes no personal duty on a mine operator neither in terms nor by reasonable or necessary implication, but on the contrary, considering it with reference to the signals and rules, and the general scope and purpose of the act, it imposes no personal duty on a mine operator to lash the timbers and tools mentioned if they are longer than the depth of the bucket; nor does it impose a personal liability on a mine operator for failing himself to lash any such timbers, poles, or tools; but a mine operator has discharged his duties in this respect when he furnishes the necessary lashing material to the employees or for the use of the employees whose duty it is to send down timbers or tools in answer to signals, and to properly lash such timbers and tools.

Manning v. App. Consolidated Gold Min. Co., 149 Cal. 35, p. 49, 84 Pac. 657 (1906).

Rule 4, supplemented by section 3 of this act, imposes a duty upon a mining corporation to securely lash all mining poles of a certain character in a designated manner when they are to be sent in a skip down the shaft, and makes the mining company operating the mine liable for any injury occasioned from its failure to comply with these statutory rules.

Manning v. App. Consolidated Gold Min. Co., 149 Cal. 35, p. 45, 84 Pac. 657 (1906).

Rule 4 of this act when considered without relation to the general scope and purpose of the act or its other provisions, shows an entire absence of any language in it which in any manner indicates upon whom is cast the duty of doing the lashing of timbers, poles, or other materials, as provided; and so far as any intention is expressed, it amounts to no more than that the legislature deemed that mining timbers or poles of certain character should be lashed; and there is not the faintest indication in the rule as to whether the legislature intended to fix a personal duty in this regard upon the operator or whether it considered that in the exercise of ordinary care the operator would furnish the necessary lashing material and the employee whose duty it was to respond to the signal to send down timbers should do the lashing.

Manning v. App. Consolidated Gold Min. Co., 149 Cal. 35, p. 47, 84 Pac. 657 (1906).  
See Elkton Consolidated Min. & Milling Co. v. Sullivan, 41 Colo. 241, p. 251, 92 Pac. 679 (1907).

A miner injured while being hoisted in a bucket in the shaft of a mine because of the excessive speed at which he was carried, causing the bucket to jump from the skids, is not to be defeated in an action for damages for the injuries because he violated the statute requiring him to securely lash to the cable the upper end of a tamping stick being carried out of the mine by him, where it is made to appear that the dangerous speed of the bucket was the proximate cause of the injury, and the miner's failure to lash his tamping stick to the cable did not contribute as a cause to the injury sustained by him.

Gibson v. Kennedy Extension Gold Min. Co., ——— Cal. ———, 156 Pac. 56, p. 61 (1916).

**MINE BELL SIGNALS. (REPEALING ACT.)****LAWS 1917, P. 434; MAY 11, 1917.**

AN ACT to repeal an act entitled "An act to establish a uniform system of mine bell signals, to be used in all mines operated in the State of California, and for the protection of miners," approved March 8, 1893, and known as chapter 74, Statutes of 1893.

The People, etc.

SEC. 1. An act entitled "An act to establish a uniform system of mine bell signals, to be used in all the mines operated in the State of California, and for the protection of miners," approved March 8, 1893, is hereby repealed.

**TELEPHONE SYSTEM.****LAWS 1913, P. 782; JUNE 13, 1913.**

AN ACT providing for the establishment and maintenance of a telephone system in mines and prescribing a penalty for the violation thereof.

The People, etc.

SEC. 1. In all mines operated and worked in this State where a depth of more than 500 feet underground has been reached, a telephone system must be established, equipped, and maintained by the owners or lessees thereof, with stations at each working level below the depth aforesaid, communicating with a station thereof on the surface of any such mine.

SEC. 2. The failure or refusal of any owner or lessee to install or maintain such telephone system shall be deemed guilty of misdemeanor and punished accordingly.

## MINING BUREAU—STATE MINERALOGIST.

### MINING BUREAU AND STATE MINERALOGIST.

LAWS 1880, P. 115; APR. 16, 1880. CODE SUPPLEMENT 1877-78, SEC. 15651.

AN ACT to provide for the establishment and maintenance of a mining bureau. (Repealed.)

The People, etc.

SEC. 1. (Code Supp. 1877-78, 1880, sec. 15651.) There shall be, and is hereby, established in this State a mining bureau, the principal office of which shall be maintained in the city of San Francisco, at which place there shall be collected by the State mineralogist and preserved for study and reference specimens of all the geological and mineralogical substances, including mineral waters, found in this State, especially those possessing economic or commercial value, which specimens shall be marked, arranged, classified, and described, and a record thereof preserved, showing the character thereof, and the place from whence obtained. The State mineralogist shall also as he has opportunity and means collect and in like manner preserve at said office minerals, rocks, and fossils of other States, Territories, and countries, and the collections so made shall at all reasonable hours be open to public inspection, examination, and study.

SEC. 2. It shall be the duty of the governor to appoint a citizen of this State having a practical and scientific knowledge of mining and mineralogy to the office of State mineralogist, to hold his said office for the term of 4 years, or until the appointment and qualification of his successor, who shall take and subscribe the oath of office prescribed by the constitution, and who shall receive for his services a salary of \$3,000 per annum to be paid as other officers of the State are paid, and shall also receive his necessary traveling expenses when traveling on the business of his office, to be allowed and audited by the State board of examiners, the whole to be paid out of the mining bureau fund hereinafter provided for, and not otherwise.

SEC. 3. In addition to the collection, classification, arranging, and preservation of specimens, as provided in the first section of this act, it shall be the duty of the State mineralogist to make analytical assays as required, and when the funds in the mining bureau fund are sufficient therefor, to provide and maintain a library of works on mineralogy, geology, and mining; to arrange in cases such specimens as he may collect; to procure and preserve models and drawings of mining machinery and of milling machinery used in the reduction of ores; to correspond with established schools of mining and metallurgy, and obtain and preserve for public inspection and use such information respecting improvements in mining and mining machinery as will be of practical value to the people of this State; to visit the several mining districts of each county of the State, from time to time, ascertain and record their history, describe their geological formation and altitudes, the character of the mines and ores, and the general development of the district. At the close of each year he shall make a report in detail to the governor, showing the amount of disbursements of the bureau under his charge, the number of specimens collected, and giving such statistical information in reference to mines and mining as shall be deemed important.

SEC. 4. The State mineralogist may, from time to time and as the funds in the mining bureau fund will permit, appoint such assistants as he may deem necessary and proper for the carrying out of the objects of this act, and the efficient provision and maintenance of a bureau of mining information and statistics, and may procure and maintain the necessary rooms and furniture for the office and uses of the bureau in San

Francisco; but the entire expenses of the bureau for salaries, assistance, rents, furniture, fuel, and all other things pertaining to the bureau must not, in any one year, be greater than can be paid out of the mining bureau fund herein provided for.

SEC. 5. For the purpose of establishing a fund for the maintenance of said mining bureau, it shall be the duty of the tax collectors in the several counties in this State, and of the license collector of the city and county of San Francisco, on the second Monday in January, April, July, and October, in each year, to transmit by express to the State treasurer all moneys collected by them from mining corporations, or from corporations formed for milling ores, or for supplying water for mining purposes, under or by virtue of the act entitled "An act imposing a tax on the issue of certificates of stock corporations," approved April 1, 1878, and to forward to the State comptroller by mail a certificate showing the amount of money so forwarded to the State treasurer, and the date when the same was transmitted, and also showing the names of the several corporations from which the same was received, and the amount received from each. The State treasurer shall receive the amounts so transmitted, and give duplicate receipts therefor, one of which shall be filed with the State comptroller, and the other shall be returned by mail, or return express, to the collector from whom the money was received. and after paying out of the money so received the charges for the transmission thereof, the amount of which shall be noted on the receipt filed with the State comptroller, he shall retain the remainder in his hands as a separate fund, to be known as the mining bureau fund, to be used only in payment of drafts made for the expenses of the mining bureau established under this act, and out of which all the expenses of said bureau shall be paid.

SEC. 6. Such tax collectors and license collector shall hereafter be required to pay into the county treasuries of their respective counties only that portion of the moneys collected by them under the act of the legislature mentioned in the last preceding section, which is collected from corporations other than those mentioned in section 5 of this act.

SEC. 7. This act shall take effect and be in force from and after its passage.

#### MINING BUREAU—TRUSTEES. (SUPPLEMENTAL ACT.)

LAWS 1855, P. 217; MAR. 21, 1855.

AN ACT supplementary to an act entitled "An act to provide for the establishment and maintenance of a mining bureau," approved April 16, 1850. (Repealed.)

The People, etc.

SEC. 1. All property of this State pertaining to said mining bureau, and the money and financial affairs thereof, shall be vested in and be under the direction and control of a board of trustees of said bureau.

SEC. 2. It shall be the duty of the governor of the State to appoint five citizens and residents of this State to be such trustees.

SEC. 3. The appointees herein mentioned, when assembled, shall constitute the board of trustees of the State mining bureau, three of whom shall constitute a quorum. The board shall have power, by said name, to sue and defend. They shall keep a record of all their proceedings, and they shall elect one of those so appointed to be president of the board, and shall have the right to appoint a custodian of the museum and other employees. The State mineralogist shall be the director of the museum, and shall have the right to appoint a custodian of the museum, and other employees, subject to the approval of the board of trustees, and it shall be his duty to consult the board in all matters of importance.

SEC. 4. Said board shall make rules for its own government, for regulating the custody and disbursement of funds, and the mode of drawing the same from the State treasury.

SEC. 5. The board of trustees shall, annually, report to the governor of the State the condition of the bureau, with a statement of the receipts and expenditures in detail, which report shall be published in the annual report of the State mineralogist provided for in the act to which this is supplementary.

SEC. 6. The trustees are hereby empowered to pay out of any moneys coming into their hands, the amount advanced by Wells, Fargo & Co., shown in the financial statement of the State mineralogist, and published in his reports.

SEC. 7. The board of trustees shall be empowered to receive, on behalf of the State, bequests or gifts, legacies and devises (devises), real estate and other property, and to use the same in accordance with the wishes of the donors; and if no instructions are given, to use their discretion for the best interests of the State museum.

SEC. 8. The board of trustees may, with the assistance of the State mineralogist, prepare a special collection of ores and minerals of California, to be sent to any world's fair, or exposition, at which they may deem it desirable to display the mineral wealth of the State.

SEC. 9. All acts or laws in conflict with this act are hereby repealed.

SEC. 10. This act shall take effect immediately.

### MINING BUREAU—ACT ESTABLISHING.

LAWS 1893, P. 203; MAR. 23, 1893.

AN ACT to provide for the establishment, maintenance, and support of a bureau, to be known as the State mining bureau, and for the appointment and duties of a board of trustees to be known as the board of trustees of the State mining bureau, who shall have the direction, management, and control of said State mining bureau, and to provide for the appointment, duties, and compensation of a State mineralogist, who shall perform the duties of his office, under the control, direction, and supervision of the board of trustees of the State mining bureau. (Repealed.)

The People, etc.

SEC. 1. There shall be, and there is hereby established, in the State of California a mining bureau, the principal office of which shall be maintained in the city of San Francisco, which said mining bureau shall be under the supervision of a board of trustees, to be known as the board of trustees of the State mining bureau; and it shall be the duty of, and the governor of the State of California is hereby authorized and empowered, to appoint five residents and citizens of the State to be such trustees.

SEC. 2. The appointees shall take the same oath of office as other State officers, and when duly qualified and assembled shall constitute the board of trustees of the State mining bureau. They shall hold office for four years from the date of their appointment, or until the qualification of their successors, and shall receive no compensation for their services. They shall have control of all properties and funds of said bureau, and shall have the power by the name of said board to sue and defend. Three of them shall constitute a quorum for the transaction of business. They shall elect one of their number to be president of said board, and shall keep a record of their proceedings. They shall adopt rules and regulations for their government not in conflict with the laws of the State. (Amended.)

SEC. 3. It shall be the duty of the governor of the State of California, and he is hereby empowered, to appoint a citizen and resident of this State, having a practical and scientific knowledge of mining and mineralogy, to the office of State mineralogist, which office is hereby created. Said State mineralogist shall hold his office for the term of four years from the date of his appointment, or until the qualification of his successor. He shall take and subscribe the same oath of office as the other State officers, and shall give bond for the faithful performance of his duties in the sum of \$25,000, said bond to be approved by the governor of the State of California. He shall receive for his services a salary of \$250 per month, to be paid in the same manner as the salaries of other State officers, and shall also receive his necessary traveling expenses when traveling on the business of his office, said expenses, when approved by the board of trustees of the

mining bureau, to be allowed and audited by the State board of examiners. The said salary and expenses shall be paid out of the mining bureau fund, herein provided for and not otherwise.

SEC. 4. It shall be the duty of said State mineralogist to make, facilitate, and encourage special studies of the mineral resources and mineral industries of the State. It shall be his duty: To collect statistics concerning the occurrence of the economically important minerals and the methods pursued in making their valuable constituents available for commercial use; to make a collection of typical geological and mineralogical specimens, especially those of economic or commercial importance, such collection constituting the museum of the State mining bureau; to provide a library of books, reports, and drawings bearing upon the mineral industries, the sciences of mineralogy and geology, the arts of mining and metallurgy, such library constituting the library of the State mining bureau; to make a collection of models, drawings, and descriptions of the mechanical appliances used in mining and metallurgical processes; to preserve and so maintain such collections and library as to make them available for reference and examination, and open to public inspection at reasonable hours; to maintain, in effect, a bureau of information concerning the mineral industries of this State, to consist of such collections and library, and to arrange, classify, catalogue, and index the data therein contained, in a manner to make the information available to those desiring it, and to provide a custodian specially qualified to promote this purpose; to make a biennial report to the board of trustees of the mining bureau, setting forth the important results of his work, and to issue from time to time such bulletins as he may deem advisable concerning the statistics and technology of the mineral industries of this State.

SEC. 5. Said State mineralogist shall have the right to appoint competent assistants and qualified specialists when necessary in the execution of his plans, and fix their compensations, but all such appointments and compensations shall be subject to the approval and confirmation of said board of trustees, and shall not become effective unless so confirmed and approved. And it shall be the duty of the State mineralogist to consult the said board of trustees upon all matters appertaining to his official duties, and he shall at all times perform such duties subject to the supervision and approval of said board of trustees.

SEC. 6. It shall be the duty of the board of trustees of the State mining bureau, when the funds of said mining bureau will permit, to procure and maintain the necessary rooms and furniture for the offices and uses of the said board of trustees and the State mineralogist, and the museum and library of the mining bureau, in San Francisco: Provided, however, That the entire expenses of the State mining bureau for salaries, assistance, light, rent, fuel, furniture, and all other things pertaining to said bureau must not, in any one year, be greater than can be paid out of the mining bureau fund herein provided.

SEC. 7. The board of trustees of the State mining bureau shall manage and control all the finances of said mining bureau, and shall make rules regulating the custody and disbursement of the funds of the State mining bureau, and the mode of drawing the same from the State treasury.

SEC. 8. The board of trustees of the State mining bureau shall biennially report to the governor of the State the condition of the bureau, with a statement of the receipts and disbursements in detail, and with said report shall be incorporated the biennial report of the State mineralogist, and the report of said board of trustees and State mineralogist shall be printed as are the reports of the other State officers. (Amended.)

SEC. 9. The board of trustees of the State mining bureau are hereby empowered and authorized to receive, on behalf of the State, for the use and benefit of the State mining bureau, gifts, bequests, devises, and legacies of real or other property, and to use the same in accordance with the wishes of the donors; and if no instructions are given by

said donors, to manage, use, and dispose of the said gifts, bequests, and legacies for the best interests of the said mining bureau in the manner they may deem proper.

SEC. 10. The State mineralogist may, with the approval of the board of trustees of the State mining bureau, prepare a special collection of ores and minerals of California, to be sent to any world's fair or exposition at which they may deem it advisable or desirable to display the mineral wealth of the State.

SEC. 11. The mining bureau fund herein mentioned, and out of which all the expenses of the State mining bureau shall be paid, shall consist of such property or moneys as may come into the hands of the board of trustees of said bureau by gift, bequest, devise, or legacy, of such moneys as may from time to time be appropriated by the legislature of the State for the use of said bureau, and of such moneys as shall be paid into the State treasury for the use and benefit of said bureau, as provided in the following section:

SEC. 12. It shall be the duty of the tax collectors in the several counties in the State and of the license collector of the city and county of San Francisco, on the second Monday in January, April, July, and October, in each year, to transmit by express to the State treasury all moneys collected by them from mining corporations or from corporations formed for milling ores or for supplying water for mining purposes under or by virtue of the act entitled "An act imposing a tax on the issue of certificates of stock corporations," approved April 1, 1878, and to forward to the State comptroller, by mail, a certificate showing the amount of money so forwarded to the State treasurer, and the date when the same was transmitted, and also showing the names of the several corporations from which the same was received, and the amount received from each. The State treasurer shall receive the amounts so transmitted and give duplicate receipts therefor, one of which shall be filed with the State comptroller and the other shall be forwarded to the collector from whom the money was received; and after paying out of the money so received the charges for the transmission thereof, the amount of which shall be noted on the receipt filed with the State comptroller, he shall retain the remainder in his hands and place it in the mining bureau fund, said mining bureau fund to be used only in the payment of drafts made for the expenses of the mining bureau established under this act.

NOTE.—The act of April 1, 1878 (Laws 1877-78, p. 955), requires the secretary of every corporation in the State to charge a fee of 10 cents for each certificate of stock issued.

SEC. 13. Such tax collectors and license collectors shall hereafter be required to pay into the county treasuries of their respective counties only that portion of the moneys collected by them under the act of the legislature mentioned in the last preceding section, approved April 1, 1878, which is collected from corporations other than those mentioned in section 12 of this act.

SEC. 14. The board of trustees now known as the board of trustees of the State mining bureau shall perform the duties of the board of trustees of the State mining bureau, as in this act provided, and administer the affairs of the State mining bureau, as in this act provided, until the appointment and qualification of their successors, as in this act provided, and the State mineralogist now performing the duties of the office of State mineralogist shall perform the duties of the office of State mineralogist, as in this act provided, until the appointment and qualification of his successor, as in this act provided.

SEC. 15. The act entitled "An act to provide for the establishment and maintenance of a mining bureau," approved April 16, 1880, and the act entitled "An act supplementary to an act entitled 'An act for the establishment and maintenance of a mining bureau,' approved April 16, 1880," approved March 21, 1885, and all acts and parts of acts in conflict with the provisions of this act are hereby repealed.

NOTE.—This act was repealed by the act of June 16, 1913. See page 123.

**AMENDMENT.****BIENNIAL REPORTS.****LAWS 1903, P. 113; MAR. 10, 1903.**

AN ACT to amend section 8 of an act entitled "An act to provide for the establishment, maintenance, and support of a bureau, to be known as the State mining bureau, and for the appointment and duties of a board of trustees, to be known as the board of trustees of the State mining bureau, who shall have the direction, management, and control of said State mining bureau, and to provide for the appointment, duties, and compensation of a State mineralogist, who shall perform the duties of his office, under the control, direction, and supervision of the board of trustees of the State mining bureau," approved March 23, 1893, relating to the powers of the board of trustees of the State mining bureau.

The People, etc.

SEC. 1. Section 8 of an act entitled "An act," etc. (same as in title), is hereby amended to read as follows:

SEC. 8. The board of trustees of the State mining bureau shall biennially report to the governor of the State the condition of the bureau, with a statement of the receipts and disbursements in detail, and with said reports shall be incorporated the biennial report of the State mineralogist, and the report of said board of trustees and State mineralogist shall be printed as are the reports of the other State officers. The board is hereby empowered to fix a price upon and to dispose of to the public at such price any and all publications of the bureau, including reports, bulletins, maps, registers, etc. The sum derived from such disposition must be accounted for and used as a revolving printing and publishing fund for other reports, bulletins, maps, registers, etc. The prices fixed must approximate the actual cost of printing and issuing the respective reports, bulletins, maps, registers, etc., without reference to the cost of obtaining and preparing the information embraced therein.

SEC. 2. This act takes effect and is in force from and after its passage.

**SECOND AMENDMENT.****TRUSTEES.****LAWS 1907, P. 935; MAR. 23, 1907.**

AN ACT to amend section 2 of an act entitled "An act," etc. (same as in section 1).

The People, etc.

SEC. 1. Section 2 of an act entitled "An act to provide for the establishment, maintenance, and support of a bureau, to be known as the State mining bureau, and for the appointment and duties of a board of trustees, to be known as the board of trustees of the State mining bureau, who shall have the direction, management, and control of said State mining bureau, and to provide for the appointment, duties, and compensation of a State mineralogist, who shall perform the duties of his office under the control, direction, and supervision of the board of trustees of the State mining bureau," approved March 23, 1893, relating to the compensation of the board of trustees of the State mining bureau, is hereby amended to read as follows:

SEC. 2. The appointees shall take the same oath of office as other State officers, and when duly qualified and assembled shall constitute the board of trustees of the State mining bureau. They shall hold office for four years from the date of their appointment or until the qualification of their successors, and shall receive no compensation for their services. They shall receive their necessary traveling expenses when attending regular meetings of said board, said traveling expenses to be approved and audited by the State board of examiners. The said expenses shall be paid out of the mining bureau fund and not otherwise.

They shall have control of all properties and funds of said bureau, and shall have the power by the name of said board to sue and defend. Three of them shall constitute a quorum for the transaction of business. They shall elect one of their number to be president of said board, and shall keep a record of their proceedings. They shall adopt rules and regulations for their government not in conflict with the laws of the State.



## REPEALING ACT.

LAWS 1913, P. 1327; JUNE 16, 1913.

AN ACT establishing a State mining bureau, creating the office of State mineralogist, fixing his salary, and prescribing his powers and duties; providing for the employment of officers and employees of said bureau, making it the duty of persons in charge of mines, mining operations, and quarries to make certain reports, providing for the investigation of mining operations, dealings, and transactions, and the prosecution for defrauding, swindling, and cheating therein, creating a State mining bureau fund for the purpose of carrying out the provisions of this act, and repealing an act entitled "An act to provide for the establishment, maintenance, and support of a bureau, to be known as the State mining bureau, and for the appointment and duties of a board of trustees, to be known as the board of trustees of the State mining bureau, who shall have the direction, management, and control of said State mining bureau, and to provide for the appointment, duties, and compensation of a State mineralogist, who shall perform the duties of his office under the control, direction, and supervision of the board of trustees of the State mining bureau," approved March 23, 1893, and all acts amendatory thereof and supplemental thereto or in conflict therewith.

The People, etc.

SEC. 1. There is hereby created and established a State mining bureau. The chief officer of such bureau shall be the State mineralogist, which office is hereby created.

SEC. 2. It shall be the duty of the governor of the State of California, and he is hereby empowered to appoint a citizen and resident of this State having a practical and scientific knowledge of mining to the office of State mineralogist. Said State mineralogist shall hold his office at the pleasure of the governor. He shall be a civil executive officer. He shall take and subscribe the same oath of office as other State officers. He shall receive for his services a salary of \$300 per month, to be paid at the same time and in the same manner as the salaries of other State officers. He shall also receive his necessary traveling expenses when traveling on the business of his office. He shall give bond for the faithful performance of his duties in the sum of \$10,000, said bond to be approved by the governor of the State of California.

SEC. 3. Said State mineralogists shall employ competent geologists, field assistants, qualified specialists, and office employees when necessary in the execution of his plans and operations of the bureau, and fix their compensation. The said employees shall be allowed their necessary traveling expenses when traveling on the business of said department and shall hold office at the pleasure of said State mineralogist.

SEC. 4. It shall be the duty of said State mineralogist to make, facilitate, and encourage special studies of the mineral resources and mineral industries of the State. It shall be his duty to collect statistics concerning the occurrence and production of the economically important minerals and the methods pursued in making their valuable constituents available for commercial use; to make a collection of typical geological and mineralogical specimens, especially those of economic and commercial importance, such collection constituting the museum of the State mining bureau; to provide a library of books, reports, and drawings, bearing upon the mineral industries, and sciences of mineralogy and geology, and arts of mining and metallurgy, such library constituting the library of the State mining bureau; to make a collection of models, drawings, and descriptions of the mechanical appliances used in mining and metallurgical processes; to preserve and so maintain such collections and library as to make them available for reference and examination and open to public inspection at reasonable hours; to maintain, in effect, a bureau of information concerning the mineral industries of this State, to consist of such collections and library, and to arrange, classify, catalogue, and index the data therein contained in a manner to make the information available to those desiring it; to issue from time to time such bulletins as he may deem advisable concerning the statistics and technology of the mineral industries of this State.

SEC. 5. It is hereby made the duty of the owner, lessor, lessee, agent, manager, or other person in charge of each and every mine, of whatever kind or character, with the State, to forward to the State mineralogist, upon his request, at his office, not later than the 30th day of June, in each year, a detailed report upon forms which will be furnished

showing the character of the mine, the number of men then employed, the method of working such mine and the general condition thereof, the total mineral production for the past year; and such owner, lessor, lessee, agent, manager, or other person in charge of any mine within the State must furnish whatever information relative to such mine as the State mineralogist may from time to time require for the proper discharge of his official duties. Any owner, lessor, lessee, agent, manager, or other person in charge of each and every mine, of whatever kind or character within the State, who fails to comply with the above provisions shall be deemed guilty of a misdemeanor.

SEC. 6. The State mineralogist now performing the duties of the office of State mineralogist shall perform the duties of the office of State mineralogist as in this act provided until the appointment and qualification of his successor as in this act provided.

SEC. 7. The said State mineralogist shall take possession, charge, and control of the offices now occupied and used by the board of trustees and State mineralogist and the museum, library, and laboratory of the mining bureau, located in San Francisco, as provided for by a certain act of the legislature approved March 23, 1893, and hereafter referred to in section 14 hereof, and shall maintain such offices, museum, library, and laboratory for the purposes provided in this act.

SEC. 8. Said State mineralogist or qualified assistant shall have full power and authority at any time to enter or examine any and all mines, quarries, wells, mills, reduction works, refining works, and other mineral properties or working plants in this State in order to gather data to comply with the provisions of this act.

SEC. 9. The State mineralogist shall make a biennial report to the governor on or before the 15th day of September next preceding the regular session of the legislature.

SEC. 10. All moneys received by the State mining bureau or any officer thereof (except such as may be paid to them by the State for disbursement) shall be receipted for by the State mineralogist or other officer authorized by him to act in his place, and at least once a month accounted for by him to the State comptroller and paid into the State treasury to the credit of a fund which is hereby created and designated "State mining bureau fund." All moneys now in the possession of the State mining bureau or any officer thereof received from any source whatsoever shall be immediately paid over to the State mineralogist and by him accounted for to the comptroller and paid into the State treasury to the credit of said fund. Said fund shall be used and is hereby appropriated for the use of said bureau in carrying out the purposes of this act.

SEC. 11. The said State mineralogist is hereby authorized and empowered to receive on behalf of this State, for the use and benefit of the State mining bureau, gifts, bequests, devises and legacies of real or other property and to use the same in accordance with the wishes of the donors, and if no instructions are given by said donors, to manage, use, and dispose of the gifts and bequests and legacies for the best interests of said State mining bureau and in such manner as he may deem proper.

SEC. 12. The State mineralogist may whenever he deems it advisable, prepare a special collection of ores and minerals of California to be sent to or used at any world's fair or exposition in order to display the mineral wealth of the State.

SEC. 13. The State mineralogist is hereby empowered to fix a price upon and to dispose of to the public, at such price, any and all publications of the State mining bureau, including reports, bulletins, maps, registers or other publications; such price shall approximate the cost of publication and distribution. Any and all sums derived from such disposition, or from gifts or bequests made, as hereinbefore provided, must be accounted for by said State mineralogist and turned over to the State treasurer to be credited to the mining bureau fund as provided for in section 10. He is also empowered to furnish without cost to public libraries the publications of the bureau, and to exchange publications with other geological surveys and scientific societies, etc.

SEC. 14. The State mineralogist provided for by this act shall be the successor in interest of the board of trustees of the State mining bureau, and the State mineralogist, under and by virtue of that certain act, entitled "An act to provide for the establishment, maintenance, and support of a bureau, to be known as the State mining bureau," and for the appointment and duties of a board of trustees, to be known as the board of trustees of the State mining bureau, who shall have the direction, management, and control of said State mining bureau, and to provide for the appointment, duties, and compensation of a State mineralogist, who shall perform the duties of his office under the control, direction and supervision of the board of trustees of the State mining bureau," approved March 23, 1893, and all books, papers, documents, personal property, records, and property of every kind and description obtained or possessed, or held or controlled by the said board of trustees of the said State mining bureau, and the State mineralogist, and the clerks and employees thereof, under the provisions of said act of March 23, 1893, or any act supplemental thereto or amendatory thereof, shall immediately be turned over and delivered to the said State mineralogist herein provided for, who shall have charge and control thereof.

SEC. 15. That certain act entitled "An act to provide for the establishment, maintenance, and support of a bureau, to be known as the State mining bureau, and for the appointment and duties of a board of trustees, to be known as the board of trustees of the State mining bureau, and to provide for the appointment, duties and compensation of a State mineralogist, who shall perform the duties of his office under the control, direction, and supervision of the board of trustees of the State mining bureau," approved March 23, 1893, together with all acts amendatory thereof and supplemental thereto and all acts in conflict herewith are hereby repealed.

SEC. 16. This act shall take effect and be in force from and after its passage.

**DUTY OF MINERALOGIST.**

**LAWS 1895, P. 263; MAR 27, 1895**

AN ACT to create a bureau of highways, and prescribe its duties and powers, and to make an appropriation for its expenses.

The People, etc.

\* \* \* \* \*

SEC. 11. It shall be the duty of the State mineralogist to furnish the bureau of highways such data and information as it may call for.

\* \* \* \* \*

**MINING BUREAU—APPROPRIATIONS.**

**LAWS 1883, P. 279; MAR. 13, 1883.**

AN ACT to appropriate money for the support of the mining bureau, and to repeal all acts and parts of acts inconsistent therewith.

The People, etc.

SEC. 1. (Appropriation.) \$5,000.

**LAWS 1885, 80, P. 86; MAR. 10, 1885.**

AN ACT making appropriations for the support of the government of the State of California, for the thirty seventh and thirty-eighth fiscal years.

The People, etc.

SEC. 1. The following sums of money are hereby appropriated out of any money in the State treasury not otherwise appropriated, for the objects hereinafter expressed and for the support of the government of the State of California, for the thirty-seventh and thirty-eighth fiscal years: \* \* \*

For the support of the mining bureau created under the provisions of an act entitled "An act to provide for the establishment and maintenance of a mining bureau," approved April 16, 1880, and amendment thereto, approved March 13, 1883, \$20,000;  
\* \* \* \* \*

**LAWS 1887, P. 62; MAR. 9, 1887.**

AN ACT making an appropriation for the support and maintenance of the State mining bureau, for the thirty-ninth and fortieth fiscal years.

The People, etc.

SEC. 1. Appropriation for support of mining bureau, \$60,000.

**LAWS 1889, P. 149; MAR. 14, 1889.**

AN ACT making an appropriation for the support and maintenance of the State mining bureau for the forty-first and forty-second fiscal years.

The People, etc.

SEC. 1. (Appropriation for State mining bureau.) \$100,000.

**LAWS 1889, 438, P. 447; MAR. 21, 1889.**

AN ACT making appropriations for the support of the government of the State of California for the forty-first and forty-second fiscal years.

The People, etc.

SEC. 1. The following sums of money are hereby appropriated out of any money in the State treasury not otherwise appropriated, for the objects hereinafter expressed and for the support of the government of the State of California for the forty-first and forty-second fiscal years. \* \* \*

For salary of the State engineer, State mineralogist ex officio, \$6,000.

For the uses of the State mineralogist, ex officio, \$10,000, to be expended as follows: For completing the work of the State engineer on publication of the volumes and maps now in course of completion, exempt from the provisions of section 4 of this act.

\* \* \* \* \*

## ANNOTATIONS.

## MINING BUREAU.

## APPROPRIATION—VALIDITY OF STATUTE.

There is no provision in the constitution providing for or prescribing any particular form of words in which an appropriation shall be made nor is there any provision in the constitution prescribing the duties of the comptroller in the matter of drawing warrants upon the treasurer, except these shall be by law; and this act is sufficient to authorize the comptroller to draw his warrant for moneys expended under the appropriation made for the support and maintenance of the State mining bureau.

Proll v. Dunn, 80 Cal. 220, p. 221, 22 Pac. 143 (1889).

The appropriation made by the act of 1889 (p. 149), for the maintenance of the bureau of mines, established under the different statutes of the State, is valid, and it is not necessary to the validity of an appropriation act that it should show the money is appropriated out of any moneys in the treasury not otherwise appropriated.

Proll v. Dunn, 80 Cal. 220, p. 227, 22 Pac. 143 (1889).

**LAWS 1893, P. 133; MAR. 11, 1893.**

AN ACT making an appropriation for editing the manuscript of the State mineralogist for the two years ending September 15, 1892.

The People, etc.

SEC. 1. (Appropriation.) Editing report of State mineralogist, \$500.

**LAWS 1893, P. 524; MAR. 25, 1893.**

AN ACT making appropriations for the support of the government of the State of California for the forty-fifth and forty-sixth fiscal years.

The People, etc.

SEC. 1. The following sums of money are hereby appropriated out of any money in the State treasury not otherwise appropriated for the support of the government of the State of California for the forty-fifth and forty-sixth fiscal years: \* \* \*

For the support of the mining bureau, including salaries, \$50,000, 60 per cent of said sum to be expended for geological field work and scientific research.

\* \* \* \* \*

**LAWS 1895, 280, P. 286; MAR. 28, 1895.**

AN ACT making appropriations for the support of the government of the State of California for the forty-seventh and forty-eighth fiscal years.

The People, etc.

SEC. 1. The following sums of money are hereby appropriated out of any money in the State treasury not otherwise appropriated for the support of the government of the State of California for the forty-seventh and forty-eighth fiscal years: \* \* \*

For the support of the mining bureau, including salaries, \$50,000, 60 per cent of said sum to be expended for geological field work and scientific research.

\* \* \* \* \*

**LAWS 1897 355, P. 364; APR. 1, 1897.**

AN ACT making appropriations for the support of the government of the State of California for the forty-ninth and fiftieth fiscal years.

The People, etc.

SEC. 1. The following sums of money are hereby appropriated out of any money in the State treasury not otherwise appropriated for the support of the government of the State of California for the forty-ninth and fiftieth fiscal years: \* \* \*

For support of the mining bureau, including salaries, at least 50 per cent of said sum to be expended for field work and scientific research, \$50,000.

\* \* \* \* \*

**LAWS 1899, 112, P. 123; MAR. 17, 1899.**

AN ACT making appropriation, etc., for the fifty-first and fifty-second fiscal years.

The People, etc.

SEC. 1. The following sums of money are hereby appropriated, etc., for the fifty-first and fifty-second fiscal years: \* \* \*

For support of State mining bureau, including salaries, \$50,000: Provided, That \$20,000 of said sum shall be expended in making a practical and scientific examination of the Mother Lode and other mineral districts in California, including the oil districts, and preparing a brief and accurate history of such districts and the development, product, resources, methods of working, and future possibilities of the mining and oil industries in California; such examinations to be made by competent experts experienced in California mining, and assistants, all of whom shall be appointed and their compensation fixed by the governor.

\* \* \* \* \*

**LAWS 1901, P. 31; FEB. 26, 1901.**

AN ACT making an appropriation to pay for printing, binding, and ruling and all other work performed and materials furnished by the State printing office to the various State offices, boards, commissions, prisons, schools, hospitals, and other State institutions, for the remainder of the fifty-second fiscal year.

The People, etc.

SEC. 1. \* \* \* mining bureau, \$1,000.

\* \* \* \* \*

**LAWS 1901, 518, P. 529; MAR. 21, 1901.**

AN ACT making appropriations, etc., for the fifty-third and fifty-fourth fiscal years.

The People, etc.

SEC. 1. The following sums of money are hereby appropriated, etc., for the fifty-third and fifty-fourth fiscal years: \* \* \*

For support of State mining bureau, including salaries, \$57,000: Provided, That not less than \$29,000 of said sum shall be expended in making a practical and scien-

tific examination of the mineral districts in California, including the oil districts, and preparing a brief and accurate history of such districts and the development, product, resources, methods of working, and future possibilities of the mining and oil industries in California. Such examinations to be made by competent experts experienced in California mining, and assistants, all of whom shall be appointed and compensation fixed by the governor.

\* \* \* \* \*

**LAWS 1903, 529, P. 540; MAR. 26, 1903.**

AN ACT making an appropriation, etc., for the fifty-fifth and fifty-sixth fiscal years.

The People, etc.

SEC. 1. The following sums of money are hereby appropriated, etc., for the fifty-fifth and fifty-sixth fiscal years: \* \* \*

For salary of State mineralogist, \$6,000.

For support of State mining bureau, \$45,000.

\* \* \* \* \*

**LAWS 1905, 729, P. 738; MAR. 22, 1905.**

AN ACT making appropriations, etc., for the fifty-seventh and fifty-eighth fiscal years.

The People, etc.

SEC. 1. The following sums of money are hereby appropriated, etc., for the fifty-seventh and fifty-eighth fiscal years:

\* \* \* \* \*

For salary of State mineralogist for the State mining bureau, \$6,000.

For support of the State mining bureau, including salaries, \$35,000.

**LAWS 1907, 859, P. 868; MAR. 22, 1907.**

AN ACT making appropriations, etc., for the fifty-ninth and sixtieth fiscal years.

The People, etc.

SEC. 1. The following sums of money are hereby appropriated, etc., for the fifty-ninth and sixtieth fiscal years:

\* \* \* \* \*

For salary of State mineralogist, \$6,000.

For the support of the mining bureau, including salaries, \$40,000.

**LAWS 1909, 1105, P. 1117; APR. 26, 1909.**

AN ACT making appropriations, etc., for the sixty-first and sixty-second fiscal years.

The People, etc.

SEC. 1. The following sums of money are hereby appropriated, etc., for the sixty-first and sixty-second fiscal years:

\* \* \* \* \*

**FOR STATE MINING BUREAU.**

For salary of State mineralogist, \$6,000.

For support of mining bureau, including salaries, \$60,000: Provided, That not less than \$30,000 shall be expended in making a practical and scientific examination of the mineral districts of California, including the oil districts, and the development, production, resources, methods of working and future possibilities of the mining and oil industries of California; such examination to be made by competent experts experienced in California mining, and assistants, all of whom shall be appointed and their compensation fixed by the governor.

For printing, binding, ruling, and all other work performed and materials furnished by the State printing office to State mining bureau, \$7,500.

**LAWS 1911, 1368, P. 1380; MAY 1, 1911.**

AN ACT making appropriations, etc., for the sixty-third and sixty-fourth fiscal years.

The People, etc.

SEC. 1. The following sums of money are hereby appropriated, etc., for the sixty-third and sixty-fourth fiscal years: \* \* \*

STATE MINING BUREAU.

For salary State mineralogist, \$6,000.

For support of the mining bureau, including salaries, \$40,000.

For printing, binding, ruling, and all other work performed and materials furnished by the State printing office to the State mining bureau, \$4,000.

\* \* \* \* \*

**LAWS 1913, 1331, P. 1346; JUNE 10 1913.**

AN ACT making appropriations, etc., for the sixty-fifth and sixty-sixth fiscal years.

The People, etc.

SEC. 1. The following sums of money are hereby appropriated, etc., for the sixty-fifth and sixty-sixth fiscal years: \* \* \*

STATE MINING BUREAU.

For salary of State mineralogist, \$6,000.

For support of the mining bureau, including salaries, \$80,000.

\* \* \* \* \*

**LAWS 1915, 610, P. 624; MAY 19, 1915.**

AN ACT making appropriations, etc., for the sixty-seventh and sixty-eighth fiscal years.

The People, etc.

SEC. 1. The following sums of money are hereby appropriated, etc., for the sixty-seventh and sixty-eighth fiscal years: \* \* \*

STATE MINING BUREAU.

For salary of State mineralogist, \$7,200.

For support of the mining bureau, including salaries, \$90,000.

**LAWS 1917, 488, P. 503; MAY 14, 1917.**

AN ACT making appropriations, etc., for the sixty-ninth and seventieth fiscal years.

The People, etc.

SEC. 1. The following sums of money are hereby appropriated, etc., for the sixty-ninth and seventieth fiscal years: \* \* \*

STATE MINING BUREAU.

For salary of State mineralogist, \$7,200.

For support of the State mining bureau, \$110,000.

## MINING CLAIMS.

### LOCATIONS—RECORDING NOTICE.

LAWS 1875-76, P. 853; APR. 3, 1876.

AN ACT to regulate the recording of mining locations in Calaveras County.

The People, etc.

SEC. 1. A copy of the notice of location of any mining claim hereafter located in the county of Calaveras shall be filed and recorded in the office of county recorder of said county within 6 days from the date of posting said notice of location, notwithstanding any rule, regulation, or by-law of any mining district in said county.

SEC. 2. Whenever a notice of location is posted without being recorded, as provided in section 1 of this act, such location shall not be considered notice to subsequent locations recording under this act.

### MINING CLAIMS—RECORD OF NOTICE.

LAWS 1897, P. 97; MAR. 9, 1897. CIVIL CODE (1872), SEC. 1159.

AN ACT to amend section 1159 of an act entitled "An act to establish a Civil Code," approved March 21, 1872, relative to recording of certain instruments and validating records heretofore made.

The People, etc.

NOTE.—The original section made no reference to mining claims.

SEC. 1. Section 1159 of an act entitled "An act to establish a Civil Code," approved March 21, 1872, is hereby amended to read as follows:

SEC. 1159. \* \* \* The record of all notices of location of mining claims heretofore made in the proper office without acknowledgment or certificate of acknowledgment or other proof shall have the same force and effect for all purposes as if the same had been duly acknowledged or proved and certified as required by law. Affidavits showing work or posting of notices upon mining claims may also be recorded in the recorder's office of the county where such mining claims are situated.

## ANNOTATIONS.

### MINING LOCATIONS.

#### LOCATION NOTICE—RECORDING.

This act constituted the only regulation in force in February, 1889, relative to the recording of location notices; and whatever might be the effect of an entire failure to comply with its provisions, a substantial compliance with the requirements of the act would be sufficient, and if a description contained in a notice was complete enough to enable one examining it to ascertain therefrom that the land actually claimed was included therein, this would be such a substantial compliance as would satisfy the statute, as such a description would be a full notice that the land had in fact been appropriated by others.

Mitchell v. Hutchinson, 142 Cal. 404, p. 411, 76 Pac. 55 (1903).

A placer mining location can not be declared invalid under this act on the ground that it did not conform to the lines of the public survey, as required by the United States statutes (sec. 2329, 2330, and 2331, U. S. Rev. Stat.), where the description of the claim by metes and bounds consisted of nine courses, of which five conformed to the



lines of the United States system of public land surveys, where the description did conform to the system of public land surveys as near as was practicable without including within the description ground which would be of no value for mining purposes.

*Mitchell v. Hutchinson*, 142 Cal. 404, p. 411, 76 Pac. 55 (1903).

A mistake in recording a mining location notice as to a boundary line and the omission of one of several courses is immaterial where there is sufficient description remaining to give notice of the ground intended to be appropriated.

*Mitchell v. Hutchinson*, 142 Cal. 404, p. 411, 76 Pac. 55 (1903).

A location notice of a mining claim in Calaveras County must be recorded as required by this special act; but a notice that contains no description of the claim by reference to any natural object or permanent monument by which it may be identified as required by the United States statute (sec. 2324, Rev. Stat.) is insufficient, and the record of it as required by this act adds no force to the notice, nor is the record of such a notice any proof that it was posted on the claim, or that the location was so marked on the ground that its boundaries could be readily traced.

*Mutchmor v. McCarty*, 149 Cal. 603, p. 607, 87 Pac. 85 (1906).

This was a special act of the legislature applicable to Calaveras County only, requiring all notices of mining locations to be recorded in the office of county recorder.

*Mutchmor v. McCarty*, 149 Cal. 603, p. 607, 87 Pac. 85 (1906).

While the act of March 27, 1897 (p. 214), requiring notices of mining locations to be recorded was repealed by the act of March 20, 1899 (p. 148), yet this act permits notices of locations of mining claims to be recorded and it is the duty of a county recorder to record a notice of the location of a mining claim when presented and on payment of the proper fee, and the duty of the recorder to record the notice does not depend upon the validity of the instrument offered for record, or the effect of the record; and a failure on the part of a recorder to perform his duty in this respect renders him liable in an action upon his official bond.

*County of Kern v. Lee*, 129 Cal. 361, p. 363, 61 Pac. 1124 (1900).

### LOCATION CERTIFICATE.

#### SEC. 1925, CODE CIVIL PROCEDURE.

SEC. 1925. A certificate of purchase, or of location, of any lands in this State, issued or made in pursuance of any law of the United States, or of this State, is primary evidence that the holder or assignee of such certificate is the owner of the land described therein; but this evidence may be overcome by proof that, at the time of the location, or time of filing a preemption claim on which the certificate may have been issued, the land was in the adverse possession of the adverse party, or those under whom he claims, or that the adverse party is holding the land for mining purposes.

### ANNOTATIONS.

#### CERTIFICATE OF PURCHASE.

##### EVIDENCE OF OWNERSHIP—RIGHTS OF HOLDER.

This section applies to certificates of purchase of mineral land and such certificates are prima facie evidence of ownership; but this may be overcome by proof that at the time of the location of the mining claim upon which the certificate issues the claim was in the adverse possession of a third person.

*McTarnahan v. Pike*, 91 Cal. 540, p. 544, 27 Pac. 784 (1891).

*Haven v. Haws*, 63 Cal. 452.

See *Young v. Shinn*, 48 Cal. 26.

*Langenour v. Hennaging*, 59 Cal. 625.

*Aurrecochea v. Sinclair*, 60 Cal. 532.

**WORKING—RIGHTS OF WAY—EASEMENT—DRAINAGE.**

LAW 1891. P. 219; MAR. 31, 1891.

AN ACT entitled "An act relating to the working, rights of way, easement, and drainage of mines in the State of California."

The People, etc.

SEC. 1. Whenever any mine owner, company, or corporation shall have performed the labor and made the improvements required by law for the location and ownership of mining claims or lodes, such owner, company, or corporation shall file or cause to be filed, within thirty days after the time limited for performing such labor or making such improvements, with the county recorder of deeds of the county in which the mine or claim is situated, particularly describing the labor performed and improvements made, and the value thereof, which affidavit shall be prima facie evidence of the facts therein stated. Upon the failure of any claimant or mine owner to comply with the conditions of this act in the performance of labor, or making of improvements upon any claim, mine, or mining ground, the claim or mine upon which such failure occurred shall be opened to relocation in the same manner as if no location of the same had ever been made. But if, previous to relocation, the original locators, their heirs, assigns, or legal representatives, resume work upon such claim, and continue the same with reasonable diligence until the required amount of labor has been performed or improvements made, and the required statement of accounts and affidavits filed with the county recorder, then the claim shall not be subject to relocation because of previous failure to file accounts. Upon the failure of any one of the several coowners to contribute his portion of the expenditures required hereby, the coowners who have performed the labor or made the improvement may, at the expiration of the year, give such delinquent coowner personal notice, in writing, or by publication in the newspaper published nearest the claim, for at least once a week for 90 days; and if, at the expiration of 90 days after such notice in writing or publication, such delinquent shall fail or refuse to contribute his portion of the expenditures required by this section, his interest in the claim shall become the property of his coowners who made the required expenditures. A copy of such notice, together with an affidavit showing personal service or publication, as the case may be, of such notice, when filed or recorded with the recorder of deeds of the county in which such mining claim is situated, shall be evidence of the acquisition of title of such coowners. Where a person or company has or may run a tunnel or cuts for the purpose and in good faith for the purpose of developing a lode, lodes, or claims owned by said person, or company, or corporation, the money so expended in running said tunnel shall be taken and considered as expended on said lodes or claims; provided further, that said lode, claim, or claims shall be distinctly marked on the surface as provided by law.

SEC. 2. All mining locations and mining claims shall be subject to a reservation of the right of way through or over any mining claims, ditches, roads, canals, cuts, tunnels, and other easements for the purpose of working other mines: Provided, That any damage occasioned thereby shall be assessed and paid for in the manner provided by law for land taken for public use under the right of eminent domain.

SEC. 3. This act shall take effect immediately.

**ANNOTATIONS.****ASSESSMENT WORK.****PERFORMANCE AND PROOF.**

Affidavits or proofs of labor are by this statute made prima facie evidence of the facts therein stated, and are admissible in evidence for the purpose of proving performance of annual labor.

Big Three Min. & Milling Co. v. Hamilton, 157 Cal. 130, p. 144, 107 Pac. 301; 137 Am. St. 118 (1909).

The mere failure to file the affidavit as required by this act does not render the mining claim subject to relocation at once but only after the expiration of the 30 days' time given by the statute, and this 30 days means 30 days from the expiration of the year. Accordingly where the required amount of work was done within the year and no affidavit was in fact filed as required a relocation of the mine made on the 2d day of January is invalid, as the mine was not open to relocation until after the expiration of the 30 days.

Harris v. Kellogg, 117 Cal. 484, p. 490, 49 Pac. 708 (1897).

### METHOD OF LOCATION.

**LAWS 1897, P. 214; MAR. 27, 1897. (REPEALED. SEE ACT FOLLOWING.)**

AN ACT prescribing the manner of locating mining claims upon the public domain of the United States, recording notices of location thereof, amending defective locations, and providing for the deposit of district records with county recorders, and prescribing the effect to be given to recordation of notices of location and affidavits.

The People, etc.

SEC. 1. The location of mining claims upon the public domain of the United States shall be made and perfected as provided in this act.

SEC. 2. The discoverer of any vein or lode shall immediately, upon making a discovery, erect at the point of discovery a substantial monument or mound of rocks, and post thereon a preliminary notice, which shall contain:

First. The name of the lode or claim;

Second. The name of the locator or locators;

Third. The date of the discovery;

Fourth. The number of linear feet claimed in length along the course of the vein each way from the point of discovery;

Fifth. The width claimed on each side of the center of the vein;

Sixth. The general course of the vein or lode, as near as may be;

Seventh. That such notice is a first or preliminary notice.

Such notice shall be recorded in the office of the county recorder of the county in which the same is posted within 20 days after the posting thereof. Upon the erection of said monument and posting such notice, the discoverer shall be allowed the period of time specified in section 3 of this act to enable him to perfect his location as hereinafter provided.

SEC. 3. Within 60 days from the date of the discovery of a vein or lode, the discoverer must perform \$50 worth of labor in developing his discovery, and distinctly mark his location on the ground so that its boundaries can be readily traced, and must file in the office of the county recorder of the county in which the claim is situated, a certificate of location, which said certificate shall state:

1. The name of the lode or claim;

2. The name of the locator or locators;

3. The date of discovery and posting of the notice provided for in section 2 of this act, which shall be considered as the date of the location;

4. A description of the claim, defining the exterior boundaries as they are marked upon the ground, and such additional description by reference to some natural objects, or permanent monument, as will identify the claim.

5. A statement that such certificate is the final or completed notice of location, and that he has performed the aforesaid \$50 worth of labor in development work thereon within the aforesaid 60-day period, stating generally the nature thereof. Said certificate shall be dated and signed by or on behalf of the locator or locators, and verified by them or by some one in their behalf, and when filed for record shall be deemed and considered as prima facie evidence of the facts therein recited. A copy of such cer-

tificate of location, certified by the county recorder, shall be admitted in evidence in all actions or proceedings with the same effect as the original. The performance of such labor shall be deemed a necessary act in completing such location and a part thereof, and no part thereof shall inure to the benefit of any subsequent location.

SEC. 4. The discoverer of placers or other forms of deposit, subject to location and appropriation, under mining laws applicable to placers, shall locate his claim in the following manner:

First. He must immediately post in a conspicuous place at the point of discovery thereon a notice or certificate of location thereof, containing:

- (a) The name of the claim;
- (b) The name of the locator or locators;
- (c) The date of the discovery and posting of the notice, hereinbefore provided for, which shall be considered as the date of the location;
- (d) A description of the claim by reference to legal subdivisions of sections, if the location is made in conformity with the public surveys; otherwise a description with reference to some natural object or permanent monument as will identify the claim and where such claim is located by legal subdivisions of the public surveys, such location shall, notwithstanding that fact, be marked by the locator upon the ground, the same as other locations.

Second. Within 30 days from the date of such discovery he must record such notice or certificate of location in the office of the county recorder of the county in which such discovery is made, and so distinctly mark his location on the ground that its boundaries can be readily traced.

Third. Within 60 days from the date of the discovery the discoverer shall perform labor upon such location or claim in developing the (same) to an amount which shall be equivalent in the aggregate to at least \$10 worth of such labor for each 20 acres, or fractional part thereof, contained in such location or claim. A failure to perform such labor within said time, shall cause all rights under such location to be forfeited and the land covered thereby shall at once be open to location by qualified locators other than the preceding locators, but shall not in any event be open to location by such preceding locators, and any labor performed by them thereon shall not inure to the benefit of any subsequent locator thereof.

Fifth. Such locator shall, upon the performance of such labor, file with the recorder of the county an affidavit, showing such performance, and generally the nature and kind of work so done.

SEC. 5. The affidavit provided for in the last section, and the aforesaid placer notice or certificate of location, when filed for record, shall be deemed and considered as prima facie evidence of the facts therein recited. A copy of such certificate, notice, or affidavit, certified by the county recorder, shall be admitted in evidence in all actions or proceedings with the same effect as the original.

SEC. 6. All locations of quartz or placer formations or deposits, hereafter made, which do not conform to the requirements of this act, in so far as the same are respectively applicable thereto, shall be void.

SEC. 7. No record of a mining claim or mill site, made after the passage of this act, in the records of any mining district, shall be valid. All notices of location of mining claims, mill sites, and other notices, heretofore recorded in such district records, if such notices conform to the local rules and regulations in force in such district, are hereby declared valid. Within 30 days after the passage of this act the district recorder or custodian of the records of the several mining districts in this State, shall transmit to the county recorders of the respective counties wherein the respective districts are situated, all the records of said respective districts, and thenceforward such county recorder shall be deemed and considered the legal custodian of such records. Thereafter copies of such records, certified by the county recorder, may be received in evidence with the same effect as the originals.

## ANNOTATIONS.

## MINING LOCATIONS.

1. VALIDITY—COMPLIANCE WITH STATE STATUTES.
2. RECORDING LOCATION—CUSTODIAN OF RECORD.
3. NOTICE OF LOCATION—CONSTRUCTION AND SUFFICIENCY.
4. RECORD OF LOCATION NOTICE.
5. FEE OF RECORDER—FAILURE TO ACCOUNT.

## 1. VALIDITY—COMPLIANCE WITH STATE STATUTE.

A mining location made subsequent to the date of this act has to depend for its validity on compliance with the provisions of the act.

*Eaton v. Norris*, 131 Cal. 561, p. 563, 63 Pac. 856 (1901).

A mining location not made according to the provisions of this act is invalid.

*Dwinnell v. Dyer*, 145 Cal. 12, p. 14, 78 Pac. 247 (1904).

*Pig Three Min. & Milling Co. v. Hamilton*, 157 Cal. 130, p. 141, 107 Pac. 301, 137 Am. St. 118 (1909).

A mining location made prior to the passage of this act must be governed, with regard to its validity, exclusively by the provisions of the United States mining statutes and especially by section 2324 of the United States Revised Statutes with reference to the marking of the location on the ground so that its boundaries can be readily traced.

*Eaton v. Norris*, 131 Cal. 561, p. 563, 63 Pac. 856 (1901).

The locator of a mining claim upon public lands pursuant to the statutes of the United States by his failure to comply with this statute of California leaves the land open to location by any other competent locator.

*Nevada Sierra Oil Co. v. Home Oil Co.*, 98 Fed. 673, p. 678.

## 2. RECORDING LOCATION—CUSTODIAN OF RECORD.

This act requires that records of mining districts shall be transmitted to the county recorder of the respective districts in which the mining claims are situated and the county recorder becomes the proper custodian, and proof that notices of location were left with him to be recorded and were so recorded and the record of the location signed by the recorder is sufficient proof by the proper custodian of the record of the claim.

*McCann v. McMillan*, 129 Cal. 350, p. 355, 62 Pac. 31 (1900).

## 3. NOTICE OF LOCATION—CONSTRUCTION AND SUFFICIENCY.

In construing notices of mining locations it must be remembered that as a rule miners are unacquainted with legal forms and requirements and are frequently out of reach of assistance; and in view of this fact it has been held that their proceedings are to be regarded with indulgence and liberally construed.

*Carter v. Bacigalupi*, 83 Cal. 187, p. 193, 23 Pac. 261 (1890).

This act prescribed what the preliminary notice of a mining location and the certificate of location should respectively state; and after the repeal of this act by the act of March 20, 1899 (p. 148), there was no law in California prescribing what a notice of a mining location should contain; but it has been the common practice from the inception of mining in this State to make written notice of mining locations, and this was recognized by section 2324 of the United States Revised Statutes in permitting miners of the district to make regulations governing the recording of mining claims.

*County of Kern v. Lee*, 129 Cal. 361, p. 362, 61 Pac. 1124 (1900).

A location notice giving the name of the mining claim, the names of the locators, the date of the discovery, and the fact that notice was posted on the claim on a certain day, and duly verified, is sufficient under this statute.

*Talmadge v. St. John*, 129 Cal. 430, p. 433, 62 Pac. 79 (1900).

A final notice of a mining location is sufficient, though it fails to mention either the State or county of the purported location, where it makes reference to the preliminary notice posted as required by law and recorded in the proper county and where such preliminary notice named the county in which the claim is located.

*Talmadge v. St. John*, 129 Cal. 430, p. 435, 62 Pac. 79 (1900).

A notice of a mining location is sufficient under this act where the exterior boundaries are described and the corners of the claim fixed by reference to permanent stone monuments; and this answers the requirement of this act and of the United States Revised Statutes demanding a description by reference to some natural object or permanent monument such as will identify the claim. The natural objects referred to are not required to be on the ground located, although they may be, and may consist of any fixed natural object, such as a permanent post or stake permanently planted in the ground or a shaft sunk in the ground, and accordingly includes stone monuments erected on the exterior boundaries of the claim.

*Talmadge v. St. John*, 129 Cal. 430, p. 436, 62 Pac. 79 (1900).

This act prescribing particulars that location notices must contain and requiring the record of such notices within a certain limited period is valid as local regulations authorized and sanctioned by the act of Congress, and so long as it remained unrepealed it was obligatory upon those who desired to secure mining claims in California, by constructive possession resulting from a technical compliance with the law.

*Dwinnell v. Dyer*, 145 Cal. 12, p. 17, 78 Pac. 247 (1904).

This was a short-lived statute prescribing the manner of locating mining claims and providing for the posting and recording of notices and was within the permissive clause of the act of Congress, recognizing and permitting local laws relating to the location of mining claims not inconsistent with the congressional enactments.

*Daggett v. Yreka Min. Co.*, 149 Cal. 357, p. 361, 86 Pac. 968 (1906).

#### 4. RECORD OF LOCATION NOTICE.

This act requires notice of mining locations and proof of performance of labor to be recorded in the county recorder's office, and prohibits records of mining claims and mill sites thereafter to be made in the office of the recorder of the mining district.

*County of Kern v. Lee*, 129 Cal. 361, p. 363, 61 Pac. 1124 (1900).

Prior to the adoption of this act of March 27, 1897 (p. 214), and after its repeal by the act of March, 1899 (p. 148), there was no statute in California giving any definite legal effect to the posting and recording of the notices of mining locations, and by the United States statutes notices of location were not required to be recorded.

*Daggett v. Yreka Min. Co.*, 149 Cal. 357, p. 361, 86 Pac. 968 (1906).

Whether the failure to record a notice of location within the time required will work a forfeiture or not, yet within the 20 days allowed for recordation, the claim of a locator is valid and no other entry can be made as the foundation basis of a claim of title.

*Big Three Min. & Milling Co. v. Hamilton*, 157 Cal. 130, p. 143, 107 Pac. 301, 137 Am. St. 118 (1909).

#### 5. FEE OF RECORDER—FAILURE TO ACCOUNT.

Under this act and section a county recorder is liable on his official bond for failing to account for fees received by him for recording notices of location of mining claims

and affidavits showing work done or posting of notices upon mining claims, though the act of 1897 (sec. 7, p. 214) requiring the record of notices of mining locations and proof of the performance of labor to be recorded, was repealed by the act of 1899 (p. 148).

County of Kern v. Lee, 129 Cal. 361, p. 363, 61 Pac. 1124 (1900).

### REPEALING ACTS.

**LAWS 1899, P. 148; MAR. 20, 1899.**

AN ACT to repeal "An act prescribing the manner of locating mining claims upon the public domain of the United States, recording notices of location thereof, amending defective locations, and providing for the deposit of district records with county recorders, and prescribing the effect to be given to recordation of notices of location and affidavits," approved March 27, 1897.

The People, etc.

SEC. 1. An act to repeal "An act prescribing the manner of locating mining claims upon the public domain of the United States, recording notices of location thereof, amending defective locations and providing for the deposit of district records with county recorders, and prescribing the effect to be given to recordation of notices of location and affidavits," approved March 27, 1897, is hereby repealed.

SEC. 2. This act shall take effect immediately.

**LAWS 1901 (EXTRA SESSION, 1900), P. 9; FEB. 8, 1900.**

AN ACT to repeal an act entitled "An act prescribing the manner of locating mining claims upon the public domain of the United States, recording notices of location thereof, amending defective locations, and providing for the deposit of district records with county recorders, and prescribing the effect to be given to recordation of notices of location and affidavits," approved March 27, 1897.

The People, etc.

SEC. 1. An act entitled "An act prescribing the manner of locating mining claims upon the public domain of the United States, recording notices of location thereof, amending defective locations, and providing for the deposit of district records with county recorders, and prescribing the effect to be given to recordation of notices of location and affidavits," approved March 27, 1897, is hereby repealed.

SEC. 2. This act shall be in force and take effect from and after its passage.

NOTE.—This is the second act that by direct reference repealed the act of March 27, 1897.

### ANNOTATIONS.

#### MINING LOCATIONS.

##### RECORDING LOCATION NOTICE—REPEALING ACTS.

This act of March 20, 1899, repealed the act of March 20, 1897 (p. 214), prescribing the manner of locating mining claims and providing for the posting and recording of notices.

Daggett v. Yreka Min. Co., 149 Cal. 357, p. 361, 86 Pac. 968 (1906).

The act of March 20, 1899, repealing the act of 1897 (p. 214) was given immediate effect.

County of Kern v. Lee, 129 Cal. 361, p. 362, 61 Pac. 1124 (1900).

The act of February 8, 1900, repealed the act of March 27, 1897 (p. 214), and the result of this repeal was to make the validity of mining locations in California solely dependent from that time forward upon a compliance with the United States statutes and with such valid local regulations as the miners themselves may have adopted in their respective districts.

Dwinnell v. Dyer, 145 Cal. 12, p. 18, 78 Pac. 247 (1904).

Big Three Min. & Milling Co. v. Hamilton, 157 Cal. 130, p. 141, 107 Pac. 301, 137 Am. St. 118 (1909).

**PATENT AS EVIDENCE OF LOCATION.****LAWS 1905, P. 78; MAR. 7, 1905. SEC. 1927, CODE CIVIL PROCEDURE.**

SEC. 1. A new section is hereby added to the Code of Civil Procedure to be known as section 1927, to read as follows:

SEC. 1927. Whenever any patent for mineral lands within the State of California, issued or granted by the United States of America, shall contain a statement of the date of the location of a claim or claims, upon which the granting or issuance of such patent is based, such statement shall be prima facie evidence of the date of such location.

**LOCATION OF MINING CLAIMS.****NEW CODE.****LAWS 1909, P. 313; MAR. 13, 1909. SEC. 1426, 1426a-1426s, CODE OF CIVIL PROCEDURE.**

AN ACT to amend the Civil Code of California by adding a new title thereto, to be numbered Title X, in Part IV of division second, consisting of sections 1426, 1426a, 1426b, 1426c, 1426d, 1426e, 1426f, 1426g, 1426h, 1426i, 1426j, 1426k, 1426l, 1426m, 1426n, 1426o, 1426p, 1426q, 1426r, and 1426s, providing for the manner of locating lode and placer mining claims, tunnel rights, mill sites, and prescribing the character and amount of assessment work on mining claims, and providing for proofs of such work, and for the recordation of location notices, and proof of labor, and for the enforcement of contributions from delinquent coowners of mining claims, and prescribing the duties of county recorders respecting the recording of location notices, and proofs of labor on, mining claims, tunnel rights, and mill sites, and the fees to be charged therefor, and repealing acts in conflict herewith.

The People, etc.

SEC. 1. The Civil Code of the State of California is hereby amended by adding a new title thereto, to be numbered Title X, in Part IV of second division, consisting of sections 1426, 1426a, 1426b, 1426c, 1426d, 1426e, 1426f, 1426g, 1426h, 1426i, 1426j, 1426k, 1426l, 1426m, 1426n, 1426o, 1426p, 1426q, 1426r, and 1426s to read as follows:

SEC. 1426. Any person, a citizen of the United States, or who has declared his intention to become such, who discovers a vein or lode of quartz, or other rock in place, bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposit, may locate a claim upon such vein or lode, by defining the boundaries of the claim, in the manner hereinafter described, and by posting a notice of such location at the point of discovery, which notice must contain:

First. The name of the lode or claim.

Second. The name of the locator or locators.

Third. The number of linear feet claimed in length along the course of the vein, each way from the point of discovery, with the width on each side of the center of the claim, and the general course of the vein or lode, as near as may be.

Fourth. The date of location.

Fifth. Such a description of the claim by reference to some natural object, or permanent monument, as will identify the claim located.

SEC. 1426a. The locator must define the boundaries of his claim so that they may be readily traced, and in no case shall the claim extend more than 1,500 feet along the course of the vein or lode, nor more than 300 feet on either side thereof, measured from the center line of the vein at the surface.

SEC. 1426b. Within 30 days after the posting of his notice of location upon a lode mining claim, the locator shall record a true copy thereof in the office of the county recorder of the county in which such claim is situated, for which service the county recorder shall receive a fee of \$1.

SEC. 1426c. The location of a placer claim shall be made in the following manner: By posting thereon, upon a tree, rock in place, stone, post or monument, a notice of location, containing the name of the claim; name of locator or locators, date of location, number of feet or acreage claimed, such a description of the claim by reference to some natural object or permanent monument as will identify the claim located, and by



marking the boundaries so that they may be readily traced: Provided, That where the United States survey has been extended over the land embraced in the location, the claim may be taken by legal subdivisions and no other reference than those of said survey shall be required and the boundaries of a claim so located and described need not be staked or monumented. The description by legal subdivisions shall be deemed the equivalent of marking.

SEC. 1426d. Within 30 days after the posting of the notice of location of a placer claim, the locator shall record a true copy thereof in the office of the county recorder of the county in which such claim is situated, for which service the recorder shall receive a fee of \$1.

SEC. 1426e. The locator of a tunnel right or location shall locate his tunnel right or location by posting a notice of location at the face or point of commencement of the tunnel, which must contain:

First. The name of the locator or locators.

Second. The date of the location.

Third. The proposed course or direction of the tunnel.

Fourth. A description of the tunnel, with reference to some natural object or permanent monument as shall identify the claim or tunnel right.

SEC. 1426f. The boundary lines of the tunnel shall be established by stakes or monuments placed along the lines at an interval of not more than 600 feet from the face or point of commencement of the tunnel to the terminus of 3,000 feet therefrom.

SEC. 1426g. Within 30 days after the posting the notice of location of the tunnel right or location, the locator shall record a true copy thereof, in the office of the county recorder of the county in which such claim is situated, for which service the recorder shall receive a fee of \$1.

SEC. 1426h. If at any time the locator of any mining claim heretofore or hereafter located, or his assigns, shall apprehend that his original location notice was defective erroneous, or that the requirements of the law had not been complied with before filing; or in case the original notice was made prior to the passage of this act, and he shall be desirous of securing the benefit of this act, such locator, or his assigns, may file an additional notice, subject to the provisions of this act: Provided, That such amended location notice does not interfere with the existing rights of others at the time of posting and filing such amended location notice, and no such amended location notice or the record thereof, shall preclude the claimant or claimants from proving any such title as he or they may have held under previous locations.

SEC. 1426i. Where a locator, or his assigns, has the boundaries and corners of his claim established by a United States deputy mineral survey, or a licensed surveyor of this State, and his claim connected with the corner of the public or minor surveys of an established initial point, and incorporates into the record of the claim the field notes of such survey, and attaches to and files with such location notice a certificate of the surveyor, setting forth: First, that said survey was actually made by him, giving the date thereof; second, the name of the claim surveyed and the location thereof: third, that the description incorporated in the declaratory statement is sufficient to identify—such survey and certificate becomes a part of the record, and such record is prima facie evidence of the facts therein contained.

SEC. 1426j. The proprietor of a vein or lode claim or mine, or the owner of a quartz mill or reduction works, or any person qualified by the laws of the United States, may locate not more than 5 acres of nonmineral land as a mill site. Such location shall be made in the same manner as hereinbefore required for locating placer claims.

SEC. 1426k. The locator of a mill site claim or location shall, within 30 days from the date of his location, record a true copy of his location notice with the county recorder of the county in which such location is situated, for which service the recorder shall receive a fee of \$1.

SEC. 1426l. The amount of work done or improvements made during each year to hold possession of a mining claim shall be that prescribed by the laws of the United States, to wit: \$100 annually.

SEC. 1426m. Whenever mine owner, company, or corporation shall have performed the labor and made the improvements required by law upon any mining claim, the person in whose behalf such labor was performed or improvements made, or some one in his behalf, shall within 30 days after the time limited for performing such labor or making such improvements make and have recorded by the county recorder, in books kept for that purpose, in the county in which such mining claim, is situated, an affidavit setting forth the value of labor or improvements made, the name of the claim, and the name of the owner or claimant of said claim at whose expense the same was made or performed. Such affidavit, or a copy thereof, duly certified by the county recorder, shall be prima facie evidence of the performance of such labor or the making of such improvements, or both.

SEC. 1426n. For recording the affidavit herein required, the county recorder shall receive a fee of 50 cents. (Amended.)

SEC. 1426o. Whenever a coowner or coowners of a mining claim shall give to a delinquent coowner or coowners the notice in writing or notice by publication provided for in section 2324, Revised Statutes of the United States, an affidavit of the person giving such notice, stating the time, place, manner of service, and by whom and upon whom such service was made, shall be attached to a true copy of such notice, and such notice and affidavit must be recorded in the office of the county recorder, in books kept for that purpose, in the county in which the claim is situated, within 90 days, after the giving of such notice, for the recording of which said recorder shall receive the same fees as are now allowed by law for recording deeds; or if such notice is given by publication in a newspaper, there shall be attached to a printed copy of such notice an affidavit of the printer or his foreman, or principal clerk of such paper, stating the date of the first, last, and each insertion of such notice therein, and where the newspaper was published during that time, and the name of such newspaper. Such affidavit and notice, shall be recorded as aforesaid, within 180 days after the first publication thereof. The original of such notice and affidavit, or a duly certified copy of the record thereof, shall be prima facie evidence that the delinquent mentioned in section 2324 has failed or refused to contribute his proportion of the expenditure required by that section, and of the service of publication of said notice: Provided, The writing or affidavit hereinafter provided for is not of record. If such delinquent shall, within the 90 days required by section 2324, aforesaid, contribute to his coowner or coowners, his proportion of such expenditures, and also all costs of service of the notice required by this section whether incurred for publication charges, or otherwise, such coowner or coowners shall sign and deliver to the delinquent or delinquents a writing, stating that the delinquent or delinquents by name has within the time require by section 2324 aforesaid, contributed his share for the year ——— upon the ——— mine, and further stating therein the district, county, and state wherein the same is situated, and the book and page where the location notice is recorded, if said mine was located under the provisions of this act; such writing shall be recorded in the office of the county recorder of said county, for which he shall receive the same fees as are now allowed by law for recording deeds. If such coowner or coowners shall fail to sign and deliver such writing to the delinquent or delinquents within 20 days after such contribution, the coowner or coowners so failing as aforesaid shall be liable to the penalty of \$100 to be recovered by any person for the use of the delinquent or delinquents in any court of competent jurisdiction. If such coowner or coowners fail to deliver such writing within said 20 days, the delinquent, with two disinterested persons having personal knowledge of such contribution, may make affidavit setting forth in what manner, the amount of, to whom, and upon what mine, such contribution was made. Such affida-

it, or a record thereof, in the office of the county recorder, of the county in which such mine is situated, shall be prima facie evidence of such contribution.

SEC. 1426p. The record of any location of a mining claim, mill site, or tunnel right, in the office of the county recorder, as herein provided, shall be received in evidence, and have the same force and effect in the courts of the State as the original notice.

SEC. 1426q. Copies of the records of all instruments required to be recorded by the provisions of this act, duly certified by the recorder, in whose custody such records are, may be read in evidence, under the same circumstances and rules as are now, or may be hereafter provided by law, for using copies of instruments relating to real estate, duly executed or acknowledged or proved and recorded.

SEC. 1426r. The provisions of this act shall not in any manner be construed as affecting or abolishing any mining district or the rules and regulations thereof within the State of California.

SEC. 1426s. The failure or neglect of any locator of a mining claim to perform development work of the character, in the manner, and within the time required by the laws of the United States, shall disqualify such locators from relocating the ground embraced in the original location or mining claim or any part thereof under the mining laws, within three years after the date of his original location and any attempted relocation thereof by any of the original locators shall render such location void.

SEC. 2. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 3. This act shall take effect and be in force on and after July 1, 1909.

#### ANNOTATIONS.

##### ASSESSMENT WORK.

###### STATUTORY AFFIDAVIT AS PRIMA FACIE PROOF.

The affidavit provided by section 1426m of the Civil Code of California constitutes prima facie evidence of the performance of the annual assessment work upon a mining claim; and if such prima facie case is not overcome by proof, then the fact of the performance of the assessment work must be taken as established.

Musser v. Fitting, ——— Cal. App. ———, 148 Pac. 536, p. 536 (1915).

See Robinson v. Briest, ——— Cal. ———, 173 Pac. 88: (1918).

###### LOCATION NOTICE—PLACE OF POSTING.

Section 1426 requires a location notice to be posted at the point of discovery, and a posting "where the lode shows" is sufficient.

Batt v. Steadman, ——— Cal. App. ———, 173 Pac. 99, p. 100 (1918).

##### FEES OF RECORDER.

###### LAWS 1915, P. 734; MAY 21, 1915.

AN ACT to amend section 1426n, Civil Code, relating to fees for recording affidavits of labor or improvements on mining claims.

The People, etc.

SEC. 1. Section 1426n of the Civil Code is hereby amended so as to read as follows:

SEC. 1426n. For recording the affidavit herein required, the county recorder shall receive a fee of 10 cents per folio, 20 cents for indorsement, and 10 cents for indexing the name of each claim and each owner.

## MINING CORPORATIONS.

### ORGANIZATION.

LAWS 1850, P. 87; APR. 22, 1850. COMPILED LAWS 1850-1853, P. 280.

AN ACT concerning corporations.

The People, etc.

\* \* \* \* \*

SEC. 4. Where the whole capital of a corporation shall not have been paid in, and the capital paid shall be insufficient to satisfy the claims of its creditors, each stockholder shall be bound to pay, on each share held by him, the sum necessary to complete the amount of such share as fixed by the charter of the company, or such proportion of that sum as shall be required to satisfy the debts of the company.

\* \* \* \* \*

SEC. 32. Each stockholder of any corporation shall be individually and personally liable for a portion of all its debts and liabilities, proportioned to the amount of stock owned by him.

LAWS 1850, P. 347 (365); APR. 22, 1850.

AN ACT concerning corporations.

The People, etc.

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### CHAPTER V.

COMPANIES FOR MANUFACTURING, MINING, MECHANICAL, OR CHEMICAL PURPOSES.

(Sections 122 to 145, inclusive, repealed.)

SEC. 122. At any time hereafter, any three or more persons, who may desire to form a company for the purpose of carrying on any kind of manufacturing, mining, mechanical, or chemical business, may make, sign, and acknowledge, before some officer competent to take the acknowledgment of deeds, and file in the office of the clerk of the county in which the business of the company shall be carried on, and a duplicate thereof in the office of the secretary of state, a certificate in writing, in which shall be stated the corporate name of said company and the objects for which the company shall be formed, the amount of the capital stock of said company, the time of its existence, not to exceed 50 years, the number of shares of which the said stock shall consist, the number of trustees and their names, who shall manage the concerns of said company for the first year, and the names of the town and county in which the operations of the said company are to be carried on. (Amended.)

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### ANNOTATIONS.

#### MINING CORPORATIONS.

##### POWER TO SUE WITHOUT CONCILIACION.

Under the Mexican constitutional law it is necessary, in order to the due institution of any suit, either civil or criminal, for wrongs purely personal, that the means of conciliation must be first tried, and by article 29 of the sixth title it is made the

province of alcaldes to exercise within their pueblos the functions of conciliators. The Mexican decree of May 23, 1837, made in pursuance of the above requirements of the constitution, supposed to have been in force in California at the time of its acquisition by the American Government gives exclusively to the alcaldes and the ayuntamientos, and to the justices of the peace in places whose population consists of 1,000 persons or more, the right to exercise within their territory the functions of conciliators according to these provisions of the constitution. Accordingly it appears to be the policy not only of the Mexican constitution and statute, but also the Spanish and Mexican law, in all cases of a civil nature, which are susceptible of being completely terminated by agreement of the parties, to require conciliatory measures to be tried, and only in the entire failure of the parties to accomplish a reconciliation are the parties allowed to resort to the regular and formal mode of litigation in the ordinary course. But since the acquisition of California by the Americans and under the statutes of California this rule of conciliacion is looked upon as a useless and dilatory formality, unattended by a single profitable result and not affecting substantial justice in any case; and without showing the conciliacion an action may be maintained by stockholders of a mining corporation, alleged to have been illegally expelled and their stock forfeited, against the company or the remaining stockholders to compel a reinstatement and to permit them to share in the distribution of the property, where the corporation had determined upon dissolution and distribution of its property.

Von Schmidt v. Huntington, 1 Cal. 55, p. 58 (1850).

**LAWS 1853, P. 87; APR. 14, 1853. COMPILED LAWS 1850-1853, P. 273.**

AN ACT to provide for the formation of corporations for certain purposes.

The People, etc.

SEC. 1. Corporations for manufacturing, mining, mechanical, or chemical purposes, or for the purpose of engaging in any species of trade or commerce, foreign or domestic, may be formed according to the provisions of this act, such corporations and the members thereof being subject to all the conditions and liabilities herein imposed, and to none other.

SEC. 2. Any three or more persons, who may desire to form a company for any one or more of the purposes specified in the preceding section, may make, sign, and acknowledge, before some officer competent to take the acknowledgment of deeds, and file in the office of the county clerk of the county in which the principal place of business of the company is intended to be located, and a duplicate thereof in the office of the secretary of state, a certificate in writing, in which shall be stated the corporate name of the company, the objects for which the company shall be formed, the amount of its capital stock, the time of its existence, not to exceed 50 years, the number of shares of which the stock shall consist, the number of trustees and their names who shall manage the concerns of the company for the first three months, and the names of the city or town and county in which the principal place of business of the company is to be located.

\* \* \* \* \*

SEC. 16. Each stockholder shall be individually and personally liable for his proportion of all the debts and liabilities of the company, contracted or incurred during the time that he was a stockholder, for the recovery of which, joint or several actions may be instituted and prosecuted.

\* \* \* \* \*

SEC. 18. It shall be the duty of the trustees of every company incorporated under this act to cause a book to be kept containing the names of all persons, alphabetically arranged, who are or shall become stockholders of the corporation, and showing the number of shares of stock held by them respectively, and the time when they respectively became the owners of such shares; which book, during the usual business hours

of the day, on every day except Sunday and the Fourth of July, shall be open for the inspection of stockholders and creditors of the company at the office or principal place of business of the company; and any stockholder or creditor shall have the right to make extracts from such book, or to demand and receive from the clerk or other officer having charge of such book a certified copy of any entry made therein; such book or certified copy of any entry shall be presumptive evidence of the facts therein stated, in any action or proceeding against the company, or against any one or more stockholders.

\* \* \* \* \*

SEC. 20. Any company incorporated under this act may, by complying with the provisions herein contained, increase or diminish its capital stock to any amount which may be deemed sufficient and proper for the purposes of the corporation; but before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the sum to which the capital is proposed to be diminished, such amount shall be satisfied and reduced, so as not to exceed the diminished amount of capital.

SEC. 21. Whenever it is desired to increase or diminish the amount of capital stock, a meeting of the stockholders may be called by a notice signed by at least a majority of the trustees, and published for at least four weeks in some newspaper published in the county where the principal place of business of the company is located, which notice shall specify the object of the meeting, the time and place where it is to be held, and the amount to which it is proposed to increase or diminish the capital; and a vote of two-thirds of all the shares of stock shall be necessary to an increase or diminution of the amount of the capital stock.

\* \* \* \* \*

SEC. 27. Corporations formed under this act, and the members thereof, shall not be subject to the conditions and liabilities contained in an act entitled "An act concerning corporations," passed April 22, 1850.

## ANNOTATIONS.

### STOCKHOLDER'S LIABILITY.

#### STOCKHOLDERS LIABLE FOR DEBTS OF CORPORATION.

Under the laws of California every stockholder of a mining corporation is individually liable for such portion of its debts and liabilities contracted or incurred during the time he was a stockholder as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock of the shares of the corporation. Where a corporation is formed in some State or county other than California, for the purpose of doing business in that State, the stockholders are, so far as concerns business transacted in California, liable in accordance with the California statutes.

Provident Gold Min. Co. v. Haynes, ——— Cal. ———, 159 Pac. 155, p. 156 (1916).

### AMENDATORY ACT (1855).

LAWS 1855, P. 205; APR. 30, 1855.

AN ACT to amend an act entitled "An act to provide for the formation of corporations for certain purposes," passed April 14, 1853.

The People, etc.

SEC. 1. Section 1 of said act is amended so as to read as follows: Corporations for manufacturing, mining, mechanical, wharfing and dockage or chemical purposes, or for the purpose of engaging in any species of trade or commerce, foreign or domestic, may be formed according to the provisions of this act; such corporations and members thereof being subject to all the conditions and liabilities herein imposed and to none others.

## AMENDATORY ACT (1858).

LAWS 1858, P. 133; APR. 10, 1858.

AN ACT amendatory of and supplementary to an act entitled "An act to provide for the formation of corporations for certain purposes," passed April 14, 1853, and an act entitled "An act to amend an act entitled 'An act to provide for the formation of corporations for certain purposes,' passed April 14, 1853," passed April 30, 1855.

The People, etc.

SEC. 1. That section 1 of an act entitled "An act to provide for the formation of corporations for certain purposes," passed April 14, 1853, be, and the same is hereby, amended so as to read as follows:

SEC. 1. Corporations for manufacturing, mining, mechanical, wharfing and dockage, chemical, or agricultural purposes, or for the purpose of engaging in any species of trade or commerce, foreign or domestic, may be formed according to the provisions of this act; such corporations and members thereof being subject to all the conditions and liabilities herein imposed, and to none others: Provided, That nothing in this section shall be so construed as to authorize a company formed under it to own or hold possession of more than 1,440 acres of land, or to authorize an individual member of such company or association, in his corporate capacity, to hold, own, or possess a number of acres to exceed 80: And provided further, That no corporation formed under the provisions of the said act of April 14, 1853, except those formed for agricultural purposes, shall own or hold possession of more real estate than shall be actually necessary for the prosecution of the business for which it was incorporated: And provided further, That no corporations, formed for agricultural purposes, shall be allowed to hold any mineral lands under the provisions of this act.

SEC. 2. (Laws 1858.) Provided that no contract valid in law, or right sacred in equity, shall be impaired by the retroactive force of this section: Provided, That nothing in this section shall be so construed as to authorize a company formed under it to own or hold possession of more than 1,440 acres of land.

## ANNOTATIONS.

## MINING CORPORATIONS.

1. REORGANIZATION—IDENTITY AND LIABILITY.
2. SALE OF STOCK—NOTICE.

## 1. REORGANIZATION—IDENTITY AND LIABILITY.

A new mining corporation organized for the same purpose as the old, with the same officers conducting its business at the same place, operating under the lease executed to the old company, and for which it paid no consideration, continuing the mining undertaken under the lease by the old company, without any responsibility therefor to the old company, must be held to be the old company under a new name and the responsibility to the lessor was not impaired by the nominal transfer.

*Higgins v. California Petroleum & Asphalt Co.*, 122 Cal. 373, p. 376, 55 Pac. 155 (1898).

See *Blanc v. Paymaster Min. Co.*, 95 Cal. 524, 30 Pac. 765, 29 Am. St. 149 (1892).

## 2. SALE OF STOCK—NOTICE.

It has been held to be necessary to the validity of a constable's sale of mining stock for unpaid assessments that notice be given in the manner required by sections 2 and 4 of the act of April 4, 1864 (Laws 1863-64, p. 478).

*Sayer v. Donahue*, 1 Cal. Unrep. Cas. 410, p. 411.

**AMENDATORY ACT (1864).**

**LAWS 1863-64, P. 149; MAR. 5, 1864. (COMPILED LAWS 1850-1853, P. 273. GENERAL LAWS 1850-1864, SEC. 932.)**

AN ACT to amend an act entitled "An act to provide for the formation of corporations for certain purposes," approved April 14, 1853, and also to amend an act entitled "An act to amend an act entitled 'An act to provide for the formation of corporations for certain purposes,' passed April 14, 1853," approved April 30, 1855.

The People, etc.

SEC. 1. Section 1 of each of said acts is amended so as to read as follows:

SEC. 1. Corporations for manufacturing, mining, mechanical, mercantile, wharfing and docking, or chemical purposes, or for the purpose of engaging in any other species of trade, business, or commerce, foreign or domestic, may be formed according to the provisions of this act: such corporations and the members thereof being subject to all the conditions and liabilities herein imposed, and to none others.

SEC. 2. All acts and parts of acts inconsistent with this act are hereby repealed.

**PRIVATE CORPORATIONS—PURPOSE.****SEC. 286, CIVIL CODE 1872.**

\* \* \* \* \*  
286. The purpose for which private corporations may be formed are the following, and none other: \* \* \*

8. Constructing and maintaining canals for navigation, and canals and ditches for drainage, agricultural, or mining purposes.

\* \* \* \* \*

**AMENDMENTS 1873-74, P. 198.**

NOTE.—The amendment of 1873-74 (Amendments to the Codes, p. 198) made no change in this section as to mining corporations.

**ORGANIZED FOR MINING OUT OF STATE.**

**LAWS 1861, P. 1; MAR. 5, 1861. (GENERAL LAWS 1850-1864, SEC. 981.)**

AN ACT in reference to corporations organized in this State for the purpose of mining out of this State.

The People, etc.

SEC. 1. That it may be lawful for any corporation organized in this State, under the laws of this State, for the purpose of mining or carrying on mining operations without this State, whose business office is in this State, to levy assessments upon the capital stock thereof to pay the debts, future or present, of said corporation, or to carry on the business of said corporation: Provided, The same shall be equal and uniform, and at no one time exceed 5 per cent of the capital stock, and such levy, or assessment, shall constitute a valid and binding obligation upon the holders of such stock to pay the sum so assessed against the stock so held. Notice of each such call, or assessment, shall be given to the respective stockholders personally, or shall be published once a week for at least four weeks in some newspaper published at the place designated as the principal place of business of the corporation, and also in some newspaper published nearest to the point where said mining operations are being carried on. If, after such notice has been given, any stockholder shall make default in the payment of such call, or assessment, as to the shares of stock held by him, so many of such shares may be sold as will be necessary for the payment of the call, or assessment, on the shares held by him. The sale of said shares shall be made as prescribed in the by-laws of the company: Provided, That no sale shall be made except at public auction to the highest bidder, after a published notice of 30 days, published as above directed; and, that at such sale the person who will agree to pay the call, or assessment, so due, together with the expense of advertisement and other expenses of the sale for the smallest number of whole shares, shall be deemed the highest bidder.

NOTE.—Section 981, General Laws 1850-1864, is the same as this section.

SEC. 2. This act shall take effect from and after its passage.



## AGENCIES.

**LAWS 1863-64, P. 429; APR. 4, 1864. CIVIL CODE (1872), SEC. 586-587. (GENERAL LAWS 1850-1864, SEC. 989-992.)**

AN ACT to authorize corporations organized in this State for the purpose of mining in or without this State to establish and maintain transfer agencies in other States.

The People, etc.

SEC. 1. That it may be lawful for any corporation organized in this State for the purpose of mining or carrying on mining operations in or without this State to establish and maintain agencies in other States of the United States for the transfer and issuance of their stock, and a transfer or issuance of (the) same at any such transfer agency, in accordance with the provisions of this statute, shall be valid and binding, and as fully and effectually so for all purposes as if made upon the books of such corporation at its principal office within this State.

NOTE.—Sections 989-992, General Laws 1850-1864, are the same as sections 1-5.

SEC. 586. (Civil Code.) Any corporation organized in this State for the purpose of mining or carrying on mining operations in or without this State may establish and maintain agencies in other States of the United States for the transfer and issuing of their stock; and a transfer or issue of the same at any such transfer agency, in accordance with the provisions of its by-laws, is valid and binding as fully and effectually for all purposes as if made upon the books of such corporation at its principal office within this State. The agencies must be governed by the by-laws and the directors of the corporation.

SEC. 587. (Civil Code.) SEC. 2. All stock of any such corporation issued at any such transfer agency shall be signed by the president and secretary of the corporation, and countersigned at the time of its issuance by the agent or agents of such corporation having charge of such transfer agency; and no stock shall be issued at such transfer agency unless the certificate or certificates of stock in lieu of which the same is issued shall at the time of such issuance be surrendered for cancellation.

SEC. 3. The stockholders of any such corporation may pass by-laws for the regulation and conduct of any such transfer agency: Provided, The same be not inconsistent with the provisions of this act, and such transfer agency shall at all times be subject to the control of the trustees of said corporation.

SEC. 4. All acts or parts of acts inconsistent herewith are hereby repealed.

SEC. 5. This act shall take effect from and after its passage.

## INCREASING CAPITAL STOCK (SEC. 359).

## SEC. 359. CIVIL CODE.

359. Every corporation may increase or diminish its capital stock, as in this section provided:

\* \* \* \* \*

## AMENDMENTS 1873-74, P. 207; MAR. 30, 1874. SEC. 359 CIVIL CODE.

SEC. 75. Section 359 of said code is amended to read as follows:

SEC. 359. Every corporation may increase or diminish its capital stock at a meeting called for that purpose by the directors, as follows: \* \* \*

Six. The written assent of the holders of three-fourths of the subscribed capital stock shall be as effectual to authorize the increase or diminution of the capital stock as if a meeting were called and held; and upon such written assent the directors may proceed to make the certificate herein provided for.

## ANNOTATIONS.

## MINING CORPORATIONS.

## INCREASE OF CAPITAL STOCK.

The constitution of 1879 (section 11, article 12) prohibits corporations from issuing stocks or bonds except for money paid, labor done, or property actually received, and makes all fictitious increases of stock or indebtedness void. It also provides that the capital stock of a corporation shall not be increased except in certain cases and in no event without the consent of the holders of the larger amount in value of the stock, at a meeting called for that purpose, after stated notice. These constitutional provisions annul section 359 of the Civil Code and render invalid and of no effect paragraph 6 of the amendment of March 30, 1874 (Amendments 1873-74, p. 207), and in no event can the capital stock of a corporation be increased except at a meeting of the stockholders called for that purpose and pursuant to statutory provisions enacted pursuant to this article of the constitution.

Ewin v. Oroville Min. Co., 56 Cal. 649, p. 652.

**PROTECTION OF STOCKHOLDERS.**

**LAWS 1880, P. 131; APR. 23, 1880. (REPEALED.)**

AN ACT for the further protection of stockholders in mining companies.

The People, etc.

SEC. 1. It shall not be lawful for the directors of any mining corporation to sell, lease, mortgage, or otherwise dispose of the whole or any part of the mining ground owned or held by such corporation, nor to purchase or obtain, in any way, any additional mining ground, unless such act be ratified by the holders of at least two-thirds of the capital stock of such corporation. Such ratification may be made either in writing, signed and acknowledged by such stockholders, or by resolution, duly passed at a stockholders' meeting called for that purpose.

SEC. 2. All stock in each and every mining corporation in this State shall stand on the books of said company, in all cases, in the names of the real owners of such stock, or in the name of the trustees of such real owners; but in every case where such stock shall stand in the name of a trustee, the party for whom he holds such stock in trust shall be designated upon said books, and also in the body of the certificate of such stock. [Neither the corporation nor its secretary must close its books more than two days prior to the day of an election.]

NOTE.—This section was amended by the act March 16, 1901 (Laws 1901, 332, p. 377), without any material change in the phraseology and with the additional last sentence.

SEC. 3. It shall not be lawful for any such corporation, or the secretary thereof, to close the books of said corporation more than two days prior to the day of any election. At such election the stock of said corporation shall be voted by the bona fide owners thereof, as shown by the books of said corporation, unless the certificate of stock, duly indorsed, be produced at such election, in which case said certificates shall be deemed the highest evidence of ownership, and the holder thereof shall be entitled to vote the same.

SEC. 4. All acts and parts of acts in conflict with this act are hereby repealed.

**LAWS 1897, P. 96; MAR. 9, 1897. LAWS 1901, 332, P. 377; MAR. 16, 1901. CIVIL CODE, SEC. 584 (NEW). (REPEALED.)**

AN ACT to amend section 1 of an act entitled "An act for the further protection of stockholders in mining companies," approved April 23, 1880.

The People, etc.

SEC. 1. Section 1 of an act entitled "An act for the further protection of stockholders in mining companies," approved April 23, 1880, is hereby amended so as to read:

SEC. 1. It shall not be lawful for the (The) directors of any mining corporation to (must not) sell, lease, mortgage, or (nor) otherwise dispose of (the whole or) any

(part of the) mining ground owned or held by such (the) corporation, nor to purchase (or obtain in) any (way except by location) additional mining ground, unless such (their) act be (is) ratified by the holders of at least two-thirds of the (capital) stock of such (the) corporation (then outstanding. Such ratification may be) made either in writing, signed and acknowledged by such stockholders, or by resolution, duly passed at any (a) regularly called stockholders' meeting. The certificate of the secretary of any mining corporation, reciting such ratification at a stockholders' meeting, or the names of stockholders with the amount of stock held by each, and the total stock outstanding, signed and acknowledged by him in the manner provided for (the) acknowledgment (s) to (of) conveyances of real property, may be attached to or indorsed upon any deed, mortgage, conveyance, or other instrument made under this act (section) and recorded with such deed, conveyance, or other instrument, and the recitals contained in such certificate, or the duly recorded copy thereof, are (made) prima facie evidence of their truthfulness for all purposes whatsoever: (Provided, That) no (No) one except a stockholder in (any) such corporation shall (must) be permitted to urge any objection to the acquisition (by it) of any additional ground or other property (by such corporation).

SEC. 2. This act shall take effect immediately.

NOTE.—By an act of March 16, 1901 (Laws 1901, 332, p. 377), section 584 was added to the Civil Code. This new section is the same in substance as section 1 of this act of March 9, 1897. The slight variations are shown by the words in parentheses. The original act of April 23, 1880, and this amendatory act were repealed by the act of March 7, 1905 (Laws 1905, p. 74).

### REPEALING ACT.

LAWS 1905, P. 74; MAR. 7, 1905.

SEC. 1. An act entitled "An act for the further protection of stockholders in mining companies," approved April 23, 1880, and an act entitled "An act to amend section 1 of an act entitled 'An act for the further protection of stockholders in mining companies,' approved April 23, 1880," approved March 9, 1897, are hereby repealed.

### ANNOTATIONS.

#### SALES OF MINES BY CORPORATIONS.

1. CONSTITUTIONALITY—CONSTRUCTION—CLASSIFICATION.
2. APPLICATION OF STATUTE—MINING GROUND.
3. POWER OF DIRECTORS TO CONVEY—PRESUMPTION.
4. AUTHORITY AND ACTS OF DIRECTORS.
5. CONVEYANCE OF MINING GROUND—RATIFICATION—VALIDITY.
6. CONVEYANCE WITHOUT RATIFICATION—ESTOPPEL.
7. METHODS OF RATIFICATION.
8. PROOF OF RATIFICATION.
9. MORTGAGE—RATIFICATION.
10. PURCHASE OF MINING GROUND—RATIFICATION.
11. REPEAL OF STATUTE.
12. AMENDATORY ACT.

#### 1. CONSTITUTIONALITY—CONSTRUCTION—CLASSIFICATION.

The fact that section 3 of this act has been held unconstitutional because no reason existed for making a law for elections of directors in mining corporations different from that of other corporations, yet because no reason could be perceived for a classification with respect to the method of selling and disposing of the property of such corporation

which constituted the real capital, that is, its mining ground; and section 1 of this act is valid and constitutional.

*Lacy v. Gunn*, 144 Cal. 511, p. 514, 78 Pac. 30 (1904).

See *McShane v. Carter*, 80 Cal. 310, 22 Pac. 178 (1889).

*Pekin Min. & Milling Co. v. Kennedy*, 81 Cal. 356, 22 Pac. 679 (1889).

*Johnson v. California Lustral Co.*, 127 Cal. 283, 59 Pac. 595 (1899).

Mining corporations are so distinct in their characteristics from other corporations that the legislature may take this as a basis for classification, and on this ground section 1 of this act is valid and constitutional.

*Lacy v. Gunn*, 144 Cal. 511, p. 515, 78 Pac. 30 (1904).

See *Granite Gold Min. Co. v. Maginness*, 118 Cal. 131, p. 137, 50 Pac. 269 (1897).

Section 3 is unconstitutional on the ground that there is no natural or inherent distinction between mining and other corporations for profit that will authorize special legislation for the mode of conducting the election of their directors, nor are mining corporations distinguished by any peculiarities which demand for them special legislation upon this subject; and as all corporations stand in the same relation to the subject of law any attempt to create a different law in this respect for a mining corporation from that prescribed for other corporations is an arbitrary selection of a specific class in a case where no natural or intrinsic difference exists.

*Krause v. Durbrow*, 127 Cal. 681, p. 685, 60 Pac. 438 (1900).

*Lacy v. Gunn*, 144 Cal. 511, p. 514, 78 Pac. 30 (1904).

The earlier cases in construing this statute show a disposition to give a very rigid and strict interpretation to the law as to the matter of the ratification of a conveyance of mining property by a board of directors, but this strictness has been somewhat relaxed in more recent cases.

*Royal Con. Mines v. Royal Con. Mines*, 157 Cal. 737, p. 752, 110 Pac. 123 (1910).

*Standard Oil Co. v. Slye*, 164 Cal. 435, p. 445, 129 Pac. 589 (1913).

This statute applies to foreign corporations as well as to domestic, and renders directors of mining corporations powerless to convey the mining ground or holders of two-thirds of the stock given as prescribed by the statute, and the consent of stockholders will not be presumed from the mere fact of the conveyance.

*Williams v. Gaylord*, 102 Fed. 372, p. 373.

*McShane v. Carter*, 80 Cal. 310, 22 Pac. 178 (1889).

*Pekin Min. & Milling Co. v. Kennedy*, 81 Cal. 356, p. 362, 22 Pac. 679 (1889).

*Granite Gold Mining Co. v. Maginness*, 118 Cal. 131, p. 137; 50 Pac. 269 (1877).

*Johnson v. Cal. Lustral Co.*, 127 Cal. 283, 59, Pac. 595, (1899).

The title of this act is "For the further protection of stockholders in mining companies," while the title of the act of April 23, 1880, is "For the better protection of stockholders and corporations formed under the laws of the State of California for the purpose of carrying on and conducting the business of mining." The general terms of the title of the first act as contrasted with the specific declaration in the other act are clearly apparent. This act is for the protection of stockholders in mining corporations, but the act of April 23, 1880, amends an act for the better protection of stockholders in mining corporations formed under the laws of California. This act provides that the directors of a mining corporation shall not sell, lease, mortgage, or otherwise dispose of mining ground without the ratification of two-thirds of the stockholders in a prescribed manner. It also requires that the stock shall be in the name of the real owner and requires the books to be closed at a certain time and fixes the method of voting the stock. This act applies to all mining corporations doing business in the State and regulates the actions of such corporations in selling, leasing, mortgaging, or otherwise disposing of mining ground, owned by corporations in the State. Under

this statute a mortgage executed by the board of directors, not ratified by the stockholders, as required by the statute, is void.

Williams v. Gold Hill Min. Co., 96 Fed. 454, p. 459.

#### 2. APPLICATION OF STATUTE—MINING GROUND.

The prohibition of the act relates to the conveyance by the directors of the whole or any part of the mining ground owned or held by the corporation; and the term "mining ground" includes all the realty that is incident or appurtenant thereto, and includes a ditch and reservoirs appurtenant to the mining ground and necessary and requisite to the working and operating thereof.

McShane v. Carter, 80 Cal. 310, p. 313, 22 Pac. 679 (1889).

See Johnson v. California Lustral Co., 127 Cal. 283, p. 289, 59 Pac. 595 (1899).

The act does not relate to the real property of a mining corporation generally, but only to its mining ground.

Granite Gold Min. Co. v. Maginness, 118 Cal. 131, 50 Pac. 269 (1897).

See Johnson v. California Lustral Co., 127 Cal. 283, p. 289, 59 Pac. 595 (1899).

When a mining corporation in good faith works by ordinary processes deposits of stone or other mineral on land owned by it with a view to utilizing the product for commercial purposes, the land thus worked and exploited is mining ground within the meaning of this act whether the undertaking results in loss or profit and whether sound judgment or discretion would or would not approve of the particular use of the land.

Johnson v. California Lustral Co., 127 Cal. 283, p. 289, 59 Pac. 595 (1899).

#### 3. POWER OF DIRECTORS TO CONVEY—PRESUMPTION.

The general presumption of the power of corporations to buy and sell property must prevail, except in cases where the facts appearing of record show affirmatively that the case follows within the restriction of this act.

Granite Gold Min. Co. v. Maginness, 118 Cal. 131, p. 138, 50 Pac. 269 (1897).

Where directors have undertaken to convey mining ground the consent of the stockholders can not be presumed from the mere fact of the conveyance, whether under the corporate seal or not, for the reason that the consent or ratification by the stockholders may be after the deed is executed and any person connecting himself with the title of the corporation owning the property may question the validity of the conveyance.

McShane v. Carter, 80 Cal. 310, p. 312, 22 Pac. 178 (1889).

Pekin Min. & Milling Co. v. Kennedy, 81 Cal. 356, 22 Pac. 679 (1889).

Bennett v. Red Cloud Min. Co., 14 Cal. App. 728, p. 732, 113 Pac. 119 (1910).

Williams v. Gold Hill Min. Co., 96 Fed. 454.

#### 4. AUTHORITY AND ACTS OF DIRECTORS.

The provisions of this act go to the power or authority of directors, and do not relate merely to other personal liability and no penalty is imposed upon them for a violation of any of the provisions of the act.

McShane v. Carter, 80 Cal. 310, p. 312, 22 Pac. 178 (1889).

See Royal Consolidated Min. Co. v. Royal Consolidated Mines, 157 Cal. 737, p. 752, 110 Pac. 123 (1910).

Standard Oil Co. v. Slye, 164 Cal. 435, p. 445, 129 Pac. 589 (1913).

The provision preventing directors from selling, mortgaging, or otherwise disposing of mining ground in the absence of a ratification by a certain part of the stockholders, does not dispense with action by the board of directors, but requires that such action shall be ratified by the holders of two-thirds of the capital stock.

Alta Silver Min. Co. v. Alta Placer Min. Co., 78 Cal. 629, p. 633, 21 Pac. 373 (1889).

Section 1 does not confer upon the stockholders of a mining corporation any power to mortgage the property of the corporation or to authorize the directors to mortgage it, and it is a familiar rule that ratification can not give effect to an unauthorized or invalid act, unless the person or body making the ratification could in the first instance have authorized the act. The corporate power and business of a corporation must be exercised by its board of directors, and stockholders can not by their own act mortgage the corporate property; and a mortgage to be effective must be made by the board of directors, but under the provisions of this act the consent of two-thirds of the stockholders is requisite to its validity, and the stockholders are thus made a component part of the power to make a mortgage effective, but can not execute a mortgage or validate one that has not been previously authorized and executed by the board of directors.

*Curtin v. Salmon River Hydraulic Gold Min. & Ditch Co.*, 130 Cal. 345, p. 351, 62 Pac. 552, 80, Am. St. 132 (1900).

*Curtin v. Salmon River Hydraulic Gold Min. & Ditch Co.*, 141 Cal. 308, p. 310, 74 Pac. 851, 99 Am. St. 75 (1903).

A mortgage or other conveyance of mining property to be effective must be made by the board of directors and under the provisions of this act the consent of two-thirds of the stockholders is requisite to the validity of any such conveyance.

*Curtin v. Salmon River Hydraulic Min. & Ditch Co.*, 141 Cal. 308, p. 310, 74 Pac. 851, 99 Am. St. 75 (1903).

A contract for the working of a mine executed by the directors of a corporation owning the mine is valid without the consent or ratification of the required number of stockholders; and the fact that the agreement was named a lease does not render it invalid, though under the agreement the mine was to be worked on shares, and the parties became tenants in common of the products of the mine when taken out.

*Hudepohl v. Liberty Hill Consolidated Min. & Water Co.*, 80 Cal. 553, p. 558, 22 Pac. 339 (1889).

##### 5. CONVEYANCE OF MINING GROUND—RATIFICATION—VALIDITY.

The directors of a mining corporation have no power or authority to convey the mining ground owned by the corporation without the consent of holders of two-thirds of the stock, given as prescribed by the act; and without such consent, title to the ground does not pass.

*McShane v. Carter*, 80 Cal. 310, p. 312, 22 Pac. 178 (1889).

*Pekin Min. & Milling Co. v. Kennedy*, 81 Cal. 356, p. 363, 22 Pac. 679 (1889).

*Granite Gold Min. Co. v. Maginness*, 118 Cal. 131, p. 137, 50 Pac. 269 (1897).

See *Johnson v. California Lustral Co.*, 127 Cal. 283, p. 286, 59 Pac. 595 (1899).

*Bennett v. Red Cloud Min. Co.*, 14 Cal. App. 728, p. 730, 113 Pac. 119 (1910).

*Williams v. Gold Hill Min. Co.*, 96 Fed. 454.

Without the consent of two-thirds of the stock of a mining corporation title to mining ground attempted to be conveyed does not pass.

*Royal Consolidated Min. Co. v. Royal Consolidated Mines*, 157 Cal. 737, p. 754, 110 Pac. 123, 137 Am. St. 165n (1910).

A deed on its face purporting to be the deed of a mining corporation and to which the name of the corporation is signed and the names of persons assuming to be its president and secretary, who acknowledge it in due form before a notary public, and affixed to it a corporate seal, is invalid to convey the mining ground of the corporation in absence of evidence to show that the deed had been authorized by the directors of the corporation and ratified by two-thirds of the stockholders.

*Pekin Min. & Milling Co. v. Kennedy*, 81 Cal. 356, p. 359, 22 Pac. 679 (1889).

See *Royal Consolidated Min. Co. v. Royal Consolidated Mines*, 157 Cal. 737, p. 753, 110 Pac. 123 (1910).

A formal ratification of a conveyance, lease, or mortgage of mining ground by mining corporation is not required where one of the participating directors owned more than two-thirds of the stock.

*Lacy v. Gunn*, 144 Cal. 511, p. 520, 78 Pac. 30 (1904).

*Standard Oil Co. v. Slye*, 164 Cal. 435, p. 445, 129 Pac. 589 (1913).

#### 6. CONVEYANCE WITHOUT RATIFICATION—ESTOPPEL.

This act is for the protection of stockholders in mining corporations, and a person seeking to raise the question of the validity of a conveyance made by the corporation must connect himself as a stockholder, or in some other way, with the corporation's title; and he would not be permitted to question the validity of such a conveyance where he stands in the position of hostility.

*Galbraith v. Shasta Iron Co.*, 143 Cal. 94, p. 99, 76 Pac. 901 (1904).

*Royal Consolidated Min. Co. v. Royal Consolidated Mines*, 157 Cal. 737, p. 754, 110 Pac. 123, 137 Am. St. 165n (1910).

A lease executed by a mining corporation but not ratified by the holders of two-thirds of the capital stock of the corporation, as required by these acts (Acts 1880, p. 131; Acts 1897, p. 96) is not void, where after the act of 1905 (p. 74), repealing these earlier acts on this subject of ratification, the mining corporation collected the full amount of rents and royalties from the lessee, thereby treating the lease as valid; and the corporation is estopped from thereafter asserting the invalidity of the corporate act in the execution of the lease.

*Standard Oil Co. v. Slye*, 164 Cal. 435, p. 445, 129 Pac. 589 (1913).

#### 7. METHODS OF RATIFICATION.

The required consent of the stockholders of two-thirds of the stock of a mining corporation must be evidenced in the manner prescribed by the act, either in writing, signed and acknowledged by the required two-thirds of the stockholders, or by resolution duly passed at a stockholders' meeting called for that purpose.

*McShane v. Carter*, 80 Cal. 310, 22 Pac. 178 (1889).

*Royal Consolidated Min. Co. v. Royal Consolidated Mines*, 157 Cal. 737, p. 754, 110 Pac. 123, 137 Am. St. 165n (1910).

Under this act stockholders of a mining corporation and the corporation itself would be equally bound by the ratification of those whom they had invested with the actual legal title to the stock, and these are the persons authorized under the statute to act in the matter, although in favor of parties claiming under the corporate conveyance, the courts may look behind an apparent ownership and sustain a ratification made by the beneficial owner; and this does not prevent the legal owners from making a legal ratification as invested with the legal title to the stock as disclosed by the record books of the corporation.

*Royal Consolidated Min. Co. v. Royal Consolidated Mines*, 157 Cal. 737, p. 759, 110 Pac. 123, 137 Am. St. 165n (1910).

*Lacy v. Gunn*, 144 Cal. 511, p. 520, 78 Pac. 30 (1904), explained and limited.

This statute was enacted primarily for the benefit of stockholders rather than creditors, and while it requires a ratification by the holders of at least two-thirds of the capital stock of the corporation to any conveyance, lease, or mortgage of the mining property by the directors, yet a previous consent or direction by two-thirds of the stockholders, although purporting to have been made in their capacity as directors, is, at least as against the directors, equivalent to a subsequent ratification, but no good ground suggests itself for saying that a conveyance, good as against a judgment creditor, would not be equally as good as against a stockholder, and the act should be construed as only illustrative and not exhaustive of the manner of ratification.

*Lacy v. Gunn*, 144 Cal. 511, p. 520, 78 Pac. 30 (1904).

*Royal Consolidated Min. Co. v. Royal Consolidated Mines*, 157 Cal. 737, p. 755, 110 Pac. 123, 137 Am. St. 165n (1910).

The procedure necessary to the validity of a mortgage made by a mining corporation has been expressly declared by statute, and the intention of the legislature that such procedure shall be incumbent upon all mining corporations doing business in the State is further evidenced by the fact that another statute upon another subject was passed upon the same day referring specifically to domestic corporations.

*Williams v. Gold Hill Min. Co.*, 96 Fed. 454, p. 460.

#### 8. PROOF OF RATIFICATION.

While this act requires a ratification of a conveyance or mortgage by a mining corporation by the holders of at least two-thirds of the stock, yet it does not require the evidence of such ratification to be attached to the deed or mortgage; but the ratification becomes complete upon the adoption of a resolution to that effect by the stockholders.

*Middleton v. Arastraville Min. Co.*, 146 Cal. 219, p. 225, 79 Pac. 889 (1905).

The provision of this act for attaching to the mortgage of a mining corporation the secretary's certificate of the adoption of a resolution by the stockholders approving the mortgage is for the convenience of proof, and the prima facie character of such certificate as evidence yields to the production of the original record of its adoption.

*Middleton v. Arastraville Min. Co.*, 146 Cal. 219, p. 225, 79 Pac. 889 (1905).

#### 9. MORTGAGE—RATIFICATION.

A mortgage executed by a mining corporation for its mining ground or any part thereof must be authorized or ratified by the holders of two-thirds of the stock of the corporation.

*McShane v. Carter*, 80 Cal. 310, 22 Pac. 178 (1889).

*Pekin Min. & Milling Co. v. Kennedy*, 81 Cal. 356, 22 Pac. 679 (1889).

*Johnson v. California Lustral Co.*, 127 Cal. 283, 59 Pac. 595 (1899).

*Curtin v. Salmon River Hydraulic Gold Min. & Ditch Co.*, 141 Cal. 308, 74 Pac. 851, 99 Am. St. 75 (1903).

*Royal Consolidated Min. Co. v. Royal Consolidated Mines*, 157 Cal. 737, p. 753, 110 Pac. 123, 137 Am. St. 165n (1910).

*Standard Oil Co. v. Slye*, 164 Cal. 435, p. 445, 129 Pac. 589 (1913).

The execution of a mortgage by a mining corporation duly authorized by a vote of more than two-thirds of its stockholders at a meeting called for that purpose is valid.

*Schmittger v. Old Home Consolidated Min. Co.*, 144 Cal. 603, p. 604, 78 Pac. 9 (1904).

A mortgage executed by a mining corporation may be validated without the authorization or ratification by the required number of stockholders if the land mortgaged is not mining ground.

*Johnson v. California Lustral Co.*, 127 Cal. 283, p. 284, 59 Pac. 595 (1899).

A mortgage by a mining corporation is invalid under this act if it is not ratified by the holders of at least two-thirds of the capital stock.

*Alvord v. Spring Valley Gold Co.*, 106 Cal. 547, p. 551, 40 Pac. 27 (1895).

Three members of the board of directors composed of five members of a mining corporation can not authorize the execution of a mortgage of the mining properties to secure a debt due to one of the three members present and voting. Such a mortgage is invalid and can not be validated by the necessary consent or by the ratification by the holders and owners of more than two-thirds of the capital stock of the corporation.

*Curtin v. Salmon River Hydraulic Gold Min. & Ditch Co.*, 130 Cal. 345, p. 351, 62 Pac. 552 80 Am. St. 132 (1900).

*Curtin v. Salmon River Hydraulic Gold Min. & Ditch Co.*, 141 Cal. 308, p. 310, 74 Pac. 851 (1903).



The president of a mining corporation, in the absence of a resolution by the board of directors and of the ratification by the stockholders, has no power by virtue of his office to mortgage the property of the corporation and a subsequent levy by the directors of an assessment to pay the mortgage debt does not render the mortgage valid.

*Alta Silver Min. Co. v. Alta Placer Min. Co.*, 78 Cal. 629, p. 633, 21 Pac. 373 (1889).

Whether or not this act applies to a foreign corporation conducting mining operations in California as to the execution of a mortgage on its mining property in this State is immaterial where a domestic mining corporation purchasing the property and assuming and undertaking to pay the mortgage as a part of the purchase price of the mine, is estopped from setting up the invalidity of the mortgage because not ratified by the holders of two-thirds of the capital stock of the corporation, and the effect of such an assumption is to charge the mining claim with the lien of the mortgage as effectually as if the purchaser had itself executed the mortgage.

*Alvord v. Spring Valley Gold Co.*, 106 Cal. 547, p. 552, 40 Pac. 27 (1895).

A second mortgagee who is made a party to an action to foreclose a first mortgage on the mining ground of a mining corporation, and who seeks to foreclose his mortgage by a cross-complaint, can not quest on the validity of the first mortgage on the ground of want of ratification by the stockholders, where he does not himself show such a ratification of his own mortgage and fails to connect himself with the title to the property.

*Bennett v. Red Cloud Min. Co.*, 14 Cal. App. 728, p. 732, 113 Pac. 119 (1910).

#### 10. PURCHASE OF MINING GROUND—RATIFICATION.

The language of this statute would seem to imply that mining corporations may purchase or hold some mining ground without the necessity of the consent of stockholders, and the statute aims only at the purchase or obtaining of additional mining ground. Accordingly, a mining corporation may, in the first instance, acquire by purchase or location, mining ground without the assent of its stockholders, and a court can not say that the purchase of mining ground by a mining corporation is invalid for want of assent of stockholders as required by the statute, until the evidence shows that the corporation already held mining ground, and until it appears that the purchase or location complained of is of additional ground as specified in the statute.

*Granite Gold Min. Co. v. Maginness*, 118 Cal. 131, p. 137, 50 Pac. 269 (1897).

This is an act for the protection of stockholders in mining companies and prevents directors of mining corporations from disposing of or encumbering the mining ground belonging to the corporation, or from acquiring additional mining ground without ratification by the stockholders of at least two-thirds of the capital stock.

*Krause v. Durbrow*, 127 Cal. 681, p. 684, 60 Pac. 438 (1900).

#### 11. REPEAL OF STATUTE.

These acts were repealed by the act of 1905 (p. 74), and ratification by stockholders of conveyances or mortgages is no longer required.

*Standard Oil Co. v. Slye*, 164 Cal. 435, p. 445, 129 Pac. 589 (1913).

#### 12. AMENDATORY ACT.

The act of March 9, 1897, amended the act of April 23, 1880 (p. 131), in a number of important particulars as to the power of mining corporations to dispose of mining ground or to purchase additional mining ground without the assent of the stockholders.

*Granite Gold Min. Co. v. Maginness*, 118 Cal. 131, p. 139, 50 Pac. 269 (1897).

**BOOKS REQUIRED—NAMES OF STOCKHOLDERS.**

**LAWS 1857, P. 121; MAR. 27, 1857. (GENERAL LAWS 1850-1864, SEC. 959.)**

AN ACT supplementary to an act entitled "An act to provide for the formation of corporations for certain purposes," passed April 14, 1853.

The People, etc.

SEC. 1. It shall be the duty of the trustees of every company, incorporated under this act, for the purpose of ditching, mining, or conveying water for mining purposes, to cause a book to be kept, containing the names of all persons, alphabetically arranged, who are, or shall become stockholders of the corporation, and showing the number and designation of shares of stock held by them, respectively, and the time when they, respectively, became the owners of such shares; also a book or books, in which shall be entered at length, in a plain and simple manner, all by-laws, orders, and resolutions of the company and board of trustees, and the manner and time of their adoption, which books, during the business hours of the day, Sundays and Fourth of July excepted, shall be open for the inspection of stockholders and the creditors of the company, each individual stockholder, and their duly authorized agents and attorneys, at the office or principal place of business of the company: Provided, That the office and books of every such company shall be kept, and the books of the company shall be open, as aforesaid, in the county in which their business is transacted, and every stockholder or creditor, as aforesaid, or their agents or attorneys, shall have the right to make extracts from such books, or upon payment of reasonable clerk's fees therefor, to demand and receive from the clerk or other officer having the charge of such books a certified copy of any entry made therein; such book or certified copy of any entry shall be presumptive evidence of the facts therein stated, in any action or proceeding against the company, or any one or more stockholders.

\* \* \* \* \*

**SECRETARY'S BOOKS—INSPECTION.**

**LAWS 1873-74, P. 866; MAR. 30, 1874.**

AN ACT for the better protection of the stockholders in corporations, formed under the laws of the State of California, for the purpose of carrying on and conducting the business of mining.

The People, etc.

SEC. 1. It shall be the duty of the secretary of every corporation formed under the laws of the State of California, for the purpose of mining, to keep the books of such corporation as prescribed by its by-laws: Provided, Such by-laws are not inconsistent with the laws of this State. The books of such corporation shall be produced for examination and inspection during the hours of business every day in the year, Sundays and legal holidays excepted, upon the demand of any stockholder holding and presenting a certificate of stock in such corporation, either in his own name or properly indorsed; and the secretary of such corporation shall be required, upon the demand of any stockholder holding stock in such corporation to the amount of \$500 par value, to have the books of the corporation written up at the end of each month, and shall make out a balance sheet, showing the correct financial condition of the corporation; and on or before the 10th day of January and July, of each year, he shall make out a written statement, showing all the business and financial transactions of the corporation for the six months preceding, which statement shall also contain a full description of all property of the corporation, and the character and extent of the same; and such statement, together with all papers and records of the corporation, shall be open to examination and inspection upon any demand by such stockholder. All demands of stockholders, as specified in this section, shall be made to the secretary, at the office of the corporation where its principal place of business is located.

SEC. 2. Any owner of stock of the par value of \$500, in any of the corporations mentioned in section 1 of this act, shall, at all hours of business or labor on or about the

premises or property of such corporation, have the right to enter upon such property and examine the same, either on the surface or under ground. And it is hereby made the duty of any and all officers, managers, agents, superintendents, or persons in charge, to allow any such stockholder to enter upon and examine any of the property of such corporation at any time during the hours of business or labor; and the presentation of certificates of stock in the corporation of the par value of \$500 to the officer or person in charge shall be prima facie evidence of ownership and right to enter upon or into, and make examinations of the property of the corporation.

SEC. 3. The violations of any of the provisions of sections 1 and 2 of this act shall subject the trustees of the corporation to a fine of \$200 and costs of suit, and the expenses of the stockholders so refused, in traveling to and from the property, which may be recovered in any court of competent jurisdiction, either in the county where the property is situated or in the county where the office and principal place of business of the corporation is situated, which said fine shall be imposed and collected for and paid over to the person so refused, together with all moneys collected for the said traveling expenses.

SEC. 4. All acts in conflict with the provisions of this act are hereby repealed.

### AMENDATORY ACT.

LAWS 1880, P. 134; APR. 23, 1880. LAWS 1897, P. 38; FEB. 26, 1897.

NOTE.—The act of April 23, 1880 (Laws 1880, p. 134), amended section 1 of the act of March 30, 1874 (Laws 1873-74, p. 866). An act of February 26, 1897 (Laws 1897, p. 38), also amended section 1 of the same act of March 30, 1874, instead of amending the amendatory act of April 23, 1880. The amendatory act of April 23, 1880, with the amendments and additions of the act of February 26, 1897, shown in parentheses, is as follows.

SEC. 1. Section 1 of said act is hereby amended so as to read as follows:

SEC. 1. It shall be the duty of the secretary of every corporation formed under the laws of this State for the purpose of mining to keep a complete set of books, showing all receipts and expenditures of such corporation, the sources of such receipts, and the object of such expenditures, and also all transfers of stock. All books and papers shall at all times, during business hours, be open to the inspection of any bona fide stockholder; and if any stockholder shall at any time so request, it shall be the duty of the secretary to attend at the office of said company at least one hour in the day out of regular business hours, and exhibit such books and papers of the company as such stockholder may desire, who shall be entitled to be accompanied by an expert; and he shall also be entitled to make copies or extracts from any such books or papers. (Any stockholder may, at reasonable hours, have permission to examine such mining property, and he shall be entitled to be accompanied by an expert to examine such property, to take samples, and to make such other examination as he may deem necessary.) It shall be the duty of the directors, on the first (second) Monday of each and every month, to cause to be made an itemized account or balance sheet for the previous month, embracing a full and complete statement of all disbursements and receipts, showing from what sources such receipts were derived and for what and to whom such disbursements or payments were made, and for what object or purpose the same were made; also all indebtedness or liabilities incurred or existing at the time, and for what the same were incurred, and the balance of money, if any, on hand. Such accounts or balance sheet shall be verified under oath by the president and secretary and posted in some conspicuous place in the office of the company. It shall be the duty of the superintendent, on the first Monday of each month, to file with the secretary an itemized account, verified under oath, showing all receipts and disbursements made by him for the previous month, and for what said disbursements were made. It shall also be the duty of the superintendent to file with the secretary a weekly statement, under oath (Such account shall also contain a verified statement), showing the number of men employed under him and for what purpose, and the rate of wages paid to each one. He shall attach to such account a full and complete report, under oath, of the work done in said mine, the amount of ore extracted, from what part

of the mine taken, the amount sent to mill for reduction, its assay value, the amount of bullion received, the amount of bullion shipped to the office of the company or elsewhere, and the amount, if any, retained by the superintendent. It shall also be his duty to forward to the offices of the company a full report, under oath, of all discoveries of ores or mineral-bearing quartz made in said mine, whether by boring, drifting, sinking, or otherwise, together with the assay value thereof. All accounts, reports, and correspondence from the superintendent shall be kept in some conspicuous place in the office of said company, and (to) be open to the inspection of all stockholders. (Provided, That this section shall apply only to mining corporations whose stock is listed and offered for sale at public exchange, and shall not apply to mining corporations whose stock is not listed in the public exchange and is not offered for public sale.)

#### AMENDATORY ACTS.

**LAWS 1901, 322, P. 378; MAR. 16, 1901. LAWS 1905, P. 584, MAR. 21, 1905.**

NOTE.—The act of March 16, 1901 (Laws 1901, 322, p. 378), revised the Civil Code by amending certain sections, repealing others, and adding new sections, and at page 378 added a new section 588. This section corresponded to section 1 of the original act of March 30, 1874, and to the amendatory acts of April 23, 1880, and of February 26, 1897. The act of March 21, 1905 (Laws 1905, p. 584), repeals certain sections of the Civil Code and substitutes a new title and new section to take the place thereof. This latter act reenacted section 588 as added by the act of 1901, and the additions and amendments are shown in parentheses.

SEC. 588. (Civil Code sec.) It is the duty of the secretary of every corporation formed for the purpose of mining or conducting mining in California (whether such corporation be formed and organized under the laws of the State of California or of any other State, Territory, or foreign country, to keep at some place within the State of California an office and in such office) to keep a complete set of books showing all receipts and expenditures of such corporation, the sources of such receipts, and the objects of such expenditures, and also all transfers of stock. All books and papers must, at all times during business hours, be open to the inspection of any stockholder. He is entitled to be accompanied by an expert and to make copies or extracts from any such books or papers. He may, at reasonable hours, examine such mining property, accompanied by an expert, take samples, and make such other examinations as he may deem necessary. It is the duty of the directors, on the second Monday of each and every month, to cause to be made an itemized account or balance sheet for the previous month, embracing a full and complete statement of all disbursements and receipts, showing from what sources such receipts were derived, and to whom and for what object or purpose such disbursements or payments were made; also all indebtedness or liabilities incurred or existing at the time, and for what the same were incurred, and the balance of money, if any, on hand. Such account or balance sheet must be verified under oath by the president and secretary and posted in some conspicuous place in the office of the company. It is the duty of the superintendent, on the first Monday of each month, to file with the secretary an itemized account, verified under oath, showing all receipts and disbursements made by him for the previous month, and for what said disbursements were made. Such account must also contain a verified statement showing the number of men employed under him, and for what purpose, and the rate of wages paid to each. He must attach to such account a full and complete report, under oath, of the work done in said mine, the amount of ore extracted, from what part of mine taken, the amount sent to mill for reduction, its assay value, the amount of bullion received, the amount of bullion shipped to the office of the company or elsewhere, and the amount, if any, retained by the superintendent. It is his duty to forward to the office of the company a full report, under oath, of all discoveries of ores or mineral-bearing quartz made in said mine, whether by boring, drifting, sinking, or otherwise, together with the assay value thereof. All accounts, reports, and correspondence from the superintendent must be kept in some conspicuous place in the office of said company, open to the inspection of all stockholders.

## STOCKHOLDER'S RIGHT OF INSPECTION.

## SEC. 589. CIVIL CODE.

NOTE.—The act of April 23, 1880 (Laws 1880, 134, p. 135), amended section 2 of the act of March 30, 1874 (Laws 1873-74, p. 866). The act of March 16, 1901, revised the Civil Code by amending certain sections, repealing others, and adding certain new sections. The new section 589 (Laws 1901, 332, p. 379) is the same as section 2 of the amendatory act of April 23, 1880, and is as follows:

SEC. 589 (new). Any bona fide stockholder of a corporation formed under the laws of this State for the purpose of mining shall be entitled to visit, accompanied by his expert, and examine the mine or mines owned by such corporation, and every part thereof, at any time he may see fit to make such visit and examination; and when such stockholder shall make application to the president of such corporation he shall immediately cause the secretary thereof to issue and deliver to such applicant an order, under the seal of the corporation, directed to the superintendent, commanding him to show and exhibit such parts of said mine or mines, as the party named in said order may desire to visit and examine. It shall be the duty of the superintendent, on receiving such order, to furnish such stockholder every facility for making a full and complete inspection of said mine or mines, and of the workings therein; it shall be his duty also to accompany said stockholder either in person, or to furnish some person familiar with said mine or mines to accompany him in his visit to and through such mine or mines, and every part thereof. In case of the failure or refusal of the superintendent to obey such order, such stockholder shall be entitled to recover, in any court of competent jurisdiction, against said corporation, the sum of \$1,000 and traveling expenses to and from said mine, as liquidated damages, together with costs of suit. In case of such refusal, it shall be the duty of the directors of such corporation forthwith to remove the officer so refusing, and thereafter he shall not be employed directly or indirectly by such corporation, and no salary shall be paid to him.

LAWS 1880, P. 134. LAWS 1897, P. 38. LAWS 1901, P. 379. LAWS 1905, P. 584. SEC. 590 (NEW)  
CIVIL CODE.

NOTE.—Section 3 of the act of April 23, 1880 (Laws 1880, 134, p. 135), amended section 3 of the act of March 30, 1874 (Laws 1873-74, p. 866). Section 2 of the act of February 26, 1897 (Laws 1897, 38, p. 40), again amended section 3 of the act of March 30, 1874. The act of March 16, 1901 (Laws 1901, 332, p. 379), revised the Civil Code by amending certain sections, repealing others, and adding new sections. The changes made in the original section by the act of February 26, 1897, are given in parentheses, and the changes made by the new section 589 are given in brackets, and the original section with the amendments is as follows (The act of March 21, 1905 (Laws 1905, p. 584), makes no change in this section from the amendment of 1901.)

SEC. 590 (new). In case of the refusal or neglect of the president to cause to be issued by the secretary the order in the second section [589] of this act mentioned, such stockholder shall be [is] entitled to recover against said president the sum of \$1,000 and costs, as provided in the last section. In case of the failure of [If] the Directors [fail] to have the reports and accounts current made and posted as in the first section [588] of this act provided, they shall be [are] liable, either severally or jointly, to an action by any stockholder in any court of competent jurisdiction complaining thereof, and on proof of such refusal or failure, such complaining stockholder shall (he may) recover judgment for \$1,000 liquidated (actual) damages, (sustained by him) with costs of suit. (And each [Each] of such defaulting directors is also liable to removal for such neglect.)

## ANNOTATIONS.

## INSPECTION OF BOOKS—POSTING REPORTS.

1. CONSTITUTIONALITY AND PURPOSE OF STATUTE.
2. STOCKHOLDER'S RIGHT TO INSPECT.
3. STOCKHOLDER'S REQUEST FOR ORDER TO INSPECT.
4. CONSTRUCTION OF STATUTE—NATURE OF LIABILITY.
5. DUTY TO MAKE REPORTS—COMPLIANCE.
6. DUTY TO POST REPORTS—EXCUSE FOR FAILURE.
7. ENFORCING LIABILITY—RECOVERY—PLEADING.
8. DEFENSES—PLEADING.
9. AMENDATORY ACT.
10. REPEALING ACT—EFFECT AND APPLICATION.

## 1. CONSTITUTIONALITY AND PURPOSE OF STATUTE.

This act is not unconstitutional because it applies to mining corporations alone and not to all corporations.

Hewlett v. Epstein, 63 Cal. 184 (1883).

Miles v. Woodward, 115 Cal. 308, p. 312, 46 Pac. 1076 (1896).

The title of this act shows that it is for the better protection of stockholders in mining corporations formed under the laws of California and is directed to the internal affairs of the corporation and not to its outside dealings or to the conduct of its business; and the constitution was not designed to limit the powers of the legislature when dealing with the organization and government of corporations created by its own will and act, as over such corporations it has and may exercise full powers of control while over the organization and internal government of foreign corporations it has no such power. The law is designed to protect stockholders of domestic mining corporations and to that end has declared that the directors of such corporations shall do specific acts under the prescribed penalty for their failure and refusal. The act is not unconstitutional because it does not apply to foreign corporations.

Miles v. Woodward, 115 Cal. 308, p. 311, 46 Pac. 1076 (1896).

Anderson v. Byrnes, 122 Cal. 272, p. 274, 54 Pac. 821 (1898).

This act is not unconstitutional on the ground that it applies only to mining corporations which produce bullion, or corporations organized for the purpose of gold or silvemining, and does not apply to domestic corporations engaged in the mining of copper, lead, quicksilver, or of gold obtained by drift or hydraulic mining. The act requires many things to be done which may be performed by, and the doing of which is properly imposed upon, all mining corporations; and the fact that some things to be done relate only to mining corporations extracting the precious metals from ore does not cause the law to lose its general characteristics or fail of uniformity of operation because it requires all corporations to report all the ores mined by them, so long as it requires all of those which mine precious ores to make such reports.

Miles v. Woodward, 115 Cal. 308, p. 312, 46 Pac. 1076 (1896).

Ball v. Tolman, 119 Cal. 358, p. 361, 51 Pac. 546 (1897).

This act is not only penal in its nature but is also remedial and of much consequence to stockholders, and it must receive a construction with reference to its munificent objects as well as to its penal character.

Ball v. Tolman, 119 Cal. 358, p. 363, 51 Pac. 546 (1897).

Eyre v. Harmon, 92 Cal. 580, 28 Pac. 779 (1891).

Shanklin v. Gray, 111 Cal. 88, 44 Pac. 237 (1896).

Anderson v. Byrnes, 122 Cal. 272, p. 273, 54 Pac. 821 (1898).

Ball v. Tolman, 135 Cal. 375, p. 378, 67 Pac. 339 (1902).

While efforts have been made to emasculate the effects of this act by construction, and its constitutionality and reasonableness have been assailed, and while it may have been used as an engine of malice and revenge, still its objects are wise and praiseworthy and tend to the protection of stockholders of mining corporations.

Ball v. Tolman, 119 Cal. 358, p. 363, 51 Pac. 546 (1897).  
See Anderson v. Byrnes, 122 Cal. 272, p. 274, 54 Pac. 821 (1898).

The purpose of section 588 of the Civil Code of California in giving a stockholder the right to examine the property of the mining company is to arrive at the value of the property in which the stockholder is interested, and that value is composed of two elements: Economical and uneconomical working of the mine, and the extent and richness of the ore body; and the statute expressly gives the right to take samples, as no valuation could be placed upon ore bodies in the absence of some test or assay.

Symes v. Sierra Nevada Min. Co., ——— Cal. ———, 152 Pac. 710, p. 711 (1916).

Under section 5897 of the Civil Code of California, construed in connection with section 588, a stockholder of a mining corporation is entitled to recover the statutory penalty for the refusal of the officers of the mining company to permit him to take samples of the ore bodies for the purpose of testing and assaying, though they did permit him with an expert to inspect and examine the mine.

Symes v. Sierra Nevada Min. Co., ——— Cal. ———, 152 Pac. 710, p. 711 (1916).

This act amends the act of March 30, 1874, and its purpose is for the better protection of stockholders and corporations formed under the laws of the State for the purpose of carrying on and conducting the business of mining. Its purpose and effect are entirely different from that of the act of the same date entitled "An act for the further protection of stockholders in mining corporations." This act lays down explicit directions for the keeping of books, making of balance sheets, the duties of the superintendent, and the examination of grounds and imposes certain penalties. The principal feature of the other act is that it makes void any sale or conveyance or mortgage of the property of a mining corporation unless authorized or ratified by a majority of the stockholders. The State has full power to regulate the form of instruments creating a lien, but it has no power to dictate in what manner corporeal action shall be evidenced or to interfere with the internal management of a foreign corporation in any manner.

Williams v. Gold Hill Min. Co., 96 Fed. 454, p. 459.

## 2. STOCKHOLDER'S RIGHT TO INSPECT.

A stockholder in a mining corporation is entitled to examine the mining property, and this presumably includes the right to be accompanied by an expert.

Hobbs v. Tom Reed Gold Min. Co., 164 Cal. 497, 129 Pac. 781; 43 L. R. A. (N. S.) 1112 (1913).

Hobbs v. Davis, 168 Cal. 556, p. 561; 143 Pac. 733 (1914).

While this section may not apply to an Arizona mining corporation having its principal place of business in the State of California, and having mines only in Arizona, yet under the law of Arizona, as it may be presumed to be in the absence of any showing, it has the same right to exist and the same duties rest upon a mining corporation as under this section of the code; but if Arizona has no such law and this section should be inapplicable, substantially the same duty on the part of a mining corporation and the same right of the stockholder to examine the books and property of the corporation exist under the common law, if the inspection is desired for a legitimate purpose and good cause is shown.

Hobbs v. Tom Reed Gold Min. Co., 164 Cal. 497, p. 502, 129 Pac. 781 (1913).

## 3. STOCKHOLDER'S REQUEST FOR ORDER TO INSPECT.

A demand by a stockholder on the president of a mining corporation for an order on the secretary requiring him to issue the necessary permit and order on "those in charge of the mining property, authorizing him to visit and examine the mines and mining property" is sufficient without the use of the word "superintendent" as used in the statute. To hold otherwise would provide a complete evasion of the statute by substituting some such title as "manager" or "foreman" for that of "superintendent" and thereby prevent stockholders from obtaining the required order.

*Kinard v. Ward*, 21 Cal. App. 85, p. 86, 130 Pac. 1196 (1913).

There is nothing in the statute requiring the application on the part of a stockholder for an order to the president of a mining corporation or an order from the president to the secretary, to be in writing, or that either shall measure up to any fixed standard of sufficiency. When a stockholder of a mining corporation "applies to the president of such corporation" and expresses his desire to examine the mine or mining property the mere fact that the stockholder requests the president to embody in the order matters beyond those contemplated by the statute will not justify a refusal.

*Kinard v. Ward*, 21 Cal. App. 85, p. 87, 130 Pac. 1196 (1913).

## 4. CONSTRUCTION OF STATUTE—NATURE OF LIABILITY.

This act is not in its nature penal and does not specifically declare that for each failure to comply with its requirements a penalty may be recovered; nor does it declare that each refusal or neglect of that kind shall render the directors liable for a penalty.

*Loveland v. Garner*, 71 Cal. 541, p. 543, 12 Pac. 616 (1887).

*Anderson v. Byrnes*, 122 Cal. 272, p. 274, 54 Pac. 821 (1898).

See *Gregory v. German Bank, etc.*, 3 Colo. 332, 25 Am. St. 760.

This act is penal in its character and the amount of recovery as provided is in all essentials a penalty, and as no person has a vested right in an unenforced penalty the repealing act of 1897 (p. 39) deprives a stockholder of his remedy prescribed in the original act when unenforced at the time of the adoption of the amendatory act, and remits him to the recovery prescribed in the amendatory act.

*Anderson v. Byrnes*, 122 Cal. 272, p. 274, 54 Pac. 821 (1898).

*Johnson v. Tautphaus*, 127 Cal. 605, p. 606, 60 Pac. 172 (1900).

*Ball v. Tolman*, 135 Cal. 375, p. 378, 67 Pac. 339 (1902).

Under this act a stockholder owning a single share of stock may sue and recover the same amount as a stockholder holding a thousand shares of stock. It is thus apparent that compensation for the actual damage done to the stockholder was not intended to be given by the act. Conditions might arise where a dereliction of the required duty upon the part of directors in posting reports would be pecuniarily beneficial to a stockholder, but such benefits would not bar a right of recovery and could not constitute a defense to an action by a stockholder, based upon a violation of the statute. These facts show that the act is as much penal in character as if it had provided that the directors should be guilty of a misdemeanor and punished accordingly for a violation of its provisions.

*Anderson v. Byrnes*, 122 Cal. 272, p. 276, 54 Pac. 821 (1898).

*Distinguishing Ball v. Tolman*, 119 Cal. 358, 51 Pac. 546 (1897).

A company organized "for the purpose of securing and working placer mines, to deal in mines and mining claims, the erection of plants for the working of the same, and to do any other business connected therewith as the board of directors shall deem necessary," and that did in fact operate a dredging boat in the Sacramento River for three months by which the mud and sand from the bed of the river was elevated by an endless chain and buckets and discharged in screens on the boat and the gold supposed to be



in the débris collected and saved by an amalgamator and concentrator, is a mining corporation within the meaning of this statute, the directors of which are liable for failure to post the report or account as required, and the requirements of the statute can not be evaded by proof that the corporation was wrongfully searching for gold in a navigable stream.

Ball v. Tolman, 119 Cal. 358, p. 359, 51 Pac. 546 (1897).

See Johnson v. California Lustral Co., 127 Cal. 283, p. 287, 59 Cal. 595 (1899).

#### 5. DUTY TO MAKE REPORTS—COMPLIANCE.

This act does not impose the duty specified upon the directors of corporations actually carrying on or conducting the business of mining; but it imposes the specific duties upon the directors of corporations formed for the purpose of carrying on and conducting the business of mining, and directors in such a corporation are liable if they fail to comply with the act.

Francias v. Somps, 92 Cal. 503, p. 505, 28 Pac. 592 (1891).

See Overton v. Noyes, — Cal. —, 171 Pac. 1110.

The only reports directed by section 1 of the act are weekly reports of the superintendent showing the work done in the mine, the amount of ore extracted, from what part of the mine taken, the amount and assay value of the ores sent to mill for reduction, the amount of bullion received and shipped, and the amount if any retained; and this section also requires reports in relation to discoveries of ore to be made on the occasion of any such discovery. It is evident that the duties and penalties imposed by section 3 include the reports of the superintendent and that section 3 does not refer alone to reports which are to be made and posted, as the purpose of the statute is to give the stockholders a right to be informed as to the manner in which the business is being conducted, the receipts and disbursements, the number of men employed, the wages paid each, the value of bullion shipped, as well as ore or bullion remaining with the superintendent, and also whether any discoveries of ore have been made in the prosecution of the work, as this would affect the value of the mine in which they own an interest; and it is undoubtedly the intention of the statute that all these accounts and reports shall be made as directed.

Eyre v. Harmon, 92 Cal. 580, p. 585, 28 Pac. 779 (1891).

See Shanklin v. Gray, 111 Cal. 88, p. 91, 43 Pac. 399 (1896).

The natural and obvious meaning of the language of this section is that for a failure upon the part of the directors to have such reports made and accounts posted as provided for in section 1 of the act, they shall be liable to the penalty named; and any other construction is forced and unnatural.

Eyre v. Harmon, 92 Cal. 580, p. 582, 28 Pac. 779 (1891).

See Shanklin v. Gray, 111 Cal. 88, p. 92, 43 Pac. 399 (1896).

Where the directors properly post a paper which is in fact a balance sheet according to the understanding of merchants and bookkeepers, this is a sufficient compliance with the law, as the statute contemplates the posting of either a balance sheet or an itemized account and the directors are not required to post both, but it is sufficient that either is posted according to the statute.

Eyre v. Harmon, 92 Cal. 580, p. 582, 28 Pac. 779 (1891).

See Shanklin v. Gray, 111 Cal. 88, p. 89, 43 Pac. 399 (1896).

The statute is as mandatory in regard to time as in other respects, and the first Monday of the month is the day specified for the making and posting of the required statement, and if not made and posted on that day penalty attaches; and the fact that the statement was made and posted at a later date and before the commencement of an action to recover the penalty is not a defense to an action to recover the statutory penalty.

Schenck v. Bandmann, 81 Cal. 231, p. 235, 22 Pac. 654 (1889).

The directors of a mining corporation who hold over must perform the duties enjoined by law with the same fidelity as regularly elected officers and they are subject to the same statutory liability for any failure of duty occurring during the term for which they may be holding over.

*Kinard v. Ward*, 21 Cal. App. 92, p. 95, 130 Pac. 1194 (1913).

#### 6. DUTY TO POST REPORTS—EXCUSE FOR FAILURE.

In an action for a violation of the provisions of this act it is not a sufficient defense for directors to say that they lacked the information necessary to enable them to make and post the account in time, as this is an admission of a neglect or disregard of duty.

*Schenck v. Bandmann*, 81 Cal. 231, p. 234, 22 Pac. 654 (1889).

In order to justify a recovery in an action against directors for failure to make the reports and post balance sheets or accounts, it must appear that there has been an intentional disregard of the law, a willful neglect to comply with its requirements; and directors are only liable for a willful and intentional failure to have the superintendent perform his duty. The statute only requires good faith and common honesty in the management of the corporate property and enforces from the directors a proper regard for the rights of those for whom they are trustees, so far at least as giving information of the working and development of the mine, and of all receipts and expenditures and discoveries attending the same.

*Eyre v. Harmon*, 92 Cal. 580, p. 588, 28 Pac. 779 (1891).

*Miles v. Woodward*, 115 Cal. 308, p. 314, 46 Pac. 1076 (1896).

Where there was an entire failure on the part of a board of directors to comply with the law, the mere ignorance of the law constitutes no exculpation.

*Ball v. Tolman*, 119 Cal. 358, p. 363, 51 Pac. 546 (1897).

See *Ball v. Tolman*, 135 Cal. 375, p. 377, 67 Pac. 339 (1902).

In an action to recover a penalty under this statute, there may be possible circumstances where directors of a corporation failing to comply should be excused from liability; but if so, the facts must be within the knowledge of the directors when sued, and this should be set forth and proved, for where a failure to comply is shown, the circumstances of exculpation are matters of defense.

*Schenck v. Bandmann*, 81 Cal. 231, p. 234, 22 Pac. 654 (1889).

*Miles v. Woodward*, 115 Cal. 308, p. 315, 46 Pac. 1076 (1896).

*Ball v. Tolman*, 119 Cal. 358, p. 362, 51 Pac. 546 (1897).

Modifying *Eyre v. Harmon*, 92 Cal. 580, 28 Pac. 779 (1891).

It is sufficient to render directors liable under this statute where it is shown that one of the stockholders, a director, was elected superintendent, and did superintend and manage the business of taking out ores from the company's mines and working them in its mill, and that the directors failed to account as required by the statute; and the directors can not defend on the ground that such stockholder received and disbursed the money, and operated the mine on his own account, under an alleged title acquired at a sheriff's sale.

*Beal v. Osborne*, 72 Cal. 305, 13 Pac. 871 (1887).

See *Loveland v. Garner*, 74 Cal. 298, p. 300, 15 Pac. 844 (1887).

The fact that no penalty is imposed by the first section upon the superintendent of a mine for failing to make a report as required by that section, does not excuse the directors from the liability imposed by the statute for failure to have the reports made. The reason of this is that the directors are the governing body of the corporation, with power to employ the superintendent, prescribe his duties, and dismiss him for failure to perform such duties, and for this reason the act, in its penal clause, addresses itself to the governing and controlling body of the corporation, and makes the directors liable for a failure to have the reports made as provided by section 1.

*Eyre v. Harmon*, 92 Cal. 580, p. 588, 26 Pac. 779 (1891).

The statute imposes upon the directors the duty of requiring the superintendent to make his reports under oath, and an omission of that duty is necessarily willful and intentional, at least where it appears that the directors considered the matter and concluded it was unnecessary. The mere inconvenience imposed upon a superintendent of going a distance of 5 miles to verify his reports is not a sufficient excuse to justify the omission; and the performance of his ordinary duties at the mine can not excuse the performance of a duty imposed by the statute. And the fact that the directors were advised by an attorney, who was a member of the board, that verification of the superintendent's reports was not necessary will not relieve the directors from liability, as the statute is not ambiguous or its construction doubtful.

*Shanklin v. Gray*, 111 Cal. 88, p. 94, 44 Pac. 237 (1896).

#### 7. ENFORCING LIABILITY—RECOVERY—PLEADING.

In an action by a stockholder against directors for failing to post the required accounts or reports, the complaint should aver that the mining company of which the defendants are directors had an office or place of business where an itemized account of the affairs of the company should have been posted, and that the directors did, in fact, receive money and incur liability.

*Hewlett v. Epstein*, 63 Cal. 184 (1883).

In an action against a board of directors for failure to make and post the required report or account, it is sufficient to aver that the directors did entirely fail, refuse, and neglect to make or cause to be made and posted the report, and upon proof of their failure or refusal, a prima facie case against the directors is established; and it is not incumbent upon the plaintiff, under the statute, to show that the failure was willful, but it is a matter of defense for the directors to prove that the failure was not willful.

*Miles v. Woodward*, 115 Cal. 308, p. 314, 46 Pac. 1076 (1896).

Under this section, stockholders may, at their election, either proceed against the directors for a single delinquency, or they may wait until more than one dereliction of duty on the part of the directors has occurred, and proceed under the statute; but in neither event can more than one penalty be recovered; and a stockholder is entitled to recover where he alleges and proves the directors of a mining corporation to have been guilty of failure on the first Monday of any one month to have the reports and accounts current made and posted, as provided in the first section of the act.

*Loveland v. Garner*, 71 Cal. 541, p. 543, 12 Pac. 616 (1887).

*Loveland v. Garner*, 74 Cal. 298, p. 300, 15 Pac. 844 (1887).

*Schenck v. Bandmann*, 81 Cal. 231, p. 236, 22 Pac. 654 (1889).

*Schofield v. Doray*, 89 Cal. 55, p. 57, 26 Pac. 606 (1891).

*Shanklin v. Gray*, 111 Cal. 88, p. 96, 43 Pac. 399 (1896).

*Francias v. Soms*, 92 Cal. 503, p. 505, 28 Pac. 592 (1891).

A recovery for past delinquencies is not a bar for an action for a delinquency occurring afterwards.

*Schofield v. Doray*, 89 Cal. 55, 26 Pac. 898 (1891).

*Shanklin v. Gray*, 111 Cal. 88, p. 96, 44 Pac. 237 (1896).

Where the right is given by a statute to a stockholder of a mining corporation to examine its books or property, it is absolute and may be enforced by mandamus, regardless of the purposes or motives of the stockholder or the existence of good cause, unless the statute imposes restrictions or limitations on the right.

*Hobbs v. Tom Reed Gold Min. Co.*, 164 Cal. 497, p. 502, 129 Pac. 781 (1913).

See *Johnson v. Langdon*, 135 Cal. 626, 57 Pac. 1050, 87 Am. St. 156 (1901).

In case of a mining corporation having its place of business in this State but owning and operating mines in another State, a court of this State can not send its officers

into the other State to induct a complaining stockholder into the mine of the corporation; but a court of this State can compel the issuance by such mining corporation in this State of an order for the inspection of its mine in another State by a complaining stockholder, under such restrictions as may seem proper, and the court can see that there is no trifling with the court in the manner of performing such act, and in such a case the court will not refuse any relief because it can not give the full relief that a complaining stockholder asks, or because it can not act directly on the premises to which the relief relates.

*Hobbs v. Tom Reed Gold Min. Co.*, 164 Cal. 497, p. 503, 129 Pac. 781 (1913).

In an action by a stockholder against the president of a mining corporation to recover the statutory penalty on the ground of a refusal and neglect of the president to cause to be issued to him an order entitling him to inspect the mine or mines of the corporation, the complaint need not allege any actual damages as resulting to the stockholder from such refusal.

*Kinard v. Ward*, 21 Cal. App. 85, p. 86, 130 Pac. 1196 (1913).

In an action by a stockholder of a mining corporation against directors for failure to post the monthly balance sheets, a complaint is sufficient which avers the fact that the defendants are directors of the mining corporation and that as such they failed and refused to cause to be posted an itemized account and balance sheet, and asks as the only relief for the removal of the defendants from office as directors of the company; and the complaint need not allege that the plaintiff suffered any actual damages by the failure and refusal of the directors to make and post the current accounts as required by law.

*Kinard v. Ward*, 21 Cal. App. 92, p. 93, 130 Pac. 1194 (1913).

#### 8. DEFENSES—PLEADING.

An action to enforce a penalty under this act for failure of the directors of a mining corporation to make and post a monthly report is not to be defeated by a mere allegation in an answer that the mining corporation has no office, where it is averred in the complaint that the mining corporation has its office for the transaction of business in a certain named town, as a corporation should have an office for the transaction of the business of the corporation.

*Chapman v. Doray*, 89 Cal. 52, 26 Pac. 605 (1891).

*Schofield v. Doray*, 89 Cal. 55, 26 Pac. 898 (1891).

In an action by a stockholder to recover the penalty provided for by this act, the defaulting directors can not defeat the action on the ground that the itemized accounts or balance sheets and reports would have shown nothing of value to the stockholders or would be of no interest to the stockholders, as no such exceptions are made in the statute.

*Francias v. Somps*, 92 Cal. 503, p. 506, 28 Pac. 592 (1891).

In an action by a stockholder against directors of a mining corporation for failure to post the reports and accounts current as required by the statute, the defendants, directors who are holding over, can not defend on the ground that the default complained of occurred during the year for which they were first elected as directors of the mining corporation, and not within the year or term for which they were holding over.

*Kinard v. Ward*, 21 Cal. App. 92, p. 94, 130 Pac. 1194 (1913).

#### 9. AMENDATORY ACT.

Prior to the amendment made by the act of February 26, 1897, the act provided a penalty of \$1,000 against directors failing to comply with its demands; but by the amendment a judgment can only be rendered against directors for the actual damages

sustained and the amendment brings foreign mining corporations within the provisions of the act and certain domestic mining corporations are relieved from its provisions while no possible substantial reason can be assigned why the change in the kind of corporations affected by the act furnished the motive in the mind of the legislature which resulted in the penalty clause being stricken out and the actual damage clause inserted, yet there is no such relationship or dependency existing between these two sections as amended which demands that, if the first must fall by reason of its unconstitutionality, then the second must likewise fall with it, and accordingly, the second amendment may stand though the first may be invalid.

*Johnson v. Tautphaus*, 127 Cal. 605, p. 606, 60 Pac. 172 (1900).

This amendatory act can not be declared unconstitutional as a whole because it attempts to deal with foreign corporations when the title only purports to cover corporations formed under the laws of the State of California. Rather than render the whole amendatory act void the result would simply be that foreign corporations would not come within the purview of the act, and the other provision would be valid and apply to domestic corporations.

*Johnson v. Tautphaus*, 127 Cal. 605, p. 606, 60 Pac. 172 (1900).

The act of February 26, 1897 (Acts 1897, p. 38), is an amendment of the act of 1880 (p. 134), and the purpose of the amendment was to confine the operation of the original act to corporations whose stock is listed and offered for sale at public exchange and in certain cases to limit recovery to the damage actually sustained; but the amendment can not be pleaded in advance of the delinquency that was created prior to its enactment.

*Ball v. Tolman*, 119 Cal. 358, p. 364, 51 Pac. 546 (1897).

See *Anderson v. Byrnes*, 122 Cal. 272, p. 276, 54 Pac. 821 (1898).

*Ball v. Tolman*, 135 Cal. 375, p. 377, 67 Pac. 339 (1902).

Section 3 of the amendatory act changing the remedy of a stockholder for the failure of directors of a mining corporation to post the report or account as required by the original act, is an entirely separate and independent provision from the other sections of the amendatory act and is valid and constitutional, though the other sections for obvious reasons might be unconstitutional.

*Johnson v. Tautphaus*, 127 Cal. 605, p. 606, 60 Pac. 172 (1900).

After the judgment confirming the original case of *Ball v. Tolman* (119 Cal. 358; 51 Pac. 546), and the return of the case to the trial court, the defendant made an application to the trial court for an order perpetually staying all proceedings on the judgment on the ground that the amendatory act of 1897 (p. 139), repealed the penalty, and changed the remedy, and left the plaintiff without power to enforce the judgment. On an appeal from an order refusing the application the order was reversed and the judgment held void and unenforceable because of the effect of the amendatory act in repealing the penalty and changing the remedy and the defendants were entitled to an order vacating the judgment and the sheriff's sale made thereunder.

*Ball v. Tolman*, 135 Cal. 375, p. 377; 67 Pac. 339; 87 Am. St. 110 (1902).

#### 10. REPEALING ACT—EFFECT AND APPLICATION.

A case in which a stockholder recovered the penalty prescribed by this act against directors of a mining corporation for failure to post the required report or statement and which was pending on appeal at the time of the enactment of the amendatory statute of 1897 (p. 39), must be reversed, for the reason that at the time of the enactment of the amendment the judgment, which was in its nature a penalty, was unenforced, and the amendatory act repealed the existing remedy and limited the stockholder to a recovery for actual damages sustained.

*Anderson v. Byrnes*, 122 Cal. 272, p. 273, 54 Pac. 821 (1898).

*Ball v. Tolman*, 135 Cal. 375, p. 377; 67 Pac. 339 (1902).

Section 3 of the act of 1880 (p. 134), as amended, entirely changes the remedy of the stockholders and therefore necessarily deprives a suing stockholder of the remedy afforded him under the old act and which he seeks to enforce; and the amendment to the act relating to the remedy of the stockholder is valid and constitutional legislation, even if it is conceded that the prior amendment pertaining to the character of mining corporations affected by the act is invalid and unconstitutional. Accordingly, the repeal and change of remedy deprives a stockholder of the recovery provided for in the original act and limits the liability of directors for failing to post the required report to the actual damages sustained by the suing stockholder.

*Anderson v. Byrnes*, 122 Cal. 272, p. 276; 54 Pac. 821 (1898).

Where an appeal was taken from a judgment against the directors of a mining corporation for failure to post a report as required by the statute, and an appeal was pending at the time of the enactment of this amendatory statute, the supreme court had no power thereafter to affirm the judgment, and its act was void, and all proceedings subsequently had in its enforcement were without authority.

*Ball v. Tolman*, 135 Cal. 375, p. 380; 67 Pac. 339; 87 Am. St. 110 (1902).

The amendment of the original act limiting the recovery for failure of the directors of a mining corporation to post the report or account as required, to the actual damages of the complaining stockholder, can not be held to be unconstitutional though the separate and independent amendment might be unconstitutional because it does not include all domestic mining corporations and because the classification of corporations made by the amendment is arbitrary and not based upon any well-defined natural and intrinsic distinction; or for the reason that it attempts to deal with foreign corporations when the title of the act only purports to cover corporations formed under the laws of California.

*Johnson v. Tautphaus*, 127 Cal. 605, p. 606; 60 Pac. 172 (1900).

### CHANGE OF PLACE OF BUSINESS.

**LAWS 1863-64, P. 76; FEB. 15, 1864. (GENERAL LAWS 1850-1864, SEC. 982-985)**

AN ACT to authorize mining companies or corporations to change their principal place of business.

The People, etc.

SEC. 1. Any mining company or corporation lawfully organized and incorporated for mining purposes within the State of California, may change its office or principal place of business by first obtaining the consent, in writing, of the stockholders representing two-thirds of all the capital stock of the company: *Provided*, That notice of such intended change, after such consent shall have been obtained, shall be inserted for 30 days in some newspaper published at or nearest the principal place of business of said mining company or corporation, designating the county or city and county to which it is intended to remove, before such removal shall be deemed lawful.

NOTE.—Sections 982-985, General Laws 1850-1864, same as sections 1-5.

SEC. 2. Any mining company or corporation availing itself of the privileges of this act, upon filing in the office of the county clerk of the county or city and county to which a removal is intended to be made a certified copy of its articles of incorporation, together with a certificate of the trustees of the company or corporation, under the seal thereof, that the requirements of section one of this act have been fulfilled, shall, from the time of such filing, be vested with all the powers in its new place of business which it might or could have exercised if originally incorporated in the county to which its office or principal place of business shall be removed.

SEC. 3. This act shall not be construed as to authorize any mining company or corporation to remove its office or principal place of business out of the State.

SEC. 4. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

SEC. 5. This act shall take effect and be in force from and after its passage.

LAWS 1863-64, P. 109; FEB. 27, 1864. (GENERAL LAWS 1850-1864, SEC. 986-988.)

AN ACT to authorize the removal of the office and principal place of business of mining and other corporations from the town of Aurora, in the Territory of Nevada, to the City of San Francisco, or other places in the State of California.

The People, etc.

SEC. 1. It is hereby declared lawful for any corporation heretofore organized under the laws of this State, whose principal place of business is in the town of Aurora, Territory of Nevada, and such corporation is hereby authorized and empowered to remove its office and principal place of business to the city of San Francisco, or to any other city or town in the State of California, as such corporation may select, by a resolution of the board of trustees thereof, adopted in accordance with its by-laws.

NOTE.—Sections 986-988, General Laws 1850-1864, are the same as sections 1-4

SEC. 2. Every such corporation desiring to make such removal shall file in the office of the clerk of the city and county of San Francisco, or of the city and county of Sacramento, or of such county in this State wherein is situated the city or town to which such corporation desires to remove, a certified copy of such resolution, under their corporate seal, together with a certified copy of the original certificate of incorporation now on file in the office of the secretary of state, and shall also deliver a certified copy of such resolution to the county clerk of Esmeralda County, Nevada Territory, and shall cause the same to be published for four successive weeks in some newspaper in the said town of Aurora; and from the time of the filing of said instruments in the clerk's office of the proper county in this State the office and principal place of business of such corporation shall be deemed removed to and established at such city or town in this State as may be declared in such resolution.

SEC. 3. The resolution heretofore passed by the board of trustees of any corporation whose office and principal place of business has heretofore been in the town of Aurora, removing such office and place of business to any city or town in the State of California, is hereby legalized and declared valid and effectual; and from the time of the passage of such resolution all acts and proceedings of the trustees of such corporation, had or done in such city or town in this State, are hereby declared and made valid and effectual, in law and equity, as fully to all intents and purposes as though such city or town had been originally designated in the certificate of incorporation of such corporation as the principal place of business thereof: Provided, That such corporation shall, within 60 days from the passage of this act, file in the office of the county clerk of the county wherein such city or town is situated, a certified copy of such resolution, attested by their corporate seal, together with a certified copy of the certificate of incorporation of said corporation now on file in the office of the secretary of state.

SEC. 4. This act shall take effect from and after its passage.

#### CODE SECTIONS.

SEC. 584. (Civil Code.) Every mining corporation may change its principal place of business from one county or city to another within this State. Before such removal is made the consent in writing of the holders of two-thirds of the capital stock must be obtained and filed in the office of the corporation. When such consent is obtained, notice of the intended removal must be published for 30 days in some newspaper published at the principal place of business of the corporation, giving the name of the county or city where it is then situated and that to which it is intended to remove it.

SEC. 585. (Civil Code.) When the publication provided for in the preceding section has been completed the directors of the corporation must file in the offices of the clerks of the counties from and to which such change has been made and in the office of the secretary of state certified copies of the written consent of the stockholders to such change and of the notice of such change, and proof of publication; also a certificate that the proposed removal has taken place; and thereafter the principal place of business of the corporation is at the place to which it is removed.

**REMOVAL OF OFFICERS—VOTE OF STOCKHOLDERS.**

LAWS 1871-72, P. 443; MAR. 21, 1872.

AN ACT supplemental to an act entitled "An act concerning corporations," passed April 22, 1850.

The People, etc.

SEC. 1. On petition of the majority of the shareholders of any corporation, formed for the purpose of mining, to the county judge of the county where said corporation has its principal place of business, verified by the signers, to the effect that they are severally the holders on the books of the company of the number of shares set opposite their signatures to the foregoing petition, the county judge shall issue his notice to the shareholders of said company that a meeting of the shareholders will be held, stating the time, not less than 5 nor more than 10 days after the first publication of such notice, and the place of meeting within said county, and the object to be to take into consideration the removal of officers of said company; which notice, signed by the said county judge, shall be published daily in one or more daily newspapers published in said county for at least 5 days before the time for the meeting.

SEC. 2. At the time and place appointed by said notice those claiming to be shareholders who shall assemble shall proceed to organize by the appointment of a chairman and secretary, and thereupon those claiming to be shareholders shall present proof thereof, and only those showing a right to vote shall take part in the further proceedings. If it appears that at the time appointed, or within one hour thereafter, shareholders of less than one-half the shares are present, no further proceedings shall be had, but the meeting shall be ipso facto dissolved: Provided, however, That by a vote of the holders of two-thirds of the capital stock of the corporations aforesaid the board of trustees may be required to furnish to the meeting a written detailed statement and account of the affairs, business, and property of the corporation; but if the holders of more than two-thirds of the shares are present they shall proceed to vote, the secretary calling the roll and the members voting yea or no, as the case may be. The secretary shall enter the same upon his list, and when he has added up the list and stated the result, he shall sign the same and hand it to the chairman, who shall also sign the same and declare the result.

SEC. 3. If the result of the vote is that the holders of a majority of all the shares of the company are in favor of the removal of one or more of the officers of the company, the meeting shall then proceed to ballot for officers to supply the vacancies thus created. Tellers shall be appointed by the chairman, who shall collect the ballots and deliver them to the secretary, who shall count the same in open session, and having stated the result of the count in writing, shall sign the same and hand it to the chairman, who shall announce the result to the meeting.

SEC. 4. A report of the proceedings of the meeting shall be made in writing, signed by the chairman and secretary and verified by them, and delivered to the county judge, who shall thereupon issue to each person chosen a certificate of his election and shall also issue an order requiring that all books, papers, and all property and effects be immediately delivered to the officers elect, and the petition and report, indorsed with the date and fact of the issuance of such certificate and order, shall be delivered to the county clerk to be by him filed in his office and thereafter the persons thus elected officers shall be the duly elected officers and hold office until the next regular annual meeting, unless removed under the provisions hereof.

SEC. 5. For all services in these proceedings the county clerk shall receive \$10 on the issuance of the notice and \$10 on the issuance of the certificates.

SEC. 6. All acts or parts of acts conflicting with this act are hereby repealed.

SEC. 7. This act shall take effect immediately.



**CONSOLIDATION OF CORPORATIONS.**

**AMENDMENTS TO CODES 1875-76, P. 75; MAR. 20, 1876. SEC. 361, CIVIL CODE (NEW). LAWS 1901, 332, P. 377; MAR. 16, 1901. SEC. 587a, CIVIL CODE (NEW); MAR. 21, 1905.**

AN ACT to add another section to the Civil Code.

The People, etc.

NOTE.—The new section 587a is codified in the act of March 31, 1905, Laws 1905, p. 585.

SEC. 1. An additional section is added to the Civil Code, to be known as section 361 (587a) and to read as follows:

(361) Sec. 587a. It shall be lawful for two or more corporations formed, or that may hereafter be formed, under the laws of this State for mining purposes, which own or possess mining claims or lands adjoining each other, or lying in the same vicinity, to consolidate their capital stock, debts, property, assets, and franchises, in such manner and upon such terms as may be agreed upon by the respective boards of directors or trustees of such companies so desiring to consolidate their interests; but no such consolidation shall (must) take place without the written consent of the stockholders representing two-thirds of the capital stock of each company; and no such consolidation shall, (can) in any way, relieve such companies, or the stockholders thereof, from any and all just liabilities; and in case of such consolidation, due notice of the same (shall) must be given by advertising for one month, in at least one newspaper in the county (and State) where the said mining property is situated, if there be one published therein, and also in one newspaper published in the county, or city and county, where the principal place of business of any of said companies shall be. And when the said consolidation is completed, a certificate thereof, containing the manner and terms of said consolidation, shall be filed in the office of the county clerk of the county in which the original certificate of incorporation of any of said companies shall be filed, and a copy thereof shall be filed in the office of the secretary of state. Such certificate (shall) must be signed by a majority of each board of trustees or directors of the original companies; and it shall be their duty to call, within 30 days after the filing of such certificate, (and after at least 10 days' public notice,) a meeting of the stockholders of all of said companies so consolidated, to elect a board of trustees or directors for the consolidated company for the year thence next ensuing, [and to cause notice of the time and place fixed for such meeting to be mailed to each stockholder of each of such corporations at his last known place of residence or business at least 10 days before the time fixed for such meeting.] The said certificate shall also contain all the requirements prescribed by section 290 of said Civil Code.

NOTE.—By an act of March 16, 1901 (Laws 1901, 332, p. 377), section 587a was added to the Civil Code. This new section is the same in substance as section 361, a section added by the act of March 20, 1876 (Amendments to Codes 1875-76, p. 75), except omissions in parentheses and added sentence in brackets.

SEC. 2. This act shall apply to all corporations formed under the laws of this State, whether formed under the said Civil Code, or prior thereto.

SEC. 3. This act shall take effect from and after its passage.

**CORPORATIONS FOR FUNDS AND SAVINGS.**

**LAWS 1869-70, P. 523; MAR. 31, 1870. (GENERAL LAWS 1864-1871, SEC. 7726-7728.)**

AN ACT to provide for the formation of corporations for the accumulation of funds and savings, and the direct promotion of manufacturing and mechanic arts, agriculture and mining.

The People, etc.

SEC. 1. Corporations for the purpose of aggregating the funds and savings of the members thereof and others, and preserving and investing the same for their common benefit, so as to directly promote the establishment and increase of manufacturing and mechanical industry, mining, and agriculture in the State of California, may be formed according to the provisions of this act; and such corporations, and the members and stockholders thereof, shall be subject to all the conditions and liabilities herein imposed, and none other.

SEC. 2. No corporation formed under this act shall loan any money without adequate security on real or personal property, except when any such corporation shall, by a by-law to that effect, adopted by a two-thirds vote of all the stock of the company subscribed and taken, authorize the making of loans to persons of reputed solvency and good character and of suitable business capacity, or to cooperative associations or corporations, for the purpose of aiding the establishment or development of mechanical, agricultural, mining, and manufacturing enterprises in the State of California, when so ordered by a vote of not less than three-fourths of all the directors thereof. \* \* \*

SEC. 3. Such corporations may be formed for the purpose of aiding the establishment or development of any one class of mining, agricultural, mechanical or manufacturing enterprise, or all enterprises of that character generally, which object or objects shall be distinctly specified in the articles of incorporation thereof. \* \* \*  
\* \* \* \* \*

NOTE.—Sections 7726-7728, General Laws 1864-1871, are the same as above.

**BOARD OF BANK COMMISSIONERS.**

**LAWS 1877-78, P. 740; MAR. 30, 1878.**

AN ACT creating a board of bank commissioners and prescribing their duties and powers.

The People, etc.

\* \* \* \* \*

SEC. 8. \* \* \* And it shall be unlawful for any savings and loan society, or savings bank, to purchase, invest, or loan its capital, or the money of its depositors, or any part of either, in mining shares or stocks. Any president or managing officer who knowingly consents to a violation of the above provision shall be deemed guilty of a felony.

\* \* \* \* \*

**CHANGE OF NAME.**

**THE BURNING MOSCOW GOLD AND SILVER MINING CO.**

**LAWS 1863-64, P. 302; APR. 1, 1864.**

AN ACT for the relief of the Burning Moscow Gold and Silver Mining Company.

The People, etc.

SEC. 1. It shall be lawful for the company or corporation organized under the laws of this State under the corporate name of "The Burning Moscow Silver Mining Company," being the same company whose certificate of incorporation was filed with the county clerk of the city and county of San Francisco on the 2d day of May, in the year 1861, as per copy or duplicate thereof, filed in the office of the secretary of state of this State on the 4th day of May, 1861, more fully appears, to assume the corporate name of "The Burning Moscow Gold and Silver Mining Company," and the said corporation shall henceforth be called and named by the last mentioned name.

SEC. 2. All deeds hitherto made to or by the said company or corporation, and all legal or other proceedings commenced by or against the same, and all contracts, certificates of stock, or other documents whatever, hitherto made, entered into, and issued by the said corporation, or to which it is a party shall be valid to all intents and purposes, and have all due force and effect, whether the said original corporate name of the said corporation or the name hereby given and granted to the same shall have been used therein.

SEC. 3. This act shall take effect from and after its passage.

## MINING DÉBRIS.

### OBSTRUCTION TO NAVIGATION

#### JOINT RESOLUTIONS.

**LAWS 1875-76, P. 955; MAR. 29, 1876.**

ASSEMBLY CONCURRENT RESOLUTION NO. 17. Memorial to the Senate and House of Representatives of the United States in Congress assembled.

(Memorial concerning the protection of the bays and rivers from mining débris.)

**LAWS 1880, P. 244; FEB. 24, 1880.**

ASSEMBLY CONCURRENT RESOLUTION NO. 15, relative to the protection of the rivers, cities, and agricultural lands of California

(Resolution concerning the protection of rivers from mining débris.)

**LAWS 1881, P. 98; FEB. 9, 1881.**

SENATE CONCURRENT RESOLUTION NO. 7, relative to mining débris and channel obstructions.

Whereas the State of California has expended over \$500,000 in engineering, levees, and dams, in an effort to rectify the river channels of this State, which are now filled with mining débris to the extent that navigation is almost destroyed; and

Whereas the rivers and bays of the State are the transportation competitors of the railroads, and should be preserved for the commercial purposes of this State and coast; and

Whereas the time and exigency have arrived when the General Government should take charge of this work and make the necessary appropriations to repair damages already accomplished and prevent the further destruction of our rivers and bays: Therefore be it

Resolved by the senate, the assembly concurring, That our Senators be instructed and our Representatives in Congress be requested to ask and urge the General Government to make the necessary appropriation, without delay, to carry on this important improvement.

Resolved, That the governor be requested to telegraph a copy of this resolution to our Representatives in Congress.

NOTE.—See United States Mining Statutes, Annotated, Part II, pages 933, 934.

**LAWS 1885, EXTRA SESSION 1884, P. 7; APR. 30, 1884.**

ASSEMBLY CONCURRENT RESOLUTION relative to river and harbor appropriations made by the Congress of the United States for the Pacific Coast and remaining now unexpended

Whereas it is reported that the Secretary of War refuses to permit the expenditure of the appropriation made by Congress of the United States of America for the improvement of the Sacramento and other rivers and their tributaries situated within this State;

Whereas the demands of commerce, the interests of the people, and the protection of these great highways of nature imperatively demand that every effort should be made to maintain them so that their navigation for commercial purposes may be unimpeded and the inauguration of such improvements be made as may best secure that result;

Whereas the flow of débris in the rivers of the State has been restrained under the decision of the circuit court of the United States, and, therefore, the reason advanced by the War Department, "that as long as that was permitted it was useless to expend public moneys in their improvement" no longer exists: Therefore be it

Resolved by the assembly, the senate concurring, That our Senators and Representatives in Congress be requested to use all honorable means, either by personal application at the War Department or by action of Congress, to secure, on the part of the Government of the United States the improvement of the rivers hereinbefore named.

Be it further resolved, That his excellency the governor of the State of California be requested to send a duly certified copy of these resolutions to the Secretary of War, Hon. Robert T. Lincoln, and to our Senators and Representatives in Congress.

**LAWS (AMENDMENTS) 1887 (EXTRA SESSION 1886), P. 253; MAR. 10, 1887.**

ASSEMBLY JOINT RESOLUTION NO. 10.

(Resolution concerning the protection of rivers from mining débris.)

**LAWS 1887, P. 253; MAR. 10, 1887.**

ASSEMBLY JOINT RESOLUTION NO. 10.

(Preamble.)

\* \* \* \* \*

Resolved by the assembly, the senate concurring, That our Senators and Representatives in Congress be requested to take such steps as will, in their judgment, relieve the mining industry of California from its present status, with a view at all times to a proper recognition of the law and the interests of all, and to that end procure the passage of such laws as will provide, first, for an immediate and thorough investigation of this mining débris question by a commission of competent Government engineers, for the purpose of ascertaining whether some plan can be devised whereby the present conflict between the mining and farming sections may be adjusted, and the mining industry rehabilitated; second, to the carrying out of such plans, in the event any suitable ones can be determined on; third, for a complete examination and survey of the injured river channels, with a view to their improvement and rectification; fourth, providing sufficient means to accomplish said purpose.

NOTE.—See United States Mining Statutes, Annotated, Part II, pages 933, 934.

**LAWS 1889, P. 730; MAR. 16, 1889.**

SENATE CONCURRENT RESOLUTION NO. 11, requesting our representatives in Congress to ask an appropriation of \$2,000,000 for the improvement of the navigation of the San Joaquin, Sacramento, and Feather Rivers, in California, from the head of navigation on said San Joaquin River and from the head of navigation on the Sacramento, at St. Johns, and from the head of navigation on Feather River, at Oroville (said Feather River being a tributary of the Sacramento) to San Francisco Bay.

(Resolution concerning the protection of rivers from mining débris.)

**LAWS 1891, P. 531; MAR. 18, 1891.**

SENATE JOINT RESOLUTION NO. 17, relative to the mining industry in California.

(Resolution concerning the protection of rivers from mining débris.)

**LAWS 1893, P. 541; JAN. 10, 1893.**

ASSEMBLY JOINT RESOLUTION NO. 2, relative to the mining and river interests of the State.

Whereas the interests of the State of California demand an immediate solution and satisfactory adjustment of the hydraulic mining and river interests in this State; and Whereas two State conventions, composed of representatives of all industries therein, have so agreed; be it

Resolved by the Assembly of the State of California, the Senate concurring, That the Congress of the United States be hereby urged to speedily enact the measure known as Caminetti's House Bill No. —, relating to hydraulic mining and river improvements in the State of California, or some other measure which, in the judgment of that honorable body, will serve the purposes set forth in said act.

Resolved, That the governor is hereby requested to affix his official signature to this resolution, and cause a certified copy thereof to be forwarded by telegraph to our Representatives and Senators in Congress.

**DÉBRIS COMMISSIONER.****LAWS 1893, P. 339; MAR. 24, 1893.**

AN ACT to provide for the appointment, duties, and compensation of a débris commissioner, and to make an appropriation to be expended under his directions in the discharge of his duties as such commissioner.

The People, etc.

SEC. 1. The governor of the State of California shall, on or before the 1st day of January, 1894, appoint a competent civil engineer for a period of four years only, to be known as and called the débris commissioner.

SEC. 2. Said commissioner shall, during the time he shall be actually employed in the discharge of this official duties, receive a compensation of \$300 per month and his necessary traveling expenses, to be allowed by the State board of examiners.

SEC. 3. Whenever any board of engineers of the United State Government shall have been appointed with power to adopt plans and specifications for the construction of works for the impounding of mining débris, it shall be the duty of said débris commissioner to consult and advise with such board of engineers of the United States Government, and to examine and pass upon the merits of such works, and said débris commissioner shall determine whether or not such works are calculated to and sufficient to protect the navigable waters of the State, and to keep a record of such determinations.

SEC. 4. (Appropriation, \$250,000.)

\* \* \* \* \*

**LAWS 1895, P. 82; MAR. 26, 1895.**

AN ACT making an appropriation to pay the salary of the secretary to the débris commissioner for the remainder of the forty-sixth fiscal year.

The People, etc.

SEC. 1. There is hereby appropriated out of any moneys in the State treasury not otherwise appropriated, the sum of \$500, to pay the salary of the secretary to the débris commissioner for the remainder of the forty-sixth fiscal year.

**LAWS 1895, P. 154; MAR. 23, 1895.**

AN ACT making an appropriation to pay the salary of the débris commissioner for the remainder of the forty-sixth fiscal year.

The People, etc.

SEC. 1. There is hereby appropriated out of any moneys in the State treasury not otherwise appropriated, the sum of \$1,200, to pay the salary of the débris commissioner for the remainder of the forty-sixth fiscal year.

**DÉBRIS COMMISSIONER—DUTIES.****LAWS 1897, P. 169; MAR. 17, 1897.**

AN ACT to amend an act entitled "An act to provide for the appointment, duties, and compensation of a débris commissioner, and to make an appropriation to be expended under his directions in the discharge of his duties as such commissioner," approved March 24, 1893.

The People, etc.

SEC. 1. Section 1 of the act entitled "An act to provide for the appointment, duties, and compensation of a débris commissioner, and to make an appropriation to be expended under his directions in the discharge of his duties as such commissioner," approved March 24, 1893, is hereby amended so as to read as follows:

SEC. 1. The governor of the State of California shall, on or before the 1st day of January, 1898, appoint a competent civil engineer for a period of four years only, to be known as and called the débris commissioner: Provided, however, That the débris commissioner heretofore appointed under the act entitled "An act to provide for the appointment, duties, and compensation of a débris commissioner, and to make an

appropriation to be expended under his directions in the discharge of his duties as such commissioner, approved March 24, 1893, shall continue to perform the duties, and receive the compensation of that office, subject to the provisions of this act, until the expiration of the term for which he was appointed and until the appointment and qualification of the débris commissioner provided for by this act.

SEC. 2. Section 2 of said act is hereby amended so as to read as follows:

SEC. 2. Said commissioner shall receive a compensation of \$10 per day while actually engaged in the discharge of his duties, and his necessary traveling expenses, to be allowed by the State board of examiners.

SEC. 3. Section 3 of said act is hereby amended so as to read as follows:

SEC. 3. It shall be the duty of the said débris commissioner to consult and advise with the members of the corps of engineers of the United States Army comprising the California Débris Commission (created by act of Congress approved March 1, 1893), in relation to the construction of works for the restraining and impounding of débris resulting from mining operations, natural erosion, or other causes; and it shall be his duty to examine such works, and to report the result of such examination to the State board of examiners. Said débris commissioner is further authorized and directed to consult and advise with said California Débris Commission in relation to any and all plans and specifications that may have been or may hereafter be prepared or adopted by said California Débris Commission, for the construction of such restraining or impounding works, and said débris commissioner shall submit a copy of all such plans and specifications to the State board of examiners for their examination and consideration, together with his approval or disapproval thereof, or other recommendation with reference thereto. The State board of examiners shall thereupon proceed to examine and consider the plans and specifications thus submitted to them, and in that behalf may require the attendance, counsel, and advice of said débris commissioner, during their examination and consideration thereof. The State board of examiners shall keep a record of their deliberations and shall either approve or disapprove said plans and specifications, which approval or disapproval may be by a majority vote of said board: Provided, That no plans and specifications involving an expenditure on the part of the State of California of a sum greater than the appropriation herein made shall be approved. If said plans and specifications be approved by the State board of examiners, the said débris commissioner shall thereupon report such action to said California Débris Commission. Whenever said California Débris Commission or the Government of the United States shall have entered into any contract for the construction of works for the purposes described in this act, in pursuance of plans and specifications that have been theretofore approved by the State board of examiners, as in this act provided, it shall then be the duty of the débris commissioner to carefully inspect such works during the process of their construction and to keep a record of the result of such inspection, and to report the same monthly to the State board of examiners. Said débris commissioner shall also, from time to time, during the process of the construction of such works, when requested so to do by the said California Débris Commission, draw his warrants upon the State comptroller in favor of such person or persons as may be designated by said California Débris Commission for such amounts as shall equal one-half of the cost of the construction of said works; and said débris commissioner shall, in like manner, and when requested so to do by said California Débris Commission, draw his warrant upon the State comptroller for an amount equal to one-half the purchase price of any site or sites necessary for the construction of said works: Provided, That the purchase of such site or sites shall have been first approved by the State board of examiners: And provided further, That no warrant shall be drawn in excess of the amount appropriated by this act.

SEC. 4. Section 4 of said act is hereby amended so as to read as follows:

SEC. 4. There is hereby appropriated out of the general fund of the treasury of this State not otherwise appropriated, the sum of \$250,000, to be used in the construction of works for the restraining and impounding of débris resulting from mining operations, natural erosion, or other causes, and for the purchase of sites therefor. The appropriation made by this section is intended as a reappropriation of the sum of \$250,000 appropriated by the act entitled "An act to provide for the appointment, duties, and compensation of a débris commissioner, and to make an appropriation to be expended under his directions in the discharge of his duties as such commissioner," approved March 24, 1893, and it is expressly intended and provided by this act that the State of California shall, in no event, incur any liability hereunder beyond the amount of the appropriation herein made; and no contractor, claimant, or person shall acquire any right or obligation against the State of California beyond said sum so appropriated and set apart for the purposes hereinabove set forth, and it is expressly declared that any claim or demand against the State of California in excess of said appropriation shall be invalid and void. Said moneys shall be paid only upon orders drawn by the State comptroller upon the written request of said débris commissioner, as in this act provided.

SEC. 5. Section 7 of said act is hereby amended so as to read as follows:

SEC. 7. All expenditures authorized by the provisions of this act shall be subject to the approval of the State board of examiners; and the State comptroller is hereby authorized to draw his warrant for all expenditures not in excess of the appropriation herein provided for, so approved by the State board of examiners, and the State treasurer is hereby directed to pay the same.

SEC. 6. This act shall take effect immediately.

#### AMENDATORY ACT.

**LAWS 1905, P. 142; MAR. 18, 1905.**

AN ACT to amend section 1 of an act entitled, etc. (Title the same as in sec. 1).

The People, etc.

SEC. 1. Section 1 of the act entitled "An act to provide for the appointment, duties, and compensation of a débris commissioner, and to make an appropriation to be expended under his directions in the discharge of his duties as such commissioner, approved March 24, 1893, and amended March 13, 1901," is hereby amended so as to read as follows:

SEC. 1. The governor of the State of California shall, on or before the 1st day of May, 1905, appoint a competent civil and mining engineer for a period of four years only, to be known as and called the State débris commissioner.

#### APPROPRIATIONS.

**LAWS 1897, P. 302; MAR. 21, 1897.**

AN ACT making an appropriation to pay the claim of John F. Kidder, for traveling expenses, from August 15, 1893, to December 21, 1896, inclusive.

The People, etc.

SEC. 1. The sum of \$480 is hereby appropriated to pay the claim of John F. Kidder, débris commissioner, for traveling expenses incurred from August 15, 1893, to December 21, 1896, both dates inclusive (the same having been approved by the State board of examiners).

**LAWS 1897, 355, P. 361; APR. 1, 1897.**

AN ACT making appropriations for the support of the government of the State of California, for the forty-ninth and fiftieth fiscal years.

The People, etc.

SEC. 1. The following sums of money are hereby appropriated, out of any money in the State treasury not otherwise appropriated, for the support of the government of the State of California for the forty-ninth and fiftieth fiscal years: \* \* \*

For salary of secretary to débris commissioner, \$3,000.

\* \* \* \* \*

**LAWS 1899, P. 112; MAR. 17, 1899.**

AN ACT making appropriations, etc., for the fifty-first and fifty-second fiscal years.

The People, etc.

SEC. 1. The following sums of money are hereby appropriated, etc., for the fifty-first and fifty-second fiscal years: \* \* \*

For salary of débris commissioner, \$7,200.

For salary of secretary of débris commissioner, \$3,000.



## MINING PARTNERSHIPS.

### PARTNERSHIPS FOR MINING PURPOSES.

LAWS 1863-64, P. 473; APR. 4, 1864. (REPEALED.)

AN ACT concerning partnerships for mining purposes.

The People, etc.

SEC. 1. All written contracts of copartnerships for mining purposes upon the lands of the United States within this State, formed by two or more persons, shall be subject to the conditions and liabilities prescribed by this act.

SEC. 2. Any member of a copartnership, or his successor in interest, in any mining claim, who shall neglect or refuse to pay any assessment, or shall neglect to perform any labor or other liability incurred by the copartnership agreement, may, after the expiration of 60 days after such assessment, labor, or other liability has become due, be notified in writing by any remaining partner or partners, or by his or their agents, that such assessment, labor, or liability is due, which written notice shall specify the name of such mine and the district wherein it is located, and shall particularly mention the liability which has been incurred; and if such delinquent reside within the State he shall be personally served with such notice; and if the person so notified shall refuse or neglect for 30 days after service of such written notice to comply with the requirements of the copartnership agreement, the remaining partner or partners may sell the interest of such delinquent partner in and to such mining claim.

SEC. 3. All sales under the provisions of this act shall be at public auction, and by giving five days' notice thereof, by posting written notices in three public places within the mining district where such mine is located. The notice shall also specify the extent of the interest to be sold, and the name of the delinquent partner or partners, and the time and place of such sale, which place shall be within the district where the mine is located. The purchaser at such sale shall acquire all the rights and title of the delinquent partner.

SEC. 4. If any delinquent partner in any mine is absent from the State, or resides in any other State or Territory, the notice to such delinquent shall be by publication, once a week for four months, in some newspaper published in the county where the mine is located; or if there be no newspaper in the county, then such notice shall be published in some newspaper in an adjoining county. After the expiration of the time of such publication, the interest of such delinquent shall be sold in the manner prescribed in section 3 of this act.

SEC. 5. This act shall take effect from and after its passage. (Repealed by the act following.)

LAWS 1865-66, P. 828; APR. 2, 1866. (GENERAL LAWS 1864-1871, SEC. 8949-8956.)

AN ACT entitled "An act concerning partnerships for mining purposes."

The People, etc.

SEC. 1. Whenever any two or more persons, being owners, occupants, or locators of any mining claim, or when any two or more persons shall have associated themselves together, with or without any written agreement (but not as a body corporate), for the purpose of working or prospecting any mining claim on any of the public lands of the United States, shall, after being notified in writing by any member of said mining company that they have been associated in said mining claim, be deemed copartners for the purpose of prospecting or working said mining claim, and shall be subject to the provisions and liabilities imposed by this act.

NOTE.—Sections 8949-8956, General Laws 1864-1871, are the same as sections 1-9.

SEC. 2. After a mining claim shall have been located, any person who shall be a member of the company, desiring to work said claim, may notify the other members of the company of his or their desire to have an assessment levied against the owners of said claim for the purpose of prospecting, working, or developing such claim designating a time and place for a meeting of the members of such company for the purpose of levying such assessment. Such notice shall be given as provided in the fourth section of this act, and if a majority of the shares in such mining claim be represented at such meeting, then a majority of those present at such meeting shall be authorized to levy such assessment; but if a majority of the shares in such company be not represented at such meeting, then a majority of those present shall be authorized to cause the said mining claim to be prospected or worked; and thereafter the owners in such mining claim shall be liable for their respective proportion of the expenses so incurred in prospecting, working, or developing such claim, to the extent of the value of their interest in such claim; and thereafter assessments may be levied from time to time, not oftener than once in 30 days, by any member not delinquent of said mining company, against delinquent members, for the collection of sufficient amount of assessment to pay for the working and prospecting of such claim up to the time such assessment is made; and such delinquent assessment may be collected as in this act provided: Provided, That when the mining companies have by-laws designating what amount of work shall be done in such claim, then any assessment made as provided in this act shall not exceed an amount sufficient to pay for the work required by the by-laws: And provided further, That no new assessment shall be made until all previous assessments have been paid, or the remedies for the collection thereof shall have been exhausted.

SEC. 3. Any member of a mining company, or his heirs, executors, administrators, or assigns in any mining claim, who shall neglect or refuse to pay any assessments, or shall neglect to perform any labor or other liability which shall become due from him under this act, may, after the expiration of 30 days after such assessment, labor, or other liability has become due, be notified in writing by any remaining member or members, or by his or their agent, that such assessment, labor, or other liability is due, which written notice shall specify the name of such mine and the district wherein it is located, and shall particularly mention the liability which has been incurred.

SEC. 4. Such notice and all other notices required under this act shall be served as follows:

First. If the party reside in the county where the mine is located, it shall be delivered to him personally or left at his place of residence;

Second. If the party reside out of the county, but within the State, and his place of residence is known, such notice shall be deposited in a post office or express office in a sealed envelope, with postage or express charges, as the case may be, prepaid, addressed to such party at his place of residence;

Third. If such party reside out of the State, or his place of residence is unknown, such notice shall be published once a week for eight successive weeks, in some newspaper published in the county where the mine is located, if there be such paper, otherwise in some newspaper published in an adjoining county.

SEC. 5. If the person so notified shall neglect or refuse to pay or discharge such assessments, work, or liability for 10 days after personal service or leaving notice at his residence, when such service has been had or notice so left, or for 20 days after deposit in post or express office of such notice, when such deposit has been made, or until the expiration of the full period of publication herein provided, when publication is made, thereafter such delinquent shall be deemed to have absolutely forfeited and abandoned to the other members of said mining company all the right, title, claim, and interest owned, held, or possessed by such delinquent in the said mining claim, such portion thereof as shall be sufficient to satisfy such delinquency; the

remaining member or members may sell the interest of such delinquent member in and to such mining claim, or so much of said interest as may be required to pay such assessment or liability, together with costs of sale.

Sec. 6. All sales under the provisions of this act shall be at public auction at the mining claim, and shall be made by any constable of the township, auctioneer, or sheriff of the county, and by giving 10 days' notice thereof by posting written notices in three public places within the mining district where such mine is located. The notice shall also specify the extent of the interest of the delinquent, and the amount of the delinquency, and the name of such delinquent member or members, at the time and place of such sale, which place shall be within the district where the mine is located, and shall commence by offering the smallest number of feet or shares in such claim for sale, and continue selling at the same time and place until a sufficient number of feet or shares is sold to pay the delinquent assessment or liabilities; and the officer selling shall execute a deed to the purchaser or purchasers, and such deed shall be received in all courts as prima facie evidence of the lawful authority of the officer selling, and of the regularity of all proceedings prior to the execution of the deed, and as prima facie evidence that all the right, title, and interest of the party delinquent has been lawfully and rightfully sold and conveyed to the purchaser; and the purchaser's title to such mining claim shall be absolute.

Sec. 7. The provisions of this act shall also apply to all persons who have refused or neglected to sign articles of incorporation or a deed of trust in any incorporated mining company.

Sec. 8. An act entitled, "An act concerning partnerships for mining purposes," approved April 4, 1864, is hereby repealed.

Sec. 9. This act shall take effect from and after its passage.

## ANNOTATIONS.

### MINING PARTNERSHIPS.

1. PARTNER'S INTEREST--ASSESSMENT WORK.
2. JUDICIAL SALE OF STOCK.

#### 1. PARTNER'S INTEREST--ASSESSMENT WORK.

A mining copartnership must exist between the owners of a mining claim before any of the joint owners or partners can avail themselves of the provisions of this act.

*Brundage v. Adams*, 41 Cal. 619, p. 623 (1871).

This act distinctly designates the persons subject to the provisions and liabilities imposed thereby and such persons must be copartners for the purpose of procuring or working a mining claim and it is not enough that they are owners and shareholders; and so long as the relation of owners and shareholders exist between parties their interest in a mining claim can not be divested by forfeiture on the failure of one such owner to pay his part of an assessment for working the mine.

*Brundage v. Adams*, 41 Cal. 619, p. 623 (1871).

#### 2. JUDICIAL SALE OF STOCK.

A purchaser of mining stock at a constable's sale for unpaid assessments due on such stock acquires no title unless it appears that the owner of the stock was notified in the manner required by either section 2 or section 4 of this act.

*Sayer v. Donahue*, 1 Cal. Unrep. Cas. 410, p. 411 (1868).

**MINING PARTNERSHIPS—SECTIONS CIVIL CODE, 1872.****SEC. 2511-2520, CIVIL CODE 1872.**

SEC. 2511. A mining partnership exists when two or more persons who own or acquire a mining claim for the purpose of working it and extracting the mineral therefrom actually engage in working the same.

SEC. 2512. An express agreement to become partners or to share the profits and losses of mining is not necessary to the formation or existence of a mining partnership. The relation arises from the ownership of shares or interests in the mine and working the same for the purpose of extracting the minerals therefrom.

SEC. 2513. A member of a mining partnership shares in the profits and losses thereof in the proportion which the interest or share he owns in the mine bears to the whole partnership capital or whole number of shares.

SEC. 2514. Each member of a mining partnership has a lien on the partnership property for the debts due the creditors thereof, and for money advanced by him for its use. This lien exists notwithstanding there is an agreement among the partners that it must not.

SEC. 2515. The mining ground owned and worked by partners in mining, whether purchased with partnership funds or not, is partnership property.

SEC. 2516. One of the partners in a mining partnership may convey his interest in the mine and business without dissolving the partnership. The purchaser, from the date of his purchase, becomes a member of the partnership.

SEC. 2517. A purchaser of an interest in the mining ground of a mining partnership takes it subject to the liens existing in favor of the partners for debts due all creditors thereof, or advances made for the benefit of the partnership, unless he purchased in good faith, for a valuable consideration, without notice of such lien.

SEC. 2518. A purchaser of the interest of a partner in a mine when the partnership is engaged in working it, takes with notice of all liens resulting from the relation of the partners to each other and to the creditors of the partnership.

SEC. 2519. No member of a mining partnership or other agent or manager thereof can, by a contract in writing, bind the partnership, except by express authority derived from the members thereof.

SEC. 2520. The decision of the members owning a majority of the shares or interests in a mining partnership binds it in the conduct of its business.

**ANNOTATIONS.****MINING PARTNERSHIPS.**

1. WHAT CONSTITUTES—APPLICATION OF STATUTE.
2. JOINT WORKING—CONTRACTS.
3. RIGHTS AND REMEDIES OF PARTNERS.
4. DISSOLUTION—CONTINUANCE OF LIABILITY.
5. PARTNER'S RIGHT TO LIEN.
6. RIGHT TO PARTITION.
7. POWER TO SUE.
8. AGREEMENT TO EXPLORE OIL TERRITORY.

**I. WHAT CONSTITUTES—APPLICATION OF STATUTE.**

If the legislature in framing the provisions of the code defining and governing mining partnerships had intended to place an innovation upon the universal law of ordinary partnerships, to the effect that a miner is only liable to creditors for his proportion of their claims, according to his interest in the partnership property, it would have so declared in explicit terms.

Stuart v. Adams, 89 Cal. 367, p. 372, 26 Pac. 970 (1891).

Patrick v. Weston, 22 Colo. 45, p. 49, 43 Pac. 466 (1896).

While these sections contain special provisions for mining partnerships, yet the statute governing general copartnerships, with a few well defined exceptions, applies to mining copartnerships and the sections of the Civil Code, that are parts of the general law of partnerships, apply to mining partnerships, unless the application is inconsistent with any exception recognized in favor of mining partnerships.

Dellapiazza v. Foley, 112 Cal. 380, p. 383, 44 Pac. 727 (1896).  
See Patrick v. Weston, 22 Colo. 45, p. 49, 43 Pac. 466 (1896).

The statute provides that mining ground owned and worked by partners in mining, whether purchased by the partnership or not, is partnership property; but it does not follow that property other than the ground owned and worked may not also be partnership property. No doubt other property acquired by the partnership for the purpose of aiding in working a mining claim such as a mill or mill site, would also be property of the partnership; and likewise mining ground acquired for the purpose of working with mining ground already being worked would be partnership property. And also, property acquired by the partnership by the use of partnership funds, as distinguished from the individuals constituting the firm, may be regarded as partnership property.

Dorsey v. Newcomer, 121 Cal. 213, p. 215, 53 Pac. 557 (1898).

Section 2511 distinguishes between ground owned or acquired for the purpose of working and ground actually worked, and it is only the last that in general can be regarded as partnership property when not acquired by the partnership or by the use of its funds.

Dorsey v. Newcomer, 121 Cal. 213, p. 215, 53 Pac. 557 (1898).  
See Shaw v. Caldwell, 16 Cal. App. 1, 115 Pac. 941 (1911).

A mining partnership arises from the ownership of shares or interests in a mine and the working of the same for the purpose of extracting the minerals therefrom.

Stuart v. Adams, 89 Cal. 367, p. 372, 26 Pac. 970 (1891).  
See Charles v. Eshleman, 5 Colo. 107 (1879).  
Higgins v. Armstrong, 9 Colo. 38, 10 Pac. 232 (1885).  
Walker v. Bruce, 44 Colo. 109, p. 113, 97 Pac. 250 (1908).  
Meagher v. Reed, 14 Colo. 335, p. 351, 24 Pac. 681 (1890).  
Abbott v. Smith, 3 Colo. App. 264, p. 270, 32 Pac. 843 (1893).

An agreement that upon the happening of some contingent future event the parties to the agreement would work a mining claim, tends to show that they had never worked it and that there was not in fact a mining partnership.

Dorsey v. Newcomer, 121 Cal. 213, p. 216, 53 Pac. 557 (1898).

## 2. JOINT WORKING—CONTRACTS.

The fact that a person contracted with the joint owners of a mine to work the mine, pay one-half of the expenses thereof, and receive one-half the products of the mine for his labor does not constitute a mining partnership between himself and the joint owners of the mine.

Stuart v. Adams, 89 Cal. 367, p. 372, 26 Pac. 970 (1891).  
See Cowan v. Abbott, 92 Cal. 100, p. 103, 28 Pac. 213 (1891).  
Shaw v. Caldwell, 16 Cal. App. 1, 115 Pac. 941 (1911).

An agreement by which one person was employed to seek for a paying quartz mine, and if found he was to be allowed by the person employing him his expenses incurred in the search and "big wages" for his time and labor as well as "an interest in the mine," does not constitute a contract of mining partnership, though the person employed did find a paying mine.

Berry v. Woodburn, 107 Cal. 504, p. 510, 40 Pac. 802 (1896).  
See Downing v. Murray, 113 Cal. 455, 45 Pac. 869 (1896).

An agreement by which one person is employed by another to seek for and find and locate a paying quartz mine, and if found the party employed is to be allowed his expenses incurred and also "big wages" for his time and labor, is not a "grubstake" contract by which two persons enter into a common venture, one furnishing the "grub" and the other the labor, in prospecting for valuable mining properties, thereby creating a joint venture and making the discoveries inure to the equal benefit of both, such venture partaking of the character of qualified partnership.

Berry v. Woodburn, 107 Cal. 504, p. 512, 40 Pac. 802 (1895).

See *Crusoe v. Clark*, 127 Cal. 341, p. 342, 59 Pac. 700 (1899).

*Murley v. Ennis*, 2 Colo. 300 (1874).

*Meagher v. Reed*, 14 Colo. 335, p. 356, 24 Pac. 681 (1890).

A mining partnership exists where two or more persons actually engage in working a mining claim owned by them.

*Ferris v. Baker*, 127 Cal. 520, p. 521, 59 Pac. 937 (1900).

See *Charles v. Eshleman*, 5 Colo. 107 (1879).

*Higgins v. Armstrong*, 9 Colo. 38, 10 Pac. 232 (1885).

*Meagher v. Reed*, 14 Colo. 335, p. 351, 24 Pac. 681 (1890).

*Walker v. Bruce*, 44 Colo. 109, p. 112, 97 Pac. 250 (1908).

*Abbott v. Smith*, 3 Colo. App. 264, p. 270, 32 Pac. 843 (1893).

*Perkins v. Peterson*, 2 Colo. App. 242, 29 Pac. 1135 (1892).

*Lyman v. Schwartz*, 13 Colo. App. 318, p. 321, 57 Pac. 725 (1899).

A mining partnership was held to exist between a man and a married woman where the mining claim was conveyed to them jointly, and the husband of the married woman as the admitted agent of his wife and the other joint owner worked the mine together.

*Ferris v. Baker*, 127 Cal. 520, p. 522, 59 Pac. 937 (1900).

A party suing for an interest or share in a mine can not recover where the proof shows he was employed by the defendant to seek for a paying quartz mine and where he did in fact find such a mine, but where he never, in conjunction with the defendant, worked the mine for the purpose of extracting minerals therefrom, but what work he did do was under the original agreement in his effort to find a paying quartz mine.

*Berry v. Woodburn*, 107 Cal. 504, p. 507, 40 Pac. 802 (1895).

Under the Civil Code of California (section 2511) a mining partnership exists when two or more persons who own or acquire a mining claim for the purpose of working it and extracting the minerals therefrom actually engage in working the same; but the actual working of the mine by the joint owners is essential to the mining partnership.

*Peterson v. Beggs*, ——— Cal. App. ———, 148 Pac. 541, p. 542 (1915).

Where a joint owner of mines and mining property who held the title in trust for all the owners under an agreement by which he was to sell the mining property and from the purchase price deduct sums sufficient to pay the expenses incurred, engaged in working the mine and himself compensated the laborers employed, and where in his absence another one of the joint owners took possession and worked the mine, this does not constitute a partnership, and neither of the coowners is liable for expenses incurred by the other.

*Peterson v. Beggs*, ——— Cal. App. ———, 148 Pac. 541, p. 542 (1915).

A contract by which one of the parties holding the legal title to certain mines and mining properties in trust for all was to sell such property or any portion of it and from the purchase price from time to time deduct a sum sufficient to repay him for all sums paid out by him for the benefit of the mining properties and to compensate him

for his personal services, the sums remaining to be divided equally among the parties, does not constitute a mining partnership.

*Peterson v. Beggs*, ——— Cal. App. ———, 148 Pac. 541, p. 542 (1915).

The actual working of a mine by the owners together for their mutual benefit seems to be essential to the existence of the partnership relation, the parties to contribute to the expenses of the work and to share in the profits according to their respective interests, and the partnership arises only when the coowners unite and cooperate in working the mine.

*Peterson v. Beggs*, ——— Cal. App. ———, 148 Pac. 541, p. 542 (1915).

An agreement among certain persons creating an association of the parties for the purpose of acquiring, developing, and dealing in mines would not create a mining partnership, unless it further provided that when the mining property was acquired and developed it should then be worked on general account.

*Peterson v. Beggs*, ——— Cal. App. ———, 148 Pac. 541, p. 542, Mar. (1915).

### 3. RIGHTS AND REMEDIES OF PARTNERS.

The legal relations existing between two or more persons interested in a bare mining right is that of a qualified partnership, and the remedies relating to a mining partnership are available for the assertion or violation of any rights arising out of such relation.

*Smith v. Coloey*, 65 Cal. 46, p. 48, 2 Pac. 880 (1884).

Section 2513 reiterates the law of ordinary business partnerships and can not be construed as referring to the relations of the partners as to each other, and has no reference to the liabilities of the partnership and third persons.

*Stuart v. Adams*, 89 Cal. 367, p. 371, 26 Pac. 970 (1891).

See *Charles v. Eshleman*, 5 Colo. 107 (1879).

*Higgins v. Armstrong*, 9 Colo. 38, 10 Pac. 232 (1885).

*Patrick v. Weston*, 22 Colo. 45, p. 49, 43 Pac. 466 (1896).

Under the provision that the decision of the members owning a majority of the shares in a mining partnership binds it in the conduct of its business, a superintendent employed by the partnership has the right to expend for the partnership moneys in the purchase of articles that are necessary for the conduct of the mine in the usual manner, though he may have no express authority from the members owning a majority of the shares or interests to make the particular purchase.

*Stuart v. Adams*, 89 Cal. 367, p. 372, 26 Pac. 970 (1891).

See *Heald v. Hendy*, 89 Cal. 632, p. 634, 27 Pac. 67 (1891).

*Lyman v. Schwartz*, 13 Colo. App. 318, p. 320, 57 Pac. 735 (1899).

Where a mining partnership exists and the partners are actually working the mining claims, no partner can assert title to the prejudice of the creditors of the partnership.

*Dorsey v. Newcomer*, 121 Cal. 213, p. 216, 53 Pac. 557 (1898).

Where one coowner of mining property engages in working it for ore, the remaining owners or cotenants not so engaged do not thus become partners, but will be left to their rights and are chargeable according to their duties as cotenants only.

*Peterson v. Beggs*, ——— Cal. App. ———, 148 Pac. 541, p. 542 (1915).

### 4. DISSOLUTION—CONTINUANCE OF LIABILITY.

A partner in a mining partnership, who sells his interest and retires from the firm, may be liable, after the dissolution of the partnership, to persons who have had dealings with and given credit to the partnership, unless he gives the notice of dissolution, as required by section 2453 of the Civil Code applying to partnerships generally, and

providing that the liability of a partner continues after dissolution until personal notice of the dissolution or until public notice for a specified time.

*Dellapiazza v. Foley*, 112 Cal. 380, p. 383, 44 Pac. 727 (1896).

#### 5. PARTNER'S RIGHT TO LIEN.

The lien of a partner, provided for by section 2514, does not give to either partner a right of possession to partnership property, consisting of a mine or mining claim, as the lien has no connection with the possession but exists independent of it; and the lien may exist in favor of a partner out of possession, and continue after dissolution of the firm.

*Morganstern v. Thrift*, 66 Cal. 577, p. 578, 6 Pac. 689 (1885).

The statute would not give each partner a lien upon the partnership property for the debts due the creditors, if each partner was not liable to such creditors for the debts; and the lien is given for the purpose of enabling the individual member to collect from his copartner their proportion of the indebtedness which he has been compelled to pay.

*Stuart v. Adams*, 89 Cal. 367, p. 371; 26 Pac. 970 (1891).

#### 6. RIGHT TO PARTITION.

When minerals and ores are the subject of a servitude and are in place, unworked and unsevered from the soil, they are incapable of allotment according to quality and quantity relatively considered.

*Smith v. Cooley*, 65 Cal. 46, p. 48, 2 Pac. 880 (1884).

#### 7. POWER TO SUE.

Where the certificate required by the general statute (sec. 2468, Civil Code) has been filed and the publication made, a mining partnership may commence an action though the publication was not completed before its commencement.

*Nicholson v. Auburn Gold Min. Co.*, 6 Cal. App. 547, p. 548, 92 Pac. 651 (1907).

#### 8. AGREEMENT TO EXPLORE OIL TERRITORY.

A partnership formed for the purpose of engaging in exploring prospective oil territory is not a mining partnership as defined by the statute of California (Civil Code, sec. 2511), where the members are associated together for the purpose of working a mining claim.

*Callahan v. Danziger*, ——— Cal. App. ———, 163 Pac. 65, p. 67.



## MINT.

### BRANCH MINT ESTABLISHED.

LAWS 1852, P. 276; APR. 9, 1852.

JOINT RESOLUTIONS in relation to the establishment of a branch mint in this State.

Resolved, by the senate and assembly of the State of California, That our Senators in Congress be, and they are hereby, instructed, and our Representatives requested to use their utmost endeavors to procure the establishment of a branch mint of the United States in this State at the earliest possible moment.

Resolved, That the governor be requested to forward to each of our Senators and Representatives a copy of the foregoing report and resolutions.

LAWS 1913, P. 1509; FEB. 4, 1913.

SENATE JOINT RESOLUTION NO. 7, relative to the proposed restriction of the mint and assay service by the United States and protesting against the same.

Whereas the Secretary of the Treasury, in his annual report, has again renewed his efforts to restrict the operation of the mint and assay service by urging the abolition of all the Federal assay offices which are located at strategic entrepôts in the principal gold-mining districts of the West; and

Whereas the fact is well known by the miners of California and of the State wherein the United States mints and assay offices are located that these public bullion-buying agencies render high economic service in protecting the producers of precious metals: Therefore be it

Resolved, by the senate and assembly, jointly, That the Legislature of the State of California respectfully urges the Congress of the United States to oppose the closing of the Federal assay offices and the restriction of the functions of the mint and assay service; and urges the Senators and Representatives of this State in Congress to oppose all efforts to this end: Be it further

Resolved, That the governor of the State of California transmit authenticated copies of these resolutions to the President of the United States, and the President-Elect of the United States, and the respective presiding officers of the sixty-second and sixty-third sessions of the Congress of the United States, and to each of our Senators and Representatives in Congress for said sessions.

## MORTGAGES ON MINING PROPERTY.

### QUARTZ CLAIMS.

LAWS 1853, P. 153; MAY 11, 1853. COMPILED LAWS 1850-1853, P. 911.

AN ACT in relation to personal mortgages in certain cases.

The People, etc.

SEC. 1. A mortgage for a good and valuable consideration upon possessory claims to public lands, all buildings, and improvements upon such lands, all quartz claims, and all other such personal property as shall be fixed in its structure to the soil, acknowledged in manner and form as mortgages upon real estate are required by law to be acknowledged and recorded in the office of the recorder of the county in which the property is situated, shall have the same effect against third persons as mortgages upon real property.

SEC. 2. The seventeenth section of an act entitled "An act concerning fraudulent conveyances and contracts," passed April 19, 1850, in so far as the same conflicts with the provisions of this act, is hereby repealed.

### PERSONAL PROPERTY.

LAWS 1857, p. 347; APRIL 29, 1857.

AN ACT amendatory of and supplementary to an act in relation to personal mortgages in certain cases, passed May 11, A. D. 1853.

The People, etc.

SEC. 1. Section 1 of said act is amended so as to read as follows:

SEC. 1. Chattel mortgages may be made on the following property to secure the payment of just indebtedness: \* \* \* mining claims, \* \* \* quartz claims, with the machinery and buildings connected therewith; water ditches, flumes and aqueducts; tunnels, cuts, and other improvements in mining claims; \* \* \*

SEC. 6. This act shall not be so construed as to interfere or conflict with the lawful mining rules, regulations, or customs in regard to the locating, holding, or forfeiture of claims, but in all cases of mortgages of mining interests under this act, the mortgagee shall have the right to perform the same acts that the mortgagor might have performed for the purpose of preventing a forfeiture of the same under the said rules, regulations, or customs of mines, and shall be allowed such compensation therefor as shall be deemed just and equitable by the court ordering the sale upon a foreclosure. Provided, That such compensation shall in no case exceed the amount realized from the claim by a foreclosure and sale.

\* \* \* \* \*

LAWS 1863, p. 331; APRIL 18, 1863.

AN ACT to amend an act entitled "An act amendatory of and supplementary to an act in relation to personal mortgages, in certain cases," passed May 11, 1853, approved April 29, 1857, and acts amendatory thereof.

The People, etc.

SEC. 1. Section 1 of the act amendatory of and supplementary to an act in relation to personal mortgages in certain cases, passed May 11, 1853, approved April 29, 1857, approved April 19, 1861, is amended so as to read as follows:

SEC. 1. Chattel mortgages may be made on the following property, to secure the payment of just indebtedness: \* \* \* machinery and apparatus for mining purposes. \* \* \*

**LAWS 1863-64, P. 226; MAR. 24, 1864.**

AN ACT to amend an act entitled "An act to amend an act entitled 'An act amendatory of and supplementary to an act in relation to personal mortgages in certain cases,' passed May 11, 1853," approved April 29, 1857, and an act amendatory thereof, approved April 18, 1863.

The People, etc.

SEC. 1. Section 1 of the act to amend an act entitled, "An act amendatory of and supplementary to an act in relation to personal mortgages in certain cases," passed May 11, 1853, approved April 29, 1857, and act amendatory thereof, approved April 18, 1863, is hereby amended so as to read as follows:

SEC. 1. Chattel mortgages may be made on the following property to secure the payment of just indebtedness: \* \* \* machinery and apparatus for mining purpose. No mortgage made by virtue of this act shall have any legal force or effect (except between the parties thereto) unless the residence of the mortgagor and mortgagee, their profession, trade, or occupation, the sum to be secured, the rate of interest to be paid, when and where payable, shall be set out in the mortgage, and the mortgagor and mortgagee shall make affidavit that the mortgagee (mortgage) is bona fide, and made without any design to defraud or delay creditors, which affidavit shall be attached to such mortgage.

**MINING MACHINERY.****LAWS 1893, P. 84; MAR. 9, 1893. CIVIL CODE, SEC. 2955.**

AN ACT entitled "An act to amend section 2955 of the Civil Code.

The People, etc.

SEC. 1. Section 2955 of the Civil Code is hereby amended so as to read as follows:

Mortgages may be made upon: \* \* \*

Fourth. Mining machinery.

\* \* \* \* \*

**LAWS 1897, P. 95; MAR. 9, 1897. SEC. 2955, CIVIL CODE.**

AN ACT to amend section 2953, Civil Code, respecting the mortgaging of personal property.

The People, etc.

SEC. 1. (This amendment makes no change as to mining property.)

**LAWS 1903, P. 78; MAR. 3, 1903. SEC. 2955, CIVIL CODE.**

AN ACT to amend an act entitled "An act to establish a Civil Code," approved March 21, 1872, by amending section 2955 thereof, relating to mortgages upon personal property.

The People, etc.

NOTE.—This amended section does not affect mortgages as to mining machinery.

**LAWS 1905, 36 P. 37; MAR. 3, 1905. LAWS 1907, P. 886; MAR. 22, 1907. SEC. 2955, CIVIL CODE.**

AN ACT to amend section 2955 of an act entitled: "An act to establish a Civil Code," approved March 21, 1872, relating to mortgages of personal property.

The People, etc.

SEC. 1. Section 2955 of the Civil Code is hereby amended so as to read as follows:

SEC. 2955. Mortgages may be made upon the following personal property and none other: \* \* \*

4. Mining machinery.

\* \* \* \* \*

21. Machinery, tanks, stills, agitators, leachers, and apparatus used in producing and refining petroleum, asphaltum, fuel oils, lubricating oils, and greases.

\* \* \* \* \*

NOTE.—The act of March 22, 1907, amended the section, but made no change in paragraphs 4 or 21.

## OIL AND GAS.

### PROOF OF CUSTOM.

LAWS 1865-1866, P. 286; MAR. 17, 1866. (GENERAL LAWS 1864-71. SEC. 9080.)

AN ACT to provide for the better protection of the petroleum mining interests of this State.

The People, etc.

SEC. 1. In actions respecting petroleum mining claims, proof shall be admitted of the customs, usages, regulations, or local laws established and in force in the petroleum mining district embracing such claim; and such customs, usages, regulations, or local laws, when not in conflict with the constitution and laws of this State, shall govern the decisions of the action.

SEC. 2. This act shall take effect and be in force from and after its passage.

### PLUGGING OIL WELLS.

LAWS 1903, P. 399; MAR. 24, 1903.

AN ACT to prevent injury to oil or petroleum bearing strata or formations by the infiltration or intrusion of water therein.

The People, etc.

SEC. 1. It shall be the duty of the owner of any well that may be drilled in the State of California on lands producing or containing oil or petroleum, to properly case such well with metal casing, in accordance with the best approved methods, landing the casing in the clay or other water-impervious strata or formation immediately underlying the surface water-bearing sands or strata, and also to, if the well be drilled to a sufficient depth, land the casing in the clay or other water-impervious strata or formation underlying such oil or petroleum producing or bearing sands or strata, and effectually shut off all water overlying and underlying the oil or petroleum producing or bearing sands or strata, and effectually prevent any water from penetrating such oil or petroleum producing or bearing sands or strata.

SEC. 2. It shall be the duty of the owner of any well referred to in section 1 of this act, before abandoning same, to withdraw the casing therefrom and securely fill such well with clay, earth, or mortar, or other good and sufficient materials, used alone or in suitable combination and thoroughly packed and tamped in the well, to a point 100 feet above the upper oil or petroleum bearing or producing sand or strata, and while withdrawing the casing therefrom, and effectually shut off and exclude all water underlying and overlying such oil or petroleum bearing or producing sand or strata from penetrating such sand or strata.

SEC. 3. The term "owner" as herein used shall mean and include each and every person, persons, copartnership, partnership, association, or corporation owning, managing, operating, controlling, or possessing any well mentioned in sections 1 and 2 of this act, either as principal or principals, lessee or lessees of such principal or principals, and their and each of their employees; the term "oil or petroleum producing or bearing sand or strata" as herein used shall mean and include any bed, seam, or stratum of rock or sand or other material which contains, includes, or yields earth oil, rock oil, or petroleum oil or natural gas or either of them.

SEC. 4. Any violation of the provisions of this act shall be deemed a misdemeanor.

### WASTE OF NATURAL GAS PREVENTED.

LAWS 1911, P. 499; MAR. 25, 1911.

AN ACT prohibiting the unnecessary wasting of natural gas into the atmosphere; providing for the capping or otherwise closing of wells from which natural gas flows; and providing penalties for violating the provisions of this act.

The People, etc.

SEC. 1. All persons, firms, corporations and associations are hereby prohibited from willfully permitting any natural gas wastefully to escape into the atmosphere.

SEC. 2. All persons, firms, corporations or associations digging, drilling, excavating, constructing, or owning or controlling any well from which natural gas flows shall upon the abandonment of such well, cap or otherwise close the mouth of or entrance to the same in such a manner as to prevent the unnecessary or wasteful escape into the atmosphere of such natural gas. And no person, firm, corporation, or association owning or controlling land in which such well or wells are situated shall willfully permit natural gas flowing from such well or wells, wastefully or unnecessarily to escape into the atmosphere.

SEC. 3. Any person, firm, corporation, or association who shall willfully violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than \$1,000 or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

SEC. 4. For the purposes of this act each day during which natural gas shall be willfully allowed wastefully or unnecessarily to escape into the atmosphere shall be deemed a separate and distinct violation of this act.

SEC. 5. All acts or parts of acts in conflict herewith are hereby repealed.

SEC. 6. This act shall take effect immediately.

### PIPE LINES.

LAWS 1911 (EXTRA SESSION), P. 18; DEC. 23, 1911.

AN ACT to provide for the organization of the railroad commission, to define its powers and duties, and the rights, remedies, powers, and duties of public utilities, their officers, define its powers and duties, and the rights, remedies, of patrons of public utilities, and to provide penalties for offenses by public utilities, their officers, agents, and employees, and by other persons and corporations, etc. \* \* \*

The People, etc.

SEC. 2. \* \* \*

(m) The term "pipe line," when used in this act, includes all real estate, fixtures, and personal property, owned, controlled, operated, or managed in connection with or to facilitate the transmission, storage, distribution, or delivery of crude oil or other fluid substances except water through pipe lines.

(n) The term "pipe line corporation," when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any pipe line for compensation within this State.

\* \* \* \* \*

### OIL WELLS—REGULATIONS.

LAWS 1915, P. 1404; JUNE 10, 1915. (AMENDED. SEE PAGE 202.)

#### CHAPTER 718.

AN ACT establishing and creating a department of the State mining bureau for the protection of the natural resources of petroleum and gas from waste and destruction through improper operations in production; providing for the appointment of a State oil and gas supervisor; prescribing his duties and powers; fixing his compensation; providing for the appointment of deputies and employees; providing for their duties and compensation; providing for the inspection of petroleum and gas wells; requiring all persons operating petroleum and gas wells to make certain reports; providing procedure for arbitration of departmental rulings; creating a fund for the purposes of the act; providing for assessment of charges to be paid by operators and providing for the collection thereof; and making an appropriation for the purposes of this act.

The People, etc.

SEC. 1. A separate department of the State mining bureau is hereby established and created to be known as the department of petroleum and gas. Such department shall be under the general jurisdiction of the State mineralogist. He shall appoint a supervisor who shall be a competent engineer or geologist experienced in the development

and production of petroleum and who shall be designated the "State oil and gas supervisor," and whose term of office shall be four years from and after the date of his appointment.

SEC. 2. For his services in the general supervision of said department the State mineralogist shall receive as compensation \$1,400 annually which shall be in addition to his compensation fixed in section 2 of the act of June 16, 1913, relating to the State mining bureau. The supervisor shall receive an annual salary of \$4,500 and shall be allowed his necessary traveling expenses. The State mineralogist may appoint necessary clerks, stenographers, and assistants, and prescribe their duties and fix their compensation, within the amount limited in section 46 hereof and subject to the civil service laws of the State.

The additional salary herein authorized to be paid to the State mineralogist and the salaries of the supervisor and of the deputies, clerks, stenographers, assistants, and other employees shall be paid out of the funds hereinafter provided for at the times and in the manner that salaries of other State officers and employees are paid. (Amended, see p. 202.)

SEC. 3. It shall be the duty of the State oil and gas supervisor so to supervise the drilling, operation, and maintenance and abandonment of petroleum or gas wells in the State of California, as to prevent, as far as possible, damage to underground petroleum and gas deposits from infiltrating water and other causes and loss of petroleum and natural gas.

SEC. 4. It shall be the duty of the State oil and gas supervisor to appoint not more than four deputies and prescribe their duties, and fix their compensation. Such deputies shall serve during the pleasure of the supervisor. He may also employ an attorney and fix his compensation. The supervisor, the deputies, and the attorney shall not be subject to the civil service act. (Amended, see p. 203.)

SEC. 5. Each deputy appointed by the supervisor shall be a competent engineer or geologist experienced in the development and production of petroleum. Each deputy shall be assigned certain districts or territory, and shall maintain an office in the district convenient of access to the petroleum or gas operators therein. The office shall be open and the deputy shall be present at certain specified times which shall be posted at such office. (Amended, see p. 203.)

SEC. 6. It shall be the duty of each deputy to collect all necessary information regarding the oil wells in the district, with a view to determining the presence and source of water in the oil sand, and to make all maps and other accessories necessary to determine the presence and source of water in the oil sands. This work shall be done with the view to advising the operators as to the best means of protecting the oil and gas sands, and with a view to aiding the supervisor in ordering tests or repair work at wells. All such data shall be kept on file in the office of the deputy oil and gas supervisor of the respective district.

SEC. 7. The records of any and all operators, when filed with the deputy supervisor as hereinafter provided, shall be open to inspection to those authorized in writing by such operators, to the State officers, and to the board of arbitration hereinafter provided for. Such records shall in no case be available as evidence in court proceedings and no officer or employee or member of any board of arbitration shall be allowed to give testimony as to the contents of said records, except at such court proceedings as are hereinafter provided for in the review of the decision of the State oil and gas supervisor, or a board of arbitration, and in criminal proceedings arising out of such records, or the statements upon which they are based. (Amended, see page 203.)

SEC. 8. It shall be the duty of the supervisor to order such tests or remedial work as is in his judgment necessary to protect the petroleum and gas deposits from damage by underground water, to the best interest of the neighboring property owners and the public at large. The order shall be in written form, signed by the supervisor, and served upon the owner of the well or his local agent in the manner provided in

section 11 hereof. The order shall specify the work necessary to protect such deposits from damage from underground waters. For this purpose each operator or owner shall designate an agent, giving his post office address, who resides within the county where the well or wells are located, upon whom all orders and notices provided for in this act may be served. (Amended, see page 203.)

SEC. 9. The well owner or his local agent may within 10 days from date of service of order from the supervisor file with the supervisor or his deputy in the district where the property is located a statement that the supervisor's order is not acceptable and that arbitration of the subject is demanded. (Amended, see page 204.)

SEC. 10. Arbitration of a question which has been the subject of an order by the supervisor shall be accomplished by a board of three members, as follows: (1) The owner of the well or his local agent shall name one member, who shall not be directly or indirectly interested in the property nor employed in its operation. (2) The owners or their local agents of wells within a radius of 1 mile from the affected well shall name one member of the arbitration board, who shall not be directly or indirectly interested in the property nor employed in its operation. For this purpose the supervisor shall give written notice to each of the said owners or agents. The notice shall specify the time and place of meeting and the fact that it is for the purpose of choosing an arbitrator. The notice shall be published once in a newspaper of general circulation, published in the county where the meeting is to be held, and posted in a conspicuous place at the office of the deputy supervisor at least five days before the time of meeting, and a copy thereof mailed to each of such owners or their local agents at the address given at least five days before the time of meeting. A majority of those attending such meeting shall be sufficient to choose such arbitrator. (3) The third member of the arbitration board shall be chosen by the other members, but if they fail to choose a third member within 10 days after the selection of the first two members then such third member shall be chosen by the State mineralogist and shall not be directly or indirectly interested in the property nor employed in its operation. The arbitrators chosen as above specified shall each be paid \$10 per day for each day of actual service, not to exceed \$30 each for any one case, upon warrants drawn upon the repair fund hereinafter created, and approved by the State mineralogist. One-half of the cost of arbitration shall be paid by the person demanding it, and the board of arbitration may, at its discretion, order that the entire cost of such arbitration shall be paid by such person if it finds that such arbitration has been demanded needlessly or not in good faith. (Amended, see pages 204, 205, 206.)

SEC. 11. Upon receipt by the supervisor or deputy supervisor of a written complaint, signed by one-third of the individuals or corporations owning land or operating wells within a radius of 1 mile of any well or group of wells, the supervisor must make an investigation of said well or wells and render a written order stating the work required to repair the damage complained of or stating that no work is required. A copy of such order must be delivered to each of the complainants, and if the supervisor order the damage repaired a copy of such order shall be delivered to each of the owners or agents having in charge the wells upon which the work is to be done. Service of such copies shall be by mailing to such persons at the post office address given. Within 10 days after the date of mailing of such order any of such complainants may demand arbitration of the matter as provided in section 10 of this act. When said complaint is made by a single party against a well or wells of which there is no financially responsible owner, the supervisor may order the necessary repair work, the expense of which shall be a charge against the complainant collectable as provided in section 14. (Amended, see page 206.)

SEC. 12. In any proceedings before the board of arbitration herein provided for, the supervisor shall have the power to subpoena witnesses and to administer oaths: Provided, however, that no person shall be required to attend upon such subpoenas,

either with or without books, papers, documents, or accounts, unless residing within the same county or within 30 miles of the place of attendance, but the supervisor may in such a case cause the deposition of witnesses residing within or without the State, to be taken in the manner prescribed by law for like depositions in civil actions in the superior courts of this State, and to that end may compel the attendance of witnesses and the production of books, papers, and documents at such places as he may designate within the limits hereinbefore prescribed. Witnesses shall be entitled to receive the fees and mileage fixed by law in civil cases. In case of failure on the part of any person to comply with any order of the supervisor or any subpoena, or upon the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated before the board, it shall be the duty of the superior court or the judge thereof, on application of the supervisor, to compel obedience in the same manner, by contempt proceedings or otherwise, that such obedience would be compelled in a proceeding pending before the court. (Amended, see page 207.)

SEC. 13. Within 10 days after hearing the evidence the arbitration board shall make a written decision ordering such tests or remedial work as is deemed necessary to protect the oil sands from damage by infiltrating water. This written decision shall be served upon the owner or his agent and shall supersede and nullify the previous order of the supervisor provided for in section 8 hereof. In case no written decision is made by a board of arbitration within 30 days after the date of notice by the supervisor, as provided in section 10 hereof, the order of the supervisor shall be effective and subject only to review by writ of certiorari from the superior court, as provided in section 14 hereof. (Amended, see page 207.)

SEC. 14. On or before 30 days after the date of serving an order of the supervisor provided for in section 8 hereof, or, in case of arbitration, on or before 30 days after date of serving the decision of the board, as provided in sections 12 and 13 hereof, the owner shall commence in good faith the work ordered, and continue until completion. If the work has not been so commenced and continued to completion the supervisor shall appoint agents as he deems necessary, who shall enter the premises and perform the work. Accurate account of all such expenditures shall be kept and the amount paid from the fund hereinafter created upon the warrant of the State comptroller. Any amounts so expended shall constitute a lien against the property upon which the work is done. The decision of the board of arbitration or of the supervisor in such a case may be reviewed by writ of certiorari from the superior court of the county in which the district is situated, if taken within 30 days after the signing of the order. If no review is taken, or, if taken, the decision of the board is affirmed, the lien upon the property shall be enforced in the same manner that other liens on real property are enforced and shall first be enforced against the owner of the well, against the operator, and against the personal property and fixtures used in the construction or operation thereof, and then if there then be any deficiency, against the land upon which the work is done. (Amended, see page 207.)

SEC. 15. It shall be the duty of the owner of any well now drilled, or that may be drilled, in the State of California, on lands producing or reasonably presumed to contain petroleum or gas, to properly case such well or wells, with metal casing, in accordance with methods approved by the supervisor, and to use every effort and endeavor in accordance with the most approved methods to effectually shut off all water overlying or underlying the oil or gas bearing strata, and to effectually prevent any water from penetrating such oil or gas bearing strata. (Amended, see page 208.)

SEC. 16. It shall be the duty of the owner of any well referred to in this act, before abandoning the same, to use every effort and endeavor in accordance with methods approved by the supervisor, to shut off and exclude all water from entering oil-bearing strata encountered in the well. The owner shall give written notice to the supervisor or his local deputy of his intention to abandon any well and the date when such work of abandonment shall begin. The notice shall be given to the supervisor or his local



deputy at least 15 days before such proposed abandonment. The owner shall furnish the supervisor or his deputy with such information as he may request, showing the condition of the well and proposed method of abandonment. The supervisor or his deputy shall before the proposed date of abandonment furnish the owner with a written order of approval of his proposal or a written order stating what work will be necessary before approval to abandon will be given. If the supervisor shall fail within the specified time to give the owner a written order, such failure shall be considered as an approval of the owner's proposal to abandon the well. (Amended, see page 209.)

SEC. 17. The owner of any well referred to in this act shall, before commencing the work of drilling an oil or gas well, file with the supervisor or his local deputy a written notice of intention to commence drilling. Such notice shall also contain the following information: (1) Statement of location and elevation above sea level of proposed derrick and drill rig. (2) The number or other designation by which such well shall be known, which number or designation shall not be changed after filing notice provided for in this section without the written consent of the supervisor being obtained therefor. (3) The owner's estimate of the depth of the point at which water shall be shut off. (4) The owner's estimate of the depth at which oil or gas producing sand or formation shall be encountered. The provisions of this section shall also apply so far as may be to the deepening or redrilling of any well. (Amended, see page 209.)

SEC. 18. It shall be the duty of the owner of any well referred to in this act to keep a careful and accurate log of the drilling of such well, such log to show the character and depth of the formations passed through or encountered in the drilling of such well, and particularly to show the location and depth of the water-bearing strata, together with the character of the water encountered from time to time (so far as ascertained) and to show at what point such water was shut off, if at all, and if not, to so state in such log, and show completely the amounts, kinds, and size of casing used, and show the depth at which oil-bearing strata is encountered, the depth and character of same, and whether all water overlying and underlying such oil-bearing strata was successfully and permanently shut off so as to prevent the percolation or penetration into such oil-bearing strata; such log shall be kept in the local office of the owner or operator and subject to the inspection of the supervisor or any of his deputies at any time during business hours, and a copy of said log shall be filed with the deputy supervisor immediately upon the completion of said well and also a complete copy shall be filed with the deputy supervisor upon the completion of any additional work upon the well. The owner of any well drilled previous to the enactment of this act shall furnish to the supervisor a complete and correct log of such well, so far as may be possible, together with a statement of the present condition of said well. (Amended, see page 209.)

SEC. 19. It shall be the duty of the owner of any well referred to in this act to notify the deputy supervisor of the time at which the owner shall test the shut-off of water in any such well. Such notice shall be given at least 5 days before such test. The deputy supervisor shall be present at such test and shall himself note in the log book the result thereof. If any test shall be unsatisfactory to him he shall notify the owner of that fact. (Amended, see page 209.)

SEC. 20. It shall be the duty of every person, association, or corporation producing oil in the State of California to file with the supervisor at his request, but not oftener than once in each month, a sworn statement of the amount of oil produced, during the period indicated, its gravity and the number of wells drilling, producing, idle, or abandoned. This information shall be in such form as the supervisor may designate. (Amended, see page 209.)

SEC. 21. Any owner or operator of a well referred to in this act, or employee thereof, who refuses to permit the supervisor, or his deputy, to inspect the same, or who willfully hinders or delays the enforcement of this act, and every person, firm, or corporation

who violates any provision of this act, is guilty of a misdemeanor and shall be punishable by a fine of not less \$100, or by imprisonment in the county jail for not less than 30 days, or by both such fine and imprisonment.

SEC. 22. Charges levied, assessed, and collected as hereinafter provided upon the properties of every person, firm, corporation, or association operating any oil well or wells for the production of petroleum in this State, or operating any well or wells for the production of natural gas in this State, which gas wells are situate in counties having producing petroleum wells chargeable under this act, and on lands situate within 2 miles, as near as may be, of any petroleum or gas well the production of which is chargeable under this act, shall be used exclusively for the support and maintenance of the department of petroleum and gas hereinbefore created, and shall be assessed and levied by the State mineralogist, and collected in the manner hereinafter provided. (Amended, see page 211.)

SEC. 23. Every person, firm, corporation or association operating any petroleum well or wells in this State shall annually pay a charge to the State treasurer at a uniform rate per barrel of petroleum produced for the preceding calendar year at the time and in the manner hereinafter provided, based upon a verified report as herein provided.

SEC. 24. Every person, firm, corporation, or association operating any gas well or wells in this State shall annually pay a charge to the State treasurer based upon the amount of gas sold in the preceding calendar year at a fixed rate per thousand cubic feet, which rate shall be based upon the proportionate benefits resulting to the property so assessed by reason of the expenditures made under this act, in the county, in which each such well is located. Said charge shall be based upon a verified report as herein provided; provided further, that no charges shall be assessed, levied, or collected from any person, firm, corporation, or association operating a gas well or wells in any county in which there exist no producing petroleum wells to be assessed under the provisions of this act. (Amended, see page 211.)

SEC. 25. Every person, firm, corporation, or association owning any oil land, as determined by the supervisor, shall annually pay a charge to the State treasurer at the time and in the manner hereinafter provided, which charge shall be a uniform rate per acre. Said charge shall be based upon a verified report as provided herein; provided, however, that such lands so assessed shall not be called upon to pay more than one-tenth of the total charges or moneys proposed to be assessed, levied, and collected under the provisions of this act for any one year.

SEC. 26. The charges assessed, levied and to be collected under the provisions of this act shall be in addition to any and all charges, taxes, assessments, or licenses of any kind or nature paid by or upon the properties assessed hereunder.

SEC. 27. The State mineralogist shall annually, on or before the first Monday in March, acting in conjunction with the State board of control, make an estimate of the amount of moneys which shall be required to carry out the provisions of this act. (Amended, see page 211.)

SEC. 28. The State mineralogist shall prescribe the form and contents of all reports for making the charge or other purposes to carry out the intent and provision of this act, which form shall be mailed in duplicate to the person, firm, corporation, or association owning property or assessed under the provisions of this act.

SEC. 29. Every person, firm, corporation, or association chargeable under the provisions of this act shall within 10 days after the first Monday in March of each year report to and file with the State mineralogist a report in such form as said officer may prescribe, giving any and all items of information as may be demanded by said report, and necessary to carry out the provisions of this act, which report shall be verified by such person or officer as the State mineralogist may designate.

SEC. 30. If any person, firm, corporation, or association chargeable under the provisions of this act shall fail or refuse to furnish the State mineralogist within the time prescribed in this act the verified report provided for in this act, the State mineralogist

must note such failure or refusal in the record of assessments hereinafter in this act provided for, and must make an estimate of the petroleum or gas production, or landed area to be assessed of any such person, firm, corporation, or association and must assess the same at the amount thus estimated and compute the charge thereon, which assessment and charge shall be the assessment and charge for such year. And if in the succeeding year any such person, firm, corporation, or association shall again fail and refuse to furnish the verified report required by this act, the State mineralogist shall make an estimate as aforesaid, which estimate shall not be less than twice the amount of the estimate made by him for the previous year, and shall note such failure or refusal as above provided, and the said estimate so made shall be the assessment or charge for said year. In case of each succeeding consecutive failure or refusal the said State mineralogist shall follow the same procedure until a true statement or report shall be furnished.

SEC. 31. Any person, firm, corporation, or association failing or refusing to make and furnish any report prescribed in this act or rendering a false or fraudulent report shall be guilty of a misdemeanor and subject to a fine of not less than \$300 and not exceeding \$1,000 for each offense. (Amended, see page 211.)

SEC. 32. The State mineralogist may, for good cause shown, by order entered upon his minutes, extend for not exceeding 30 days the time fixed in this act for filing any report herein provided for.

SEC. 33. On or before the third Monday before the first Monday in July the State mineralogist shall determine the rate or rates which, when applied to the assessments provided for in this act, shall produce the sum necessary to be raised as provided in section 27 of this act. Within the same time the said State mineralogist shall extend in the proper column of the record of assessments hereinafter provided for the amount of charges due from each person, firm, corporation, or association. (Amended, see page 211.)

SEC. 34. Between the first Monday in March and the third Monday before the first Monday in July in each year, the State mineralogist must assess and levy the charges as and in the manner provided for in this act. The assessments must be made to the person, firm, corporation, or association owning or operating the property subject to assessment hereunder on the first Monday in March. If the name of the owner is unknown to the State mineralogist, such assessment must be made to unknown owners. Clerical errors occurring or appearing in the name of any person, firm, corporation, or association whose property is properly assessed and charged, or in the making, or extension of any assessment or charge upon the records, which do not affect the substantial rights of the payer, shall not invalidate the assessment or charge.

SEC. 35. The State mineralogist and the chairman of the State board of control and the chairman of the State board of equalization shall constitute a board of review, correction, and equalization, and shall have all the powers and perform such duties as usually devolve upon a county board of equalization under the provisions of section 3672 of the Political Code. The State mineralogist shall act as secretary of said board, and shall keep an accurate minute of the proceedings thereof. Said board of review, correction, and equalization shall meet at the State capitol on the third Monday before the first Monday in July of each year, and remain in session from day to day until the first Monday in July for the purpose of carrying out the provisions of this section.

SEC. 36. On the third Monday before the first Monday in July of each year the State mineralogist shall cause to be published a notice, one or more times, in a daily, or weekly, or semiweekly newspaper of general circulation, published in the counties of Fresno, Kern, Los Angeles, Orange, Ventura, and Santa Barbara, if one be published therein, otherwise in a newspaper of general circulation published in the county nearest to such county designated herein in which no such paper is published, that the assessment of property and levy of charges under and in pursuance of this

act has been completed and that the records of assessments containing the charges due will be delivered to the State comptroller on the first Monday in July, and that if any person, firm, corporation, or association is dissatisfied with the assessment made or charge fixed by the State mineralogist, he or it may, at any time before said first Monday in July, apply to said board of review, correction, and equalization to have the same corrected in any particular. The said board shall have power at any time before said first Monday in July to correct the record of assessments and may increase or decrease any assessment or charge therein if, in its judgment, the evidence presented or obtained warrants such action. Costs of such publication in any county shall be paid from the repair fund of said county. (Amended, see page 211.)

SEC. 37. The State mineralogist must prepare each year a book, in one or more volumes, to be called the "Record of Assessments and Charges for Oil Protection," in which must be entered, either in writing or printing, or both writing and printing, each assessment and levy or charge made by him upon the property provided to be assessed and charged under this act, describing the property assessed, and such assessments may be classified and entered in such separate parts of said record as said State mineralogist shall prescribe.

SEC. 38. On the first Monday in July the State mineralogist must deliver to the State comptroller the record of assessments and charges for oil protection, certified to by said State mineralogist, which certificate shall be substantially as follows:

"I, ———, State mineralogist, do hereby certify that between the first Monday in March and the first Monday in July, 19—, I made diligent inquiry and examination to ascertain all property and persons, firms, corporations, and associations subject to assessment for the purpose of oil protection, as required by the provisions of the act of legislature approved June 10, 1915, providing for the assessment and collection of charges for oil protection; that I have faithfully complied with all the duties imposed upon me by law; that I have not imposed any unjust or double assessment through malice or ill will, or otherwise; nor allowed any person, firm, corporation, or association, or property to escape a just assessment or charge through favor or regard, or otherwise."

But the failure to subscribe such certificate to such record of assessments and charges for oil protection, or any certificate, shall not in any manner affect the validity of any assessment or charge.

It is the intention of this act that in the assessment of the lands as provided in section 25 hereof, and in carrying such assessments to the record of assessments aforesaid, the State mineralogist shall keep within 2 miles, as near as may be, of producing petroleum or gas wells, as provided in said section 25 hereof. (Amended, see page 212.)

SEC. 39. The charges levied and assessed under the provisions of this act shall be due and payable on the first Monday in July in each year, and one-half thereof shall be delinquent on the sixth Monday after the first Monday in July at 6 o'clock p. m., and unless paid prior thereto, 15 per cent shall be added to the amount thereof, and unless paid prior to the first Monday in February next thereafter at 6 o'clock p. m., an additional 5 per cent shall be added to the amount thereof, and the unpaid portion, or the remaining one-half of said charges shall become delinquent on the first Monday in February next succeeding the day upon which they become due and payable, at 6 o'clock p. m.; and if not paid prior thereto, 5 per cent shall be added to the amount thereof.

SEC. 40. Within 10 days after the receipt of the record of assessments and charges for oil protection, the State comptroller must begin the publication of a notice to appear daily for 5 days, in one daily newspaper of general circulation published in each of the counties of Fresno, Kern, Los Angeles, Orange, Ventura, and Santa Barbara, if one be published therein, otherwise for at least two times in a weekly or semi-weekly paper of general circulation published therein, or if there be neither a daily

nor weekly nor semiweekly paper of general circulation published in any one of such counties, then the publication of the notice for such county shall be made in a similar manner in a newspaper of general circulation published in the county nearest such county, specifying—

(1) That he has received from the State mineralogist the record of assessments and charges for oil protection.

(2) That the charges therein assessed and levied are due and payable on the first Monday in July and that one-half thereof will be delinquent on the sixth Monday after the first Monday in July at 6 o'clock p. m., and that unless paid to the State treasurer at the capitol prior thereto, 15 per cent will be added to the amount thereof, and unless paid prior to the first Monday in February next thereafter at 6 o'clock p. m., an additional 5 per cent will be added to the amount thereof; and that the remaining one-half of said charges will become delinquent on the first Monday in February next succeeding the day upon which they become due and payable, at 6 o'clock p. m.; and if not paid to the State treasurer at the capitol prior thereto, 5 per cent will be added to the amount thereof. Costs of such publication in any county shall be paid from the repair fund of said county. (Amended, see page 212.)

SEC. 41. The assessments and charges levied under the provisions of this act shall constitute a lien upon all the property of every kind and nature belonging to the persons, firms, corporations, and associations and assessed under the provisions hereof, which lien shall attach on the first Monday in March of each year. Every charge and assessment herein provided for has the effect of a judgment against the person, firm, corporation, or association, and every lien created by this act has the effect of an execution duly levied against all property of the delinquent; the judgment is not satisfied nor the lien removed until such charges, penalties, and costs are paid, or the property sold for the payment thereof. (Amended, see page 213.)

SEC. 42. All charges assessed and levied under the provisions of this act shall be paid to the State treasurer upon the order of the State comptroller. The comptroller must mark the date of payment of any charge on the record of assessments and charges for oil protection, and shall give a receipt for such payment in such form as the comptroller shall prescribe. Errors appearing in any assessment on said record of assessments or overcharges shall be corrected by the comptroller by and with the consent of the State board of control in such manner as said comptroller and said board shall agree upon. (Amended, see page 213.)

SEC. 43. Any person, firm, corporation, or association claiming and protesting as herein provided that the assessment made or charges assessed against him or it by the State mineralogist is void, in whole or in part, may bring an action against the State treasurer for the recovery of the whole or any part of such charge, penalties, or costs paid on such assessment upon the grounds stated in said protest, but no action may be brought later than the third Monday in February next following the day on which the charges were due, nor unless such person, firm, corporation, or association shall have filed with the State comptroller at the time of payment of such charges a written protest, stating whether the whole assessment or charge is claimed to be void, or if a part only, what part, and the grounds upon which such claim is founded; and when so paid under protest the payment shall in no case be regarded as voluntary. (Amended, see page 213.)

Whenever, under the provisions of this section, an action is commenced against the State treasurer, a copy of the complaint and of the summons must be served upon the treasurer, or his deputy. At the time the treasurer demurs or answers, he may demand that the action be tried in the superior court of the county of Sacramento, which demand must be granted. The attorney general must defend the action, or may appoint any competent attorney to so defend, the expense of which employment shall be paid from the repair fund raised under the provisions of this act. The provisions of the Code of Civil Procedure relating to pleadings, proofs, trials, and appeals are applicable to the proceedings herein provided for.

A failure to begin such action within the time herein specified shall be a bar against the recovery of such charges. In any such action the court shall have the power to render judgment for plaintiff for any part or portion of the charge, penalties, or costs found to be void and so paid by plaintiff upon such assessment.

SEC. 44. The State comptroller shall, on or before the 30th day of May next following the delinquency of any charge as provided in this act, bring an action in a court of competent jurisdiction in the county of Sacramento in the name of the people of the State of California, to collect any delinquent charges or assessments, together with any penalties, or costs, which have not been paid in accordance with the provisions of this act and appearing delinquent upon the records of assessments and charges for oil protection hereinbefore in this act provided for.

The attorney general, or some competent attorney appointed by him for that purpose, must prosecute such action, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proofs, trials, and appeals are applicable to the proceedings herein provided for. In such action a writ of attachment may be issued, and no bond or affidavit previous to the issuing of said attachment is required. The special attorney herein authorized to be appointed to prosecute such action or actions shall be paid from the repair funds raised under the provisions of this act.

Payment of the charges and penalties, or amount of the judgment recovered in such action, must be made to the State treasurer. In such actions the record of assessment and charges for oil protection, or a copy of so much thereof as is applicable in said action, duly certified by the comptroller, showing unpaid charges against any person, firm, corporation, or association assessed by the State mineralogist, is prima facie evidence of the assessment upon the property, the delinquency, the amount of charges, penalties, and costs due and unpaid to the State, and that the person, firm, corporation, or association is indebted to the people of the State of California in the amount of charges and penalties therein appearing unpaid, and that all the forms of law in relation to the assessment of such charges have been complied with. (Amended, see page 214.)

SEC. 45. The first assessment under the provisions of this act shall be as of the first Monday in March, 1916, and the reports of petroleum production and sales of gas herein provided to be assessed shall be reported for the calendar year ending December 31, 1915. The lands herein provided to be assessed and charged shall be assessed to the owners thereof as of the first Monday in March, 1916.

SEC. 46. All of the moneys paid to the State treasurer under this act shall be deposited to the credit of the "oil protection fund" which is hereby created. Of the moneys in such funds \$45,000 only shall be set aside as a "supervision account" and shall be available annually for the support and maintenance of the department herein established, and for the necessary expenses of the comptroller in carrying out the provisions of this act. Any balance remaining in said account at the end of any fiscal year shall be carried over and made a part of the succeeding year's "supervision account"; provided further, that in the first assessment under this act, an amount equal to the sum appropriated in section 51 hereof, shall be added to the regular supervision account and also the amount of \$10,000 which shall be available for providing offices and equipment for the deputy supervisors. All moneys shall be drawn from such fund, for the purpose of this act, upon warrants drawn by the comptroller of the State, upon demands made by the State mineralogist, and audited by the State board of control. (Amended, see page 214.)

SEC. 47. The moneys in such fund shall be expended under the direction of the State mineralogist. All moneys over and above the \$45,000 for support and maintenance shall be available for the actual repair of wells as specified in section 14 and for expenditures provided for in sections 36, 40, 43, and 44 of this act. Moneys collected from any county shall be available for repair work only in said county. Expenditure on repair work, in any county, during one year, shall not exceed an amount equal to \$25 per producing oil well in said county, but in no county shall the amount exceed

\$25,000 and the charges hereinbefore provided for shall be so determined that such amount shall be available. All moneys received in repayment for repair work done under the order and direction of the supervisor, as hereinbefore provided, shall be returned to the repair fund of the county in which the work was done. (Amended, see page 214.)

SEC. 48. On or before the first day of October in each and every year, the supervisor shall submit a report in writing to the State mineralogist showing the total number of barrels of petroleum produced in each county in the State during the previous fiscal year, together with the total cost for said year of supervision as shown by the "supervision account" and the net amount remaining therein available for the succeeding year's expense, also the total amount uncollected; such report shall also show the total amount collected in each county under the "county repair account" during such year, total amount expended for said purpose, the total amount still outstanding and not repaid, and the sum available for the next succeeding year. Such report shall also include such other information as the supervisor may deem advisable. The State mineralogist shall make public such statements promptly after receipt of the same from the supervisor for the benefit of all parties interested therein. (Amended, see page 214.)

SEC. 49. All leases, licenses, and assignments thereof or of any interest therein for, upon, or concerning lands or tenements in this State, whereby a right is given or granted to operate or to sink or drill wells thereon for petroleum or gas, or either, or pertaining thereto, shall be filed for record forthwith, and recorded in the records of the county recorder of the county where the property is situated without delay, and not be removed until recorded. No such lease or license shall have any force or validity until it is filed for record as aforesaid, except as between parties thereto, unless the person claiming thereunder is in actual possession. (Amended, see page 215.)

SEC. 50. Whenever the term "supervisor" is used in this act it shall be taken to mean the "State oil and gas supervisor," the term "oil" shall include "petroleum," the term "petroleum" shall include "oil," the term "gas" shall mean natural gas coming from the earth, the term "operator" shall mean any person, firm, or corporation drilling, maintaining, operating, pumping, or in control of a well in any territory which the supervisor determines to be oil or gas producing territory, the term "owner" shall include "operator" when any oil or gas well is operated or has been operated or is about to be operated by any person, firm, or corporation other than the owner thereof, and the term "operator" shall include "owner" when any such well is or has been or is about to be operated by or under the direction of the owner, except that all the provisions of this act relating to assessments for the purposes of this act based upon the annual production of oil or petroleum or sale of gas, as set forth in sections 22 to 45, inclusive of this act, shall apply only to a person, firm, or corporation operating an oil or petroleum or gas well, and shall not apply to the owner of such well if some person, firm, or corporation other than such owner, has been actually operating the well during the whole period for which such annual charge is made, but in the event that the actual operation of any such well changes hands during such period, the charge shall be apportioned upon the basis of the oil or petroleum or gas produced, and the lien provided for in section 41 of this act shall be a lien against the property of each and all such operators.

SEC. 51. There is hereby appropriated out of any moneys in the State treasury not otherwise appropriated, the sum of \$20,000 which said sum shall be immediately transferred by the State comptroller on the books of his office from the general fund to the "oil protection fund" created by section 46 of this act.

The above-mentioned fund shall be available for the uses of the State mineralogist for the maintenance of the department of petroleum and gas and for the necessary expenses of the comptroller in carrying out the provisions of this act. When the collections paid to the State treasurer, as herein provided, equal the sum of \$30,000 then said sum of \$20,000 shall be re-transferred from the oil protection fund to the general fund.

The moneys received into the State treasury through the provisions of this act are hereby appropriated for the uses and purposes herein specified.

SEC. 52. If any section, subsection, sentence, clause, or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

SEC. 53. This act shall be liberally construed to meet its purposes and the supervisor shall have all powers which may be necessary to carry out the purposes of this act, but the provisions of this act shall not apply to any land or wells situated within the boundaries of an incorporated city where the drilling of oil wells is prohibited.

SEC. 54. That certain act entitled "An act to prevent injury to oil, gas, or petroleum bearing strata or formations by the penetration or infiltration of water therein," approved March 20, 1909, together with all acts amendatory thereof and supplemental thereto and all acts in conflict herewith are hereby repealed. Nothing herein shall be construed as affecting the provisions of the act of June 16, 1913, establishing a State mining bureau.

### AMENDATORY ACT.

LAWS 1917, P. 1586; JUNE 1, 1917.

AN ACT to amend sections 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 24, 27, 31, 33, 36, 37, 38, 40, 41, 42, 43, 44, 46, 47, 48, 49 of an act entitled "An act establishing and creating a department of the State mining bureau for the protection of the natural resources of petroleum and gas from waste and destruction through improper operations in production: providing for the appointment of a State oil and gas supervisor; prescribing his duties and powers; fixing his compensation; providing for the appointment of deputies and employees; providing for their duties and compensation; providing for the inspection of petroleum and gas wells; requiring all persons operating petroleum and gas wells to make certain reports; providing procedure for arbitration of departmental rulings; creating a fund for the purposes of the act; providing for assessment of charges to be paid by operators and providing for the collection thereof; and making an appropriation for the purposes of this act," approved June 10, 1915, and to add a new section thereto, to be numbered 21a.

The People, etc.

SEC. 1. Section 2 of an act entitled "An act, etc." (same as in title), approved June 10, 1915, is hereby amended to read as follows:

SEC. 2. For his services in the general supervision of said department, the State mineralogist shall receive as compensation \$1,400 annually which shall be in addition to his compensation fixed in section 2 of the act of June 16, 1913, relating to the State mining bureau.

The secretary of the State mining bureau shall receive for his services in connection with the department of petroleum and gas a sum not to exceed \$600 annually, which sum shall be in addition to his compensation paid from the funds of the State mining bureau.

The supervisor shall receive an annual salary of \$6,000, and shall be allowed his necessary traveling expenses. The State mineralogist may, at the request of the State oil and gas supervisor, and subject to the civil service laws of the State, appoint 1 chief clerk at a salary of not to exceed \$1,800 annually; 12 office assistants or stenographers each at a salary of not to exceed \$1,200 annually; 4 geological draftsmen each at a salary not to exceed \$1,500 annually; 4 petroleum engineers each at a salary not to exceed \$2,400 annually; 12 inspectors each at a salary not to exceed \$1,800 annually.

The additional salary herein authorized to be paid to the State mineralogist and the secretary of the State mining bureau and the salaries of the supervisor and of the deputies, clerks, stenographers, assistants, and other employees shall be paid out of the funds hereinafter provided for at the times and in the manner that salaries of other State officers and employees are paid.



SEC. 2. Section 4 of said act, approved June 10, 1915, is hereby amended to read as follows:

SEC. 4. It shall be the duty of the State oil and gas supervisor to appoint one chief deputy and five field deputies, one for each of the districts hereinafter provided for and prescribe their duties and fix their compensation, which shall not exceed \$4,000 per annum for the chief deputy and not to exceed \$3,600 per annum for each field deputy. Such deputies shall serve during the pleasure of the supervisor. He shall also employ an attorney at a compensation not exceeding \$3,000 per year, payable out of said fund, who shall also be attorney for each district board of commissioners; such commissioners may allow additional compensation to such attorney in actual litigation. The supervisor, the deputies, and the attorney shall not be subject to the civil service act.

SEC. 3. Section 5 of said act, approved June 10, 1915, is hereby amended to read as follows:

SEC. 5. Each deputy appointed by the supervisor shall be a competent engineer or geologist, experienced in the development and production of petroleum. At the time said deputy is appointed, notice of such appointment shall be transmitted in writing to the board of commissioners of the district for which said deputy is appointed. Said notice shall be given either personally or by mailing a notice of said appointment to the post-office address of each commissioner. No appointment shall be final until a period of 10 days shall have elapsed from the mailing of said notice to said commissioners. In the event the majority of the commissioners notify said oil and gas supervisor in writing before the expiration of 10 days from the date of said notice that the appointment of said field deputy is disapproved by them, then and in that event said field deputy shall not be appointed but said oil and gas supervisor must appoint some other individual as in this section provided. Each field deputy shall maintain an office in the district for which he is appointed, convenient of access to the petroleum and gas operators therein. The office shall be open and the deputy shall be present at certain specified times which shall be posted at such office.

SEC. 4. Section 7 of said act, approved June 10, 1915, is hereby amended to read as follows:

SEC. 7. The records of any and all operators, when filed with the deputy supervisor as hereinafter provided, shall be open to inspection to those authorized in writing by such operators, to the State officers, and to the board of commissioners hereinafter provided for. Such records shall in no case other than those hereinafter and in this section provided, be available as evidence in court proceedings and no officer or employee or member of any board of commissioners shall be allowed to give testimony as to the contents of said records, except at such court proceedings as are hereinafter provided for in the review of the decision of the State oil and gas supervisor, or a board of commissioners, or in any proceedings initiated for the enforcement of an order of the supervisor, or any proceeding initiated for the enforcement of a lien created by this act, or any proceeding for the collection of the assessment levied under and pursuant to the provisions of this act or in criminal proceedings arising out of such records, or the statements upon which they are based.

SEC. 5. Section 8 of said act, approved June 10, 1915, is hereby amended to read a follows:

SEC. 8. It shall be the duty of the supervisor to order such tests or remedial work as in his judgment are necessary to protect the petroleum and gas deposits from damage by underground water, to the best interests of the neighboring property owners and the public at large.

The order shall be in written form, signed by the supervisor, and shall be served upon the owner of the well or the local agent appointed by such owner, either personally or by mailing a copy of said order to the post office address given at the time the local agent is designated, or if no such local agent has been designated, by mailing a copy

of said order to the last known post office address of said owner, or if the owner be unknown, by posting a copy of said order in a conspicuous place upon the property and publishing the same in some newspaper of general circulation throughout the county in which said well is located once a week for two successive weeks.

Said order shall specify the condition sought to be remedied and the work necessary to protect such deposits from damage from underground waters. For this purpose each operator or owner shall designate an agent, giving his post office address, who resides within the county where the well or wells are located, upon whom all orders and notices provided for in this act may be served.

SEC. 6. Section 9 of said act, approved June 10, 1915, is hereby amended to read as follows:

SEC. 9. The well owner or his local agent may within 10 days from the date of service of any order from the supervisor, file with the supervisor or his deputy in the district where the property is located a statement that the supervisor's order is not acceptable and that appeal from said order is taken to the board of commissioners. Such appeal shall operate as a stay of any order issued under or pursuant to the provisions of this act.

SEC. 7. Section 10 of said act, approved June 10, 1915, is hereby amended to read as follows:

SEC. 10. For the purposes of this act the State shall be divided into five districts, as follows:

District No. 1, including the counties of Los Angeles, Riverside, Orange, San Diego, Imperial, and San Bernardino.

District No. 2, the county of Ventura.

District No. 3, including the counties of Santa Barbara, San Luis Obispo, Monterey, Santa Cruz, San Benito, Santa Clara, Contra Costa, San Mateo, Alameda, and San Francisco.

District No. 4, including the counties of Tulare, Inyo, and Kern.

District No. 5, including the counties of Fresno, Madera, Kings, Mono, Mariposa, Merced, and all other counties in California not included in any of said other districts.

There shall be elected at the times and in the manner hereinafter provided district oil and gas commissioners for each such district, as follows:

For district No. 1, five; for district No. 2, five; for district No. 3, five; for district No. 4, seven; for district No. 5, five.

Said district oil and gas commissioners shall be elected by vote of the companies, individuals, copartnerships, or associations who shall have been assessed and whose names shall appear upon the last record of assessments (next preceding such election) for and on account of the fund in this act provided to be raised, within said districts, respectively, said vote to be taken at a meeting to be held in each of said districts, respectively, and on the third Monday in September of each year, such place and the time and details of such meeting to be fixed by the State oil and gas supervisor, and of which meeting at least two weeks' previous notice shall have been given by letter addressed to each of said persons, corporations, copartnerships, and associations entitled to vote as aforesaid, at his or its post office address or principal place of business.

At said meeting each of those entitled to vote as herein provided may be represented by one person holding the written authority of such voter to act for him at such meeting.

At said meeting each voter shall be entitled to one vote for each member of the board of district oil and gas commissioners who are required to be selected for such district. In addition thereto, in each district in which five commissioners are to be elected, each voter shall be entitled, for each \$100 or fraction thereof which said voter shall have paid in accordance with his last assessment hereunder, to cast one vote for the two commissioners who are elected for three years; and in each district in which seven

commissioners are to be elected each voter shall be entitled, for each \$100 or fraction thereof which said voter shall have paid in accordance with his last assessment hereunder, to cast one vote for the three commissioners who are elected for three years. In all subsequent elections the qualification of voters in the election of a commissioner shall be the same as in the election of the commissioner whose successor in office is being elected.

Said meeting shall select by ballot by a majority vote of the votes represented the number of persons as hereinbefore specified to act as district oil and gas commissioners for such district.

In any district entitled to seven commissioners two shall be chosen for a term of one year, two for two years, and three for three years. In any district entitled to five commissioners, one shall be chosen for a term of one year, two for two years, and two for three years.

The chairman and secretary of the meeting shall issue a written certificate to the State oil and gas supervisor, setting forth the result of such election and the name and address of each of the persons elected at said meeting as the district oil and gas commissioners for said district and the term for which each has been elected. No person shall be eligible as a district oil and gas commissioner who is not a resident of the district for which he is elected, nor shall any person be eligible for such position who is not actually engaged in the business of oil or gas development or production within the district.

Upon receipt of the certificate so made by the chairman and secretary of any such meeting the State oil and gas supervisor shall issue a certificate of election to the respective persons in said certificate named as the district oil and gas commissioners for said district, and for the periods of one, two, or three years from and after the first Monday in October, 1917, as shall be shown in such certificate, and until their respective successors shall have been elected.

Within 30 days after their appointment by the State oil and gas supervisor, the district oil and gas commissioners for each district shall meet at a time and place within the district to be designated by the State oil and gas supervisor and shall thereupon select one of the number as chairman.

The deputy supervisor of the district shall be ex officio secretary of said board and shall keep a record of its proceedings, and his office shall be the office of the commissioners.

Said commissioners shall serve without compensation, except their necessary traveling expenses. The traveling expenses of said commissioners and all actual expenses incurred by or under order of said commissioners in the hearing and determination and carrying out of orders appealed to them, shall be certified to said State supervisor, and when audited by him and by the State board of control shall be paid from said fund.

On the third Tuesday in September of each year at an hour and places in said respective districts to be fixed by the State oil and gas supervisor, and of which notices shall have been given as hereinbefore specified, the successor of each of the district oil and gas commissioners whose term of appointment shall expire that year, shall be elected and qualified in the manner and subject to the provisions hereinbefore set forth, and the term of each shall be for a period of three years from and after the first Monday in October next succeeding.

All, either, or any of the district oil and gas commissioners elected in any district may be recalled by the votes of a majority of the qualified voters of the district entitled to vote as to such commissioners, respectively. In case there shall be filed in the office of the State oil and gas supervisor a written petition, signed by not less than 40 per cent of those entitled to vote as to the election of any commissioner or commissioners, asking the recall of such commissioner or commissioners, said State oil and gas supervisor shall, within 10 days thereafter order and give notice of a special election

in such district to fill the office or offices of the commissioner or commissioners named in said petition for recall; and shall cause notice to be given of said election in the manner and for the time required for regular election, and said notice shall fix the time and place for such election.

At such election, the commissioner or commissioners named in such petition for recall shall be voted upon as though candidates for election for the unexpired portion of the term for which they, respectively, were originally elected, and any other candidate or candidates may, at the same time, be voted upon. It shall require a majority of all the qualified votes entitled to vote for such commissioners, respectively, to constitute an election. In case less than a majority of all qualified votes shall be cast for any candidate, said recall shall be deemed to have failed as to the commissioner concerning whose office such vote was taken; and in case such commissioner himself shall receive a majority of the votes, said recall shall be deemed to have failed, and in either of such cases, such commissioner shall continue to serve until the expiration of his term as though no such special election had been held. But in case any person other than such commissioner shall receive a majority of the votes for such unexpired term, then such recall shall become effective, and the office of the commissioner so recalled shall be vacant and upon written certificate of such election being filed with the State oil and gas supervisor, the person so chosen and elected for such unexpired term shall become the successor of the commissioner so recalled, and a certificate of his election for such unexpired term shall be issued and transmitted to him by the State oil and gas supervisor. And like proceedings shall be had in case more than one commissioner shall be included in said petition for recall.

In all recall elections, qualifications for voters and the number of votes which they will be entitled to cast shall be the same as they respectively were in the election of the commissioner as to whom such recall election is being held.

In case of vacancy caused by the death, resignation, or removal from district or ceasing to be engaged in the business of development or production of oil or gas in the district as to the office of any commissioner, such vacancy shall be filled until the next annual election by the State oil and gas supervisor, who shall appoint to fill such vacancy an eligible person, nominated in writing by the remaining commissioner of such district.

Upon any subject in which any commissioner is personally interested, or upon which any corporation, copartnership, association, or individual by whom he is employed is directly interested as a party, such commissioner shall not be entitled to sit or vote.

The board of commissioners shall be entitled to call upon the supervisor for advice and written report upon any matter referred to the board of commissioners, and the supervisor shall be entitled to call meetings of the commissioners at the office of the field supervisor, upon 5 days' written notice, to obtain their written advice upon any matters relating to his work within their district."

SEC. 8. Section 11 of said act, approved June 10, 1915, is hereby amended to read as follows:

SEC. 11. Upon receipt by the supervisor or deputy supervisor of a written complaint specifically setting forth the condition complained against, signed by a person, firm, corporation, or association owning land or operating wells within a radius of 1 mile of any well or group of wells complained against, or upon the written complaint specifically setting forth the condition complained against, signed by one of the board of commissioners for the district in which said well or group of wells complained against is situated, the supervisor must make an investigation of said well or wells and render a written report stating the work required to repair the damage complained of, or stating that no work is required. A copy of said order must be delivered to the complainant, or if more than one, each of said complainants, and if the supervisor order the damage repaired, a copy of such order shall be delivered to each of the

owners, operators, or agents having in charge the well or wells upon which the work is to be done. Said order shall contain a statement of the conditions sought to be remedied or repaired and a statement of the work required by the supervisor to repair such condition. Service of such copies shall be made by mailing to such persons at the post-office address given.

SEC. 9. Section 12 of said act, approved June 10, 1915, is hereby amended to read as follows:

SEC. 12. In any proceeding before the board of commissioners as herein provided, or in any other proceeding or proceedings instituted by the supervisor for the purpose of enforcing or carrying out the provisions of this act, or for the purpose of holding an investigation to ascertain the condition of any well or wells complained of, or which in the opinion of the supervisor may reasonably be presumed to be improperly drilled, operated, maintained, or conducted the supervisor and the chairman of the board of commissioners shall have the power to administer oaths and may apply to a judge of the superior court of the State of California, in and for the county in which said proceeding or investigation is pending, for a subpoena for witnesses to attend at said proceeding or investigation. Upon said application of said supervisor or said chairman of said board of commissioners, said judge of said superior court must issue a subpoena directing said witness to attend said proceeding or investigation; provided, however, that no person shall be required to attend upon such proceeding, either with or without such books, papers, documents, or accounts unless residing within the same county or within 30 miles of the place of attendance. But the supervisor or the chairman of the board of commissioners may in such case cause the depositions of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in superior courts of this State, and to that end may, upon application to a judge of the superior court of the county within which said proceeding or investigation is pending, obtain a subpoena compelling the attendance of witnesses and the production of books, papers, and documents at such places as he may designate within the limits hereinbefore prescribed. Witnesses shall be entitled to receive the fees and mileage fixed by law in civil causes, payable from the fund hereinafter created. In case of failure or neglect on the part of any person to comply with any order of the supervisor as hereinbefore provided, or any subpoena, or upon the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated, or upon refusal or neglect to appear and attend at any proceeding or hearing on the day specified, after having received a written notice of not less than 10 days prior to such proceeding or hearing, or upon his failure, refusal, or neglect to produce books, papers, or documents as demanded in said order or subpoena upon such day, such failure, refusal, or neglect shall constitute a misdemeanor and each day's further failure, refusal, or neglect shall be and be deemed to be a separate and distinct offense, and it is hereby made the duty of the district attorney of the county in which said proceeding, hearing, or investigation is to be held, to prosecute all persons guilty of violating this section by continuous prosecution until such person appears or attends or produces such books, papers, or documents or complies with said subpoena or order of the supervisor or chairman of the board of commissioners.

SEC. 10. Section 13 of said act, approved June 10, 1915, is hereby amended to read as follows:

SEC. 13. Within 10 days after hearing the evidence the board of commissioners must make a written decision with respect to the order appealed from, and in case the same is affirmed or modified shall retain jurisdiction thereof until such time as the work ordered to be done by such order shall be finally completed. This written decision shall be served upon the owner or his agent and shall supersede the previous order of the supervisor. In case no written decision be made by said board of commissioners within 30 days after the date of notice by the supervisor as provided in section 10 hereof, the order of the supervisor shall be effective and subject only to review by writ of certiorari from the superior court as provided in section 14 hereof.

SEC. 11. Section 14 of said act, approved June 10, 1915, is hereby amended to read as follows:

SEC. 14. On or before 30 days after the date of serving an order of the supervisor, provided for in section 8 hereof, or in case of appeal to the board of commissioners, on or before 30 days after date of serving the decision of the board, as provided in sections 12 and 13 hereof, or in the event review be taken of the order of the board of commissioners within 10 days after affirmance of such order, the owner shall commence in good faith the work ordered and continue until completion. If the work has not been so commenced and continued to completion, the supervisor shall appoint agents as he deems necessary, who shall enter the premises and perform the work. Accurate account of such expenditures shall be kept and the amount paid from the fund hereinafter created upon the warrant of the State comptroller. Any amount so expended shall constitute a lien against the property upon which the work is done. The decision of the board of commissioners in such case may be reviewed by writ of certiorari from the superior court of the county in which the district is situated, if taken within 10 days after the service of the order upon said owner, operator, or agent of said owner or operator as herein provided, or within 10 days after decision by the board of commissioners upon petitions by the supervisor. Such writ shall be made returnable not later than 10 days after the issuance thereof and shall direct the district board of oil and gas commissioners to certify their record in the cause to such court. On the return day the cause shall be heard by the court unless for good cause the same be continued, but no continuance shall be permitted for a longer period than 30 days. No new or additional evidence shall be introduced in the court before the cause shall be heard upon the record of the district board of oil and gas commissioners. The review shall not be extended further than to determine whether or not—

1. The commission acted without or in excess of its jurisdiction.
2. The order, decision, or award was procured by fraud.
3. The order, decision, rule, or regulation is unreasonable.
4. The order, decision, regulation, or award is clearly unsupported by the evidence.

If no review be taken within 10 days, or if taken in case the decision of the board is affirmed, the lien upon the property shall be enforced in the same manner as the other liens on real property are enforced, and shall first be enforced against the owner of the well, against the operator, and against the personal property and fixtures used in the construction or operation thereof, and then if there be any deficiency against the land upon which the work is done, upon the request of the supervisor, the State comptroller must, in the manner provided in section 44 of this act, bring an action for the enforcement of said lien.

SEC. 12. Section 15 of said act, approved June 10, 1915, is hereby amended to read as follows:

SEC. 15. It shall be the duty of the owner of any well now drilled or that may be drilled in the State of California on lands producing or reasonably presumed to contain petroleum or gas, to properly case such well or wells with metal casing, in accordance with methods approved by the supervisor, and to use every effort and endeavor in accordance with the most approved methods to effectually shut off all water overlying or underlying the oil or gas bearing strata and to effectually prevent any water from penetrating such oil or gas bearing strata.

Whenever it appears to the supervisor that any water is penetrating oil or gas bearing strata, he may order a test of water shut off and designate a day upon which the same shall be held. Said order shall be in written form and served upon the owner of said well at least 10 days prior to the day designated in said order as the day upon which said shut-off test shall be held. Upon the receipt of such order it shall be the duty of the owner to hold said test in the manner and at the time prescribed in said order.

SEC. 13. Section 16 of said act, approved June 10, 1915, is hereby amended to read as follows:

SEC. 16. It shall be the duty of the owner of any well referred to in this act, before abandoning the same, or before removing the rig, derrick, or other operating structure therefrom, or removing any portion of the casing therefrom, to use every effort and endeavor, in accordance with methods approved by the supervisor, to shut off and exclude all water from entering oil-bearing strata encountered in the well. Before any well is abandoned the owner shall give written notice to the supervisor or his local deputy of his intention to abandon such well and of his intention to remove the derrick or any portion of the casing from such well and the date upon which such work of abandonment or removal shall begin. The notice shall be given to the supervisor or his local deputy at least 5 days before such proposed abandonment or removal. The owner shall furnish the supervisor or his deputy with such information as he may request, showing the condition of the well and proposed method of abandonment or removal. The supervisor or his deputy shall, before the proposed date of abandonment or removal, furnish the owner with a written order of approval of his proposal or a written order stating what work will be necessary before approval, to abandon or remove, will be given. If the supervisor shall fail within the specified time to give the owner a written order, such failure shall be considered as an approval of the owner's proposal to abandon the well or to remove the rig or casing therefrom.

SEC. 14. Section 17 of said act, approved June 10, 1915, is hereby amended to read as follows:

SEC. 17. The owner or operator of any well referred to in this act shall, before commencing the work of drilling an oil or gas well, file with the supervisor or his local deputy a written notice of intention to commence drilling. Such notice shall also contain the following information: (1) Statement of location and elevation above sea level of the floor of the proposed derrick and drill rig; (2) the number or other designation by which such well shall be known, which number or designation shall not be changed after filing the notice provided for in this section without the written consent of the supervisor being obtained therefor; (3) the owner's or operator's estimate of the depth of the point at which water will be shut off, together with the method by which such shut off is intended to be made and the size and weight of casing to be used; (4) the owner's or operator's estimate of the depth at which oil or gas producing sand or formation will be encountered.

After the completion of any well the provisions of this section shall also apply, as far as may be, to the deepening or redrilling of any well or any operation involving the plugging of any well or any operations permanently altering in any manner the casing of any well; and provided further, that the number or designation by which any well heretofore drilled has been known shall not be changed without first obtaining a written consent of the supervisor.

SEC. 15. Section 18 of said act, approved June 10, 1915, is hereby amended to read as follows:

SEC. 18. It shall be the duty of the owner or operator of any well referred to in this act, to keep a careful and accurate log of the drilling of such well, such log to show the character and depth of the formation passed through or encountered in the drilling of such well, and particularly to show the location and depth of the water bearing strata, together with the character of the water encountered from time to time (so far as ascertained) and to show at what point such water was shut off, if at all, and if not, to so state in such log, and show completely the amounts, kinds, and size of casing used, and show the depth at which oil bearing strata are encountered, show the depth and character of same, and whether all water overlying and underlying such oil-bearing strata was successfully and permanently shut off so as to prevent the percolation or penetration into such oil-bearing strata; such log shall be kept in the local

office of the owner or operator, and together with the tour reports of said owner or operator, shall be subject, during business hours, to the inspection of the supervisor, or any of his deputies, or any of the commissioners of the district except in the case of a prospect well as hereinafter defined. Upon the completion of any well, or upon the suspension of operations upon any well, for a period of six months if it be a prospect well, or for 30 days, if it be in proven territory, a copy of said log in duplicate, and in such form as the supervisor may direct shall be filed within 10 days after such completion, or after the expiration of said 30-day period, with the field supervisor, and a like copy shall be filed upon the completion of any additional work in the deepening of any such well.

The State oil and gas supervisor shall determine and designate what wells are prospect wells within the meaning of this act and no reports shall be required from such prospect wells until six months after the completion thereof.

The owner or operator of any well drilled previous to the enactment of this act shall furnish to the supervisor or his deputy a complete and correct log in duplicate and in such form as the supervisor may direct, or his deputy, of such well, so far as may be possible, together with a statement of the present condition of said well.

Sec. 16. Section 19 of said act, approved June 10, 1915, is hereby amended to read as follows:

Sec. 19. It shall be the duty of the owner or operator of any well referred to in this act to notify the deputy supervisor of the time at which the owner or operator shall test the shut-off of water in any such well. Such notice shall be given at least five days before such test. The deputy supervisor or an inspector designated by the supervisor shall be present at such test and shall render a report in writing of the result thereof to the supervisor, a duplicate of which shall be delivered to the owner. If any test shall be unsatisfactory to the supervisor he shall so notify the owner or operator in said report and shall within five days after the completion of such test, order additional tests of such work as he deems necessary to properly shut off the water in such well and in such order shall designate a day upon which the owner or operator shall again test the shut-off of water in any such well, which day, may upon the application of the owner, be changed from time to time in the discretion of the deputy supervisor.

Sec. 17. Section 20 of said act, approved June 10, 1915, is hereby amended to read as follows:

Sec. 20. It shall be the duty of every person, association, or corporation producing oil in the State of California, to file with the supervisor, at his request but not oftener than once in each month, a statement showing amount of oil produced during the period indicated from each well, together with its gravity and the amount of water produced from each well, estimated in accordance with methods approved by the supervisor, and the number of days during which fluid was produced from each well, the number of wells drilling, producing, idle, or abandoned, owned or operated by said person, association, or corporation; provided, that, upon request and satisfactory showing a longer interval may be fixed by the State oil and gas supervisor as to such reports in the case of any specific owner or operator.

This information shall be in such form as the supervisor may designate.

Sec. 18. There is hereby added to said act, approved June 10, 1915, a new section to be numbered 21a and to read as follows:

Sec. 21a. The charges hereinafter provided for are directed to be levied by the State of California as necessary in the exercise of its police power and to provide a means by which to supervise and protect deposits of petroleum and gas within the State of California, in which deposits the people of the State of California are hereby declared to have a primary and supreme interest.

Sec. 19. Section 22 of said act, approved June 10, 1915, is hereby amended to read as follows:



SEC. 22. Charges levied, assessed, and collected as hereinafter provided upon the properties of every person, firm, corporation, or association operating any well or wells for the production of petroleum in this State, or operating any well or wells for the production of natural gas in this State which gas wells are situate on lands situate within 2 miles, as near as may be, of any petroleum or gas well the production of which is chargeable under this act, shall be used exclusively for the support and maintenance of the department of petroleum and gas hereinbefore created, and shall be assessed and levied by the State mineralogist, and collected in the manner hereinafter provided.

SEC. 20. Section 24 of said act, approved June 10, 1915, is hereby amended to read as follows:

SEC. 24. Every person, firm, corporation, or association operating any gas well or wells in this State shall annually pay a charge to the State treasurer based upon the amount of gas sold in the preceding calendar year, at a fixed rate per thousand cubic feet, at the times and in the manner hereinafter provided, based upon a verified report as herein provided.

SEC. 21. Section 27 of said act, approved June 10, 1915, is hereby amended to read as follows:

SEC. 27. The State mineralogist shall annually, on or before the first Monday in March, acting in conjunction with the State board of control, make an estimate of the amount of money which shall be required to carry out the provisions of this act.

At the time of making such estimate, the State mineralogist shall report to the State board of control the amount of money in the petroleum and gas fund on the day such estimate is made, less the amount of money necessary for the support of the department of petroleum and gas for the remainder of the fiscal year, and the amount of such estimate shall in no event exceed the difference between the amount thus determined as remaining in the petroleum and gas fund at the end of the fiscal year and the sum of \$150,000.

SEC. 22. Section 31 of said act, approved June 10, 1915, is hereby amended to read as follows:

SEC. 31. Any person, firm, corporation, or association failing or refusing to make or furnish any report which may be required pursuant to the provisions of this act, or who wilfully renders a false or fraudulent report, shall be guilty of a misdemeanor and subject to a fine of not less than \$300 nor more than \$1,000, or by imprisonment in the county jail not exceeding six months, or both such fine and imprisonment for each such offense.

SEC. 23. Section 33 of said act, approved June 10, 1915, is hereby amended to read as follows:

SEC. 33. On or before the third Monday before the first Monday in July of each year, the State mineralogist shall determine the rate or rates which shall produce the sums necessary to be raised, as provided in section 27 of this act. Within the same time the said State mineralogist shall extend into the proper column of the record of assessments hereinafter provided for, the amount of charges due from each person, firm, corporation, or association.

SEC. 24. Section 36 of said act, approved June 10, 1915, is hereby amended to read as follows:

SEC. 36. On the third Monday before the first Monday in July of each year the State mineralogist shall cause to be published a notice, one or more times, in a daily, or weekly, or semi-weekly newspaper of general circulation published in the counties of Fresno, Kern, Los Angeles, Orange, Ventura, and Santa Barbara, and such other counties as may contain lands or produce oil or gas charged under and pursuant to the terms and provisions of this act, if one be published therein, otherwise in a newspaper of general circulation published in the county nearest to such county designated herein in which no such paper is published, that the assessment of property and levy

of charges under and in pursuance of this act has been completed and that the records of assessments containing the charges due will be delivered to the State comptroller on the first Monday in July; and that if any person, firm, corporation, or association is dissatisfied with the assessment made or charge fixed by the State mineralogist, he or it may, at any time before said first Monday in July, apply to said board of review, correction, and equalization to have the same corrected in any particular. The said board shall have the power at any time before said first Monday in July to correct the record of assessments and may increase or decrease any assessment or charge therein if, in its judgment, the evidence presented or obtained warrants such action. Costs of such publication in any county shall be paid from the petroleum and gas fund; provided, however, that the omission to publish said notice as hereinbefore and in this section provided, shall not affect the validity of any assessment levied under or pursuant to the provisions of this act.

SEC. 25. Section 37 of said act, approved June 10, 1915, is hereby amended to read as follows:

SEC. 37. The State mineralogist must prepare each year a book, in one or more volumes, to be called the "Record of assessments and charges for the petroleum and gas fund," in which must be entered, either in writing or printing, or both writing and printing, each assessment and levy or charge made by him upon the property provided to be assessed and charged under this act, describing the property assessed, and such assessments may be classified and entered in such separate parts of said record as said State mineralogist shall prescribe.

SEC. 26. Section 38 of said act, approved June 10, 1917, is hereby amended to read as follows:

SEC. 38. On the first Monday in July the State mineralogist must deliver to the State comptroller the record of assessments and charges for the petroleum and gas fund, certified to by said State mineralogist, which certificate shall be substantially as follows: I, ———, State mineralogist, do hereby certify that between the first Monday in March and the first Monday in July, 19—, made diligent inquiry and examination to ascertain all property and persons, firms, corporations, and associations subject to assessment for the purpose of the petroleum and gas fund, as required by the provisions of the act of legislature approved June 10, 1915, providing for the assessment and collection of charges for oil protection; that I have faithfully complied with all the duties imposed upon me by law; that I have not imposed any unjust or double assessment, through malice or ill will, or otherwise; nor allowed any person, firm, corporation, or association or property to escape a just assessment or charge through favor or regard, or otherwise. But the failure to subscribe such certificate to such record of assessment and charges for oil protection, or any certificate, shall not in any manner affect the validity of any assessment or charge.

SEC. 27. Section 40 of said act, approved June 10, 1915, is hereby amended to read as follows:

SEC. 40. Within 10 days after the receipt of the record of assessments and charges for oil protection, the State comptroller must begin the publication of a notice to appear daily for five days in one daily newspaper of general circulation published in each of the counties of Fresno, Kern, Los Angeles, Orange, Ventura, and Santa Barbara, and such other counties as may contain lands or produce oil or gas charged under or pursuant to the terms and provisions of this act, if one be published therein, otherwise for at least two times in a weekly or semiweekly paper of general circulation published therein, or if there be neither a daily nor weekly nor semiweekly paper of general circulation published in any one of such counties, then the publication of the notice for such county shall be made in a similar manner in a newspaper of general circulation published in the county nearest such county, specifying: (1) That he has received from the State mineralogist the record of assessments and charges for oil protection; (2) that the charges therein assessed and levied are due and payable on

the first Monday in July and that one-half thereof will be delinquent on the sixth Monday after the first Monday in July at 6 o'clock p. m., and that unless paid to the State treasurer at the capital prior thereto, 15 per cent will be added to the amount thereof, and unless paid prior to the first Monday in February next thereafter at 6 o'clock p. m. an additional 5 per cent will be added to the amount thereof; and that the remaining one-half of said charges will become delinquent on the first Monday in February next succeeding the day upon which they become due and payable, at 6 o'clock p. m., and if not paid to the State treasurer at the capital prior thereto, 5 per cent will be added to the amount thereof. Costs of such publication in any county shall be paid from the petroleum and gas fund.

SEC. 28. Section 41 of said act, approved June 10, 1915, is hereby amended to read as follows:

SEC. 41. The assessments and charges levied under the provisions of this act shall constitute a lien upon all the property of every kind and nature belonging to the persons, firms, corporations, and associations assessed under the provisions hereof, which lien shall attach on the first Monday in March of each year. Such lien shall be enforced and said charges collected by an action by the State comptroller as provided in section 44 of this act.

SEC. 29. Section 42 of said act, approved June 10, 1915, is hereby amended to read as follows:

SEC. 42. All charges assessed and levied under the provisions of this act shall be paid to the State treasurer upon the order of the State comptroller. The comptroller must mark the date of payment of any charge on the record of assessment for the petroleum and gas fund and shall give a receipt for such payment in such form as the comptroller may prescribe. Errors appearing upon the face of any assessment on said record of assessments or overcharges may be corrected by the comptroller by and with the consent of the State board of control, in such manner and at such time as said comptroller and said board shall agree upon.

SEC. 30. Section 43 of said act, approved June 10, 1915, is hereby amended to read as follows:

SEC. 43. Any person, firm, corporation, or association claiming and protesting as herein provided that the assessment made or charges assessed against him or it by the State mineralogist is void, in whole or in part, may bring an action against the State treasurer for the recovery of the whole or any part of such charges, penalties, or costs paid on such assessment, upon the grounds stated in said protest, but no action may be brought later than the third Monday in February next following the day upon which the charges were due, nor unless such person, firm, corporation, or association shall have filed with the State comptroller at the time of payment of such charges, a written protest stating whether the whole assessment or charge is claimed to be void, or if a part only, what part and the grounds upon which such claim is founded, and when so paid under protest the payment shall in no case be regarded as voluntary.

Whenever, under the provisions of this section, an action is commenced against the State treasurer, a copy of the complaint and of the summons must be served upon the treasurer or his deputy. At the time the treasurer demurs or answers he may demand that the action be tried in the superior court of the county of Sacramento, which demand must be granted. The attorney employed by the State oil and gas supervisor must defend such action: provided, however, the said mineralogist may, at the request of said oil and gas supervisor, employ additional counsel, the expense of which employment shall be paid from the petroleum and gas fund. The provisions of the Code of Civil Procedure relating to pleadings, proofs, trials, and appeals are applicable to the proceedings herein provided for.

A failure to begin such action within the time herein specified shall be a bar against the recovery of such charges. In any such action the court shall have the power to render judgment for the plaintiff for any part or portion of the charge, penalties, or costs found to be void and so paid by plaintiff upon such assessment.

SEC. 31. Section 44 of said act, approved June 10, 1915, is hereby amended to read as follows:

SEC. 44. The State comptroller shall, on or before the 30th day of May next following the delinquency of any charge as provided in this act, bring an action in a court of competent jurisdiction, in the name of the people of the State of California, in the county in which the property assessed is situated, to collect any delinquent charges or assessments, together with any penalties or costs, which have not been paid in accordance with the provisions of this act and appearing delinquent upon the records of assessment and charges for the petroleum and gas fund in this action provided for.

The attorney for the State oil and gas supervisor shall commence and prosecute such action to final judgment and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proofs, trials, and appeals are applicable to the proceedings herein provided for. The State mineralogist may employ additional counsel to assist the attorney for the State oil and gas supervisor, and the expense of such employment shall be paid from the petroleum and gas fund.

Payments of the penalties and charges or amount of the judgment recovered in such action must be made to the State treasurer. In such actions the record of assessment and charges for oil protection, or a copy of so much thereof as is applicable in said action, duly certified by the comptroller showing unpaid charges against any person, firm, corporation or association assessed by the State mineralogist is prima facie evidence of the assessment upon the property, the delinquency, the amount of charges, penalties, and costs due and unpaid to the State, and that the person, firm, corporation, or association is indebted to the people of the State of California in the amount of charges and penalties therein appearing unpaid and that all the forms of law in relation to the assessment of such charges have been complied with.

SEC. 32. Section 46 of said act, approved June 10, 1915, is hereby amended to read as follows:

SEC. 46. All the moneys heretofore paid to the State treasurer under or pursuant to the provisions of this act and deposited to the credit of the oil protection fund, shall be withdrawn from said fund, which is hereby abolished, and deposited to the credit of the petroleum and gas fund, which is hereby created. All the moneys hereafter paid to the State treasurer under or pursuant to the provisions of this act shall be deposited to the credit of the petroleum and gas fund. All moneys in such fund shall be expended under the direction of the State mineralogist, drawn from such fund for the purpose of this act upon warrants drawn by the comptroller of the State, upon demands made by the State mineralogist, and audited by the State board of control. Of the moneys in said petroleum and gas fund, when such action has been authorized by the State board of control, the State mining bureau may withdraw, without at the time furnishing vouchers and itemized statements, a sum not to exceed \$500, said sum so drawn to be used as a revolving fund where cash advances are necessary. At the close of each fiscal year, or at any other time, upon demand of the board of control, the moneys so drawn shall be accounted for and substantiated by vouchers and itemized statements and submitted to and audited by the board of control.

SEC. 33. Section 47 of said act, approved June 10, 1915, is hereby amended to read as follows:

SEC. 47. All moneys received in repayment of repair work done under the order and direction of the supervisor as hereinbefore provided, shall be returned and credited to the petroleum and gas fund.

SEC. 34. Section 48 of said act, approved June 10, 1915, is hereby amended to read as follows:

SEC. 48. On or before the 1st day of October of each and every year the supervisor shall submit a report in writing to the State mineralogist showing the total number of barrels of petroleum produced in each county in the State during the previous calendar year, together with the total cost of said department for the previous fiscal year and the

net amount remaining in the petroleum and gas fund available for the succeeding fiscal year's expense, also the total amount delinquent and uncollected from any assessments or charges levied under or pursuant to the provisions of this act. Such report shall also include such other information as the supervisor may deem advisable. The State mineralogist shall make public such statements promptly after receipt of the same from the supervisor for the benefit of all parties interested therein.

SEC. 35. Section 49 of said act, approved June 10, 1915, is hereby amended to read as follows:

SEC. 49. The owner or operator of any lands or tenements subject to assessment under this act shall, within six months after this act goes into effect, file with the supervisor a certificate which shall contain the names of all the parties claiming an interest in or to said lands and full description of the property and the names of all parties in interest where such interest is held by lease, license, or assignment.

### OIL INDUSTRY—JOINT RESOLUTIONS.

LAWS 1901, P. 943; FEB. 20, 1901.

SENATE JOINT RESOLUTION No. 12, relative to attempted location of mineral oil lands as agricultural lands.

Whereas there is now pending in the Land Department at Washington, D. C., numerous applications of persons seeking to locate the oil mineral lands of this State in lieu of agricultural lands contained in various reservations pursuant to the act of June 4, 1897; and

Whereas bona fide locators of said lands as mineral lands have contested such application to select said oil lands under said act; and

Whereas, the mineral locators and miners engaged in the development of oil lands in this State have developed an industry of great importance and value to this State and to its people; and

Whereas certain of said matters having been judicially investigated before Judge E. M. Ross, judge of the ninth circuit court, southern district of California, and by him adjudged as to matters before him to be fraudulent and void applications for the selection of said oil lands as lieu lands; and

Whereas said matters are pending for consideration and decision before the honorable Secretary of the Interior at Washington, D. C., and believing that the acquiring of title to said lands as agricultural lands under said act would be an injustice to the miners of this State and the persons who have actually developed the valuable character of said lands, and would as we believe amount to a fraud upon the Government of the United States; now, therefore, be it

Resolved by the senate and assembly of the State of California, jointly, That the said honorable Secretary of the Interior is hereby requested and urged to fully and thoroughly investigate said matters on behalf of the Government of the United States, and to thoroughly and carefully examine into the truth and honesty of the applications made to select said lands as agricultural lands, and he is hereby requested to take all necessary steps on behalf of the Government of the United States to fully examine into said matters and ascertain if frauds have been committed in the attempted selection of said mineral lands as agricultural lands, and if the same be adjudged to have been fraudulent, then we request the said Secretary of the Interior to use all lawful ways and means to prevent the consummation of any attempted fraudulent selection of lands.

Resolved, That the secretary of the senate be instructed to immediately transmit a copy of this resolution by mail to the Secretary of the Interior, and to our Senators and Representatives in Congress.

**LAWS 1915, P. 1915; MAY 12, 1915.**

SENATE JOINT RESOLUTION NO. 16, memorializing the President of the United States, the Secretary of the Interior, and Congress to take immediate action to establish a policy for the development of the oil lands of the United States.

Whereas the oil industry of the State of California is one of the most important industries of the State, an industry in which vast sums of money have been invested in good faith and in which the State of California leads all the other States of the Union; and

Whereas, The continued development of the oil lands of the State is essential to the continuance of this great industry, and such development has been, and now is, seriously hampered by the chaotic condition of the Federal laws governing the same, due in part to the inapplicability of the mineral laws of the United States to the oil industry, and the confusion resulting from the various executive withdrawal orders, and the conflicting decisions of the courts and the Department of the Interior; therefore, be it

Resolved by the senate, the assembly concurring, That the President of the United States, the Secretary of the Interior, and Congress be memorialized urging that steps be immediately taken by the Government to lay down and establish a fixed and definite policy covering the condition referred to; and further be it

Resolved, That a copy of this resolution be sent to every Member of the House of Representatives and of the Senate of the United States, and to the Secretary of the Interior, and to the President of the United States.

**LAWS 1917, P. 1698; JAN. 19, 1917.**

ASSEMBLY JOINT RESOLUTION No. 2, relating to the oil industry of the State of California.

Whereas the oil industry of California is in a demoralized condition, caused by litigation instituted and threatened by the United States Government against bona fide operators who entered upon and were developing public lands in good faith at the time of their withdrawal, and continued such development under the law, as they were legally advised it to be, until by such efforts they greatly increased the production of oil, and in some instances were the means of opening up new oil fields; and

Whereas unless Congress settles by a law these vexatious disputes the present litigations will probably continue for many years, resulting in great hardship to the operators by preventing the marketing of their oil and to the public by reason of constantly increasing the price of gasoline and oil, due to the stoppage by the Government of the operation of large areas of this land, and also resulting in many instances in bankrupting the small operators who have not the resources to stand years of expensive litigations against the United States Government; and

Whereas we firmly believe that justice requires that the Government shall legalize the claims of all locators who were actually developing such land in good faith at the time of its withdrawal; now, therefore, be it

Resolved, That the Legislature of the State of California respectfully requests the Congress to enact such legislation as will legalize the rights of these operators; and be it further

Resolved, That the secretary of the senate be, and he is hereby, directed to send a certified copy of these resolutions to each of our Senators and Representatives in Congress, to the President of the Senate, and to the Speaker of the House of Representatives, to the Attorney General, the Secretary of the Navy, and the Secretary of the Interior.

## RIGHTS OF WAY.

### RIGHTS OF WAY OVER MINING CLAIMS.

LAWS 1853, P. 169; MAY 12, 1853. COMPILED LAWS 1850-1853, P. 291. (GENERAL LAWS 1850-1864, SEC. 908.)

AN ACT to authorize the formation of corporations for the construction of plank or turnpike roads.  
The People, etc.

\* \* \* \* \*

SEC. 16. The company shall not locate their road through any house or orchard, or through any yard or garden within 50 feet of any dwelling house, or through or over any mining claim, ditch, flume, or aqueduct, carrying water for mining or other purposes, so as to hinder or obstruct the working of such claim or the running of such water without the consent of the owner thereof, or the approval of two or three commissioners, to be appointed by the court of sessions for such purpose; and should such approval be obtained, and the road be located, the damages shall be assessed by the last-named commissioners, and collected in the same manner as is provided in section 15 of this act.

\* \* \* \* \*

### RIGHTS OF WAY AND GROUNDS FOR TAILINGS.

LAWS 1869-70, P. 569; APR. 1, 1870. (GENERAL LAWS 1864-1871, SEC. 8934-8943.)

AN ACT to regulate the rights of the owners of mines.

The People, etc.

SEC. 1. The owner or owners of mines or mining claims in this State shall have a right of way for ingress and egress, for all necessary purposes, over and across the land or mining claims of others, as hereinafter prescribed.

NOTE.—Sect ons 8934-8943, General Laws 1864-1871, are the same as sections 1 to 11, Laws 1869-70, p. 569.

SEC. 2. Whenever any mine or mining claim shall be so situated that it can not be conveniently worked without a road thereto, or a ditch to convey water thereto, or a ditch or cut to drain water therefrom, or without a flume or tunnel thereto, or a place whereon to dump or deposit tailings, and such road, ditch, or drain, or such flume or tunnel shall necessarily pass over, across, or through or under, and such place of deposit be upon mining claims or other lands owned or occupied by others, then shall such first-mentioned owner or owners be entitled to a right of way for such road, ditch, drain, flume, or tunnel over, across, or through or under, or to such place of deposit upon such other mining claims or lands, upon compliance with the provisions of this act.

SEC. 3. Whenever the owner or owners of any mine or mining claim shall desire to work the same and it is necessary, to enable him or them to do so conveniently, that he or they should have a right of way for any of the purposes mentioned in the foregoing sections, or that he or they should have a place for dumpage and deposit of tailings, as mentioned in the preceding section, and such right of way or place of deposit shall not have been acquired by private agreement between him or them and the owners or occupants of the claims or lands over, across, under, or upon which he or they seek to establish such right of way or place of deposit, then it shall be lawful for him or them to present to the county court, or to the county judge, if the court be not in session, of the county wherein such mine or claims are situated, a petition praying that such right of way or place of deposit be awarded to him or them. Such

petition shall be verified and shall contain a particular description of the character and extent of the right sought, a description of the mine or claims of the petitioners, and of the claims or lands to be affected by such right or privilege, with the names of the owners or occupants thereof. It shall also show that such right or privilege has not been acquired by private agreement or contract between the respective parties and shall conclude with a prayer for the allowance thereof by the court or judge and the appointment of three commissioners to assess the damages resulting from such allowance.

SEC. 4. Upon the receipt of such petition and the filing thereof in the office of the clerk of the county court, the court or judge, as the case may be, shall direct a citation to issue, under the seal of the court, to the owners named in the petition, of mining claims or lands to be affected by the granting of such right or privilege, requiring them and each of them to appear before such court or the judge thereof, if the court be not in session, on a day therein named, which shall not be less than 10 days from the service thereof, and show cause why such right or privilege should not be awarded or allowed, and such commissioners appointed as prayed for. Such citation shall be served on each of the parties therein named, in the manner prescribed by law for the service of summons in ordinary proceedings at law.

SEC. 5. Upon the day named in the citation, or upon any subsequent day to which the hearing may be adjourned, the county court, or the county judge, if the court be not in session, shall proceed to hear the allegations and proofs of the respective parties, and if satisfied that the claims of the petitioners can only be conveniently worked by means of the right of way, privilege, or place of deposit prayed for, shall make an order adjudging and awarding to such petitioners such right of way, privilege, or place of deposit, and appointing three disinterested persons, residents of the county, as a commission to assess the damages resulting to the owners of mining claims or lands affected thereby.

SEC. 6. The commissioners so appointed, being duly sworn, shall proceed without delay to examine the mine or claims of the person or persons petitioning, as well as the mining claims or lands to be affected by the right or privilege prayed for. They may also hear testimony relative to the value of such mining claims or lands and the damages resulting from such right or privilege, and report in writing the result of their inquiries to the court or judge appointing them. Such report shall designate the course or line and dimensions of the road, ditch, drain, flume, or tunnel (as the case may be), or the place of deposit prayed for. It shall further designate the value of the lands to be occupied by or appropriated to and for such right of way or place of deposit, and assign the damages which each of the owners or occupants of mining claims or lands affected by such right or place of deposit shall suffer in consequence thereof.

SEC. 7. Within 10 days from the filing of such report any of the parties concerned in the same may move, for cause shown by affidavit, to set aside the same; and if, upon the hearing of such motion, such court or judge shall set aside or vacate such report a new commission shall be appointed, which shall proceed in all respects as is provided for the first commission. If no motion to set aside the report of the first or any succeeding commission be made as provided in the last section, or if, being made, it is denied, then the same shall be regarded as final, and an order shall be made by the court or judge in pursuance thereof.

SEC. 8. Upon the payment of the sum assessed as damages to each of the owners or occupants of claims or lands to whom the same shall have been awarded by the report and order mentioned in the preceding section, then the person or persons petitioning shall be entitled to the right of way or place of deposit as designated and defined by such report, over or upon the land or claims of the person or persons receiving such compensation, and he or they may, upon making such payment, proceed to occupy the line, route, way, or place of deposit so designated and to erect thereon such works



and structures, and mak esuch excavations as may be necessary to the use and enjoyment of the right of way or place of deposit so awarded.

SEC. 9. Whenever the owner or owners of any mine or mining claims are desirous, in working the same, to carry off the tailings and other refuse matter through and along any water course, ravine, or natural outlet which is in whole or in part owned or occupied by other persons for mining or other purposes, then such first-mentioned owner or owners may proceed, in the manner hereinbefore provided, to have such right and privileges awarded to him or them; provided, nevertheless, that the county court or judge shall not make such award or appoint a commission unless such court or judge shall be satisfied that the right or privilege sought can be enjoyed without especial injury to those owning or occupying claims or lands along or upon such water course, ravine, or outlet.

SEC. 10. All costs and expenses shall be paid by the party making the application, and the commissioners appointed shall receive \$5 per day for each day actually engaged in the service.

SEC. 11. This act shall take effect from and after its passage.

#### ANNOTATIONS.

##### RIGHTS OF WAY AND EASEMENTS.

1. STATUTORY REMEDY NOT EXCLUSIVE.
2. MINERS' CUSTOMS.
3. APPROPRIATION OF LAND—DEPOSIT OF TAILINGS.

###### 1. STATUTORY REMEDY NOT EXCLUSIVE.

This act undertakes to provide means by which a party may procure a right which he would not otherwise have; but it can not be construed to have the effect of excluding a party from the enforcement of a right which he claims to have independent of the statute.

*Bliss v. Kingdom*, 46 Cal. 651, p. 653 (1873).

###### 2. MINERS' CUSTOMS.

The fact that this act provides for condemnation of a right of way through a mining claim for ditches, flumes, and tunnels for the convenient working of another claim does not deprive the owner of the mining claim of a right to construct a tunnel through an adjoining claim under the local customs of the miners in the particular mining district.

*Bliss v. Kingdom*, 46 Cal. 651, p. 653 (1873).

###### 3. APPROPRIATION OF LAND—DEPOSIT OF TAILINGS.

When a place of deposit for tailings is necessary for the fair working of a mine the owner of a mine has a right to appropriate such ground as may be reasonably necessary for this purpose, providing he does not interere with preexisting rights; but his intention in this respect should be clearly manifested by outward acts, and the mere posting of a notice is not a sufficient act of appropriation.

*Jones v. Jackson*, 9 Cal. 237, p. 244 (1858).

See *Esmond v. Chew*, 15 Cal. 137 (1860).

## **SMELTERS.**

### **INVESTIGATION BY STATE.**

**LAWS 1913, P. 1147; JUNE 16, 1913. (REPEALED.)**

AN ACT providing for the investigation by the State veterinarian, the secretary of the State board of health, and the State commissioner of horticulture of injury to animal life and vegetation in California caused by smelter wastes, and making an appropriation therefor.

The People, etc.

SEC. 1. The State veterinarian, the secretary of the State board of health, and the State commissioner of horticulture, said officers now existing under the laws of this State, are hereby directed and empowered to cause to be prosecuted with all possible diligence an investigation of the injury, as well as the extent thereof, to animal life and vegetation in the State of California caused by smelter wastes that emanate from establishments or smelting plants where metal is extracted from ores.

SEC. 2. The said State veterinarian, the secretary of the State board of health, and the State commissioner of horticulture shall, upon completion of such investigation, make a report in writing to the governor of the State of California giving in full all the facts and circumstances ascertained in such investigation, and if as a result of such investigation it shall be ascertained that the wastes from any such establishment or smelting plant are causing serious injury to animal life or vegetation, it shall be the duty of the governor to notify the attorney general of this State of the facts and circumstances therewith, and thereafter it shall be the duty of the said attorney general to bring an action in the name of the people of the State of California against the person or persons, company, or corporation owning or in control of such establishment or smelting plant to discontinue the discharge of wastes that are harmful to animal life or vegetation.

SEC. 3. The sum of \$5,000 is hereby appropriated out of any money in the State treasury not otherwise appropriated, to be expended by the said State veterinarian, the secretary of the State board of health, and State commissioner of horticulture in carrying out the purposes of this act, and the State comptroller is hereby authorized and directed to draw his warrants from time to time to the full amount of this appropriation, in favor of the person or persons authorized by law to receive the same, and the State treasurer is hereby directed to pay the same.

### **REPEALING ACT.**

**LAWS 1917, P. 280; MAY 5, 1917.**

AN ACT to repeal an act entitled "An act, etc." (same as in section 1).

The People, etc.

SEC. 1. An act entitled "An act providing for the investigation by the State veterinarian, the secretary of the State board of health, and the State commissioner of horticulture of injury to animal life and vegetation in California, caused by smelter wastes, and making an appropriation therefor," approved June 16, 1913, is hereby repealed.

# TAXATION.

## MACHINERY AND STOCK.

LAWS 1853; MAY 18, 1853. COMPILED LAWS 1850-1853, 669, P. 670, 689, 691.

AN ACT to provide revenue for the support of the government of this State.

The People, etc.

### ARTICLE I.

SEC. 1. \* \* \*

#### PROPERTY SUBJECT TO TAXATION.

First. All lands and lots of ground lying within this State owned or claimed by any person or corporation, whether patented or not, including in the assessment thereof the value of all houses, fixtures, and improvements of every kind or value thereon, or affixed thereto, all machinery, machinery for mining purposes, canals, water races, \* \* \*

\* \* \* \* \*

### ARTICLE IX.

SEC. 1. All monied or stock corporations, or private associations, and all companies and associations for mining purposes, whether the same be or be not incorporated, and whether the capital stock of such corporation, private association, or mining company, be located in or without the limits of this State, shall be liable to taxation in the manner hereinafter prescribed.

SEC. 2. The president, cashier, secretary, treasurer, agent, or other proper officer, or manager of every incorporated company, and of each mining company or association that is now or shall hereafter be under and by virtue of any law of this State authorizing the same, or that may exist by virtue of the laws of any other State, or by virtue of any private or individual agreement, who derive any income or profit on their capital in this State, or who have capital invested in their machinery, dam or dams, canal or canals, or other works for mining purposes; and the principal persons having charge of the affairs of every private association engaged in selling foreign bills of exchange, drafts, or certificates of deposit on capital within this State, shall, on or before the second Monday of May, annually, make and deliver, on application of the assessor of the county in which the company or private association is liable to be taxed, and in the same manner as is required by this act, of all private citizens or inhabitants within this State, a written statement, specifying: First, the real estate, if any, owned by any such company or private association, the county or counties in which it is situated, and the sums of money actually paid therefor, or the actual value thereof. Second, the present value of all machinery and of all works and improvements. Third, the city, town, or place in which the depot of the property of such company or private association is situated; or, if there be no such office, the place where its operations are carried on; and such statements shall be certified, under the oath of such president or other officer or person, to be in all respects just and true.

\* \* \* \* \*

### ARTICLE X.

SEC. 1. The term real estate, as used in this act, shall be construed to include all lands within this State.

SEC. 2. For the purpose of revenue, the term personal property, as used in this act, shall be construed to include \* \* \* all stock and interest invested or owned in any company or association owning or having the management of any mines \* \* \*

\* \* \* \* \*

ANNOTATIONS.

TAXATION.

PROPERTY USED IN MINING.

The revenue act of 1853 declared canals and water races to be property subject to taxation, and this was at a time when there were none other in the State than such as were devoted to the use of mining; and section 2 of article 9 of the act expressly mentioned "dam or dams, canal or canals, or other works for mining purposes."

Irwin v. Phillips, 5 Cal. 140, p. 146.

Under this act dams or canals or other works for mining purposes are subject to taxation, and this shows the control of the State over the waters and streams and their method of use.

Irwin v. Phillips, 5 Cal. 140, p. 147, 63 Am. Dec. 113 (1855).

The interest of the occupant of a mining claim is property liable to be subjected at the will of the legislature to taxation the same as other property.

State v. Moore, 12 Cal. 56, p. 72 (1859).

Money expended in the purchase and working of a mining claim is not so much capital invested in the business of mining, and is not subject to taxation under the revenue act.

State v. Moore, 12 Cal. 56, p. 71 (1859).

MINING CLAIMS AS REAL ESTATE.

LAWS 1854, 88, AND P 102, 104; MAY 15, 1854.

AN ACT to provide revenue for the support of the government of this State.

The People, etc.

ARTICLE 1.

\* \* \* \* \*

SEC. 2. The following property shall be subject to taxation. All lands and lots of ground, except preemption claims on lands belonging to the United States, lying within this State, owned or claimed by any person or corporation, whether patented or not, including the assessment thereof, the value of all houses, fixtures, and improvements of every kind or value thereon, or affixed thereto, all machinery, machinery for mining purposes, canals, water races, \* \* \*

SEC. 3. The following property shall not be listed for taxation. \* \* \*

Eighth. Mining claims.

ARTICLE VIII.

SEC. 54. All monied or stock corporations, or private associations, and all companies and associations for mining purposes, whether the same be or be not incorporated, and whether the capital stock of such corporation, private association, or mining company be located in or without the limits of this State, shall be liable to taxation in the manner hereinafter prescribed.

SEC. 55. The president, cashier, secretary, treasurer, agent, or other proper officer or manager of every incorporated company, and of each mining company or association that is now or shall hereafter be under and by virtue of any law of this State authorizing the same, or that may exist by virtue of the laws of any other State, or by virtue of any private or individual agreement, who derive any income or profit on their capital in this State, or who have capital invested in their machinery, dam or dams, canal or canals, or other works for mining purposes, \* \* \* shall on or before the second Monday of May annually make and deliver on application of the assessor of the county in which the company or private association is liable to be taxed, and in the same

manner as is required by this act, of all private citizens or inhabitants within this State, a written statement, specifying:

First. The real estate, if any, owned by any such company or private association, the county or counties in which it is situated, and the sums of money actually paid therefor, or the actual value thereof.

Second. All the present value of all machinery, and of all works and improvements.

\* \* \* \* \*

SEC. 59. The term "real estate," as used in this act, shall be construed to include all lands within this State, except mining claims.

\* \* \* \* \*

**MINING CLAIMS EXCEPTED.**

LAWS 1857, P. 325; APR. 29, 1857.

AN ACT to provide revenue for the support of the government of this State.

The People, etc.

\* \* \* \* \*

SEC. 2. All property, of every kind and nature whatsoever within this State, shall be subject to taxation, except— \* \* \*

Ninth. Mining claims.

\* \* \* \* \*

ANNOTATIONS.

TAXATION.

1. MINING CLAIMS EXEMPT.
2. PROPERTY INCIDENT TO MINING CLAIM.

I. MINING CLAIMS EXEMPT.

The legislature expressly exempted mining claims from the operation of the revenue act, and a court can not presume that it intended indirectly to subject them by levying a tax on the price paid for them, which would be a partial and unequal mode of ascertaining the value and, in a majority of cases, be productive of great injustice.

People v. Moore, 12 Cal. 56, p. 72 (1859).

2. PROPERTY INCIDENT TO MINING CLAIMS.

The constitution of the State and the second section of the act of April 29 (27), 1857, expressly require that all property shall be taxed, and an exemption should very clearly appear to have been made in the act before a court could give effect to it. But the fact that a flume constructed by a mining corporation is in some sort an auxiliary to the working of the mining claim does not exempt it, although it is so affixed to the claim as to be a part of it. It is rather to be regarded as machinery or as an apparatus useful in mining. The fact that many articles of personal property are indispensable to the working of a mining claim does not make them a part of the freehold or exempt them from taxation. The machinery of a quartz mill is not exempt, nor are ditches conveying water to mining claims, though the claims and ditches should be owned by the same person.

Hart v. Plum, 14 Cal. 148, p. 153.

**AMENDATORY ACT.**

**LAWS 1859, P. 343; APR. 19, 1859**

AN ACT amendatory of, and supplementary to, an act to provide revenue for the support of the government of this State, approved April 29, 1857.

The People, etc.

NOTE.—This act does not change the act of April 29, 1857, in regard to mining claims.

**REAL ESTATE AND PERSONAL PROPERTY.**

**LAWS 1860, P. 365; APR. 30, 1860.**

AN ACT to provide revenue for the support of the government of this State.

The People, etc.

\* \* \* \* \*

SEC. 2. All property in this State shall be taxed as real or personal property. The term "real property" as used in this act, shall include lands and all unmovable property thereon. The term "personal property" as used in this act shall include all property except real property, as hereinabove defined. All property in this State shall be subject to taxation except— \* \* \*

Eighth. Mining claims: provided, that all machinery used in mining claims and all property and improvements appurtenant to or upon mining claims which have an independent and separate value that can be estimated and taxed, without taxing such mining claims, shall be subject to taxation.

**LAWS 1861 P. 419; MAY 17, 1861. (GENERAL LAWS 1850-1864, SEC. 6153.) (REPEALED.)**

AN ACT to provide revenue for the support of the government of this State

The People, etc.

\* \* \* \* \*

SEC. 4. All property of every kind and nature whatsoever within this State shall be subject to taxation except— \* \* \*

Tenth. Mining claims: provided, that all machinery used in mining claims, and all property and improvements appurtenant to or upon mining claims which have an independent and separate value shall be subject to taxation.

\* \* \* \* \*

SEC. 5. The term "real estate," whenever used in this act, shall be deemed and taken to mean and include, and it is hereby declared to mean and include, the ownership of, or claim to, or possession of, or right of possession to any land within the State; and the claim by or possession of any person, firm, corporation, association, or company to any land shall be listed under the head of real estate; the term "personal property," whenever used in this act, shall be deemed and taken to mean, and it is hereby declared to mean and include, \* \* \* gold dust. \* \* \*

**MINING CLAIMS NOT EXEMPT.**

**SUPPLEMENTARY ACT.**

**LAWS 1863-64, P. 471; APR. 4, 1864. (REPEALING ACT.) (GENERAL LAWS 1850-1864, SEC. 6265.)**

AN ACT supplementary to an act entitled "An act to provide revenue for the support of the government of this State," approved May 17, 1861.

The People, etc.

SEC. 1. All provisions of law exempting mining claims from taxation are hereby repealed, so far as they apply to lands or mines in the condition of private property and granted as such by the Spanish or Mexican Governments or the Government of the United States, or of this State.

**AMENDATORY SECTION 4.**

**LAWS 1865-66, P. 802; APR. 2, 1868 (AMENDATORY ACT.)**

AN ACT to amend an act entitled "An act to provide revenue for the support of the government of this State, approved May 17, 1861, and to repeal certain provisions of the revenue acts of this State."

The People, etc.

SEC. 1. Section 4 of said act of 1861 is hereby amended so as to read as follows:

SEC. 4. All property, both real and personal, of every kind, nature, and description whatever, within this State, whether owned by individuals or by corporations, and whether its owner be a resident or nonresident of this State, shall be liable to taxation, subject to the exemptions hereinafter specified; and all persons, corporations, and associations doing business in this State, either as principals or partners, whether special or otherwise, and not residents of this State, shall be assessed and taxed on all sums invested in any manner in said business in this State, the same as if they were residents of this State; and said taxes shall be collected from the property within this State of said persons, corporations, associations, or firms. The following property shall be exempt from taxation: \* \* \*

Fourth. All growing crops, all mining claims upon public land within this State, and the possessory right thereto: Provided, That all machinery used in mining claims and all property and improvements appurtenant to or upon mining claims which has an independent and separate value shall be subject to taxation."

SEC. 3. This act shall take effect from and after its passage and all laws, general or special, in conflict herewith are hereby repealed so far as repugnant thereto.

**REPEALING ACT.**

**LAWS 1867-68, P. 674; MAR. 30, 1868. GENERAL LAWS 1864-1871, SEC. 9257.**

AN ACT to amend an act entitled "An act to provide revenue for the support of the government of this State," approved May 17, 1861.

The People, etc.

SEC. 1. Section 4 of said act is hereby amended so as to read as follows:

SEC. 4. All property of every kind, name, and nature whatsoever within this State shall be subject to taxation.

NOTE.—This section clearly repeals all prior laws exempting mining claims and other property from taxation.

**AMENDATORY ACT.**

**LAWS 1876 (NOT IN SESSION LAWS), APR. 3, 1876. SEC. 3617, AMENDMENTS TO CODES 1875-76, P. 58. SEC. 3617, AMENDMENTS TO CODES 1877-78, P. 64. JAN. 24, 1878.**

AN ACT to amend section 3617 of the Political Code, defining certain terms.

The People, etc.

SEC. 1. Section 3617 of the Political Code of this State is hereby amended so as to read as follows:

SEC. 3617. Whenever the terms mentioned in this section are employed in this title, they are employed in the sense hereafter affixed to them:

First. The term "real estate" includes: \* \* \*

2. All mines, minerals, and quarries in and under the land, and all rights and privileges appertaining thereto.

\* \* \* \* \*

**AMENDATORY ACT.**

**LAWS 1881, P. 56; MAR. 7, 1881. (LAWS 1895, P. 310.) SEC. 3617, POLITICAL CODE.**

AN ACT to amend the Political Code of the State of California, relating to revenue, by adding a new section, to be known as section 3608 of said code, and by amending sections 3607, 3617, 3627, 3629, 3650, 3651 and 3652 of said code and by repealing section 3640 of said code, all relative to revenue.

The People, etc.

\* \* \* \* \*

SEC. 3. Section 3617 of said code is hereby amended to read as follows:

SEC. 3617. Whenever the terms mentioned in this section are employed in this act they are employed in the sense hereafter affixed to them: \* \* \*

“Second. The term ‘real estate’ includes: \* \* \*

2. All mines, minerals, and quarries in and under the land, all timber belonging to individuals or corporations growing or being on the lands of the United States, and all rights and privileges appertaining thereto.

\* \* \* \* \*

**LAWS 1905, P. 192; MAR. 18, 1905.**

AN ACT to amend section 3617 of an act entitled “An act to establish a Political Code,” approved March 12, 1872, relating to the definition of terms.

The People, etc.

NOTE.—This amendment makes no change in paragraph 2 as amended by the act of March 7, 1881, Laws 1881, p. 56.

**ANNOTATIONS.**

**TAXATION.**

1. ESTATE OR INTEREST TAXABLE.
2. OIL INTEREST TAXABLE.

**1. ESTATE OR INTEREST TAXABLE.**

The interest of the occupant of a valid placer mining location upon the public domain is real estate and as such is subject to taxation under the statutes of California.

Bakersfield & Fresno Oil Co. v. Kern County, 144 Cal. 148, p. 153, 77 Pac. 892 (1904).

See *People v. Moore*, 12 Cal. 56 (1859).

*People v. Shearer*, 30 Cal. 645 (1866).

*Graciosa Oil Co. v. County of Santa Barbara*, 155 Cal. 140, p. 147, 99 Pac. 483 (1909).

This section is not to be limited to mines, minerals, quarries, and timber on the public lands of the United States, but mining rights and privileges may exist on lands belonging to the State of California under various statutes of the State.

*Graciosa Oil Co. v. County of Santa Barbara*, 155 Cal. 140, p. 147, 99 Pac. 483 (1909).

This section providing that for purposes of taxation all mines, minerals, and quarries belonging to individuals or corporations on lands of the United States, and all rights and privileges appertaining thereto, applies to mines, minerals, quarries, and rights and privileges appertaining thereto, in and on lands owned by the State and lands held under private ownership, when held separately from the ownership of the other parts of the land.

*Graciosa Oil Co. v. County of Santa Barbara*, 155 Cal. 140, p. 148, 99 Pac. 483 (1909).

**2. OIL INTEREST TAXABLE.**

The oil strata constitute minerals in and under the land and the rights and privileges of a lessee under an oil lease are clearly rights and privileges pertaining to such minerals and are real estate within the meaning of the second subdivision of this section and the estate created by a lease of minerals in and under the land is real estate subject to taxation.

*Graciosa Oil Co. v. County of Santa Barbara*, 155 Cal. 140, p. 146, 99 Pac. 483 (1909).

Mining rights and privileges may exist on lands belonging to the State of California and as such are subject to taxation to the person in possession, as otherwise, State land not being taxable, they would entirely escape taxation.

*Graciosa Oil Co. v. County of Santa Barbara*, 155 Cal. 140, p. 147, 99 Pac. 483 (1909).

Strata of oil or oil-bearing sand constitute a part of the land that may be subject of separate ownership, and fall within the definition of this section.

*Graciosa Oil Co. v. County of Santa Barbara*, 155 Cal. 140, p. 146; 99 Pac. 483 (1909).



## TOWN SITES.

### MINING CLAIMS IN TOWN SITES.

LAWS 1867-68, P. 487; MAR. 24, 1868. (GENERAL LAWS 1864-1871, SEC. 9457.)

AN ACT to authorize and direct the municipal authorities of the several cities and incorporated towns of this State to execute certain trusts in relation to the town lands granted to the incorporated cities and towns in this State by the act of Congress entitled "An act for the relief of the inhabitants of cities and towns upon the public lands" approved March 2, 1867.

The People, etc.

SEC. 1. It shall be the duty of the board of trustees, or other corporate authorities of any city or incorporated town in this State, to enter at the proper land office of the United States such quantity of land as the inhabitants of any incorporated city or town may be entitled to claim, in the aggregate, according to their population, in the manner required by the laws of the United States and the regulations prescribed by the Secretary of the Interior of the United States, and by order entered upon their minutes of proceedings, at a regular meeting, to authorize the presiding officer and clerk of such board or other corporate authority, attested by the seal of such corporation, to make and sign all necessary declaratory statements, certificates, and affidavits, or other instruments requisite to carry into effect the intentions of this act and the intentions of the act of Congress of the United States entitled, "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2, 1867, and to make proof, when required, of the facts necessary to establish the claim of such inhabitants to the lands so granted by said act of Congress.

\* \* \* \* \*

SEC. 9. \* \* \* And provided further, That whenever mining claims shall have been located prior to the passage of this act, and where the same shall be prior in location to the claim of any occupant for other purposes, such mining rights, according to the metes and bounds so located and claimed, shall not in any manner be affected by the provisions of this act; nor shall any sale be made, nor any title be conveyed by reason of any sale or pretended sale, of such lands so claimed for mining purposes until after the occupancy of such mining claims shall have been abandoned by the holders thereof.

\* \* \* \* \*

LAWS 1867-68, P. 692; MAR. 30, 1868. (GENERAL LAWS 1864-1871, SEC. 9441.)

AN ACT to authorize and direct the county judges of the several counties of this State to execute certain trusts in relation to the town lands granted to the unincorporated towns in this State by the act of Congress entitled "An act for the relief of the inhabitants of cities and towns upon the public lands" approved March 2, 1867.

The People, etc.

\* \* \* \* \*

SEC. 10. \* \* \* And provided further, That whenever mining claims shall have been located and held bona fide for mining purposes, prior to the passage of this act, and where the same shall be prior in location to the claim of any occupant for other purposes, such mining rights, according to the metes and bounds so located and claimed, shall not in any manner be affected by the provisions of this act; nor shall any sale be made, nor any title be conveyed by reason of any sale or pretended sale of such lands so claimed for mining purposes, until after the occupancy of such mining claims shall have been abandoned by the holders thereof.

\* \* \* \* \*

## AMENDATORY ACT.

LAWS 1897, P. 93; MAR. 9, 1897.

AN ACT to amend section 15 of an act entitled "An act entitled 'An act, etc.'" (same as in section 1)

The People, etc.

SEC. 1. Section 15 of an act entitled "An act to authorize and direct the county judges of the several counties of this State to execute certain trusts in relation to the town lands granted to the unincorporated towns in this State by the act of Congress entitled 'An act for the relief of the inhabitants of cities and towns upon the public lands,' approved March 2, 1867," approved March 30, 1868, is hereby amended so as to read as follows:

SEC. 15. If within six months after the giving of the public notice that the plat of any town site has been filed in the recorder's office as provided in section 12 of this act, there shall remain any unoccupied or vacant unclaimed lands, or lands not previously surveyed into town lots under the provisions of this act, and any person who has hitherto or shall hereafter discover gold in any portion thereof in quantities which he may deem sufficient to justify the profitable working thereof (his judgment thereon to be conclusive), and has located and held the same bona fide for mining purposes, such mining possession shall constitute him a preferred purchaser thereof, from the judge of the superior court, according to the metes and bounds of his location thereof, within the meaning of this act; and he may apply to the judge of the superior court for a deed thereto, which application he shall accompany with a deposit to be held by such judge in an amount to be estimated by him sufficient to pay the expenses of a survey and the platting thereof as herein provided for.

The said superior judge shall thereupon cause a survey and plats to be made of such mining possession, and shall cause such plats and a copy of the field notes of such survey to be filed in the recorder's office of the county in which such town is situated, in the manner provided in section 3 of this act, and such filing shall have the effect therein provided; but the provisions of section 4 of this act shall not apply to any survey made under the provisions of this section.

After the filing of such plats and such copy of field notes, said judge shall sell the said land so embraced within such mining possession to the bona fide possessor thereof at a price equal to \$1.25 per acre or fraction of an acre thereof, and the expenses of the surveying and platting thereof; and in case two or more claimants apply for the same tract, or parcel of the same tract, said judge shall determine who is entitled thereto, and shall sell the same to the party so entitled.

If any person has hitherto or shall hereafter occupy any portion of such unsurveyed lands, and shall, in good faith, make improvements thereon for any purpose other than mining, he shall have to the extent of his possession thereof the same rights and privileges hereunder as such possessor for mining purposes.

\* \* \* \* \*

NOTE.—The original section 15 of the act of March 30, 1868 (Laws 1867-68, p. 692), made no reference to mining or mines.

## WATER RIGHTS.

### SERVITUDES.

SEC. 801, 802, CIVIL CODE (1872).

801. The following land burdens, or servitudes upon land, may be attached to other land as incidents or appurtenances, and are then called easements: \* \* \*

5. The right of taking water, wood, minerals, and other things:

\*                    \*                    \*                    \*                    \*                    \*                    \*

NOTE.—Paragraph 6 of section 802 is the same as paragraph 5 of section 801.

LAWS 1875-76, P. 547; MAR. 29, 1876.

AN ACT concerning water ditches and water privileges for irrigating, mining, and manufacturing purposes, in the counties of Fresno, Tulare, and Kern.

The People, etc.

SEC. 1. The board of supervisors of the counties of Fresno, Tulare, and Kern are hereby made ex officio water commissioners in and for said counties; they shall have the power and shall perform the duties hereinafter set forth.

SEC. 2. They shall procure a suitable book, and their clerk shall keep therein a full record of all their official acts as such water commissioners, which shall be open to the inspection of any citizen.

SEC. 3. No ditch shall hereafter be taken out of any stream in the waters of which different persons have an interest by virtue of prior appropriation, without leave of said commissioners.

SEC. 4. Any person or persons desiring to construct a ditch and appropriate water for irrigation, manufacturing, or mining purposes, shall file a petition with said commissioners, setting forth the stream from which they intend to take the water, the point where the proposed ditch will commence its general course, and the proposed size thereof; whereupon the said commissioners may grant the right to construct said ditch, and to use water sufficient to fill the same, for the uses and purposes set forth in said petition; provided, that nothing herein contained shall be so construed as to affect the right and privileges of those who, by prior appropriation and by actual use, have secured the right to the use of water from the several rivers and streams of Fresno, Tulare, and Kern counties.

SEC. 5. Said commissioners shall have power to grant the right of way to lay out and construct ditches through any lands in said counties, and any person damaged thereby, or by the water of any ditch, shall be entitled to such compensation as may be agreed upon between the parties interested; and in case the parties can not agree, each party shall choose an arbitrator, and the two chosen shall choose a third; and such arbitrators shall assess the damages sustained under oath, which sum shall be paid before the ditch is constructed, by the parties using the water, in proportion to their several interests therein; and the decision of said arbitrators shall have the force and effect of a judicial decision; provided, that in case any of the parties herein shall refuse to choose an arbitrator, then the parties desiring the right of way may apply to the district court of such county and have such right of way condemned under Title Seven, Part Three, of the Code of Civil Procedure; and in all cases when the right of way to construct ditches, and fill the same with water, the right to fix maximum rates to be charged by ditch owners for water per inch is expressly reserved to such board.

SEC. 6. The owners of water ditches may make such rules and regulations for the government of their several companies, not repugnant to the constitution and laws of the State of California, as a majority of them may deem just and proper, and elect such officers for the transaction of their business as they may require; provided, that in all meetings of water ditch companies each owner shall be entitled to a vote in proportion to his or her interest therein.

SEC. 7. All water ditches shall be kept in good repair by the owners thereof; and any member of the said board of commissioners shall have power to close or authorize any other person to close and shut off the water from any ditch not in good repair; and any person opening or turning in the water into such ditch before the same is repaired shall be deemed guilty of a misdemeanor.

SEC. 8. When any ditch shall break so as to cause a loss or wastage of water, or shall overflow its banks, any person shall have a right to notify, either verbally or in writing, any owner in the said ditch; and if the said ditch is not repaired within 48 hours after the time when such notice is given, then any person shall have the right to repair said ditch, and shall have the right of action to recover, in any court of competent jurisdiction, from the owners of said ditch, or any of them, double the cost of suit.

SEC. 9. Whenever a majority in interest of the owners in any ditch company, or their authorized agent, shall deem it necessary to repair, enlarge, or extend their ditch, they shall cause a notice, either written or verbal, to be served upon each owner therein, specifying a time to commence work therein; and any owner therein neglecting or refusing to perform his proportion of such labor, or pay his proportion of the cost thereof, shall forfeit his right to the use of any water from such ditch until such time as he pays the same to the person or persons performing his proportion of such labor, together with 10 per cent per month thereon additional. The number of hours constituting a day's labor, and the value thereof, shall be determined by the respective water ditch companies in the rules and regulations they may severally adopt. Leaving the notice contemplated in this section at the residence of any owner in a ditch company, with any member of his or her family over the age of 15 years, shall be deemed a sufficient service for the purposes of this act. Every person owning an interest in any water ditch, or owning any interest in the use of the water therein, shall be considered a member of such water ditch company.

SEC. 10. The board of water commissioners of the said counties are hereby authorized to fix by order, and make a record of the same, in a book kept for that purpose, the maximum rate to be charged by ditch owners for water, per inch, for irrigation, manufacturing, or mining purposes, which rate shall apply to ditches heretofore, as well as to those hereafter, constructed, whether under and by virtue of this act or nay previous law of this State.

SEC. 11. All acts and parts of acts, so far as they conflict with the provisions of this act in the counties herein named, are hereby repealed.

SEC. 12. This act shall take effect and be in force from and after its passage.

### HYDRAULIC MINING.

LAWS 1880, P. 123; APR. 23, 1880.

AN ACT to promote drainage.

The People, etc.

\* \* \* \* \*

SEC. 2. Within 30 days after the passage of this act, or as soon thereafter as may be practicable, the State engineer shall submit to said board a report or reports containing the result of his investigations as to drainage, having in view the control of débris from mining and other operations, the improvement and rectification of river channels, the erection of embankments or dikes necessary for the protection of lands, towns, or cities from inundation. He shall also make special examinations with

reference to the division of the State into several drainage districts, each of which shall include a territory drained by one natural system of drainage, and shall report to the board of drainage commissioners the result of his examinations and shall from time to time propose boundaries for such districts and recommend their formation.

\* \* \* \* \*

SEC. 19. The owner or owners, or the managing agent of every hydraulic mine or any mine using water to wash the earth or ores for mining purposes, which mine may be embraced in whole or in part within any drainage district to be formed or organized under this act and of all mines the waters from which carrying slickens, sand, or débris therefrom runs into any such district, shall, on or before the 1st day of July, A. D. 1880, and every year thereafter, at the time required for rendering a statement to the assessor for the purpose of assessing for State and county taxes, render to the assessor of the county in which the mine is located a sworn statement showing the number of miners' inches of water (of 24 hours' run) used by the mine, of which he is in whole or in part owner or the managing agent, for the preceding year ending on the 1st day of March next preceding the rendition of such statement. The statement shall include also the name and description of the mine. Upon receipt of such statement from the owner or managing agent of such mines the assessor shall enter the same, in a separate column, in the duplicate assessment book provided for (in) this act, so that it will show the number of miners' inches of water (of each 24 hours' run) used by each of such mines within the county for which he is assessor.

SEC. 20. The board of directors shall, at the same time in October of each year that they levy the tax hereinbefore provided for, levy an assessment upon all hydraulic mines, and upon all mines washing earth or ores with water running into the district, of one-half of 1 cent for each miners' inch of water of each 24 hours' run, used during such year, and shall notify the auditor of each county embraced in whole or in part in the district of the amount so levied, and he shall compute and enter upon the duplicate assessment book the respective sums to be collected from the respective mines; and the tax collector shall collect said assessment at the same time and the same manner that they collect State and county taxes. \* \* \*

\* \* \* \* \*

SEC. 24. There shall be levied in the year 1880, and each year thereafter, by the same officers, at the same time and in the same manner that other State taxes are levied, a tax of one-twentieth of 1 per cent on all the taxable property in the State in addition to other State taxes. Said tax must be collected by the same officers, at the same time, and paid over at the same time that other State taxes are collected and paid over. The State treasurer shall place all moneys received by him on account of such tax to the credit of a fund, to be known as the "State drainage construction fund." \* \* \*

\* \* \* \* \*

**SYSTEM OF IRRIGATION.**

LAWS 1889, P. 328; MAR. 19, 1889.

AN ACT to amend an act entitled "An act to provide a system of irrigation, promote rapid drainage, and improve the navigation of the Sacramento and San Joaquin Rivers," approved March 29 1878.

The People, etc.

SEC. 1. Section 1 of "An act to provide a system of irrigation, promote rapid drainage, and improve the navigation of the Sacramento and San Joaquin Rivers," approved March 29, 1878, is hereby amended so as to read as follows:

SEC. 1. The office of the State engineer is hereby created to remain in existence for a period of two years only from the time this act takes effect, and the State mineralogist shall be ex officio State engineer.

SEC. 2. Section 2 of said act is hereby amended so as to read as follows:

SEC. 2. The salary of the State engineer shall be \$3,000 per year.

**MINER'S INCH.**

**LAWS 1901, P. 660; MAR. 23, 1901.**

AN ACT fixing and defining a miner's inch of water.

The People, etc.

SEC. 1. The standard miner's inch of water shall be equivalent or equal to 1½ cubic feet of water per minute, measured through any aperture or orifice.

SEC. 2. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

SEC. 3. This act shall be in effect and force 60 days from and after its passage.

**WATER SYSTEM -MEANING.**

**LAWS 1911 (EXTRA SESSION). P. 18; DEC. 23, 1911**

AN ACT to provide for the organization of the railroad commission; to define its powers and duties, and the rights, remedies, powers, and duties of public utilities; their officers; define its powers and duties, and the rights, remedies, of patrons of public utilities, and to provide penalties for offenses by public utilities, their officers, agents and employees, and by other persons and corporations, etc. \* \* \*

The People, etc.

\* \* \* \* \*  
SEC. 2. \* \* \*

(w) The term "water system," when used in this act, includes all reservoirs, tunnels, shafts, dams, dikes, headgates, pipes, flumes, canals, structures, and appliances, and all other real estate, fixtures, and personal property, owned, controlled, operated or managed in connection with or to facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage, apportionment or measurement of water for power, irrigation, reclamation, or manufacturing, or for municipal, domestic, or other beneficial use.

\* \* \* \* \*

**CIVIL CODE IN FORCE.**

**LAWS 1871-72, P. 622; MAR. 27, 1872.**

AN ACT to put into effect the provisions of the Civil Code relative to water rights.

The People, etc.

SEC. 1. Title VIII (eight) of Part IV (four) of division 2 of the Civil Code of the State of California shall be in full force and effect from and after the first day of May, 1872.

SEC. 2. The revision commission are hereby authorized to cause to be printed and certified by their chairman 1,200 copies of Title VIII (eight), in pamphlet form, and to distribute them to the members of the legislature and county officers of the several counties.

SEC. 3. This act shall be in force and effect from and after its passage.

**ANNOTATIONS.**

**WATER RIGHTS FOR MINING.**

1. PRIOR APPROPRIATION—PROTECTION.
2. RIGHT TO DIVERT WATER FROM STREAMS.
3. WATER RIGHTS PASS ON CONVEYANCE OF MINE.
4. FELLOW SERVANTS.

**I. PRIOR APPROPRIATION—PROTECTION.**

Among the conceded and protected rights of miners in the possession of their selected localities is the right gained by prior appropriation to take the waters from their natural beds and by costly artificial works conduct them to supply the necessities of their gold

digging, and without which the most important interest of the mineral region would remain without development. Without any specific legislation conferring or confirming these rights they are alluded to and spoken of in various acts of the legislature in the same manner as if they were rights which had been vested by the most distinct expression of the will of the law makers.

Irwin v. Phillips, 5 Cal. 140, p. 146, 63 Am. Dec. 113 (1855).  
Tartar v. Spring Creek Water & Min. Co., 5 Cal. 396, p. 398.

#### 2. RIGHT TO DIVERT WATER FROM STREAMS.

It has been the policy of California, as evidenced by her legislation, to confer the privilege to work the mines of the State, and the State has equally conferred the right to divert the streams from their natural channels, and if a miner locates his mining claim upon a stream the waters of which have not been taken from their bed, they can not then be taken to his prejudice; but if they have been already diverted for other lawful purposes, the miner has no right to complain and no right to interfere with such prior occupation or appropriation.

Irwin v. Phillips, 5 Cal. 140, p. 147 (1855); 63 Am. Dec. 113.  
Tartar v. Spring Creek Water & Min. Co., 5 Cal. 395, p. 398 (1855).  
See Sims v. Smith, 7 Cal. 148 (1857), 63 Am. Dec. 233.

However much the policy of the State, as indicated by her legislation, has conferred the privilege to work the mines it has equally conferred the right to divert the streams from their natural channels.

Irwin v. Phillips, 5 Cal. 140, p. 147, 63 Am. Dec. 113 (1855).  
Tartar v. Spring Creek Water & Min. Co., 5 Cal. 396, p. 398 (1855).

The State has granted the franchise of digging gold and all the incidents necessary to that purpose, such as wood, water, etc., must follow.

Tartar v. Spring Creek Water & Min. Co., 5 Cal. 396, p. 398 (1855).

#### 3. WATER RIGHTS PASS ON CONVEYANCE OF MINE.

The right to receive and use water flowing from a tunnel for the operation of a mining claim passes by a conveyance of the mine as an easement attached thereto.

Cross v. Kitts, 69 Cal. 217, p. 221, 10 Pac. 409; 58 Am. 558 (1886).

#### 4. FELLOW SERVANTS.

An engineer running the engine to hoist water from a mine is a fellow servant with a laborer at the bottom of the mine, within the rule that the master is not liable for injuries occasioned by the negligence of a fellow servant.

Collier v. Steinhart, 51 Cal. 116 (1875).

A person in the hydraulic department of a mine is a fellow servant with the foreman in the blasting department within the rule that the master is not liable for an injury to a servant occasioned by the negligence of a coservant.

McLean v. Blue Point Gravel Mining Co., 51 Cal. 255, p. 257 (1876).  
Keilley v. Belcher Silver Mining Co., 3 Sawyer 500.

**WEIGHING COAL.**  
**COAL WEAHER—APPOINTMENT.**

**LAWS 1863, P. 765; APR. 27, 1863.**

AN ACT to provide for the appointment of a weigher of coal in and for the city and county of San Francisco California.

The People, etc.

SEC. 1. The board of supervisors of the city and county of San Francisco are hereby authorized to appoint a weigher of coal in and for the city and county of San Francisco, who shall reside in said place, and continue in office for the term of two years from the date of his appointment, and until his successor is appointed and qualified.

SEC. 2. Said weigher, before entering upon the duties of his office, shall take and subscribe the oath of office, and give bond, in the sum of \$10,000 for the faithful discharge of his duties, which oath shall be administered by the county judge, and said bond acknowledged before him and approved, or before some other competent officer, the oath and bond to be filed in the office of the auditor of said city and county.

SEC. 3. When requested to do so by any person interested in knowing the weight of any coal, it shall be the duty of said weigher to weigh all coal brought to his scales to be weighed, and, unless some other price be agreed upon by said weigher and the person or persons making such request, he may charge and collect 10 cents per ton for such service.

SEC. 4. Said weigher shall have and maintain at suitable places such number of scales as he may deem necessary; but this act shall not be so construed as to enable said weigher to create any liability against said city and county.



## EXPLOSIVES.

### SHIPPING AND STORING.

LAWS 1887, P. 110; MAR. 12, 1887.

AN ACT to protect life and property against the careless and malicious use or handling of dynamite and other explosives.

The People, etc.

SEC. 1. It is the duty of each and every person, contractor, firm, association, joint stock company, and corporation, manufacturing, storing, selling, transferring, disposing of, or in any manner dealing in, or with, or using, or giving out nitroglycerine, dynamite, vigorite, hercules powder, giant powder, or other high explosive, by whatever name known, to keep at all times an accurate journal, or book of record, in which must be entered, from time to time, as they are made, each and every sale, delivery, transfer, gift, or other disposition made by such person, firm, association, joint stock company, or corporation, in the course of business or otherwise, of any quantity of such explosive substance.

SEC. 2. Such journal or record book must show in a legible handwriting, to be entered therein at the time, a complete history of each transaction, stating the name and quantity of the explosive sold, delivered, given away, transferred, or otherwise disposed of; the name, place of residence, or business of the purchaser or transferee; the name of the individual to whom delivered, with his or her address, with a description of such individual sufficient to provide for identification.

SEC. 3. Such journal or record book must be kept by the person, firm, association, joint stock company, or corporation so selling, delivering, or otherwise disposing of such explosive substance or substances in his or their principal office or place of business, at all times subject to the inspection and examination of the peace officers or other police authorities of the State, county, city and county, or municipality where the same is situated, on proper demand made therefor; any failure or neglect to keep such book or to make the proper entries therein at the time of the transaction as herein provided or to exhibit the same to the peace officers or other police authorities on demand shall be deemed a misdemeanor and punished accordingly.

SEC. 4. In addition to such punishment and as a cumulative penalty such person, firm, association, joint stock company, or corporation so offending shall forfeit for each offense the sum of \$250, to be recovered in any court of competent jurisdiction, by action at law. The party so instituting such actions shall not be entitled to dismiss the same without consent of the court before which the suit has been instituted. Nor shall any judgment recovered be settled, satisfied, or discharged, save by order of such court, after full payment into court, and all moneys so collected shall be paid to the parties bringing the suit.

SEC. 5 (sec. 601a (new) Civil Code). Any person who in the public street or any highway of any county, city and county, city, or town and city, or at, in, or near to, any theater, hall, public or private school, or college, church, hotel, or other public building, or at, in, or near to any private habitation, or in, on board of, or near any railway passenger train, or car or train, or cable road, or car of the same, or steam or other vessel, engaged in carrying passengers, or ferryboat, or other public place, where human beings ordinarily pass and repass, shall recklessly or maliciously have in his or her possession any dynamite, nitroglycerine, vigorite, hercules powder, giant powder, or other high explosive, or who shall recklessly or maliciously by use of such means intimidate, terrify, or endanger any human being, is guilty of a felony, and on conviction shall be punished accordingly.

SEC. 6 (sec. 601b (new) Civil Code). Any person not regularly engaged in the manufacture, sale, transportation, or legitimate use in blasting operations, or in the arts, of such substances as are named in this act shall be presumed (*prima facie*) to be guilty of a reckless and malicious possession thereof, within the meaning of the foregoing section, if any such substance is found upon him, or in his possession, in any of the places or under any of the circumstances specified in the preceding section.

SEC. 7 (sec. 601c (new) Civil Code). No person may knowingly keep or have in his or her possession any dynamite, vigorite, nitroglycerine, giant powder, hercules powder, or other high explosive, except in the regular course of business carried on by such person, either as a manufacturer thereof or merchant dealing in the same, or for use in legitimate blasting operations, or in the arts, or while engaged in transporting the same for others, or as the agent or employee of others engaged in the course of such business or operations. Any other possession of any such explosive substances as are named in this act is unlawful; and the person so unlawfully possessing it shall be punished by imprisonment in the State prison not exceeding 5 years or by fine not exceeding \$5,000, or by both such fine and imprisonment.

SEC. 8 (sec. 601b Civil Code). Any person who maliciously deposits or explodes, or who attempts to explode, at, in, under, or near any building, vessel, or boat, railroad, tramroad, or cable road, or any train, or car, or any depot, stable, car house, theater, schoolhouse, church, dwelling house, or other place where human beings usually inhabit, assemble, frequent, or pass and repass, any dynamite, nitroglycerine, vigorite, giant or hercules powder, gunpowder, or other chemical compound, or other explosive, with the intent to injure or destroy such building, vessel, boat, or other structure, or with the intent to injure, intimidate, or terrify any human being, or by means of which any human being is injured or endangered, is guilty of a felony, and on conviction thereof shall be punished by imprisonment in the State prison not less than 1 year.

SEC. 9 (sec. 601d (new) Civil Code). Any person, firm, or corporation who shall take, carry, or transport, or cause to be taken, carried, or transported, any dynamite, vigorite, nitroglycerine, hercules or giant powder, or other high explosive, into the limits of, or through, or across any incorporated city or town of this State, or into, through, or across any harbor for shipping, in any manner, condition, or quantity, or otherwise, in violation of the laws or ordinances of such city or town, or of the laws or regulations governing such harbor, shall, in addition to the penalties provided or imposed by such laws, ordinances, or regulations, forfeit to the State of California all such explosive substances, as well as the cases inclosing the same. Such forfeiture may be sued for by any citizen of the State, for himself and the State; and the goods or property, when so forfeited and recovered by judgment of the court, shall be sold and the proceeds divided, the citizen so suing taking one half to himself, for his own benefit, and paying the other half into the State treasury. Such action may be maintained in any court of competent jurisdiction; provided, that the State shall never be liable to any cost or expense for any such suit or proceeding.

SEC. 10. Any of the forfeitures provided for in this act may be taken advantage of, and sued for, and recovered, by any peace officer or policeman, member of the police force of any city, city and county, or town where the same arises, for his own benefit, notwithstanding any law, ordinance, or rule, to the contrary.

SEC. 11. This act shall take effect and be in force from and after its passage.

**LAWS 1911, P. 391; MAR. 21, 1911.**

AN ACT relating to explosives and prescribing regulations for the transportation, storage, and selling of explosives, and providing penalties for the violation of this act.

The People, etc.

SEC. 1. The term "explosive" or "explosives," whenever used in this act, shall include gunpowder, blasting powder, dynamite, guncotton, nitroglycerine or any

compound thereof, fulminate, and every explosive substance having an explosive power equal to or greater than black blasting powder, and any substance intended to be used by exploding or igniting the same to produce a force to propel missiles, or rend apart substances, but does not include said substances, or any of them, in the form of fixed ammunition for small arms. The term "person," whenever used herein, shall be held to include corporations as well as natural persons; words used in the singular number to include the plural and the plural the singular. The words "explosive manufacturing plant" shall be understood to include all the land used in connection with the manufacture and storage of explosives thereat.

SEC. 2. Except only at an explosive manufacturing plant, no person shall have, keep or store, at any place within this State, any explosives, unless such explosives are completely inclosed and encased in tight metal, wooden or fiber containers, and, except while being transported, or within the custody of a common carrier pending delivery to consignee, shall be kept and stored in a magazine constructed and operated as hereinafter described, and no person having in his possession or control, any explosives, shall, under any circumstances, permit or allow any grains or particles thereof to be or remain on the outside or about the containers, in which such explosives are contained.

SEC. 3. Magazines in which explosives may lawfully be stored or kept shall be two classes, as follows:

(A) Magazines of the first class shall consist of those containing explosives exceeding 50 pounds, and shall be constructed wholly of brick, wood covered with iron, or other fireproof material, and must be fireproof, and, except magazines where gunpowder or black blasting powder only is stored, must be bullet proof, and shall have no openings except for ventilation and entrance. The doors of such magazine must be fireproof and bullet proof, and at all times kept closed and locked, except when necessarily opened for the purpose of storing or removing explosives therein or therefrom, by persons lawfully entitled to enter the same. Every such magazine shall have sufficient openings for ventilation thereof, which must be screened in such manner as to prevent the entrance of sparks or fire through the same. Upon each side of such magazine there shall, at all times, be kept conspicuously posted a sign, with the words, "Magazine," "Explosives," "Dangerous," legibly printed thereon in letters not less than 6 inches high. No matches, fire, or lighting device of any kind shall at any time be permitted in any such magazine. No package of explosives shall at any time be opened in any magazine, nor shall any open package of explosives be kept therein. No blasting caps, or other detonating or fulminating caps, or detonators or electric fuses shall be kept or stored in any magazine in which explosives are kept or stored, but such caps, detonators, or fuses may be kept or stored in a magazine constructed as above provided, which must be located at least 100 feet from any magazine in which explosives are kept or stored. Magazines in which explosives are kept or stored must be detached, and must be located at least 100 feet from any other structure.

(B) Magazines of the second class shall consist of a stout wooden box, covered with sheet iron, and not more than 50 pounds of explosives shall at any time be kept or stored therein, and, except when necessarily opened for use by authorized persons, shall at all times be kept securely locked. Upon each such magazine there shall at all times be kept conspicuously posted a sign with the words, "Magazine," "Explosives," "Dangerous," legibly printed thereon.

Nothing in this section contained shall be held to prohibit the keeping or storing of explosives in any tunnel, where no person or persons are employed; provided always, that any tunnel so used for the storage of explosives shall have fireproof doors, which must at all times be kept closed and locked, except when necessarily opened for the purpose of storing or removing explosives therein or therefrom, by persons lawfully entitled to enter the same. The door of such tunnel magazine shall at all

times have legibly printed thereon the words, "Magazine," "Explosives," "Dangerous."

NOTE.—This section is amended by act May 11, 1917.

SEC. 4. Any person violating or failing to comply with any of the provisions of sections 2 and 3 of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$25 and not more than \$1,000, or by imprisonment not exceeding six months, or by both such fine and imprisonment.

SEC. 5. It shall be unlawful to transport, carry or convey, any explosives between any places within this State, on any vessel, car, or other vehicle of any description, operated by common carrier, which vessel, car, or vehicle is carrying passengers for hire; provided, that it shall be lawful to transport on any such vessel, car, or vehicle, small arms ammunition in any quantity, and such fuses, torpedoes, rockets, or other signal devices, as may be essential to promote safety in operation, and properly packed and marked samples for laboratory examination, not exceeding a net weight of one-half pound each, and not exceeding 20 samples at one time, in a single vessel, car, or vehicle, but such samples shall not be carried in that part of the vessel, car, or vehicle which is intended for the transportation of passengers for hire; provided, further, that nothing in this section shall be construed to prevent the transportation of military or naval forces with their accompanying munitions of war on passenger equipment vessels, cars, or vehicles; provided, further, that the transportation of explosives on any freight train in this State that carries passengers for hire in a car or caboose attached to the rear of such train, shall not be held or construed to violate the provisions of this act.

SEC. 6. The railroad commission of this State is hereby empowered to make, publish, and promulgate such regulations as are not in conflict with this act and as, in the judgment of said commission, may tend to the safe packing, loading, storage, and transportation of the explosives defined by section 1 of this act.

SEC. 7. It shall be unlawful to transport, carry, or convey liquid nitroglycerin, fulminate in bulk, in dry condition, or other like explosive, between any places within this State, on any vessel, car, or vehicle of any description, operated by common carrier in the transportation of passengers or articles of commerce by land or water.

SEC. 8. Every package containing explosives or other dangerous articles when presented to a common carrier for shipment shall have plainly marked on the outside thereof the contents thereon, and it shall be unlawful for any person to deliver for transportation to any common carrier engaged in commerce by land or water, or cause to be delivered or to carry any explosive or other dangerous article, under any false or deceptive marking, description, invoice, shipping order or other declaration, or without informing the agent of such carrier of the true character thereof, at or before the time of such delivery or carriage is made.

SEC. 9. Any person who willfully violates or causes to be violated any of the foregoing provisions of sections 5, 6, 7, and 8 of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished for each offense by fine not exceeding \$2,000, or by imprisonment not exceeding 18 months, or by both such fine and imprisonment in the discretion of the court.

SEC. 10. Every person selling, giving away, or delivering explosives within this State shall keep at all times an accurate journal or book of record in which must be entered from time to time, as it is made, each and every sale, delivery, gift, or other disposition made by such person in the course of business, or otherwise, of any quantity of such explosive substance. Such journal or record book must show in a legible handwriting, to be entered therein at the time, a complete history of each transaction, stating name and quantity of explosives sold, delivered, given away, or otherwise disposed of; name, place of residence, and business of the purchaser or transferee; name of

individual to whom delivered with his or her address. Such journal or record book must be kept by the person so selling, delivering, or otherwise disposing of such explosives, in his or their principal office or place of business, at all times subject to the inspection and examination of the police authorities of the State, county, or municipality where same is situated, on proper demand therefor. In addition to keeping the record above provided, it shall be unlawful for any person to sell, give away, or deliver any explosives within this State, without taking from the person to whom such explosives are sold, given away, or delivered within this State, a statement in writing showing the name and the address of the person to whom such explosives are sold, given away, or delivered, and the place where and the purpose for which such explosives are intended for use, which statement shall be signed by the person to whom such explosives are sold, given away, or delivered, or his agent, and be witnessed by two witnesses known to the person selling, giving away, or delivering such explosives, to be residents of the county where such explosives, as shown by such statement, are intended for use, who shall certify that the person to whom such explosives are to be sold, given away, or delivered is personally known to each of said witnesses, and that to the best of his knowledge and belief, the explosives are required by such person for the uses and purposes set forth in the statement, which said statement shall at all times be kept on file in the principal office or place of business of the person so selling, giving away, or delivering such explosives, subject to the inspection of the police authorities of the State, county, or municipality where the same is situated, on proper demand made therefor; provided, that nothing in this section shall be held to apply to the delivery of explosives to any person or carrier for the purpose of being transported from a place within this State to any other place within this State; and provided further, that nothing in this section contained shall apply to interstate commerce.

Every person selling, giving away, or delivering any explosives without complying with all the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than \$100 and not more than \$2,000, or by imprisonment of not less than six months, or by both such fine and imprisonment in the discretion of the court.

In addition to such imprisonment and as cumulative penalty such person so offending shall forfeit for each offense the sum of \$250, to be recovered in any court of competent jurisdiction, and the party instituting the action for such forfeiture shall not be entitled to dismiss the same, without the consent of the court before which the suit has been instituted; nor shall any judgment recovered be set aside, satisfied, or discharged save by order of such court, after full payment into court, and all moneys so collected must be paid to the party bringing suit.

SEC. 11. No explosives in excess of an amount sufficient for one day's operations shall be taken into any mine or underground workings in this State, and any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in an amount not exceeding \$500.

NOTE.—This section is repealed by the act of May 11, 1917.

SEC. 12. No person, except a peace officer or a person authorized so to do by the owner thereof, or his agent, shall enter any explosive manufacturing plant, magazine, or car containing explosives in this State, and any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not exceeding \$1,000 or by imprisonment not exceeding three months, or by both such fine and imprisonment.

SEC. 13. No person shall discharge any firearms within 500 feet of any magazine or of any explosive manufacturing plant, and any person willfully violating any of the provisions of this section shall be deemed guilty of a misdemeanor and fined not exceeding \$1,000, or by imprisonment not exceeding one year, or by both such fine and imprisonment.

SEC. 14. No person shall willfully carry any explosive on his person within this State in any car, vessel, or vehicle that carries passengers for hire, or place or carry any explosive while on board any such car, vessel, or vehicle, in any hand baggage, roll, or container or place any explosive in any baggage thereafter checked with any common carrier, and any person violating any of the provisions of this section shall be deemed guilty of a felony and upon conviction thereof shall be punished by imprisonment in the penitentiary not exceeding two years.

SEC. 15. Nothing in this act contained shall prevent the operation of, or modify, alter, set aside, or supersede the provisions of any municipal ordinance respecting the delivery, storing, and handling of explosives.

SEC. 16. Nothing in this act contained shall regulate or apply to any shipment of explosives from a point within this State, consigned to a point without this State, over a line or lines of one or more common carriers.

**SEC. 3, ACT 1911, AMENDED.—SEC. 11, ACT 1911, REPEALED.**

**LAWS 1917, P. 695; MAY 11, 1917.**

AN ACT to amend section 3 of an act entitled "An act, etc." (same as in sec. 1.)

The People, etc.

SEC. 1. Section 3 of chapter 213, of the statutes of 1911, entitled "An act relating to explosives and prescribing regulations for the transportation, storage, and selling of explosives, and providing penalties for the violation of this act," in effect March 21, 1911, is hereby amended to read:

SEC. 3 (chap. 213, sec. 11). Magazines in which explosives may lawfully be stored or kept shall be two classes, as follows:

(a) Magazines of the first class shall consist of those containing explosives exceeding 100 pounds, and shall be constructed wholly of brick, wood covered with iron, or other fireproof material, and must be fireproof, and, except magazines where gunpowder or black blasting powder only is stored, must be bullet proof, and shall have no openings except for ventilation and entrance. The doors of such magazine must be fireproof and bullet proof, and at all times kept closed and locked, except when necessarily opened for the purpose of storing or removing explosives therein or therefrom by persons lawfully entitled to enter the same. Every such magazine shall have sufficient openings for ventilation thereof, which must be screened in such manner as to prevent the entrance of sparks or fire through the same. Upon each side of such magazine there shall at all times be kept conspicuously posted a sign, with the words "magazine," "explosives," "dangerous," legibly printed thereon in letters not less than 6 inches high. No matches, fire, or lighting device of any kind except electric light shall at any time be permitted in any such magazine. No package of explosives shall at any time be opened in any magazine. No blasting caps, or other detonating or fulminating caps, or detonators, or electric fuzes shall be kept or stored in any magazine in which explosives are kept or stored, but such caps, detonators, or fuzes may be kept or stored in a magazine constructed as above provided which must be located at least 100 feet from any magazine in which explosives are kept or stored. Magazines in which explosives are kept or stored must be detached and must be located at least 100 feet from any other structure.

(b) On and after January 1, 1919, the quantity of explosives that may be lawfully had, kept, or stored in any magazine shall depend upon the distance that such magazine is situated from buildings, highways, or railroads, and upon the protection afforded by natural or efficient artificial barricades to such buildings, highways, or railroads. Whenever any of the quantities given in column 1 of the quantity and distance table hereinafter set forth is had, kept, or stored in any magazine in this State, the distance that any quantity given in the column 1 of said table may be lawfully had, kept or stored from buildings is the distance set opposite said quantity in column 2 of said table, and the distance that any quantity in column 1 of said table may be lawfully

had, kept, or stored from railroads is the distance set opposite said quantity in column 3 of said table, and the distance that any quantity given in column 1 of said table may be lawfully had, kept, or stored from highways is the distance set opposite said quantity in column 4 of said table. The quantity and distance table governing the keeping or storing of explosives is as follows:

*Quantity and distance table.*

Column 1. Quantity that may be lawfully kept or stored from nearest building, highway, or railroad.				Column 2. Distance from nearest building (feet).	Column 3. Distance from nearest railroad (feet).	Column 4. Distance from nearest highway (feet).
Blasting caps.		Other explosives.				
Number over.	Number not over.	Pounds over.	Pounds not over.			
1,000	5,000	-----	-----	30	20	10
5,000	10,000	-----	-----	60	40	20
10,000	20,000	-----	-----	120	70	35
20,000	25,000	-----	50	145	90	45
25,000	50,000	50	100	240	140	70
50,000	100,000	100	200	360	220	110
100,000	150,000	200	300	520	310	150
150,000	200,000	300	400	640	380	190
200,000	250,000	400	500	720	430	220
250,000	300,000	500	600	800	480	240
300,000	350,000	600	700	860	520	260
350,000	400,000	700	800	920	550	280
400,000	450,000	800	900	980	590	300
450,000	500,000	900	1,000	1,020	610	310
500,000	750,000	1,000	1,500	1,060	640	320
750,000	1,000,000	1,500	2,000	1,200	720	360
1,000,000	1,500,000	2,000	3,000	1,300	780	390
1,500,000	2,000,000	3,000	4,000	1,420	850	420
2,000,000	2,500,000	4,000	5,000	1,500	900	450
		5,000	6,000	1,560	940	470
		6,000	7,000	1,610	970	490
		7,000	8,000	1,660	1,000	500
		8,000	9,000	1,700	1,020	510
		9,000	10,000	1,740	1,040	520
		10,000	20,000	1,780	1,070	530
		20,000	30,000	2,110	1,270	630
		30,000	40,000	2,410	1,450	720
		40,000	50,000	2,680	1,610	800
		50,000	60,000	2,920	1,750	880
		60,000	70,000	3,130	1,880	940
		70,000	80,000	3,310	1,990	1,000
		80,000	90,000	3,460	2,080	1,040
		90,000	100,000	3,580	2,150	1,080
		100,000	200,000	3,800	2,280	1,140
		200,000	300,000	4,310	2,590	1,300

Whenever the building, railroad, or highway to be protected is effectually screened from the magazine where explosives are had, kept, or stored, either by natural features of the ground or by an efficient artificial barricade of such height that any straight line drawn from the top or any side wall of the magazine to any part of the building to be protected will pass through such intervening natural or efficient artificial barricade, and any straight line drawn from the top of any side wall of the magazine to any point 12 feet above the center of the railroad or highway to be protected will pass through such intervening natural or efficient artificial barricade, the applicable distances given in columns 2, 3, and 4 of the quantity and distance table may be reduced one-half.

If at any time the distances from a magazine to a building, highway, or railroad be decreased through the construction of a new building, highway, or railroad, or by any other means, then the amounts of explosives which may be lawfully had, kept, or stored in said magazine must be reduced to correspond with the quantity and distance table.

The term "building" when used in the foregoing table shall be held to mean and include only any building regularly occupied in whole or in part as a habitation for human beings, and any store, church, schoolhouse, railway station, or other public place of assembly.

The term "highway" when used in the foregoing table shall be held to mean public streets or public road, and shall not include roads constructed and maintained by private persons.

The term "railroad" when used in the foregoing table shall be held to mean and include any steam, electric, or other railroad that carries passengers or articles of commerce for hire.

The term "efficient artificial barricade" when used in the foregoing shall be held to mean an artificial mound or properly revetted wall of earth of a thickness of not less than 3 feet. The provisions of this subsection (b) shall not apply to mining or quarrying operations. Nothing contained in this subsection (b) shall be held to prohibit the keeping or storing of explosives at any explosive manufacturing plant which was actually used in manufacturing explosives prior to the 15th day of April, 1917.

(c) Magazines of the second class shall consist of a stout box, and not more than 100 pounds of explosives shall at any time be kept or stored therein, and, except when necessarily opened for use by authorized persons, shall at all times be securely locked. Upon each such magazine there shall at all times be kept conspicuously posted a sign with the words "magazine," "explosives," "dangerous," legibly printed thereon.

Nothing in this section contained shall be held to prohibit the keeping or storing of explosives in any tunnel, where no person or persons are employed, provided, always, that any tunnel so used for the storage of explosives shall have fireproof doors, which must at all times be kept closed and locked, except when necessarily opened for the purpose of storing or removing explosives therein or therefrom, by persons lawfully entitled to enter the same. The door of such tunnel magazine shall at all times have legibly printed thereon the words "magazine," "explosives," "dangerous."

SEC. 2. Section 11 of said act is hereby repealed.



## PUBLICATIONS RELATING TO MINING LAWS.

A limited supply of the following publications of the Bureau of Mines has been printed and is available for free distribution until the edition is exhausted. Requests for all publications can not be granted, and to insure equitable distribution applicants are requested to limit their selection to publications that may be of especial interest to them. Requests for publications should be addressed to the Director, Bureau of Mines.

The Bureau of Mines issues a list showing all its publications available for free distribution as well as those obtainable only from the Superintendent of Documents, Government Printing Office, on payment of the price of printing. Interested persons should apply to the Director, Bureau of Mines, for a copy of the latest list.

### PUBLICATIONS AVAILABLE FOR FREE DISTRIBUTION.

BULLETIN 75. Rules and regulations for metal mines, by W. R. Ingalls and others. 1915. 296 pp., 1 fig.

BULLETIN 90. Abstracts of current decisions on mines and mining, December, 1913, to September, 1914, by J. W. Thompson. 1915. 176 pp.

BULLETIN 101. Abstracts of current decisions on mines and mining, October, 1914, to April, 1915, by J. W. Thompson. 1915. 138 pp.

BULLETIN 118. Abstracts of current decisions on mines and mining, reported from October to December, 1915, by J. W. Thompson. 1916. 74 pp.

BULLETIN 126. Abstracts of current decisions on mines and mining, reported from January to April, 1916, by J. W. Thompson. 1916. 90 pp.

BULLETIN 152. Abstracts of current decisions on mines and mining, reported from January to April, 1917, by J. W. Thompson. 1917. 79 pp.

BULLETIN 159. Abstracts of current decisions on mines and mining, reported from May to August, 1917, by J. W. Thompson. 1917. 111 pp.

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