

CHAPTER XI.

POWERS OF A WARDEN OVER ROADS.

Roads and tramways for conveyance of timber.

The Warden of a goldfield has power under Sub-section (1) of Section 66 of "The Mining Act, 1895," to consent to a person holding a miner's right to make tramways on roads for the purpose of conveying timber from unalienated Crown lands for the use of such person.

Road included in license gives licensee no rights to mine on same.

Section 157 of "The Mining Act, 1905," which authorises the Warden to exchange a license under former Acts for a license under that Act, authorises him to include the area of any roads in such new license, but the inclusion of the roads in such license will not by virtue of Section 205 of the Act give the licensee any right to mine, dredge, or sluice the soil of such road, or to do so within one chain of such road except with the consent of the local authority having control of the road.

Holder of miner's right may be authorised to use road, etc.

Section 200 of "The Mining Act, 1905," empowers the Warden to grant, by a certificate of easement, to the holder of any mining privilege, the right to enter upon, occupy and use for a road, tramway, or bridge any specified portion of land comprised in any other mining privilege, subject to the person to whom such certificate is granted paying to the holder of the other mining privilege compensation for actual or prospective loss or damage that may be suffered by him by reason of the grant of such easement.

Holder of sawmill license may be authorised to use road, etc.

Section 201 of the Act extends the provisions of Section 200 to timber cutting and sawmill licenses, and to the lands comprised in such licenses.

In every case where a public or private bridge exists, Bridges in mining district. or where land is reserved as a site for a public bridge, the following provisions apply (see Section 202 of "The Mining Act, 1905"):—

- (a) It shall not be lawful for any person, being the holder of a mining privilege, howsoever or whensoever acquired, to carry on mining operations as such holder by sluicing, dredging, tunnelling, or driving within five chains of such public bridge or site, or three chains of such private bridge, except with the written consent, in the case of the public bridge or site, of the local or other authority having control thereof, and in the case of the private bridge, of the owner thereof, nor in any case except in accordance with the terms and conditions subject to which the consent is given: Sluicing, dredging, etc., not to be carried on within. Provided that in the case of a private bridge the Warden, on application in that behalf, may negative, modify, or vary, as he thinks fit, any term or condition which the owner has imposed, otherwise than for the *bona fide* purpose of insuring the safety of the bridge. Conditions may be varied.
- (b) The powers of this section conferred upon the local authority may be exercised either by resolution of the local authority or by writing under the hands of the Chairman or Mayor and any two other members thereof appointed either generally or specially in that behalf by resolution of the local authority. How power may be exercised.
- (c) In the case of bridges constructed or sites reserved after the twenty-fourth day of October, 1899 (being the date of the commencement of "The Mining Act, 1899"), this section shall extend and apply as from the date on which the construction is commenced or the reservation made. Cases of bridges erected after 24th October, 1899.

(d) For the purposes of this section—

Definition.

- (1) "Public bridge" means any bridge intended for public use or for use in connection with any public work within the meaning of "The Public Works Act, 1894," and under the control of the Government or any local authority; and
- (2) "Private bridge" means any bridge (other than a foot-bridge) intended for use in connection with the business of any person or company, and owned by any person or company.

Penalty.

- (c) If the holder of the mining privilege by himself, his agents, or workmen, commits any breach of any of the provisions of this section, or of the terms or conditions subject to which the aforesaid consent is given, he shall be civilly liable for all damage thereby done, and in addition thereto his mining privilege shall be liable to forfeiture; and, if the breach is committed in respect of a public bridge or site, he shall also be liable as for committing an injury to a public work.

License for mining privilege may include road or street.

The following provisions also apply with respect to every public road or public street in a mining district (see Section 204 of the Act).

- (a) The license for a mining privilege, being a claim, race, or tramway, or a prospecting or mineral area, may be applied for and granted notwithstanding that any public road or public street exists on the land comprised in the license.
- (d) The license, if granted, shall be deemed to be granted and shall be held subject to the provisions of the next succeeding sections hereof.

Such privilege does not authorise mining or sluicing within one chain of road or street.

Section 205 of "The Mining Act, 1905," provides that it is not lawful for any person (howsoever or whensoever acquired) to exercise upon, over or under any public road

or public street any of his rights as such holder, or to carry on mining operations by dredging or sluicing within one chain of such road or street (whether situate within or outside the limits of the land comprised in his mining privilege, except with the written consent of the local or other authority having the control of such road or street, nor except in accordance with the terms and conditions subject to which such consent is given.

(2) The powers by this section conferred upon the local authority may be exercised in manner provided in Section 202 of "The Mining Act, 1905."

(3) In the case of public roads or public streets constituted after the 24th day of October, 1899 (being the date of the commencement of "The Mining Act Amendment Act, 1899"), this section shall extend and apply as from the date of constitution.

(4) If such holder, by himself, his agents or workmen, commits any breach of any of the provisions of this section, or of the terms or conditions subject to which such consent is given, he shall be civilly liable for all damage done, and in addition thereto his mining privilege shall be liable to forfeiture; and if the breach is in respect of a Government road or street, he shall also be liable as for committing an injury to a public work. Penalty.

The travelling roads in every mine must at all times be in a fit state for working and passing therein, and every road on which persons travel underground, and where the produce of the mine in transit exceeds ten tons an hour over any part thereof, and where the load is drawn by a horse or other animal, the owner of the mine must provide (at intervals of not more than one hundred yards), sufficient spaces for places of refuge, and these spaces must be of sufficient length and at least three feet in width between the waggons running on the tram-road and the side of the road (see Sub-section (1) and (4) of Section 255 of "The Mining Act, 1905," and Sub-sections (1) and (4) of Section 39 of "The Coal Mines Act, 1905"). Travelling roads
in mines.

Power of
warden to hear
disputes as to
mines etc.

A Warden's Court has power (*inter alia*) to hear and determine suits and other proceedings which arise within a mining district relative to encroachments upon, injuries to, and the determination of all questions concerning roads, tramways, etc., held or occupied under any Mining Act (see Sub-section 305 (1) of "The Mining Act, 1905").

Regulations.

Regulations may be made by the Governor under Sub-section (24) of Section 358 of the Act, authorising and regulating mining under roads, streets and paths, subject to due provision being made for the safety, preservation and repair thereof (but no regulations appear to have yet been made hereunder).