

CHAPTER 107.

MINING AND SMELTING.

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107.01 Rules governing mining rights. Where there is no contract between the parties or terms established by the landlord to the contrary the following rules and regulations shall be applied to mining contracts and leases for the digging of ores and minerals, viz.:

(1) No license or lease, verbal or written, made to a miner shall be revocable by the maker thereof after a valuable discovery or prospect has been struck unless the miner shall forfeit his right by negligence such as establishes a forfeiture according to mining usages.

(2) The discovery of a crevice or range containing ores or minerals shall entitle the discoverer to the ores or minerals pertaining thereto, subject to the rent due his landlord, before as well as after the ores or minerals are separated from the freehold; but such miner shall not be entitled to recover any ores or minerals or the value thereof from the person digging on his range in good faith and known to be mining thereon until he shall have given notice of his claim; and he shall be entitled to the ores or minerals dug after such notice.

(3) Usages and customs among miners may be proved in explanation of mining contracts to the same extent as usage may be proved in other branches of business.

107.02 Mining statement; penalty. When there shall be no agreement between the parties to any mining lease, license or permit, to mine or remove ore from any lands in this state, regulating the method of reporting the amount of ore taken, it shall be the duty of the person, firm or corporation mining and removing such ore or ores, to keep proper and correct books, and therefrom to make and deliver by or before the fifteenth day of each month to the lessor, owner or person entitled thereto, a detailed statement covering the operations of the preceding month. Such statement shall show the total amount of tons or pounds of each kind of ore produced; if sold, then to whom sold, giving the date of sale, date of delivery to any railroad company, naming such company, and the station where delivered or billed for shipment; the name and address of the purchaser; the price per ton at which sold and the total value of each kind of ore so sold. Such books shall be always open to any owner, lessor, licensor or stockholder, if such owner, lessor, or licensor is a corporation, and to any person or stockholder interested in any such mining operations, for the purpose of inspection and taking copies thereof or abstracts therefrom. Any person, firm, joint stock company or corporation, and every officer, agent or employe of any thereof, who shall violate any of the provisions of this act, or who shall make any false or incomplete entries on any such books or statements, shall, upon conviction, thereof, be punished by a fine of not less than one hundred dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment.

107.03 Conflicting claims. In case of conflicting claims to a crevice or range bearing ores or minerals the court may continue any action to enforce a claim or grant any necessary time for the purpose of allowing parties to prove up their mines or diggings if it shall be made satisfactorily to appear necessary to the ends of justice; and in such case the court or judge in term or vacation may appoint a receiver and provide that the mines or diggings shall be worked under the receiver's direction, subject to the order of the court, in such manner as will best tend to ascertain the respective rights of the parties; and the ores or minerals raised by either party pending the dispute shall be delivered to the receiver, who may, by order of the court or judge, pay any rent or other necessary expenses therefrom.

107.04 Lessee's fraud; failure to work mine. Any miner who shall conceal or dispose of any ores or minerals or mines or diggings for the purpose of defrauding his lessor of his rent or who shall neglect to pay any rent on ores or minerals raised by him for three days after the notice thereof and claim of such rent, shall forfeit all right to his mines, diggings or range; and his landlord after such concealment or after three days

have expired from the time of demanding rent, may proceed against him to recover possession of the mines or diggings before a justice of the peace as in the case of a tenant holding over after the termination of his lease as provided by these statutes; and in case a miner shall neglect to work his mines or diggings according to the usages of miners, without reasonable excuse, he shall likewise forfeit his mines or diggings and his landlord may proceed against him in like manner to recover possession of the same.

107.05 Water may be conducted across land. Every corporation, company or person engaged in mining may, when it is necessary in order to prosecute their work in mining, upon complying with the provisions of this chapter, conduct or convey the water away from their shafts, levels or land upon, over or below the surface of the land of any adjoining owner in pipes, ditches, races or tunnels, doing as little damage as the case will admit of.

107.06 Appointment of commissioners. Whenever such corporation, company or person cannot agree with such adjoining owner upon the damages for the right of so conducting or conveying the water across his land they may, upon petition setting forth the facts and specifying the kind and character of the pipe, ditch, race or tunnel proposed to be constructed and the line or route thereof, and after at least eight days' notice to the landowner, to be served in the manner provided for serving a summons of the circuit court, apply to the county judge for the appointment of commissioners to appraise the damages. Upon proof of the due service of such notice and after hearing the parties interested who shall appear, if the county judge be satisfied of the necessity for the proposed use of such land he shall by order appoint three disinterested freeholders, resident in the county, to examine the premises and appraise the damages of such landowner.

107.07 Proceedings in making award. The said commissioners shall, before entering on the discharge of their duties, take and subscribe an oath that they will support the constitution of the United States and the constitution of the state of Wisconsin and faithfully discharge their duties as such commissioners to the best of their ability. They shall give the landowner at least six days' notice of the time and place at which they will meet to make their examination and award, to be served in the manner provided for serving a summons of the circuit court. They shall meet at the time and place appointed in such notice, and shall view and examine all the land upon which the pipe, ditch, race or tunnel is proposed to be constructed and also such land as may be liable to be overflowed by the construction, maintenance and use thereof, and shall hear the parties interested and such testimony as they shall produce, and make an award in writing of all the damages which such landowner will sustain by reason of the construction, maintenance and use of the proposed pipe, ditch, race or tunnel, and within sixty days from the date of their appointment return the same to the county judge. Said commissioners shall each receive two dollars per day for their services.

107.08 Filing award; judgment. The county judge shall forthwith file with the clerk of the circuit court the said award, with the petition and notices and proofs of service thereof, with all other papers relating thereto; and the award shall be presumptive evidence of the regularity of the proceedings. The corporation, company or person shall pay all the costs of the proceedings, and on motion the circuit court may enter judgment upon the award, to be docketed and collected in the same manner and with like effect as judgments in civil actions.

107.09 Appeal; costs. Either party may appeal to the circuit court from the award of commissioners within twenty days after the same is filed by filing with the clerk a written notice of appeal. Upon the filing of such notice the appeal shall be deemed an action pending in court, in which the landowner is plaintiff and the other party defendant, for trial by jury, unless waived, and subject to appeal to the supreme court. The appellant shall recover costs if the award be altered in his favor on appeal; otherwise the respondent; and judgment shall be rendered according to the rights of the parties. Unless so appealed from the award of the commissioners shall be final.

107.10 Land, how taken. After the award of commissioners is filed the corporation, company or person procuring the same may pay to the landowner or to the clerk of the circuit court for his use the amount awarded, and thereupon may enter upon the land, construct, maintain and use the pipe, ditch, race or tunnel as proposed and described in the petition; and on motion a writ of assistance may issue therefor, provided security be given to the satisfaction of the court for the payment of any judgment that may be rendered on appeal, if an appeal shall have then been taken or the time for appeal shall not have expired. But if entry shall be made for such purpose the landowner shall be entitled to the money paid into court absolutely without prejudice to the appeal.

107.11 Account of ore received. Every smelter and every purchaser of ores and minerals shall keep a substantially bound book, ruled into suitable columns, in which shall be entered from day to day, as ores or minerals are received, the following items: The day, month and year when received; the name of the person from whom purchased; the

name of the person by whom hauled and delivered; name of the owner of the land from which the ores or minerals were obtained, or if not known, the name of the diggings or some distinct description of the land. Said book shall be kept at the furnace or at the usual place of business of such smelter or purchaser or his agent in this state, and shall be open to all persons at reasonable times for inspection and taking extracts.

107.12 Penalty. If any such smelter or purchaser or the agent of any such smelter or purchaser doing his business shall fail to keep such a book or to make such entries, or shall unreasonably refuse to show the same for inspection or taking extracts or shall make false entries therein he shall forfeit ten dollars for each offense, one-half to the use of the prosecutor; and each day such failure or refusal shall continue shall be deemed a distinct and separate offense.