CHAPTER 20.

An Act to make provisions for facilitating the working of minerals and for imposing restrictions on the working of minerals required for the support of railways, buildings, and works.

[18th July 1923.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.

RIGHTS OF WORKING MINERALS AND RIGHTS ANCILLARY THERETO AND OF SUPPORT.

Rights of working and rights ancillary to the working of Minerals.

Power to grant right to work minerals which would otherwise be unworkable.

1.—(1) Where there is danger of minerals being left permanently unworked—

(*a*) by reason of the minerals being comprised in or lying under land which is or has been copyhold land, or land subject to a lease exception reservation restriction covenant or condition, or otherwise not being capable of being worked without the concurrence of two or more persons;

(*b*) by reason of the minerals being owned in such small parcels that they cannot be properly or conveniently worked by themselves;

a right to work the minerals may be conferred in the manner and subject to the provisions hereinafter appearing on any person having an interest in them, or, in the case of minerals owned in small parcels, in minerals adjacent to them, who is desirous of working them either by himself or through his lessees.

(2) For the purposes of this Part of this Act, references to working minerals shall include references to working, carrying away, treating, and converting minerals.

Power to grant right to work minerals where adjustment of boundaries between two mines agreed.

2. Where the persons working two adjoining mines have agreed on an adjustment of boundaries between the mines with a view to reducing the amount of minerals to be left unworked between the mines, or to enabling the minerals to be worked more efficiently or more economically, and effect cannot be given to the agreement by reason of the failure or refusal of the lessors of the mines or the owners of the surface, or any of them, to concur, a right to work the minerals in accordance with such adjusted boundaries may be conferred in the manner and subject to the provisions hereinafter appearing on the persons working the mines respectively.

Power to grant ancillary rights for facilitating the working of minerals.

3.—(1) Where any facility, right, or privilege is required in order that minerals may be properly and conveniently worked by the person entitled to work the same, and the proper and efficient working of the minerals is unduly hampered by the inability or failure of that person to obtain such right, facility, or privilege (hereinafter referred to as an ancillary right), such ancillary right may be conferred in the manner and subject to the provisions hereinafter appearing on the person having the right to work the minerals who is working or desirous of working them either by himself or through his lessees.

(2) In particular, but without prejudice to the generality of the foregoing provision, such ancillary rights shall include—

(*a*) A right to let down the surface;

(*b*) A right of air-way, shaft-way, or surface or underground wayleave, or other right for the purpose of access to or conveyance of minerals or the ventilation or drainage of the mines;

(*c*) A right to use and occupy the surface for the erection of washeries, coke ovens, railways, by-product works, or brick making or other works, or of dwellings for persons employed in connection with the working of the minerals or with any such works as aforesaid;

(*d*) A right to obtain a supply of water or other substances in connection with the working of minerals;

(*e*) A right to dispose of water or other liquid matter obtained from mines or any by-product works.

(3) An ancillary right may be granted to a person to whom a right of working minerals is granted in pursuance of section one of this Act at the time when such last-mentioned right is granted or at any subsequent time.

Limitation on power of granting rights.

4.—(1) Neither the right to work minerals nor an ancillary right shall be granted under this Act unless it is shown that it is not reasonably practicable to obtain the right in question by private arrangement for any of the following reasons:

(*a*) that the persons with power to grant the right are numerous or have conflicting interests;

(*b*) that the persons with power to grant the right, or any of them, cannot be ascertained or cannot be found;

(*c*) that the persons from whom the right must be obtained, or any of them, have not the necessary powers of disposition, whether by reason of defect in title, legal disability or otherwise;

(*d*) that the person with power to grant the right unreasonably refuses to grant it or demands terms which, having regard to the circumstances, are unreasonable.

(2) For the purposes of this Part of this Act, a person whose concurrence is necessary for the exercise of a right to work minerals shall be deemed to be a person having power to grant the right, or a person from whom the right must be obtained, as the case may be.

Applications for rights.

5.—(1) Any person having an interest in any minerals who is desirous of working, either by himself or through a lessee, those minerals, or any adjacent minerals, and who considers that the circumstances are such that a right to work the minerals can be granted under this Part of this Act, may send to the Board of Trade an application for the grant of such a right.

(2) Any person having a right to work any minerals or applying for such a right who, for the purpose of or in connection with working those minerals either by himself or through a lessee, is desirous of obtaining an ancillary right, and who considers that the circumstances are such that such an ancillary right can be granted under this Part of this Act, may send to the Board of Trade an application for the grant of such a right.

(3) An application under this section shall set forth the circumstances alleged to justify the grant of the right, and shall be in such form, and accompanied by such information verified in such manner, as the Board may direct.

(4) The Board shall consider the application, and shall, unless after communication with such other parties interested (if any) as they may think fit they are of opinion that a primâ facie case is not made out, refer the matter to the Railway and Canal Commission:

Provided that, where it is alleged that the right in question cannot be obtained by reason of any person not having the necessary powers of disposition, or having unreasonably refused to grant it, or having demanded terms which are unreasonable, the Board shall not so refer the application to the Commission without first having communicated with that person.

(5) When the application relates to a right to obtain a supply of water, or a right to dispose of water or other liquid matter, or any other right which appears to the Board of Trade to affect any local authority, the Board before referring the application to the Commission shall send a copy thereof to the local authority in order to enable them to take such steps as they think fit for placing their views before the Commission.

References to Railway and Canal Commission.

6.—(1) Where a matter is so referred to the Commission, the Commission, if satisfied that the requirements of this Part of this Act are complied with in the case of the applicant, and that it is expedient in the national interest that the right applied for should be granted to him, may, by order, grant the right on such terms and subject to such conditions, and for such period, as the Commission may think fit, and upon such an order being made, the right specified in the order shall, subject to the provisions hereinafter contained, vest in the applicant.

(2) Where such a right is granted, such compensation or consideration as in default of agreement may be determined by the Commission shall be paid or given by the applicant in respect of the acquisition of the right to such persons as the Commission may determine to be entitled thereto.

(3) In determining the duration of any right to be granted the Commission shall have regard to the time

reasonably necessary to enable the minerals to be fully worked, and where the applicant's interest in any minerals in virtue of which he is entitled to make the application is an interest as lessee, shall have regard to the duration of such interest.

(4) Where the right applied for is a right to let down the surface, the Commission in determining whether the right should be granted—

(*a*) shall have regard to the value of the minerals required for the support of any works or buildings or intended works or buildings on or below the surface as compared with the value of the buildings or works, and as to whether the support of the buildings or works or intended works or buildings is in the national interest more important than the working of those minerals; or

(*b*) if there are no such buildings or works, shall have regard to the extent to which the use of the surface for the purposes for which it is used or is intended to be used will be prejudicially affected by subsidence, and as to whether the support of the surface is in the national interest more important than the working of the minerals required for the support thereof.

(5) In determining whether any right should be granted or the conditions upon which any such right should be granted the Commission shall have regard to all the circumstances of the case, and in particular to the extent to which the retention of any minerals is required for the protection of any mines or other works from flooding, or for any other mining purpose, and (so far as relevant) to the royalties, covenants, and conditions reserved by or contained in the applicant's existing mining lease or leases (if any), or customary in mining leases in the district.

Provisions where several applications in respect of the same rights.

7.—(1) Where separate applications are made by two or more persons for the right to work the same minerals and are referred to the Commission, the Commission, in addition to the matters aforesaid, shall determine which, if any, of the applicants is to be preferred, or whether the right to work one part of the minerals

should be granted to one applicant and the right to work another part should be granted to another applicant; and in arriving at their determination the Commission shall have regard to the question as to how the minerals can be most conveniently worked, to the respective rights of the applicants in the surface or adjacent minerals, and generally to all the circumstances of the case.

(2) This section shall apply to cases of applications by two or more persons for the same ancillary right subject to the necessary modifications, and in particular subject to this modification, that the right may be granted to the applicants, or to any two or more of them, jointly.

Restrictions on working Minerals required for Support.

Restrictions on working minerals required for support.

8.—(1) If any person having an interest in any land is not entitled to support or sufficient support, whether vertical or lateral, for any buildings or works, whether on or below the surface, erected or constructed, or intended to be erected or constructed, on or below the surface, and alleges that it is not reasonably practicable to obtain a right to such support by private arrangement for any of the reasons mentioned in section four of this Act, he may send to the Board of Trade an application that such restrictions may be imposed on the working of the minerals under that land and the land adjacent thereto as he may consider necessary to secure sufficient support to the buildings or works.

(2) An application under this section shall set forth the circumstances alleged to justify the imposition of the restrictions, and shall be in such form, and accompanied by such information verified in such manner, as the Board may direct.

(3) The Board shall consider the application, and shall, unless after communication with such other parties interested (if any) as they think fit, they are of opinion that a primâ facie case is not made out, refer the matter to the Railway and Canal Commission:

Provided that, where it is alleged that the right in question cannot be obtained by reason of any person not having the necessary powers of disposition, or having unreasonably refused to grant it, or having demanded terms which are unreasonable, the Board shall not so

refer the application to the Commission without first having communicated with that person.

(4) Where any such case is referred to the Commission, the Commission, if satisfied that the requirements of this section are complied with in the case of the applicant, and that it is expedient in the national interest that restrictions should be imposed, may, by order, impose such restrictions, on such terms and subject to such conditions and for such period as the Commission may think just, and upon such order being made the right to enforce the restrictions imposed by the order shall, subject to the provisions hereinafter contained, vest in the applicant.

(5) Where restrictions are imposed, such compensation or consideration as in default of agreement may be determined by the Commission shall be paid or given by the applicant in respect of the imposition of the restrictions to such persons as the Commission may determine to be entitled thereto.

(6) The restrictions may be either on the quantity or position of the minerals to be worked, or on the methods of working or packing, or otherwise such as may be necessary to secure adequate support to the buildings or works or to prevent or minimise damage thereto.

(7) In determining whether restrictions should be imposed the Commission shall have regard to the value of the buildings or works or the cost of repairing damage likely to be caused thereto by subsidence, as compared with the value of the minerals, or to the importance in the national interest of the erection or preservation of the buildings or works, as compared with the importance in the national interest of the working of the minerals.

(8) For the purposes of this section, where any building or work is an ancient monument within the meaning of the Ancient Monuments Consolidation and Amendment Act, 1913, and is, in pursuance of that Act, under the guardianship or protection of the Commissioners of Works, or is under the guardianship of a local authority, the Commissioners of Works or the local authority, as the case may be, shall be deemed to be persons entitled to make an application under this section.

3 & 4 Geo. 5. c. 32.

General.

Provisions for compensation.

9.—(1) Where a right to work minerals or an ancillary right is granted or any restriction on the working of minerals is imposed under this Part of this Act, the Commission may determine the amount and nature of compensation or consideration to be paid or given and the persons to whom it is to be paid or given, either at the time when they determine whether the right should be granted or the restrictions imposed or at any subsequent time.

(2) The compensation or consideration in respect of any right, including a right to enforce restrictions, shall be assessed by the Commission on the basis of what would be fair and reasonable between a willing grantor and a willing grantee, having regard to the conditions subject to which the right is or is to be granted.

(3) Where the person to whom any compensation or consideration is payable cannot be found or ascertained, the compensation or consideration shall be paid into court.

(4) The Commission may impose as a condition on the grant of any right or the imposition of any restriction that any compensation or consideration payable in respect thereof shall be paid, or that security to the satisfaction of the Commission for the payment thereof shall be given, before the right is commenced to be exercised, or the restriction is enforced.

Provisions as to the Railway and Canal Commission. 51 & 52 Vict. c. 25.

10.—(1) The provisions of the Railway and Canal Traffic Act, 1888, as amended by any subsequent enactment, relating to the procedure for the determination of questions under that Act (including the provisions relating to appeals) shall apply to the determination of questions relating to applications under this Act as if they were herein re-enacted and in terms made applicable to the provisions of this Act:

Provided that—

(*a*) the Commission, in any case in which they think it expedient to do so, may call in the aid of one or more qualified assessors and hear the case wholly or partially with the assistance of such assessors;

(*b*) the Commission may hold a local inquiry for the purposes of this Part of this Act by any

one of their members, or by an officer of the Commission, or other person whom they may direct to hold the same, and the said provisions of the Railway and Canal Traffic Act, 1888 (except the provisions relating to appeals), shall, so far as applicable, apply to such inquiries, and any member, officer, or other person directed to hold an inquiry shall have power to administer oaths, and shall report the result of the inquiry to the Commission;

(*c*) the discretion of the Commission with respect to costs shall not be limited in the manner provided by section two of the Railway and Canal Traffic Act, 1894; 57 & 58 Vict. c. 54.

(*d*) the rules regulating the procedure of the Commission may apply any of the provisions of the Lands Clauses Acts relating to the payment of compensation so far as not inconsistent with the provisions of this Part of this Act.

(2) The Board of Trade and any other Government Department shall give to the Commission such assistance as the Commission may require for the purposes of their duties under this Part of this Act, and shall be entitled to appear and be heard at any proceedings on an application before the Commission under this Part of this Act.

Effect of grant of right.

11. A right granted under this Part of this Act shall not confer on the person to whom it is granted any greater or other power than if the right had been granted by a person legally entitled to grant the right, or relieve the grantee from any obligation or liability to which he would have been subject had the right been granted by such a person.

Provisions as to tenants for life, &c.

12. An order under this Part of this Act may confer rights on a tenant for life or on any person having the statutory powers of a tenant for life, or any trustee, personal representative, or other person in a fiduciary position, and, where any such rights are so conferred upon any such person, the rights shall be deemed to form part of the property subject to the settlement or the estate of the deceased person or the property subject to the trust as the case may be.

Saving of rights under the Railways Clauses Act, &c. 8 & 9 Vict. c. 20.

13. Nothing in this Part of this Act shall prejudicially affect the right under the Railways Clauses Consolidation Act, 1845, or any Act modifying that Act, including Part II. of this Act, or any other Act, whether public general, or local and private, of any railway or canal company local authority or other statutory body to acquire minerals for the purposes of support, or any rights or interests in minerals which may have been acquired by any such company authority or body, or any right of support from minerals to which any such company, authority or body may be entitled, or any right empowering any such company authority or body to acquire the rights to which they are entitled directly or indirectly under any special Act or order relating to the company authority or body or any statute incorporated therewith, or shall confer on any such company authority or body a right to acquire under this Part of this Act any rights to prohibit or restrict the working of minerals.

Interpretation.

14.—(1) For the purposes of this Part of this Act, unless the context otherwise requires—

"Minerals" includes all minerals and substances in or under land obtainable by underground or by surface working;

"Surface" in relation to land includes any buildings, works or things erected, constructed or growing thereon;

"Right to let down the surface" includes a right to let down superincumbent or adjacent strata up to and including the surface;

"Lease" includes underlease or other tenancy and a licence, and "lessor" and "lessee" have corresponding meanings;

"Copyhold land" has the same meaning as in the Law of Property Act, 1922. 12 & 13 Geo. 5. c. 16.

(2) In the application of this Part of this Act to Scotland for the reference to the Railways Clauses Consolidation Act, 1845, there shall be substituted a reference to the Railways Clauses Consolidation (Scotland) Act, 1845. 8 & 9 Vict. c. 33.

PART II.

MINERALS UNDER RAILWAYS.

Amendment of 8 & 9 Vict. c. 20. ss. 78 to 85 as incorporated in future Acts.

15. The Railways Clauses Consolidation Act, 1845, as incorporated in any Act, order, or other instrument relating to a railway company passed or made after the passing of this Act, shall, except as otherwise expressly provided in that Act order or instrument, have effect as if for sections seventy-eight to eighty-five thereof, inclusive, the following provisions were substituted, and as if the First, Second and Third Schedules to this Act were inserted in that Act as the First, Second and Third Schedules thereto.

Conditions under which minerals under railway may be worked.

78.—(1) If the mine owner of minerals lying under an area of protection as hereinafter defined is desirous of working any such minerals, he shall give to the company and also to the royalty owner (if any) notice of his intention so to do at least thirty days before the commencement of the working and on the receipt of such notice the company and the royalty owner respectively may cause the minerals to be inspected by any person appointed for the purpose by the company or royalty owner as the case may be.

(2) If it appears to the company that the working of any of the minerals to which such notice relates will be likely to damage the railway or works or any part thereof, the company may, at any time after the receipt of such notice, give a counter-notice to the mine owner requiring him to leave unworked all or any part of such minerals, and the counter-notice shall specify the minerals (hereinafter referred to as the specified minerals) so required to be left unworked and the particular portion of the railway or works (hereinafter referred to as the protected works) for the support of which the specified minerals are required to be left unworked.

(3) Where any such counter-notice has been served on the mine owner, he shall forthwith serve a copy thereof on the royalty owner (if any).

(4) Where any such counter-notice has been served on the mine owner, the specified minerals shall not be worked or got after the service of the counter-notice, and the company shall pay compensation to the mine owner and the royalty owner (if any) for the loss caused by the specified minerals being left unworked.

(5) The area of protection in relation to any seam of minerals shall be the area comprising any railway or works of the company and such a lateral distance therefrom, on all or both sides thereof, as is equal at each point along the railway to one-half of the depth of the seam at that point or forty yards, whichever be the greater; and, when the said lateral distance exceeds forty yards, the area of protection shall be divided into two areas:

(*a*) an inner area of protection consisting of the area comprising the railway or works and a distance of forty yards therefrom on all or both sides thereof; and

(*b*) an outer area of protection consisting of so much of the area of protection as is not included in the inner area of protection.

Compensation for leaving minerals unworked.

78A.—(1) The compensation payable by the company to the mine owner and the royalty owner respectively for the loss caused by the specified minerals being left unworked shall, in default of agreement, be determined by arbitration:

Provided that so far as such compensation is payable in respect of the value of specified minerals—

(i) the compensation payable to the mine owner and to the royalty owner shall be separately assessed;

(ii) the compensation payable to the mine owner shall be a sum for each ton of the specified minerals, the rate per ton in the case of minerals lying under the outer area of protection being one-third of the rate which is or would be awarded in the case of minerals lying under the inner area of protection;

(iii) the compensation payable to the royalty owner shall be based on the amount

which would have been received from time to time by way of royalty in respect of the specified minerals if they had been worked out in the ordinary course, and the royalties payable had been—

(*a*) in the case of such of the specified minerals as lie under the inner area of protection, the same as those reserved by and payable under the lease comprising the minerals and subsisting at the date of the counter-notice; and

(*b*) in the case of such of the specified minerals as lie under the outer area of protection, one-third of the royalties so reserved and payable with the addition to such one-third of one penny per ton;

(iv) in every case the arbitrator shall state in his award the tonnage of the specified minerals on which his award is based.

(2) The mine owner shall also be entitled to be paid by the company the amount of any increase in the cost of working any part of his minerals (other than the specified minerals) which may have been caused by the failure of the company to give the counter-notice within such a reasonable time as would have enabled the mine owner to avoid such increase in cost, and, in default of agreement, the amount so payable by the company shall be determined by arbitration.

Power to work minerals not affected by a counter-notice.

79.—(1) If within thirty days from the service by a mine owner on the company of a notice of intention to work any minerals no counter-notice is served by the company, the mine owner may, after the expiration of those thirty days, and until a counter-notice is served, work any minerals to which the notice relates, so, nevertheless, that the same be done in the manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such minerals in the district where the same shall be situated.

Where a counter-notice is served, whether before or after the expiration of the said thirty days, and the counter-notice does not require the

mine owner to leave unworked the whole of the minerals to which the notice relates, the foregoing provisions shall apply to any minerals to which the notice relates which are not specified minerals in like manner as if no such counter-notice had been served.

(2) If any damage or obstruction is occasioned to the railway or works by any improper working of such minerals, the same shall be forthwith repaired or removed (as the case may require) and such damage made good by the mine owner at his own expense; and if such repair or removal is not forthwith done, or, if the company think fit, without waiting for the same to be done by the mine owner, they may execute the same and recover from the mine owner the expense occasioned thereby by action.

Liability in respect of authorised workings.

79A.—(1) If a mine owner works any minerals lying under any part of the area of protection in the manner authorised by this Act, he shall nevertheless become liable on demand by the company (subject as hereinafter provided) to contribute towards the expenses properly incurred, or to be incurred, by the company from time to time thereafter in making good any damage caused by such working to the railway or works of the company (not being protected works comprised in any counter-notice relating to such area of protection) the appropriate percentage (if any) of those expenses, the appropriate percentage being such as is specified in the First Schedule to this Act according to the depth of the minerals being so worked.

(2) The liability of a mine owner under this section in respect of any part of the railway or works on which such expenditure has been incurred shall not exceed an aggregate sum equivalent to sixpence for each ton of the commercially workable minerals, gotten or ungotten, in such part of any seams as lies under the area ascertained as respects the several seams in accordance with the rules contained in the Second Schedule to this Act, being seams which have been or are being worked under such area as aforesaid:

Provided that, in ascertaining such aggregate sum as aforesaid, minerals gotten more than six years before the date on which a contribution shall have been demanded by the company under this section shall not be reckoned.

(3) Any mine owner making a contribution under this section, who is a lessee, shall be entitled to deduct from any royalties then or thereafter becoming due from him to the royalty owner under the lease, one-third part of the amount which he has so contributed as aforesaid, subject, however, to this limitation: that if the royalty payable by the mine owner under his lease is at the rate of less than six pence per ton, the amount deducted shall not exceed the amount produced by multiplying one-third of such rate per ton by the tonnage of the minerals with reference to the aggregate amount of which the maximum liability of the mine owner is to be so calculated as aforesaid; and, where the mine owner is entitled to make such a deduction, the sum reserved by and payable under the lease shall be deemed to be the net amount arrived at after making the deduction:

Provided that no such deduction shall be allowed when the liability of the mine owner to the company is a liability arising out of an arrangement between the mine owner and the company with respect to the working of minerals under or near the railway or works.

(4) The liability of a mine owner under this section shall be subject to the following further limitation as respects damage done by workings in any single mine, that is to say, that when the aggregate of the sums paid by the mine owner in satisfaction of such liability amounts to a sum equivalent to sixpence for each ton of commercially workable minerals, gotten or ungotten, in such part of any seams as lies within the mine and under an area extending laterally on both sides of the railway or works to a distance ascertained in accordance with Rule 1 of the said Second Schedule and extending longitudinally to a distance coextensive with the portion of the railway lying over or adjacent to the mine, being seams which have been or are being worked under such area as

aforesaid, the mine owner shall not be liable to make any further contribution under this section towards the expenses of making good any damage caused to any part of the railway or works by the working of such seams as aforesaid in that mine.

For the purposes of this provision, all the minerals which the mine owner is entitled to work, and which have been, or would in the ordinary course of events and in accordance with good mining practice be, worked from the same shafts or adits shall be deemed to be a single mine.

Where the liability of a mine owner under subsection (2) of this section is reduced by the operation of this subsection, the right of the mine owner under subsection (3) thereof to make deductions from royalties shall be proportionately reduced.

(5) Where a single mine, as hereinbefore defined, is held under leases granted by more than one lessor, any deductions which the mine owner is authorised under this section to make shall be made from the royalties payable to such one or more of such lessors, and in the latter case in such proportions, as in default of agreement may, on the application of the mine owner or any of the royalty owners, be determined by arbitration.

(6) If any dispute arises as to the amount of the expenses towards which a mine owner is liable to contribute under this section, or the amount of his contribution, or the amount to be deducted as between a mine owner and a royalty owner, it shall be settled by arbitration, and, where any such arbitration between a company and a mine owner is to be held, the royalty owner (if any) shall be entitled to have notice of the intended arbitration, and to appear and be heard at the arbitration proceedings.

Notices and accounts with respect to damage.

79B.—(1) When and so far as reasonable and practicable, the company shall give notice to the mine owner and the royalty owner (if any) affected specifying particulars of—

(i) the railway or works to which damage has been caused or to which damage is apprehended from the working of any minerals

under the area of protection sufficient to enable the same to be identified;

(ii) the nature of the damage or apprehended damage; and

(iii) the nature of the works intended to be carried out for the purpose of making good or preventing the damage.

(2) The company shall keep separate accounts differentiating the cost of the ordinary maintenance of the railway or works from the cost of making good any damage caused to the railway or works by the working of any minerals under the area of protection, and such accounts shall, at all reasonable times, be open for inspection by or on behalf of a mine owner working minerals under or near to such railway or works and the royalty owner (if any) of such minerals.

Rights of access through specified minerals.

80. If the working of any minerals is prevented under this Act by reason of a counter-notice, a mine owner whose minerals extend so as to lie on both sides of the specified minerals may cut and make such airways, headways, gateways, or water levels through the specified minerals and the strata above or below the same or any of them as may be requisite to enable him to ventilate, drain, and work his remaining minerals; but no such airway, headway, gateway, or water level shall be cut or made upon or so as to injure any part of the protected works, or within forty yards of any other airway, headway, gateway, or water level, nor shall the same without the consent of the company (which consent shall not be unreasonably withheld) be greater than eight feet wide and eight feet high, unless the top of the same is more than one hundred and sixty yards below the average rail level of the protected works, or, if the top exceeds that distance, than thirteen feet wide and eight feet high.

Additional expenses for severance.

81.—(1) Where a counter-notice has been given by the company to a mine owner, the company shall from time to time pay to the mine owner the appropriate percentage (if any) of all such additional expenses and losses as may be

incurred by such mine owner in consequence of such counter-notice by reason of—

(i) the continuous working of the mine being interrupted; or

(ii) the mine being worked in such manner and under such restrictions as not to prejudice or injure the protected works.

(2) For the purpose of this section, the appropriate percentage means the percentage determined in accordance with the rules contained in the Third Schedule to this Act.

(3) If any question or dispute arises between the company and the mine owner concerning the amount of such losses or expenses, or as to the appropriate percentage, it shall be settled by arbitration.

(4) Where the minerals specified in a counter-notice lie in different seams, the amount payable by the company to the mine owner under this section shall be calculated separately as respects each seam:

Provided that, where the works on which any additional expenditure is incurred serve more than one seam, that expenditure shall, for the purposes of this section, be apportioned between the seams served in such manner as, in default of agreement, may be determined by arbitration.

Compensation to surface owners.

82. If any loss or damage is sustained by the owner, lessee, or occupier of the land over any specified minerals (not being the owner or lessee of the specified minerals) by reason of the making of such airway or other authorised work as aforesaid, where neither that work nor any like work, would have been necessary save on account of the prevention of the working of the minerals, the company shall make full compensation to such owner, lessee, or occupier of the surface for the loss or damage sustained by him, such compensation in default of agreement to be determined by arbitration.

Rights of inspection.

83.—(1) For ascertaining whether or not any minerals are being worked or are about to be or have been worked so as to damage the railway or works of a company, any person appointed by

the company may, after at least twenty-four hours notice has been given by the company, enter upon any land (through or near which the railway passes) which the company believe to contain or to have contained such minerals, and may enter into and return from any such minerals or the works connected therewith; and, for that purpose, the person so appointed may make use of any apparatus or machinery belonging to a mine owner, and use all necessary means for discovering the distance from such railway or works to the parts of the minerals which are being or have been worked or are about to be worked; and, after giving a like notice, may inspect and take copies of so much of the working plans and sections of the mine as relate to minerals the working whereof affects or has affected or may affect the railway or works.

(2) A mine owner who desires to work any minerals under or near to the railway or works of the company, and also the royalty owner (if any) or any person duly authorised by either of them, may, at any time, either before or during or after the working thereof, upon giving at least twenty-four hours notice to the company, and subject to such reasonable conditions as may be imposed by the company, enter upon the railway or works and inspect the same and take levels or particulars thereof.

Penalty for refusal to allow inspection.

84.—(1) If any mine owner refuses to allow any person appointed by the company for that purpose to enter into and inspect any such mines or works or to inspect and take copies of such plans and sections in manner aforesaid, every person so offending shall, for every such refusal, become liable to pay to the company a sum not exceeding twenty pounds.

(2) If the company refuse to allow a mine owner or royalty owner or such duly authorised person as aforesaid to enter upon or inspect any railway or works or to take levels and particulars thereof in manner aforesaid, the company so offending shall, for every such refusal, become liable to pay to the mine owner or royalty owner a sum not exceeding twenty pounds.

Protection against improper working.

85. If it appears that any minerals have been worked or are being worked contrary to the provisions of this Act or the special Act, the company may, if they think fit, give notice to the mine owner thereof, requiring him to construct such works and to adopt such means as may be necessary or proper for making safe such railway or works and for preventing injury thereto; and if, after such notice, the mine owner shall not forthwith proceed to construct the works necessary for making safe the railway, the company may construct such works and recover the expense thereof from the mine owner by action.

Power to vary rights by agreement.

85A. Notwithstanding anything contained in this Act, a mine owner, a royalty owner, and the company or any two of them may, by agreement, alter, extend, or otherwise vary their respective rights under the provisions of this Act with regard to any minerals to which this Act applies, but not so as to prejudice the rights of any mine owner, royalty owner, or company not a party to the agreement without his or their consent.

Savings.

85B.—(1) Nothing in this Act shall affect any agreement between the mine owner and the royalty owner for the payment of any rent or royalty:

Provided that—

(i) the payment of compensation by the company to the royalty owner in respect of any minerals shall extinguish any liability by the mine owner to pay any royalty in respect of the same minerals;

(ii) the mine owner shall be entitled to make such deductions as are authorised by subsection (3) of section 79A of this Act notwithstanding anything in any agreement between him and the royalty owner entered into before the first day of August, nineteen hundred and twenty-three, unless the agreement was made after the first day of November, nineteen hundred and twelve, and expressly or by necessary implication provided for the payment of royalties in respect of

the minerals supporting the railway or works in the event of the mine owner working them in virtue of a right acquired by agreement or statute or otherwise, or for the payment of royalties in respect of such minerals whether they are or are not worked;

(iii) if the exercise by the company of powers conferred upon them by the foregoing provisions of this Act as to minerals in the area of protection will prevent the mine owner from working such quantity of minerals as at the royalties reserved will produce the sum total of the fixed or minimum rent remaining payable under the lease, or otherwise occasions serious hardship having regard to the obligation of the mine owner to pay such rent, or owing to any provision in the lease restricting the time within which a deficiency due to previous short working may be made good, such adjustment shall be made between the royalty owner and the mine owner as, failing agreement, may be determined by arbitration, and any question whether the circumstances are such as to give rise to such a right of adjustment shall be similarly determined.

Where at the time of the exercise by the company of such power as aforesaid any deficiency due to previous short working which may be made good in a subsequent period exists, the amount of such deficiency shall be treated for the purposes of this proviso as if it formed part of the sum total of the fixed or minimum rent remaining payable under the lease.

(2) Nothing in this Act shall alter, diminish or affect any right to let down the surface, either unconditionally or subject to payment of compensation, or to any other condition, which a mine owner or royalty owner may possess, whether by statute grant lease agreement or otherwise, derived from a title antecedent to the acquisition by the company

of their interest in the surface, or conferred on him by a reservation contained in the grant to the company, and a mine owner having such a title and having served a notice in accordance with this Act with respect to the working of any minerals, shall be free to work any such minerals, as to which a counter-notice shall not have been received, discharged from all the restrictions and provisions of this Act, other than those contained in subsection (2) of section seventy-nine of the Act, but, if a counter-notice is served, the minerals to which such counter-notice relates, shall, for the purposes of the assessment of compensation payable to the mine owner or royalty owner under this Act for leaving the same unworked, be deemed to be minerals lying wholly under the inner area of protection, and the appropriate percentage for the purpose of section eighty-one of this Act shall be one hundred.

Serving of notices, counter-notices, &c. 44 & 45 Vict. c. 41.

85C. Section sixty-seven of the Conveyancing Act, 1881, shall apply to notices and counter-notices and copies thereof required or authorised to be served or given under the provisions of this Act with respect to mines lying under or near the railway, as if it were herein re-enacted and in terms made applicable to such notices, counter-notices and copies thereof, and to the persons by or on whom the same are so required or authorised to be served.

Interpretation.

85D.—(1) In the foregoing provisions of this Act with respect to mines lying under or near a railway, unless the context otherwise requires—

"Mine owner" includes the owner, lessee, or other person entitled to work and get minerals;

"Seam" in relation to minerals includes bed, lode and vein;

"Surface" in relation to land includes any buildings, works or things erected, constructed, or growing thereon;

"Royalty" includes rent and any other reservation in respect of minerals by the acre, ton or otherwise;

"Royalty owner" includes any person entitled to receive a royalty in respect of minerals;

"Deficiency due to short working" means the amount by which the royalties payable under a lease of the minerals worked fall short of the fixed or minimum rent;

"Lease" includes an under-lease or other tenancy and a licence;

"Lessee" includes an under-lessee and a licensee.

(2) For the purposes of the said provisions, the depth of a seam at any point of the railway shall be taken to be the distance between the rail level and the point where a line drawn vertically through the centre of the railway would first cut the seam of minerals, except that for the purpose of ascertaining the area of protection, but not for any other purpose, the said distance shall, where the railway is carried through a tunnel, be measured from the point where the said line would cut the natural surface of the land instead of from the rail level.

(3) Where in an arbitration under the said provisions there are more than two parties involved, then, unless all the parties otherwise agree, the arbitration shall be conducted by a single arbitrator appointed by the Board of Trade, and the provisions of this Act with respect to the settlement of disputes by arbitration shall apply as if all the parties had concurred in his appointment as a single arbitrator.

Exemption from liability to leave support otherwise than under Act or agreement.

85E. Save as in this Act, or the special Act, or under any agreement between the company and the mine owner expressly provided, the mine owner as between himself and the company—

(*a*) shall not be under any liability to leave support either inside or outside the area of protection; and

(*b*) shall be entitled to remove such support without being liable for any damage thereby caused to the railway or works or any part thereof; but so that the removal shall be done in a manner proper and necessary for the beneficial working of the minerals and according to the usual manner of working minerals in the district in which the same is situate.

Application to existing railways, &c.

16.—(1) Where—

(*a*) a special Act, order, scheme, or certificate confirmed by or having the force of an Act of Parliament relating to a railway company, passed or confirmed before the commencement of this Act, incorporates sections seventy-eight to eighty-five, inclusive, of the Railways Clauses Consolidation Act, 1845, and does not prescribe any distance in lieu of the distance of forty yards mentioned in section seventy-eight of that Act; or

(*b*) a special Act relating to a railway company, passed before the commencement of this Act, does not incorporate the said sections, but contains provisions similar thereto, and by the provision similar to the said section seventy-eight prescribes a distance of forty yards;

the Act, order, scheme, or certificate shall, as from the commencement of this Act, take effect as if the provisions which by this Part of this Act are to be substituted for the said sections seventy-eight to eighty-five were substituted for those sections as incorporated in the Act, order, scheme, or certificate or for the similar provisions contained in the special Act as the case may be, and as if the Act, order, scheme, or certificate incorporated or included the First, Second, and Third Schedules to this Act, subject, however, to the provisions hereinafter contained in this section.

(2) If at the commencement of this Act minerals lying under the outer area of protection are being worked by a mine owner, he shall, within one month after the commencement of this Act, give such notice as would after the commencement of this Act have been required to be given before such minerals were commenced to be worked, and, if such notice is so given, it shall be deemed for the purposes of the provisions of section seventy-eight of the Railways Clauses Consolidation Act, 1845, as amended by this Act, to have been given more than thirty days before the date on which it is in fact given, and the minerals worked before the notice is given shall, for the purposes of the same provisions, be deemed to have been worked since the expiration of those thirty days.

(3) Any mine owner shall be liable to contribute towards the expenses properly incurred by the railway

company subsequent to the commencement of this Act in making good damage caused to any railway or works of the company by any working of minerals within the six years immediately preceding the commencement of this Act in like manner as if this Act had been in force at the date of such working; but, save as aforesaid, the mine owner shall be relieved of all liability to the company with respect to the working of any minerals prior to the passing of this Act, except a liability arising under an arrangement with the company.

The provisions of subsections (2), (3), (4), (5) and (6) of section 79A of the Railways Clauses Consolidation Act, 1845, as amended by this Act, shall apply in respect of the liability of a mine owner under this subsection in like manner as they apply in respect of his liability under that section.

(4) Nothing in this section shall—

(*a*) take away, diminish or prejudicially alter or affect any estate right or interest in minerals which may have been acquired by a railway company before the commencement of this Act under or by virtue of any express provision in any deed or contract, or under or by virtue of the exercise of their powers under sections seventy-eight to eighty-five of the Railways Clauses Consolidation Act, 1845, or any right of support from minerals which any such company may have so acquired, or any compensation paid or payable by any such company in consequence of the exercise before the commencement of this Act of any such powers as aforesaid; or

(*b*) affect any agreement subsisting between a railway company and a mine owner or a royalty owner at the commencement of this Act with regard to the working of, or the leaving unworked, minerals lying under or near to any railway or works of the company, so long as the agreement continues in force, and any such agreement shall, notwithstanding anything in this section, continue in force until determined by effluxion of time, or by the exercise of any power to determine it

conferred by the agreement, nor shall anything in this section prevent the entering into a new agreement.

Application of Part II. to Scotland.

17. This Part of this Act shall apply to Scotland, subject to the following modifications:—

(*a*) For references to the Railways Clauses Consolidation Act, 1845, and to sections seventy-eight to eighty-five thereof, there shall be substituted references to the Railways Clauses Consolidation (Scotland) Act, 1845, and to sections seventy-one to seventy-eight thereof:

(*b*) of the substituted provisions, that numbered 85c shall not apply, and of the remaining provisions, those numbered 78, 78A, 79, 79A, 79B, 80, 81, 82, 83, 84, 85, 85A, 85B, 85D and 85E, shall respectively be numbered 71, 71A, 72, 72A, 72B, 73, 74, 75, 76, 77, 78, 78A, 78B, 78c and 78D, and the reference to section 78 in section sixteen of this Act and references to section 79A both in that section and in the said substituted provisions shall be construed as references to section 71 and to section 72A, respectively:

(*c*) for the reference to an arbitrator, there shall be substituted a reference to an arbiter.

PART III.

GENERAL.

Short title, commencement, and extent.

18.—(1) This Act may be cited as the Mines (Working Facilities and Support) Act, 1923.

(2) This Act shall come into operation on the first day of January, nineteen hundred and twenty-four.

(3) This Act shall extend to Great Britain.

SCHEDULES.

FIRST SCHEDULE.

Section 15.

PERCENTAGE OF CONTRIBUTION.

Depth in Yards.	Percentage.	Depth in Yards.	Percentage.
160	Nil.	270	21
170	3	280	23
180	5	290	24
190	8	300	25
200	10	350	30
210	12	400	35
220	14	450	40
230	15	500	45
240	16	550	50
250	17	600	55
260	19	650 and over	60

The percentage at intermediate depths to be in proportion.

SECOND SCHEDULE.

Section 15.

RULES FOR ASCERTAINING AREA FOR THE PURPOSE OF COMPUTING MAXIMUM LIABILITY OF MINE OWNER IN RESPECT OF AUTHORISED WORKINGS.

1. The area shall extend laterally on each side of (but not including) the inner area of protection to the following distance therefrom:—

If the depth of the seam is 160 yards or under	Nil.
If the depth of the seam exceeds 160 yards, but does not exceed 170 yards	1½ yards.
If the depth of the seam exceeds 170 yards, but does not exceed 180 yards	2½ yards.
If the depth of the seam exceeds 180 yards, but does not exceed 190 yards	4½ yards.
If the depth of the seam exceeds 190 yards, but does not exceed 200 yards	5½ yards.

If the depth of the seam exceeds 200 yards, but does not exceed 210 yards - - - - - -	7 yards.
If the depth of the seam exceeds 210 yards, but does not exceed 220 yards - - - - - -	8 yards.
If the depth of the seam exceeds 220 yards, but does not exceed 230 yards - - - - - -	9 yards.
If the depth of the seam exceeds 230 yards, but does not exceed 240 yards - - - - - -	9½ yards.
If the depth of the seam exceeds 240 yards, but does not exceed 250 yards - - - - - -	10 yards.
If the depth of the seam exceeds 250 yards - - - - - -	To a line descending outwards from the railway or works at an angle of one horizontal to five vertical from a point on the boundary of the railway or works at rail level until the depth of 650 yards is reached and thence descending vertically.

2. The area shall extend longitudinally for a distance co-extensive with the part of the railway or works upon which expenditure has been incurred in making good the damage, together with a length beyond that distance at either end thereof equal to one-half of the mean depth of the seam or seams in question.

Section 15.

THIRD SCHEDULE.

RULES FOR DETERMINING PERCENTAGE OF CONTRIBUTIONS TO ADDITIONAL EXPENSES FOR DAMAGES PAYABLE BY A COMPANY.

1. The percentage shall be one hundred if the specified minerals do not extend beyond the boundary of the protected works, and shall diminish by one for every one-and-a-half yards by which the specified minerals extend beyond that boundary on each side thereof.

2. If the specified minerals extend to one hundred and fifty yards or more beyond such boundary, no payment shall be due by the company.

3. If the specified minerals extend further from such boundary on one side of the railway than on the other, they shall, for the purposes of this schedule, be deemed to extend beyond such boundary for the mean of such distances on both sides of the railway.

CHAPTER 21.

An Act to provide for the transfer of certain properties to the Forestry Commissioners and to amend the Forestry Act, 1919, and for purposes in connection therewith.

[18th July 1923.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Transfer of property to Forestry Commissioners.

1.—(1) Subject to the provisions of this Act, His Majesty on the joint representation of the Forestry Commissioners and of the Commissioners of Woods or other Government department concerned may by Order in Council make provision—

(*a*) for the transfer to and vesting in the Forestry Commissioners of any estate, interest, rights, powers and liabilities of the Crown and of the Commissioners of Woods in or in connection with any woods and forests under the management or control of the Commissioners of Woods, or in or in connection with any other property under the management and control of the Commissioners of Woods which at the time of transfer is subject to the same local management as such woods and forests; and

(*b*) for the transfer to and vesting in the Forestry Commissioners of the estate, interest, rights, powers, and liabilities of any Government department in or in connection with any woods and forests vested in or held on lease by that department; and