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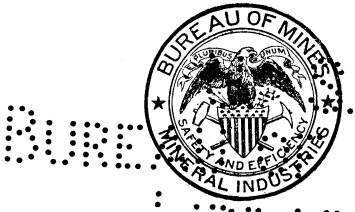
DEPARTMENT OF THE INTERIOR
BUREAU OF MINES
JOSEPH A. HOLMES, DIRECTOR

ABSTRACT OF CURRENT DECISIONS
ON
MINES AND MINING

OCTOBER, 1912, TO MARCH, 1913

BY

J. W. THOMPSON



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PREFACE.

This bulletin differs somewhat from other published reports of the Bureau of Mines, which relate chiefly to the bureau's researches into the methods of increasing health, safety, economy, and efficiency in the mining, quarrying, metallurgical, and miscellaneous mineral industries of the country.

This publication is devoted exclusively to a review and abstracts of decisions based on the laws governing the rights and duties of mine owners, operators, miners, and persons trafficking in all kinds of mining properties. It includes abstracts of current decisions of all the Federal and State courts of last resort on questions relating to the mining industries.

The bureau proposes to issue similar bulletins with sufficient frequency to keep the report of the courts mentioned reasonably current. There is no present medium known to the bureau by which this information is conveyed immediately to miners, mine owners, or other persons interested in mining and mining industries.

The interest manifested in this bulletin by the persons for whom it is intended will be taken as a basis for determining whether the subsequent publication of similar bulletins is warranted. The issuance of such bulletins will accordingly depend on the number of individual requests received for this one and on the opinion as to its value expressed by those who receive it.

J. A. Holmes.

ABSTRACT OF CURRENT DECISIONS ON MINES AND MINING, OCTOBER, 1912, TO MARCH, 1913.

By J. W. THOMPSON.

MINERALS AND MINERAL LANDS.

A. SALE AND CONVEYANCE.
B. SURFACE AND MINERALS—OWNERSHIP AND SEVERANCE.

A. SALE AND CONVEYANCE.

CONVEYANCE OF COAL IN PLACE.

Coal or other mineral in place may be granted and conveyed as land, separate and apart from that which underlies or overlies it.

Board, etc., of Greene County *v.* Lattas Creek Coal Co., 100 Northeastern, 561 (Indiana), January, 1913.

MINERALS SUBJECT OF GRANT.

Coal, mineral, and stone under the surface of the earth are the subject of grant and exception, and when excepted in a deed become a separate and distinct inheritance.

Gordon *v.* Million, 154 Southwestern, 99 (Missouri), February, 1913.

CONVEYANCE BY ONE COTENANT.

One cotenant of land can not make a valid conveyance as against his cotenants of the minerals therein and a right to the small timber on the surface necessary for mining purposes with easements and full rights of way over the premises by the construction of roads, tramways, or railroads for the purpose of extracting, storing, handling, and shipping the mineral products.

Ball *v.* Clark, 150 Southwestern, 359 (Kentucky), November, 1912.

CONTRACT OF SALE—COVENANTS RUNNING WITH LAND.

Where a deed was made pursuant to a contract for the sale of certain copper-mining property at an agreed price, and at the same time and as a part of the same transaction a written agreement was

entered into providing for the payment of the balance of the unpaid purchase money out of the net profits resulting from the operation of the mining property, and also providing that it should be binding upon the successors and assigns of the parties, this agreement was not a mere personal contract to be performed by the promissor, but was a covenant running with the land and binding upon a purchaser and of which he was bound to take notice.

Henchman *v.* Consolidated Arizona Smelting Co., 198 Fed., 907, August, 1912.

CONTRACT OF SALE OF MINES—TIME IS OF THE ESSENCE.

Where mines or mining properties are the subject of a contract of sale, time is of the essence, independent of any express stipulation inserted in the contract, and where time is expressly made the essence, then an inexcusable failure to perform or to pay according to the conditions terminates the rights of the promissor under the contract, and if his right of possession depends on his making payments at stated times, his failure to pay accordingly terminates his right to possession and no notice is necessary; and a tender of the amount due after default is not available in the absence of a waiver by the promisee.

Champion Gold Mining Co. *v.* Champion Mines, 128 Pacific, 315 (California), November, 1912.

CONTRACT BY OFFICERS WITH STOCKHOLDER OF ANOTHER CORPORATION.

A verbal agreement entered into between the president and general manager of an oil company with a stockholder of such company who was also the manager and assistant treasurer of another oil company, by which certain mining properties of the first-named company and of the president, who claimed an interest in his own right, were sold to such purchasing company in consideration of a certain sum paid into the treasury of the first-named company, was binding upon both corporations, though made for the benefit of the selling corporation; and the latter had the right to maintain an action to recover the amount so paid from such stockholder and assistant treasurer of the purchasing company and from another stockholder of the selling corporation who subsequently appropriated the amount so paid under the claim that the sale was for their interest in the property.

Love *v.* Kirkbride Drilling & Oil Co., 129 Pacific, 858 (Oklahoma), January, 1913.

DEED CONVEYING COAL MINES.

A deed conveying "the equal undivided half of the coal mines," situated on a certain described tract of land, and reciting that "said mines are now showing themselves in the bed of the creek running

through said described tract of land," is intended to convey the coal deposits subject to being mined and is not limited to the particular veins of coal shown by the croppings in the creek, but cover an undivided half of all the coal deposits underlying the land described.

Gordon *v.* Million, 154 Southwestern, 99 (Missouri), February, 1913.

A purchaser of a mine who fails to make payments according to his purchase contract, and at the stated times, where time is of the essence, forfeits his right to continued possession and also forfeits the payments made, where such forfeiture is expressly provided in the contract.

Champion Gold Mining Co. *v.* Champion Mines, 128 Pacific, 315 (California), November, 1912.

OPTION CONTRACT TO PURCHASE MINES—CONSTRUCTION AND FORFEITURE.

An option contract to purchase mines provided that the purchase price was to be payable in installments, and possession was to be delivered on the first payment, and the purchaser was to expend not less than $100,000 in the development of the mine the first year and to pay the vendor 10 per cent of the gross amount of bullion obtained from clean-ups, such amounts to be applied on the installments of the purchase money, and upon the failure to make any specified payment, or upon breach of any of the agreements, all payments made were to be forfeited, and the vendor could reenter and take possession of the property. Under this contract the purchaser's right to continue in possession and operate the mine depended on the payment of the 10 per cent of the gross amount of each clean-up, and a tender after maturity of an amount not sufficient to pay the percentage on clean-ups admittedly due did not prevent a forfeiture of the contract at the election of the vendor.

Champion Gold Mining Co. *v.* Champion Mines, 128 Pacific, 315 (California), November, 1912.

OPTION TO PURCHASE COAL.

A contract of sale and an agreement to convey a certain vein of coal in and under a certain described tract of land, with the right to mine and remove the same, for a stipulated price payable at certain stated dates, is no more than an option where it provides that it shall be null and void if the wife of the vendor refuses to sign the deed.

Thompson *v.* Craft, 85 Atlantic, 1107 (Pennsylvania), January, 1913.

OPTION CONVERTED INTO ABSOLUTE CONTRACT OF SALE.

An option contract to sell and convey a certain vein of coal in and under a certain described tract of land, with the right to mine and remove the same, providing that it should be null and void if

the vendor's wife should refuse to sign the deed, became absolute where the vendor on his acceptance of an assignment of the contract indorsed thereon that the "contract of sale is made absolute" and acknowledged receipt of part of the purchase price, and the assignee may compel specific performance of the agreement subject to the wife's right of dower, where the wife refused to join in the conveyance.

Thompson *v.* Craft, 85 Atlantic, 1107 (Pennsylvania), January, 1913.

ACCOUNTING FOR PROFITS UNDER OPTIONS.

In an action for an accounting for profits realized from the operation of a certain mining property where it appeared that the complainant and the defendant entered into a verbal agreement by which the defendant should obtain options upon two separate mining properties, and the complainant should advance money sufficient to operate the same by means of leases on a royalty basis, and where the defendant according to the agreement obtained an option on one of the properties and the complainant advanced money according to the agreement, and subsequently the defendant obtained an option for himself solely on the other mining property, and both were operated through leases on a royalty basis, the defendant was bound to account to the complainant for the profits realized by him from the operation of such second property, as the original agreement was entire and included both properties alike.

Quinn *v.* Tully, 140 Northwestern, 492 (Michigan), March, 1913.

AGREEMENT TO RECONVEY—NOTICE.

On the sale of certain mining property the seller made a written agreement that if the purchaser was dissatisfied with the property at the end of the three years the seller would return the amount paid on reconveyance of the property; the purchaser must, in order to hold the vendor, give notice of his dissatisfaction within a reasonable time after the expiration of the three years, and notice of such dissatisfaction, given two and one-half months after the end of the three years, is within a reasonable time where the vendor was in the Territory of Alaska at the expiration of the three years' time and notice could not be served upon him earlier.

McDougall *v.* O'Connell, 130 Pacific, 362 (Washington), February, 1913.

EJECTMENT TO DETERMINE TITLE TO COAL.

Ejectment is the proper remedy to try the title to an estate in coal mines under a deed conveying to the plaintiff the coal mines situated on a certain tract of land described, where the defendant was in the

possession of the surface and had in digging a hole discovered a vein of coal and was claiming the entire estate from the surface to the center of the earth.

Gordon *v.* Million, 154 Southwestern, 99 (Missouri), February, 1913.

SALE INDUCED BY FRAUD.

When a purchase of mineral lands is induced by the fraudulent representation that gold in great quantities had been found upon ground immediately adjacent to the lands purchased, it is proper to assume that the purchase was induced solely by the representations concerning the gold deposits upon the adjoining lands, and whether the purchaser was told by the seller that gold in paying quantities had been found there or whether the seller presented the purchaser with written logs and copies of assays showing rich gold deposits with assurances that they were correct is immaterial; and it is not even material whether the seller knew that his representations were false, as the test is the truth of the representations and whether the purchaser relied upon them and believed them to be true.

Kleine *v.* Gidcomb, 152 Southwestern, 462 (Texas), January, 1913.

B. SURFACE AND MINERALS—OWNERSHIP AND SEVERANCE.

SEPARATE OWNERSHIP OF SURFACE AND MINERALS.

The surface ownership of land may be in one person, and that of the minerals therein in another, and both are, in such cases, landholders.

Ball *v.* Clark, 150 Southwestern, 359 (Kentucky), November, 1912.

ESTATE IN COAL DEPOSITS.

Coal deposits when separated by grant or reservation in a deed are as much of an estate in lands as is the surface of the same lands.

Gordon *v.* Million, 154 Southwestern, 99 (Missouri), February, 1913.

PARTITION OF MINERALS.

An estate in minerals is a subject of partition.

Ball *v.* Clark, 150 Southwestern, 359 (Kentucky), November, 1912.

SEVERANCE OF SURFACE AND MINERALS.

The owner of land may by proper conveyance to another sever the minerals from the surface and each will thereafter constitute a separate and distinct estate, taxable as such.

McCormick *v.* Berkley, 86 Atlantic, 97 (Pennsylvania), January, 1913.

There may be a complete severance of the mineral estate in lands from the surface estate.

Gordon *v.* Million, 154 Southwestern, 99 (Missouri), February, 1913.

SEPARATE CONVEYANCE OF SURFACE AND MINERALS.

The owner of land may by deed containing a sufficient description convey all the surface to one person, reserving the mineral therein, and may by a proper deed containing sufficient description convey the mineral in the same land to another person.

Bingham *v.* Carnes, 153 Southwestern, 193 (Kentucky), February, 1913.

The owner of land may convey the surface to another and reserve to himself an estate in fee in the minerals, or he may convey the surface to one person and the minerals to another, and such a conveyance will create an estate separate and distinct in the properties sundered the one from the other, entire and complete in fee simple.

Ball *v.* Clark, 150 Southwestern, 359 (Kentucky), November, 1912.

GRANT OF COAL—USE OF SURFACE.

The grant of coal in land carries with it the use of the surface so far as is necessary to carry on mining operations.

Gordon *v.* Million, 154 Southwestern, 99 (Missouri), February, 1913.

OIL AND GAS LANDS—OWNERSHIP OF OIL.

Oil in and under the surface of the earth and not reduced to actual possession constitutes a part of the land and belongs to the owner of the land, and he has the right to reduce it to possession or grant the privilege of doing so to other persons.

Kahle *v.* Crown Oil Co., 100 Northeastern, 681 (Indiana), January, 1913.

AUTHORITY OF INDIANS OVER OIL AND GAS—POWER TO SELL.

Under the act of Congress dated June 28, 1906 (34 Stat., 540), the adult members of the Osage Tribe of Indians are not authorized to sell the oil, gas, coal, or other mineral covered by their lands, though certificates of competency were issued to such Indians by the Secretary of the Interior.

Neilson *v.* Alberty, 129 Pacific, 847 (Oklahoma), January, 1913.

MINING CLAIMS.

A. Location and Effect.
B. Assessment Work.
C. Abandonment and Relocation.
D. Adverse Claims.
E. Liens.
F. Coal Locations.

A. LOCATION AND EFFECT.

DISCOVERY NECESSARY.

A valid location of a placer-mining claim can not be made without a discovery of mineral, nor can such location be made in the State of Washington without complying with the statute by commencing excavations or the construction of works within the required time. The labor required by the statute must be performed.

Spokane Portland Cement Co. *v.* Larson, 128 Pacific, 641 (Washington), December, 1912.

There can be no valid location of a mining claim until a sufficient actual discovery of mineral is made on the claim and no question of the doing of annual assessment work is involved, as it is only after such a discovery, when actual possession is no longer necessary to protect the location against subsequent locators, that annual assessment work is essential to prevent a forfeiture.

Borgwardt *v.* McKittrick Oil Co., 130 Pacific, 417 (California), March, 1913.

DISCOVERY OF MINERAL.

In a contest involving the right of possession of a mining claim it is competent for expert witnesses to give their opinion as to whether or not there is such a showing of a vein and mineral in the location as would justify a reasonably prudent miner in the expenditure of his money and time, with the expectation of finding minerals in profitable quantities.

King Solomon Tunnel & Development Co. *v.* Mary Verna Mining Co., 127 Pacific, 129 (Colorado), October, 1912.

CHARACTER OF MINERALS SUBJECT TO LOCATION.

In a contest between a placer and a lode locator a court has jurisdiction to determine whether the mineral land in controversy was of a character which entitled it to be located as a placer mine, or whether it could only be entered as a lode mining claim, for the reason that if the land was not subject to location as a placer claim the placer claimant obtained no possessory right thereto.

San Francisco Chemical Co. *v.* Duffield, 201 Fed., 830, p. 834, November, 1912.

GOOD FAITH LOCATION.

In an action of ejectment the question of the good faith of a locator is for the jury to decide, as a court can not lay down rules by which to distinguish a speculative location from one made in good faith and with the intent to make excavations and ascertain the character of

the vein so as to determine whether it will justify the expenditures required to extract the metal.

Rooney *v.* Barnette, 200 Fed., 700, p. 709, October, 1912.

LANDS ALREADY APPROPRIATED.

No right to a mining claim can be initiated while the ground is in possession of another who has the right to its possession under an earlier lawful location, nor can such a claim be initiated by forcible or fraudulent entry upon land in possession of one who has no right either to the possession or to the title.

San Francisco Chemical Co. *v.* Duffield, 201 Fed., 830, p. 834.

PRIORITY OVER CONFLICT GROUND.

Where, prior to the patent survey of a second mining claim, the south end line of an existing and prior claim was moved to the south of the line originally monumented, to correspond with the call in the location notice and certificate, prior to the patent survey of such second claim, and where subsequently the easterly side line of such second claim was moved to the east, the owner of such original claim has a better right than the owner of such second claim to the ground in conflict occasioned by such changes in the boundaries of the respective claims.

Indiana Nevada Mining Co. *v.* Gold Hill Mining & Milling Co., 126 Pacific, 965 (Nevada), October, 1912.

MARKING BOUNDARIES.

The marking upon the ground of the boundaries of a mining location should be made so certain and so plain that anyone prospecting in the same locality would have no trouble in locating the exact ground claimed; but any markings on the ground by stakes, monuments, mounds, and written notices whereby the boundaries can be readily traced, are sufficient, and if a third party intending to locate can readily ascertain from what has been done by the prior locator the extent and boundaries of the existing location, then the statute has been sufficiently complied with.

Madeira *v.* Sonoma Magnesite Co., 130 Pacific, 175 (California), December, 1912.

FAILURE TO MARK BOUNDARIES.

A locator of a mining ground who failed to definitely mark the boundaries of his location and left his claim unmarked from September, 1905, to June, 1906, and knew that another person had located a part of the same ground and performed a large amount of labor

thereon without knowledge of such prior location, did not act within a reasonable time in definitely marking his claim on the ground so that its boundaries could be readily traced.

Madeira *v.* Sonoma Magnesite Co., 130 Pacific, 175 (California), December, 1912.

EXCESSIVE GROUND.

A mining location duly made according to the mining laws is not invalid where the locator includes within the boundaries of his claim more than the law permits, as in such case he is entitled to hold to the limit which the law authorizes within the limits he has laid out, and the territory embraced within his boundaries in excess of such limits is to be rejected; but where a locator relies upon the corners established and marked out, a different rule governs, and if the courses are so widely separated from where they should be as to bear no relation to the lode, and so remote as to justify reasonable inference that they were not intended to apply to the lode in question, they would add little if any force to the claim that the law had been complied with, and especially so where the notice once posted at the discovery point had disappeared or where the lode line was not distinctly marked.

Madeira *v.* Sonoma Magnesite Co., 130 Pacific, 175 (California), December, 1912.

ENTRY ON EXISTING LOCATION.

A provisional location can not be made upon an existing mining claim with the intention on the part of the locator that the validity of such provisional location depends on whether or not the prior locator fails to do the annual assessment work and thereby forfeits the existing claim.

Rooney *v.* Barnette, 200 Fed., 700, p. 708, October, 1912.

PLACER CLAIMS.

By a placer claim is meant ground within defined boundaries containing mineral in its earth, sand, or gravel—ground that includes valuable deposits not in place, nor fixed in rock, but which are in a loose state and that may usually be collected by washing or amalgamation without milling.

San Francisco Chemical Co. *v.* Duffield, 201 Fed., 830, p. 836, November, 1912.

PLACER AND LODE CLAIMS—ROCK PHOSPHATE.

Calcium phosphate or rock phosphate found in place having a dip and strike, firmly fixed in the mass of a mountain and occurring between strata of limestone, chert, and shale, where the line of demarca-

tion between veins of such phosphate rock and wall rock of limestone or shale is well defined and distinct, and where the distinction between such phosphate rock, having commercial value, and the wall rock, with no commercial value, is readily determined by visual inspection, is subject to location under the mining laws only as a vein or lode and not as a placer claim.

San Francisco Chemical Co. *v.* Duffield, 201 Fed., 830, p. 836, November, 1912.

PAROL AGREEMENT TO LOCATE FOR BENEFIT OF OTHERS.

An agreement to locate a mining claim for the benefit of others is valid though not in writing.

Clark *v.* Mitchell, 130 Pacific, 760 (Nevada), March, 1913.

AGREEMENT TO LOCATE FOR ANOTHER—ESTOPPEL.

An agent or a representative of an owner of a mining claim who agreed to perform the assessment work for a certain year for an undivided interest in the claim and to relocate another claim for such owner in consideration of an undivided interest therein is, in performing such work, and relocating such other claim, bound to protect the original claimant to the extent of the interest agreed upon and is estopped from denying the rights of such original claimant and can not question the validity of the locations made by himself in violation of the agreement.

Clark *v.* Mitchell, 130 Pacific, 760 (Nevada), March, 1913.

LOCATIONS FOR BENEFIT OF LOCATORS.

Valid locations of mining claims may be made by a number of different locators, though made under an arrangement by which each locator was to transfer his claim to a corporation to be subsequently organized and in which the locators should be the sole stockholders, each owning an equal undivided part of the stock.

Borgwardt *v.* McKittrick Oil Co., 130 Pacific, 417 (California), March, 1913.

POSSESSORY RIGHT.

A locator of a mining claim has no vested right which courts are obliged to recognize until the inchoate location is perfected by discovery, but where such location is made in good faith the locator has the right as against third persons to be protected against all forms of forcible, fraudulent, surreptitious, or clandestine entries so long as he remains in possession and with due diligence prosecutes his work toward discovery.

Borgwardt *v.* McKittrick Oil Co., 130 Pacific, 417 (California), March, 1913.

POSSESSION PROTECTED.

The possession of an attempted locator is protected only while he may fairly be held to be actually engaged in such work as may reasonably be held to be discovery work.

Borgwardt *v.* McKittrick Oil Co., 130 Pacific, 417 (California), March, 1913.

POSSESSORY RIGHTS AND RELOCATION.

The location of mineral ground gives to the locator before discovery, and so long as he complies with the United States statutes and State laws and local rules and regulations, the absolute right of possession as against all intruders, and he may convey or transfer this right to another; and during such time such ground is so segregated it is not open to location by another, and any attempted relocation of such ground during such time is void.

Rooney *v.* Barnette, 200 Fed., 700, p. 709, October, 1912.

AMENDED LOCATION.

The filing of amended location certificates for the purpose of correcting errors in the original location, without waiving previously acquired rights, is not a waiver of any priority obtained by the original location.

King Solomon Tunnel & Development Co. *v.* Mary Verna Milling Co., 127 Pacific, 129 (Colorado), October, 1912.

FAILURE TO FILE AMENDED CERTIFICATE.

The failure to file a certificate or amended certificate of location, as required by the statute of Nevada, has the effect of shifting the burden of proof, but does not otherwise affect the rights of the parties thereunder.

Indiana Nevada Mining Co. *v.* Gold Hill Mining & Milling Co., 126 Pacific, 965 (Nevada), October, 1912.

EFFECT OF PATENT.

A patent for a mining claim that contains within its surface boundaries the location and monument shaft of another claim effectually extinguishes the latter claim as a valid location.

Indiana Nevada Mining Co. *v.* Gold Hill Mining & Milling Co., 126 Pacific, 965 (Nevada), October, 1912.

LOCATION OF HIGHWAY.

A board of commissioners of a county has the power to locate and establish a public highway over an existing mining claim, as this amounts to no more than establishing an easement over such claim to the extent necessary for use as a highway.

Olaine *v.* McGraw, 120 Pacific, 460 (California), January, 1913.

B. ASSESSMENT WORK.

ASSOCIATION CLAIM.

The mining laws do not require the annual assessment work on each 20-acre tract of an association claim.

Rooney *v.* Barnette, 200 Fed., 700, p. 708, October, 1912.

PAROL AGREEMENT TO PERFORM ASSESSMENT WORK AND RELOCATE CLAIM.

An oral agreement by which one person agreed to perform the assessment work upon a certain mining claim for a year, in consideration of which the owner of the claim agreed to convey the undivided one-fourth interest of such claim, is not void under the statute of frauds where the owner of the claim fully performed his part of the agreement; but where the other party with the fraudulent purpose of dispossessing the owner of his claim willfully failed to perform such assessment work, causing the claim to be forfeited and to revert to the public domain and afterwards relocated such claim in the names of himself and other persons, a trust relation was thereby created and the original owner can enforce the trust and recover the share of such relocated mine which he would have received had the other party performed his part of the contract.

Clark *v.* Mitchell, 130 Pacific, 760 (Nevada), March, 1913.

INSUFFICIENT PROOF.

It is not sufficient proof of assessment work for a party to state in his affidavit that he has in his possession the affidavits of three competent persons to the effect that the assessment work on a mining claim for a particular year has been done.

Anderson *v.* Robinson, 127 Pacific, 546 (Oregon), November, 1912.

VALUE OF HYDRAULIC WORK.

The value of assessment work by hydraulicking on a mining claim is not determined by the wages of the man who holds the nozzle, but by the results accomplished, and in such case the value of the use of the plant, including the water rights, ditches, pipe lines, giants, all of which contribute more to the result than the manual labor, must be considered.

Anderson *v.* Robinson, 126 Pacific, 988 (Oregon), October, 1912.

CONSTRUCTION OF FLUME FOR OPERATION OF MINE.

The construction of a flume for the bringing of water to a mine for the sole purpose of working it, where this is the only way by which the mine could be worked or prospected, is development work within the

meaning of the California statute giving a laborer lien for labor performed in developing a mine.

McClung *v.* Paradise Gold Mining Co., 129 Pacific, 774, p. 776 (California), January, 1913.

RESUMPTION OF WORK.

It is immaterial whether a locator or owner of a mining claim performed the assessment work for a particular year if such locator or owner was subsequently in possession and performing work on the claim; and it is not then open to relocation and possession by another, and work thereafter performed would apply on the work required for that year.

Anderson *v.* Robinson, 126 Pacific, 988 (Oregon), October, 1912.

C. ABANDONMENT AND RELOCATION.

QUESTION OF FACT.

The abandonment of a mining claim by a locator is a question of fact, and the fact is to be found from the intention and the filing of amended location certificate; but the sinking of new discovery shafts are not necessarily evidence of an intention to abandon where the amended location certificate expressly stated that it was without waiver of previously acquired rights.

King Solomon Tunnel & Development Co. *v.* Mary Verna Mining Co., 127 Pacific, 129 (Colorado), October, 1912.
Indiana Nevada Mining Co. *v.* Gold Hill Mining & Milling Co., 126 Pacific, 965 (Nevada), October, 1912.

PRIORITY OF RIGHT.

In an action to recover possession of a mining claim where the defendant pleaded title to the disputed ground by reason of discovery and location antedating that of the plaintiff's, the fact that the defendant did, subsequent to the location claimed by the plaintiff, file amended locations does not of itself show an abandonment where the amended location notices stated that they were amended locations, made to correct errors in the original locations and without waiver of previously acquired rights; and the further fact that the defendant sunk new discovery shafts under such amended location did not break the continuity of the original location where it clearly appeared that the locator did not intend to abandon the original location.

King Solomon Tunnel & Development Co. *v.* Mary Verna Mining Co., 127 Pacific, 129 (Colorado), October, 1912.

ABANDONMENT OF PLACER CLAIM.

An attempt to locate a placer mining claim and appropriate alleged water rights as a speculative venture in an effort to prevent others from appropriating, developing, or using the waters of a lake or stream

will not operate as a valid location where the locator and his successors made no honest effort to work the claim for more than a year, and where they made no application to the Forest Service of the United States for permission to develop or work the claim; and under such circumstances an abandonment may properly be declared.

Spokane Portland Cement Co. *v.* Larson, 128 Pacific, 641 (Washington), December, 1912.

NEW DISCOVERY UNDER AMENDED LOCATION.

Under the statute of Colorado, the locator of a mining claim who files an amended location certificate for the purpose of correcting errors in the original location is not required to discover a new vein or lode, or sink any additional shaft, or make any new discoveries of mineral on his location.

King Solomon Tunnel & Development Co. *v.* Mary Verna Mining Co., 127 Pacific, 129 (Colorado), October, 1912.

D. ADVERSE CLAIMS.

EVIDENCE AS TO VACANT PUBLIC LAND.

In an action on adverse claims involving the priority of locations of mining claims witnesses may not testify as to whether or not the located land was vacant public domain at the time of a certain location, but in such case the witnesses are limited in their testimony to their knowledge of the physical conditions of the ground, based on personal examination and inspection thereof, and as to what shafts, adits, tunnels, or other mining developments are located thereon, and it is then the province of the court and jury to determine whether or not the alleged locations were made upon unappropriated public domain.

King Solomon Tunnel & Development Co. *v.* Mary Verna Mining Co., 127 Pacific, 129 (Colorado), October, 1912.

CONFLICT IN LODE AND PLACER LOCATIONS.

In an action on an adverse claim to determine a controversy between lode and placer locators, the court can only inquire as to the priority of location and whether all the requirements of the statute have been complied with.

San Francisco Chemical Co. *v.* Duffield, 201 Fed., 830, p. 833, November, 1912.

TRESPASS AND DAMAGES.

The locator of a lode claim can not successfully maintain an action to enjoin a trespass and to recover damages for such trespass upon his alleged mining location where the testimony shows that such

lode location, triangular in form, overlapped a placer location, and where no discovery was made within the limits of such lode location, but where a surface discovery only was claimed, and where the ore was taken by the defendant from such overlap and wholly within the boundaries of the placer location.

Olaine *v.* McGraw, 120 Pacific, 460 (California), January, 1912.

E. LIENS.

LIEN FOR LABOR.

In asserting a lien for labor on a mining claim under the statute of California it is not necessary that the claimant should use the language of the statute, nor does the statute require the claimant to state the character of his labor nor show that the labor was performed in development or work by the subtractive process, though he must show by his proof that it was of such kind as is made lienable by the statute and that it did constitute development work or mining by the subtractive process.

McClung *v.* Paradise Gold Mining Co., 129 Pacific, 774 (California), January, 1913.

NATURE OF WORK AND AUTHORITY OF AGENT.

A person having in contemplation the purchase of a large block of the shares of a corporation owning mining property, and who took an option from the corporation for that purpose and by which he was authorized to go upon its property and repair the flume as he thought necessary and sufficient to run water, and to deliver to its treasurer one-half of all the gold taken from the mine, was sufficient to constitute such officer the statutory agent for the employment of laborers, and to put the corporate officers on notice that he intended to operate the mine and to engage laborers who would be entitled to a lien for their services.

McClung *v.* Paradise Gold Mining Co., 129 Pacific, 774, p. 776 (California), January, 1913.

PRIORITY OF LIENS.

An agent employed by an English corporation to superintend its mining operations in certain States is entitled to a lien on the mining property for advances made by him and used in the development of the property of the company, and in purchasing certain mining claims for the company to which he took title to himself as security; and such liens are not subject to a floating lien created by an English debenture that does not restrict or in any way interfere with the corporation from prosecuting the business for which it

was organized in foreign countries and there encumbering, transferring, or otherwise dealing with its property in the ordinary course of business.

Pearson *v.* Harris, 200 Fed., 10, October, 1912.

LIEN ON OIL AND GAS LEASEHOLD.

The statute of Kansas giving a lien on the whole of any leasehold for oil or gas purposes, or any oil or gas pipe lines, for labor performed, or for material furnished, or for machinery and oil-well supplies used in digging, drilling, torpedoing, completing, operating, or repairing any oil or gas well, does not give a person performing such labor or furnishing any such materials a lien upon the oil produced.

Black *v.* Gearth, 128 Pacific, 183 (Kansas), December, 1912.

MECHANIC'S LIEN ON OIL WELL.

A leasehold estate, for the purpose of producing oil and gas, and an oil and gas well and its appliances located thereon, are subject to a mechanic's lien, and such oil well is a "structure" within the meaning of the statute giving a mechanic's lien on buildings and structures.

Kanawha Oil & Gas Co. *v.* Wenner, 76 Southeastern, 893 (West Virginia), December, 1912.

LABOR LIEN—WAIVER.

An agreement by which a mining company leased to a person who had performed work for it certain oil wells for a specified time upon a royalty of 10 cents per barrel for all oil produced, and by which the lessee was to make certain collections on account of oil previously sold by the company to third persons, and apply the proceeds of such collections to his claim for such work performed by him, and also agreeing to sell oil in certain holes and apply the proceeds upon such indebtedness, did not constitute a novation so as to extinguish the existing indebtedness and did not operate as a waiver of the lien held by the lessee upon the mining property of the lessor for the services rendered.

Reynolds *v.* York Syndicate Oil Co., 130 Pacific, 183 (California), December, 1912.

ASSIGNMENT OF LABOR LIEN.

A laborer's lien on a mine under the statute of California is not invalid merely because the date of the assignment antedated that of the recording, where the assignment was made to take effect after the recording of the claim as a lien and where the assignment itself showed that it was for the claim of lien "heretofore filed" by the assignor against the property of the mining company.

McClung *v.* Paradise Gold Mining Co., 129 Pacific, 774, p. 777 (California), January, 1913.

F. COAL LOCATIONS.

ENTRY FOR SOLE USE OF ENTRYMAN.

The officers of the land office have the right to assume that an application to purchase coal lands is made with knowledge of the law regulating such purchases and that the applicant is applying to purchase the land for his own use and benefit, as the law restricts the amount of land that can be purchased by one person to 160 acres and by an association to 320 acres.

United States *v.* Home Coal & Coke Co., 200 Fed., 910, p. 914, October, 1912.

ENTRY BY ONE PERSON FOR BENEFIT OF OTHERS.

There is no prohibition, either express or implied, in the coal-land law against an entry by a qualified person for the benefit of another person or association where such person or association is qualified to make the entry in his or its own name and is not seeking to evade restriction in respect of quantity; but the prohibition is against a qualified person making an entry for another who is disqualified.

United States *v.* Home Coal & Coke Co., 200 Fed., 910, p. 917, October, 1912.

STATEMENT AS TO PURPOSE OF ENTRY.

The statute regulating the entry and purchase of coal lands does not require an applicant to state in his application that the entry is for his sole use and benefit.

United States *v.* Home Coal & Coke Co., 200 Fed., 910, p. 914, October, 1912.

PURCHASE MONEY REFUNDED.

Where from any cause a coal entry has been erroneously allowed the purchase money may be repaid to the entrymen; but the expression "erroneously allowed" denotes some mistake or error on the part of the land officers whereby an entry is allowed when it should be disallowed, and not some fraud or false pretense practiced on them whereby an applicant appears to be entitled to the allowance of an entry when in truth he is not.

United States *v.* Home Coal & Coke Co., 200 Fed., 910, p. 916, October, 1912.

MINES AND MINING OPERATIONS.

A. DUTIES AND LIABILITIES OF OPERATOR.

SAFE WORKING PLACE.

A mine owner owes the duty to the miners to make its mine as reasonably safe to work in as is practicable in such a dangerous vocation.

Cook *v.* Cranberry Furnace Co., 76 Southeastern, 473 (North Carolina), November, 1912.

DANGEROUS EMPLOYMENT.

A coal-mine operator is not an insurer of the safety of its miners and owes a miner no greater duty for his protection than he owes to himself.

Stony Fork Coal Co. *v.* Lingar, 153 Southwestern, 6 (Kentucky), February, 1913.

DUTY TO KEEP WORKING PLACE SAFE.

The duty of a mine operator to keep safe the place where a miner works extends to places immediately connected with the working place of the miner where he must necessarily go in connection with his ordinary work as a miner, and a miner did not forfeit his right to the protection the discharge of the operator's duty would afford where he was temporarily in an unprotected part of his chamber, without notice of danger, to get a needed drink from his water pail, which he kept in close proximity to his place of work.

Mammoth Mining Co. *v.* Thomas, 201 Fed., 297, p. 300, October, 1912.

DUTY TO MAKE MINE SAFE.

A mine owner fails to exercise ordinary care to make its mine reasonably safe for its miners where it had knowledge that the roof was in an unsafe and dangerous condition and where slate had been

falling from a roof in an entry for some time and it took no steps to remove the defect either by taking down the loose slate or by propping the roof.

Trosper Coal Co. *v.* Crawford, 153 Southwestern, 211 (Kentucky), February, 1913.

SAFE WORKING PLACE FOR MINERS.

It is the duty of a mine operator to inspect and keep safe a chamber or chute where miners are expected to work up to the line of such chamber or chute, and it is the continuing duty of the operator to warn miners of the danger of such adjacent or adjoining chute, and either protect them or give them opportunity to protect themselves, where the miners themselves are not permitted to enter or inspect such adjoining chute.

Gennaux *v.* Northwestern Improvement Co., 130 Pacific, 495 (Washington), February, 1913.

DUTY TO PROVIDE SAFE PLACE AND WARN MINERS.

A mining company owes the duty to its miners of using ordinary care and diligence to provide reasonably safe places in which miners are to work, and to see that such places are reasonably free from danger, and that the appliances furnished are reasonably safe and free from danger; and it is obligatory upon such company to warn its servants of the situation, so that they may not accidentally or purposely come in contact with the danger, and such warning must be plainly noticeable to give the servant a comprehension of the danger.

Williams *v.* Bunker Hill & Sullivan Mining, etc., Co., 200 Fed., 211, October, 1912.

KEEPING MINE ROOF SAFE.

The rule that a mine owner or operator is required to furnish a safe working place in which the miners may work applies also to places in the mine other than those in which miners work, and a mine owner may be liable for an injury to a miner caused by falling slate or rock from the roof where the miner under direction of the operator or foreman was passing through the mine and injured by the fall of such material from the roof.

Broadway Coal Mining Co. *v.* Robinson, 150 Southwestern, 1000 (Kentucky), November, 1912.

DUTY TO KEEP ROOF OF CROSSCUTS SAFE.

Where a mine was worked by what is called a "panel" system and the entries were connected by crosscuts in which miners were not required to work, but in which, with the knowledge and acqui-

escence of the mine owner, the miners were accustomed to store tools and to sit while eating their dinners or for other convenient uses, it then became the duty of the mine operator to keep the walls and roofs of these crosscuts in reasonably safe condition and make reasonably frequent and proper inspection thereof, and the failure or neglect on his part would render him liable for an injury to a miner while eating his dinner caused by the falling of the roof.

Kennis *v.* Ogden, 138 Northwestern, 467 (Iowa), November, 1912.

DUTY TO FURNISH PASSAGEWAY.

A mining company failing to provide a passageway by which miners and employees can pass in safety from one part of the mine to another without going through the elevator shaft where elevators are constantly being raised and lowered without warning or notice is not exercising ordinary care to furnish its miners a reasonably safe place in which to work, and the fact that no statute of the State required mine owners to provide a passageway around the elevator shaft did not relieve it from liability for injury to a miner while passing through the shaft.

Fluehart Collieries Co. *v.* Elam, 151 Southwestern, 34 (Kentucky), December, 1912.

DUTY TO FURNISH SAFE HAULAGEWAYS.

A mine owner and operator must furnish a safe passageway for drivers of cars hauling coal out of the mine, and it is liable for an injury to a driver caused by protruding rock extending from the rib of the entry to a point perpendicular above the rail, leaving a clearness above the edge of the car of only 2 inches.

Ek *v.* Phillips Fuel Co., 138 Northwestern, 547 (Iowa), November, 1912.

DUTY EXTENDS TO ALL PARTS OF MINE.

The duty of a coal-mine operator to furnish a miner with a reasonably safe place is not confined to the precise spot in which he works, but includes the places to and from which he is required to go in performing his duties, and the places whither he is ordered by the mine foreman to go.

Fluehart Collieries Co. *v.* Elam, 151 Southwestern, 34 (Kentucky), December, 1912.

DUTY TO PROVIDE SUITABLE APPLIANCES.

It is the duty of the master to use due diligence to provide suitable appliances in the operation of his business, and the servant may assume that the master has performed this duty, and an employee does not assume the risk of his employer's negligence in performing such duties, and he is not obliged to pass judgment upon the em-

ployer's methods of transacting his business, but may assume that reasonable care has been used in furnishing the appliances necessary for its operation; but if the conditions are constant and of long standing, and the danger is so obvious as to suggest itself to persons in possession of their faculties and of ordinary intelligence, he can not escape the consequences by refusing to see the conditions or appreciate the danger.

Killeen *v.* Barnes-King Development Co., 127 Pacific, 89 (Montana), October, 1912.

A coal company operating a coal mine was held liable to a rope driver for an injury received by him by reason of its failure to exercise ordinary care to keep its tracks in a reasonably safe condition, and by reason of which the cable used to draw the coal cars caught on the end of a tie and suddenly came loose and struck and injured the rope driver.

Stony Fork Coal Co. *v.* Lingar, 153 Southwestern, 6 (Kentucky), February, 1913.

It is the duty of a coal company operating a coal mine to exercise ordinary care to provide miners and employees with a reasonably safe place in which to work considering the nature of the employment and must use ordinary care to put and keep its tracks in a reasonably safe condition, and if it failed to do this and the rope driver was injured by reason of a wire cable used to draw the loaded cars the company is liable.

Stony Fork Coal Co. *v.* Lingar, 153 Southwestern, 6 (Kentucky), February, 1913.

DUTY TO PROVIDE SAFE PLACE AND APPLIANCES.

It is the duty of an operator of a coal mine to use ordinary care to furnish the employees and miners a reasonably safe place to work and to use ordinary care to furnish such appliances as are reasonably safe under such strains as might be reasonably anticipated in the uses for which they are intended.

Interstate Coal Co. *v.* Shelton, 153 Southwestern, 1 (Kentucky), February, 1913.
Trosper Coal Co. *v.* Crawford, 153 Southwestern, 211 (Kentucky), February, 1913.

DUTY OF MINE OPERATOR TO INSPECT AND GUARD AGAINST DANGER.

It is the duty of a coal company operating a coal mine to use ordinary care in having the roof inspected by its mine foreman where such roof is supported only by pillars, and if the mine foreman knows, or by the exercise of ordinary care should have known, that the mining of coal by miners would affect the roof of an entry, then it was the duty of the company to guard against the danger by more securely propping the roof and making it reasonably safe, and if the place was dangerous and unsafe and if this was known to the mine foreman, or should have been known to him by the exercise of ordi-

nary care, and a miner working in an entry did not know of the dangerous condition of the roof, and by the exercise of ordinary care could not have known of the danger, then the company is liable to such miner for an injury caused by the falling of the roof.

Ada Coal Co. *v.* Linville, 153 Southwestern, 21 (Kentucky), February, 1913.

DUTY TO WARN AND INSTRUCT MINER.

Though the place where a miner works is reasonably safe, yet the master is not thereby relieved from the duty of warning and instructing a young and inexperienced miner that the service is dangerous and is one in which an inexperienced miner would not appreciate or realize the danger.

Bartley *v.* Elkhorn Consolidated Coal & Coke Co., 152 Southwestern, 955 (Kentucky), January, 1912.

DUTY TO INSTRUCT INEXPERIENCED MINER.

The fact that a person 23 years of age was employed and paid miner's wages while working in a mine, and the further fact that such miner had worked in another coal mine and had, previous to his employment as a miner, been employed as a car driver, will not relieve the mine owner and operator employing him to work in the mine, with knowledge of his inexperience, from the duty of warning him when he changed his occupation from car driving to mining.

Carney Coal Co. *v.* Benedict, 129 Pacific, 1024 (Wyoming), February, 1913.

DUTY TO EMPLOYEE OF INDEPENDENT CONTRACTOR.

A mine owner who had contracted with a third party to mine ore for it in its mine but who operated for itself the cars or skips for hauling out the coal and transporting the employees of such contractor, owed to an employee of such contractor the duty of providing safe passageways and means of conveyance for use in coming from the place of work.

Republic Iron & Steel Co. *v.* Fuller, 60 Southern, 475 (Alabama), December, 1912.

DUTY TO CONVICT MINER.

A coal-mine operator owes a convict working in a mine the duty of doing him no willful harm and of exercising reasonable care for his personal safety, and the doctrine of assumption of risk from the negligence of fellow servants does not apply to such convict, as he is under involuntary servitude and has no power to quit the employment.

Sloss-Sheffield Steel & Iron Co. *v.* Weir, 60 Southern, 851 (Alabama), January, 1913.

DUTY TO GUARD ELECTRIC WIRES.

It is the duty of a mining company to protect its live trolley wires by trough or other practical device, and thus make the place safe for miners who may be working under or near such wire, and especially where the floor of a mine or of a stope is wet and slippery and where there is danger of a miner accidentally slipping and the tools or implements with which he is working thereby coming in contact with such electric wire.

Williams *v.* Bunker Hill & Sullivan Mining, etc., Co., 200 Fed., 211, October, 1912.

DUTY TO FURNISH SAFE ELECTRICAL APPLIANCES.

A mining company operating its tram cars in its mine by electrical power is not bound to use the greatest possible care, but it is its duty to use ordinary care to make such appliances reasonably safe, and the duty of diligence is greater where the mechanism or the agency employed is highly hazardous.

Meola *v.* Quincy Mining Co., 140 Northwestern, 460 (Michigan), March, 1913.

PLACE MADE UNSAFE BY MINER.

A coal company operating a coal mine was held liable to a miner injured by falling of slate from the roof where the mine foreman directed the miner and his partner or "buddy" to mine out a pillar and directed what to do and how to do it, and where after cutting into the pillar 6 or 8 inches and removing the coal the roof fell, causing the injury, and where it was shown that the mine foreman knew that the roof of an entry becomes rotten from the action of the air upon it and admitted that the slate would not have fallen if it had not been loose, but he made no inspection of the roof, though he could have discovered its condition by sounding it with a pick, and where it also appeared that the slate would not have fallen if the 6 or 8 inches of coal had not been removed, but where the condition of the roof was not known to the miner and it was shown that the mine foreman had previously put up one prop.

Ada Coal Co. *v.* Linville, 153 Southwestern, 21 (Kentucky), February, 1913.

PROOF OF INSUFFICIENT INSPECTION.

In an action by a miner for damages for injuries caused by the falling of a part of a roof in a mine the evidence ordinarily must be confined to the condition of the roof in the particular part of the mine where the accident occurred; but where the mine owner introduced evidence to show that the mine was inspected daily

by three competent persons the injured miner then had the right to show that such inspections were neither competent nor thorough, and one way of doing this was to show the faulty and defective condition of the roof of the mine in parts other than where the injury occurred.

Trosper Coal Co. *v.* Crawford, 153 Southwestern, 211 (Kentucky), February, 1913.

DEFECTIVE TRACKS USED FOR HAULING COAL CARS.

It is the duty of a coal-mine operator to use ordinary care to furnish its employees and miners a reasonably safe place in which to work, and if an operator failed to use reasonable care to make the tracks or tram road used for hauling coal from its mine in a reasonably safe condition, and its defective condition was known or could have been known to the operator by the exercise of ordinary care, and was not known to a rope driver, or such defect was not so obvious that the driver could by the exercise of ordinary care in the discharge of his duty have known such defect, and by reason of such defect the car on which the driver was riding was derailed and wrecked and the driver, while using ordinary care for his own safety, was thereby injured, he is entitled to recover damages for such injury.

Bell-Knox Coal Co. *v.* Gregory, 153 Southwestern, 465 (Kentucky), February, 1913.

ACTS OF VICE PRINCIPAL.

Where miners were using a dump car to haul the excavated earth from a prospect shaft in process of sinking, and the employer had placed, or caused to be placed, a block or bumper upon the rail to prevent the car from running over the collar of the shaft, the employer was in duty bound to place a bumper reasonably sufficient for such purpose; and this duty so plainly belonged to the employer in providing a safe place for the miners to work that it was wholly immaterial, in an action by a miner for injuries caused by reason of the bumper being insufficient, as to the person actually performing the mechanical labor in placing the bumper, if the injured miner himself had no part in placing it, and if the bumper was placed by another miner or employee he was, as to the particular act, a vice principal.

Killeen *v.* Barnes-King Development Co., 127 Pacific, 89 (Montana), October, 1912.

CONVICT MINER AS SUPERINTENDENT—LIABILITY.

A coal-mine operator employing convicts to work in its mine may intrust superintendence and authority to one of such convicts over their fellow workers the same as if there existed a voluntary contract of employment, but when the operator so constitutes a convict its agent and servant for certain purposes, it can not receive the benefit

of such service and at the same time exempt itself from liability for the negligence of such constituted agent.

Sloss-Sheffield Steel & Iron Co. *v.* Weir, 60 Southern, 851 (Alabama), January, 1913.

INJURY TO COAL-CAR DRIVER.

A driver of a car in a coal mine is entitled to recover for injuries caused by falling coal where the mine owner and operator failed to make proper inspection and failed to warn the driver of the danger, or properly support the roof to prevent falling of loose material, where it was no part of the driver's duty to inspect the roof of the mine or report any dangerous conditions in the roof, and where the defect and danger was not so open, patent, and of such a nature as to be discoverable by the driver passing along the entry in the discharge of his duties.

Prairie Creek Coal Mining Co. *v.* Kittrell, 153 Southwestern, 59 (Arkansas), December, 1912.

B. RIGHTS AND DUTIES OF MINER.

MINER MAKING WORKING PLACE SAFE.

The rule that it is the duty of a master to furnish safe working places for his servants applies to mine owners and operators, but the rule does not apply where a miner is employed in a mine and is making his own place to work in, and where such place is the result of the particular work for which the miner was employed, or where the place is inherently dangerous and necessarily changes as the work progresses.

Creede United Mines Co. *v.* Hawman, 127 Pacific, 924 (Colorado), November, 1912.

MINER'S WORKING PLACE.

A mine operator is not required to use ordinary care to furnish a miner a safe working place where such miner is mining coal in a room or entry in a mine and which by reason of the work of mining is constantly shifted and changed as the direct result of the mining, and especially so where a statute makes it the duty of the miner to properly prop the roof of his working place.

Proctor Coal Co. *v.* Beavers, 152 Southwestern, 965 (Kentucky), January, 1913.

MINER MAY ASSUME HIS WORKING PLACE IS SAFE.

A miner whose duty it is to drill blast holes that are charged with dynamite, for the purpose of breaking down coal in a mine, has the right to assume that the mine boss, in accordance with his duties, has examined the holes after the blast to see that all shots have been properly fired, and may return to his place of work after such mine boss has made his inspection under such assumption, and he may

recover for an injury occasioned by the failure of the mine boss to discharge this duty.

Cook *v.* Cranberry Furnace Co., 76 Southeastern, 473 (North Carolina), November, 1912.

DUTY TO KEEP ENTRY SAFE—USE OF PROPS.

The statute of Tennessee imposes upon the miner the duty to keep the roof of his working place properly propped and timbered to prevent falling rock or slate, and a failure of a miner to properly prop the roof of his working place will defeat a recovery for any consequential injury, unless it is shown that the mine operator failed to furnish the proper timbers.

Proctor Coal Co. *v.* Beavers, 152 Southwestern, 965 (Kentucky), January, 1913.

MINER'S RELIANCE ON FOREMAN'S JUDGMENT.

Where a miner was not charged with the duty of inspecting or keeping in reasonably safe condition the room or entry in which he works and had the right to rely upon the mine foreman's inspecting and keeping the place reasonably safe, the miner will not be justified in relying upon the assurance of the mine foreman that the room or entry was safe if the danger was so obvious that he knew or must have known it; but if the mine operator or the mine foreman gave the miner to understand that he did not consider the risk one which a prudent man would refuse to undertake, then the miner, notwithstanding his knowledge of the danger, may rely upon the master or foreman's judgment, and may recover in case he is injured.

Sunrise Coal Co. *v.* McDaniel, 150 Southwestern, 3 (Kentucky), October, 1912.

C. CONTRACTS RELATING TO OPERATIONS.

POWER OF MINING CORPORATION TO CONTRACT.

A zinc-mining company owning and operating mines entered into a contract by which it agreed to sell and deliver zinc concentrates at the rate of 100 tons weekly for three years, commencing at a future date. On the subsequent operation of the mines the corporation, discovering that it could not produce sufficient ore and concentrates to fulfill the contract, was authorized under its charter to purchase sufficient ore and concentrates with which to fulfill its contracts.

Young *v.* United States Zinc Cos., 198 Fed., p. 593, September, 1912.

POWER OF GENERAL MANAGER OF OIL COMPANY TO MAKE CONTRACTS.

The general manager of an oil company has implied authority to bind the company by a contract for the employment of a superintendent of the company's refineries for a period of one year, and to

agree on the compensation that should be paid him, where such general manager also has the power to discharge employees within a year for incompetency, disloyalty to the company, or insubordination in refusing to obey the orders of the general manager.

Manross *v.* Uncle Sam Oil Co., 128 Pacific, 385 (Kansas), December, 1912.

POWER OF SUPERINTENDENT OF MINING COMPANY.

An officer and superintendent of a mining company, placed in charge of the company's plant and mine by the board of directors without having his powers and duties defined, has the right as such officer or agent to enter into such contracts only as are usual and necessary to carry on the company's business according to general custom and usage of the coal-mining business in the particular territory, and whether or not a contract made by such officer or agent was a special and unusual one, or whether it was usual and necessary to carry on the business, was a question of fact to be determined by a jury.

Raven Red Ash Coal Co. *v.* Herron, 75 Southeastern, 752 (Virginia), September, 1912.

LIABILITY FOR INJURY TO INDEPENDENT CONTRACTOR.

A contractor employed by a coal company operating a mine to drive a certain entry and air course, and for which he was paid so much per yard in the heading and employed his own help and was only under the direction of the engineers of the coal company, can not recover damages of the coal company for an injury received by the fall of rock from the roof of the entry driven by him, and there is no violation of the Alabama statute where the coal company kept a sufficient supply of props and timbers to prop the roof of the mine.

Bowen *v.* Pennsylvania Coal Co., 60 Southern, 835 (Alabama), January, 1913.

OIL AND GAS LEASES—RIGHTS AND LIABILITIES OF PARTIES.

Where one of three parties engaged in the joint enterprise of procuring, improving, and handling oil and gas leases and properties caused wells to be drilled on his own land that were turned into the common holdings, the expense of such drilling must be borne by the parties as a common expense, including the expense of dry and unproductive wells.

Smith *v.* Harris, 128 Pacific, 378 (Kansas), December, 1912.

D. METHODS OF OPERATING—RIGHTS AND LIABILITIES.

STOPE—MEANING.

A stope is a working above or below a level where the mass of the ore body is broken. It is also defined to be any excavation for extraction of ore, as distinguished from a shaft, drift, airway, etc.

So a stope is said to be the very antithesis of a shaft, tunnel, drift, winze, or other similar excavation in a mine which has been finished and completed.

Creede United Mines Co. *v.* Hawman, 127 Pacific, 924 (Colorado), November, 1912.

DUTY TO VENTILATE.

The statute of Washington requires that every coal mine shall have and get sufficient ventilation, the amount of air in circulation to be not less than 100 cubic feet per minute for each man or animal in the mine, and the air must be made to circulate.

Dollar *v.* Northwestern Improvement Co., 129 Pacific, 578 (Washington), January, 1913.

It is a sufficient compliance with the statute of Illinois where a mine inspector examined a room in the mine on a morning before the miners began work and indicated the unsafe condition of the roof by chalk marks thereon, pointing out to the miner that a prop should be placed under the unsafe roof, and accordingly the miner placed a suitable prop thereunder, but this was knocked down by a blast during the day, and on the following morning before the miner commenced work the mine inspector again entered the mine, and perceiving the chalk marks on the roof were still plainly visible made chalk marks on the face of the coal, indicating the date of the inspection. Under such circumstances the mine operator was not liable to the miner injured by a fall of rock from the roof while removing the gob preparatory to setting a prop.

Kilduff *v.* Consolidated Coal Co., 99 Northeastern, 783 (Illinois), October, 1912.

DUTY OF MINE EXAMINER.

Under the statute of Illinois a mine examiner is required at all mines, and it is his duty to visit the mine before the miners are permitted to enter it and see that the air current is traveling in its proper course and in proper quantity, and for this purpose he is required to measure with a suitable instrument the amount of air passing in the last crosscut or break-through of each pair of entries or in the last room of each division in a long wall mine and at all other points where he deems it necessary, and the result of these observations must be noted in the daily book kept for that purpose, and a recovery by a miner injured by an explosion of gas because of the failure of the mine operator to comply with this statute will not be defeated because the miner passed under a canvas curtain hung at the door of the entry, where there was no sign of warning and nothing to indicate the presence of danger.

Colesar *v.* Star Coal Co., 99 Northeastern, 709 (Illinois), October, 1912.

FILLED STOPE—METHOD OF FILLING.

A "filled stope" is one where the waste rock taken out of the vein is left on the floor of the stope in order to raise the floor as the work proceeds. If there is insufficient material from the vein matter, it is the custom to blast into the side walls in order to obtain sufficient filling matter, so that the floor may be kept conveniently close to the roof to facilitate the drilling into the roof of the stope, and under such circumstances timbers, stull-timbers, or lagging are usually unnecessary, except lagging may be used to construct a crib for such convenient working.

Creede United Mines Co. *v.* Hawman, 127 Pacific, 924 (Colorado), November, 1912.

COAL WRONGFULLY MINED—MEASURE OF DAMAGES.

Where coal is wrongfully mined from another's land, but in good faith and as the result of an honest mistake, the measure of damages is the value of the coal taken as it lay in the mine, or the usual reasonable royalty paid for the right of mining, and the royalty in such case is the price paid for coal as it lies in the earth, and the fair market price is the usual standard for measuring the value; and the owner can not ask more where coal has been taken innocently under an honest mistake as to the location of the boundary line.

Burke Hollow Coal Co. *v.* Lawson, 151 Southwestern, 657 (Kentucky), December, 1912.

E. STATUTORY REGULATIONS—EFFECT AND NONOBSERVANCE.

VALIDITY OF LAWS REGULATING MINES.

A law which protects the lives, health, safety, and comfort of the miners is within the police power of a State.

Booth *v.* State, 100 Northeastern, 563 (Indiana), January, 1913.

PROSECUTIONS FOR VIOLATIONS OF MINING LAWS.

The fact that the mining act of 1905 of the State of Indiana places upon the inspector of mines the duty to see that its provisions are enforced does not necessarily limit the right to institute prosecutions for the violations of the act to the inspector or his deputies.

Malone *v.* State, 100 Northeastern, 567 (Indiana), January, 1913.

VIOLATION AS EVIDENCE OF NEGLIGENCE.

The mere violation of a statute is not even prima facie evidence of actionable negligence, except when a court can say as a matter of law that the consequences against which the statute was intended to provide have actually ensued from its violation.

Dickinson *v.* Stuart Colliery Co., 76 Southeastern, 654 (West Virginia), November, 1912.

INADVERTENT FAILURE TO COMPLY.

An action may be maintained for an injury to a miner or for the death of a miner caused by the failure of the mine operator to comply with a coal-mining statute, whether the operator's failure to comply with the statute was a mere inadvertence or a willful violation.

Peabody Alwert Coal Co. *v.* Yandell, 100 Northeastern, 758 (Indiana), February, 1913.

OPINION OF WITNESS AS TO COMPLIANCE.

In an action by a miner against a mine operator for damages for injuries caused by falling down a stairway in a shaft, due to the lack of proper banisters to the stairway, a witness can not state that in his opinion the mine was in good condition and was operated in compliance with the State mining laws, as this would involve a construction of the mining laws on the part of the witness himself; nor can he state that the entries and driveways were in a safe condition, but must state their manner of construction and leave it for the jury to determine whether the mine was properly and safely constructed.

Consumers Lignite Co. *v.* Hubner, 154 Southwestern, 249 (Texas), March, 1913.

DUTIES OF MINE BOSS.

The statutes of Indiana require a mine boss to see that every working place is properly secured by timbering and that a sufficient amount of timbers are always on hand at the miner's working place, and when an unsafe place is reported to such mine boss, then no one shall enter the place except for the purpose of making it safe; and the statutes do not contemplate that the ordinary mine work should continue in such dangerous place, but on the contrary that it should cease until the place is made safe.

Peabody Alwert Coal Co. *v.* Yandell, 100 Northeastern, 758 (Indiana), February, 1913.

FAILURE TO EMPLOY MINE BOSS.

It is a violation of the statute of West Virginia for a coal mining company to fail or refuse to employ a mine boss, and it is also a violation of the statute for a coal mining company operating its own mine to remove a mine boss and undertake itself to superintend the care of the roof of its mine and the maintenance of its safety, and it is liable to a miner injured by the fall of slate or rock from the roof of the mine permitted by the company to become and remain unsafe.

Peterson *v.* Paint Creek Collieries Co., 76 Southeastern, 664 (West Virginia), November, 1912.

DAILY INSPECTION OF MINE.

The statute of Missouri requires a daily inspection of mines generating explosive gas in which men are employed; but this statutory rule does not apply to mines not generating explosive gas, and as to

such mines the duty of the mine owner and operator is defined by the general rule requiring a master to exercise reasonable care to provide his servant a reasonably safe place in which to work.

Goode *v.* Central Coal & Coke Co., 151 Southwestern, 508 (Missouri), November, 1912.

FAILURE TO VENTILATE MINE.

In an action by a miner for injuries on the ground of negligence of the operator in failing to properly ventilate its mine, as required by the statute of Washington, the quantity of air necessary for the proper ventilation can not be measured by the judgment of a witness, but must be determined by the requirements of the statute.

Dollar *v.* Northwestern Improvement Co., 129 Pacific, 578 (Washington), January, 1913.

LIABILITY FOR PERMITTING ROADWAYS TO BECOME OBSTRUCTED.

A mine operator is liable for an injury to a miner caused by permitting dangerous obstructions to accumulate in a roadway of a mine where miners and employees are required to pass or work in performing their duties and where the permitting of such obstructions is in violation of a statute.

Eaton *v.* Marion County Coal Co., 101 Northeastern, 58 (Illinois), February, 1913.

REFUGE HOLES REQUIRED.

The statute of West Virginia makes it the duty of the mine owner to see that refuge holes are properly made along motor roads in coal mines.

May *v.* Davis Coal Co., 76 Southeastern, 342 (West Virginia), October, 1912.

DUTY TO FURNISH PROPS.

A mine operator does not comply with the statute of Kentucky imposing on him the duty of furnishing suitable props where he merely furnished such props to a youthful and inexperienced miner who was not sufficiently skilled in mining to know how to set such props, and where the operator failed either to instruct such miner or furnish an experienced miner to instruct or help him in setting the props.

Bartley *v.* Elkhorn Coal & Coke Co., 152 Southwestern, 955 (Kentucky), January, 1913.

FAILURE TO FURNISH TIMBERS.

A mine operator can not be held liable for failure to furnish a safe working place for a miner because of his failure to comply with the requisitions of a mine boss, as required by the statute of West Virginia, on a mere notice by such mine boss of his inability to remedy a defect and remove a "pot" or "kettle bottom" in the roof of a

haulageway, since both operator and mine boss continue under legal duties after such notice, and such a notice does not absolve the mine boss from further duty, and it was still incumbent on him, under the statute, to do the work or have it done if the mine operator furnished the materials, machinery, and labor; and to render the operator liable it must be shown that he failed, pursuant to such requisition, to furnish the necessary materials, machinery, and labor.

Peterson *v.* Paint Creek Collieries Co., 76 Southeastern, 664 (West Virginia), November, 1912.

The statute of Indiana imposes on mine operators the duty of supplying the working places of a miner with the timbers needed from time to time as the work progresses in order to make his working place secure, and the law requires the mine boss to visit the mine every alternate day, and the operator of a mine can not escape liability for injury to a miner caused by falling coal because the miner did not register on the blackboard a request for props and timbers, as provided by the statute, where the mine boss had knowledge that the necessary timbers were not supplied in the miner's working place.

Peabody Alwert Coal Co. *v.* Yandell, 100 Northeastern, 758 (Indiana), February, 1913.

MINER'S NOTICE FOR DOUBLE TIMBERING.

The statute of Iowa makes it a misdemeanor for a miner to neglect or refuse to securely prop or support the roof and entries under his control; but where the coal operators and the mine workers entered into an agreement to the effect that where a miner has properly timbered his room or entry and the roof from any cause becomes so heavy as to require double timbering, then the mine operator shall, when notified by the miner, do the necessary work to protect the roadway, and a miner is not subject to a charge of a violation of the statute and is not guilty of contributory negligence where he had securely propped the roof and had notified the mine operator that double timbering was required.

Braddich *v.* Phillips Coal Co., 138 Northwestern, 406 (Iowa), November, 1912.

LIABILITY OF OPERATOR FOR INJURIES FROM FALLING COAL.

An allegation in a complaint in an action by a miner for injuries caused by falling coal, to the effect that the mine boss knew that the roof was insecure and defective and in a condition to fall at any time, and that such mine boss had such knowledge for a period of from two to six days preceding the injury and in time to have taken down the loose material that caused the injury, is sufficient as an averment of the actual dangerous condition of the roof.

Domestic Block Coal Co. *v.* De Armey, 100 Northeastern, 675 (Indiana), January, 1913.

DUTIES OF OPERATOR TO REMOVE LOOSE MATERIAL.

The Indiana statute of 1897 providing that all loose coal, slate, and rock overhead, where miners have to travel to and from their work, must be carefully secured, was amended by the act of 1905 by the addition of a provision that such loose coal, slate, or rock should be taken down or carefully secured, and the purpose of the amendment was to compel the removal of loose material in places where it was impracticable to secure the same by means of props and timbers, and the provision includes a way or track in a room in which miners are working as well as travel ways through the mine.

Domestic Block Coal Co. *v.* De Armey, 100 Northeastern, 675 (Indiana), January, 1913.

WORKING MORE THAN EIGHT HOURS A DAY.

The statute of Montana prohibits a mine owner from employing miners to work more than eight hours a day in a mine and also prohibits miners from working more than eight hours a day, and a violation of the statute is legal negligence, and if a violation of the law on the part of a mine operator is negligence and the proximate cause of an injury resulting to a miner, so the disobedience of the statute by the miner himself must be regarded as a contributing proximate cause, and the disobedience is concurrent and the injury is the result of the concurrent causes operating to the same end, and the miner can not recover, for the reason that in alleging the injury he must necessarily show his own contributing fault.

Melville *v.* Butte-Balalava Copper Co., 130 Pacific, 441 (Montana), February, 1913.

PERSON SERVING AS HOISTING ENGINEER WITHOUT CERTIFICATE.

An indictment against a person under the statute of Indiana for serving as a hoisting engineer in a coal mine without a certificate of competency is not required to negative the statutory provision that fewer than 10 men were employed in the mine, as that is a matter of defense.

Malone *v.* State, 100 Northeastern, 567 (Indiana), January, 1913.

EMPLOYMENT OF BOY IN MINE.

The statute of Alabama providing that no woman, and no boy under the age of 14 years, shall be employed in a mine was intended to protect women and children of tender age from incurring the hazard and danger incident to the operation of mines by absolutely preventing their employment; and the statute requires the mine owner or operator to see and know that those employed are not within the prohibited class, and the statute must be liberally construed, so as to effectuate the humane intent of the legislature.

De Soto Coal Mining & Development Co. *v.* Hill, 60 Southern, 583 (Alabama), December, 1912.

EMPLOYMENT OF BOY—LIABILITY FOR INJURY.

The employment of a boy under the age of 14 years in a coal mine is a violation of the statute and constitutes actionable negligence whenever such violation is the natural and proximate cause of the injury, though the boy himself may have negligently contributed to his own injury, if such contributory negligence was of that character for which the statute was intended with respect to boys of that age, for the reason that boys employed in violation of a statute can not be regarded as having assumed the risks of any injuries resulting from the ordinary operations of a coal mine.

Dickinson *v.* Stuart Colliery Co., 76 Southeastern, 654 (West Virginia), November, 1912.

INJURY TO BOY OF PROHIBITED AGE.

A mining company employing a boy under 14 years of age to work in its mine in violation of the statute of Alabama is liable to him for injuries resulting by reason of such employment, and in such case it is not a question as to whether or not the mining company believed the boy was over the prohibited age, nor is it necessary that injury must result as a proximate cause of some act or omission of the boy in the discharge of his duty; but the right of action arises where the injury resulted from the employment and was incident to any of the risks or dangers in or about the business, and this liability is not excused by reason of false representations by the boy or anyone else as to his age, and such representations do not estop him from a recovery for the injuries sustained.

De Soto Mining & Development Co. *v.* Hill, 60 Southern, 583 (Alabama), December, 1912.

EMPLOYMENT OF BOY WITH FATHER'S CONSENT.

Where a father was a party to a contract of employment of his son under 12 years of age in a coal mine, in violation of the statute of West Virginia, and the boy was killed by an explosion in the mine and the father was the sole beneficiary of any recovery, the contributory negligence of the father in respect to such employment will prevent his recovery against the mine operator for damages unless such owner or operator was himself guilty of some act of negligence that was the proximate cause of the explosion and the consequential death of the boy.

Dickinson *v.* Stuart Colliery Co., 76 Southeastern, 654 (West Virginia), November, 1912.

VALIDITY OF STATUTES REQUIRING WASHHOUSES.

The statute of Indiana requiring owners or operators of coal mines and other employers of labor to erect and maintain washhouses is valid, as being within the police power of the State, and includes

superintendents within its scope; and a superintendent of a mine who fails, on the written request of the employees of the mine, to provide and maintain a washhouse for the use of the miners is subject to the penalty imposed by the statute.

Booth *v.* State, 100 Northeastern, 563 (Indiana), January, 1913.

MINE OPERATORS REQUIRED BY STATUTE TO MAINTAIN WASHHOUSES.

A statute requiring an owner or operator of a coal mine where more than 20 persons are employed to construct and maintain washhouses is not unconstitutional in that it denies to coal companies the equal protection of the law and discriminates between coal mining and other classes of business, or deprives the mine owner of his property without due process of law, as such a statute falls within the police power of the State.

Booth *v.* State, 100 Northeastern, 563 (Indiana), January, 1913.

POLLUTION OF WATER.

Under the statute of West Virginia making it an offense to put into a stream of water any matter deleterious to the propagation of fish, an operator of a coal mine can not assert a right contrary to the statute to drain into a stream from his mine sulphur or mine water deleterious to the propagation of fish, though such stream is the natural receptacle for such drainage and it is impracticable to drain the mine otherwise.

State *v.* Southern Coal & Transportation Co., 76 Southern, 970 (West Virginia), December, 1912.

F. NEGLIGENCE OF OPERATOR—LIABILITY.

EXPLOSION AS EVIDENCE OF NEGLIGENCE.

The fact of an explosion in a coal mine is not even prima facie evidence of negligence on the part of the mine foreman.

Dickinson *v.* Stuart Colliery Co., 76 Southeastern, 654 (West Virginia), November, 1912.

EXPLOSIONS—JUDICIAL NOTICE.

Courts take judicial notice that explosions occur in the best-equipped, best-regulated, and perfectly ventilated coal mines, and a mine owner or operator is not liable for resulting injuries when an explosion is the result of negligence of a fellow servant, and not of the owner or operator to furnish a reasonably safe place in the first instance or to employ a competent mine boss or to perform some other statutory or common-law duty imposed.

Dickinson *v.* Stuart Colliery Co., 76 Southeastern, 654 (West Virginia), November, 1912.

PLEADING NEGLIGENCE AND PLACE OF INJURY.

A complaint in an action by a miner for injuries caused by the negligence of a coal-mine operator can not be regarded as defective and can not be held insufficient for failing to specify the exact location in the mine where the accident happened, where the particular place is not a material feature of the negligence complained of.

Birmingham Coal & Iron Co. *v.* Brice, 60 Southern, 952 (Alabama), January, 1913.

PROXIMATE CAUSE OF INJURY.

A court can not say as a matter of law that permitting obstructions in violation of a statute, in an entryway of a mine where a miner was required to work, was not the proximate cause of an injury, where such obstructions were permitted at a steep incline, rendering it necessary to sprag cars, and where the miner was, while endeavoring to sprag the wheels of a car, by reason of the dangerous conditions caused by such obstructions, caught between the car and the rib of the mine.

Eaton *v.* Marion County Coal Co., 101 Northeastern, 58 (Illinois), February, 1913.

FAILURE TO EMPLOY MINE BOSS.

A coal-mining company that ousts a mine boss after his employment, in compliance with the statute of West Virginia, and itself undertakes the care of the roof of its mine, and then permits the roof to become and remain unsafe and dangerous, is liable to a miner injured by a fall of slate or stone from the roof, as the negligence in such case is not negligence of the mine boss, but that of the mine owner and operator.

Peterson *v.* Paint Creek Collieries Co., 76 Southeastern, 664 (West Virginia), November, 1912.

MINERS FOLLOWING DIRECTIONS OF MINE FOREMAN.

A coal company operating a coal mine is liable for an injury of a miner caused by falling coal or slate where the miner at the time of the injury was following the direction of the mine foreman, and was doing what he told him to do and in the particular way he told him to do it, and where the miner himself did not create the danger in the progress of his work, and where the danger existed at the time the mine foreman directed the work to be done and was incidental to the work so directed.

Ada Coal Co. *v.* Linville, 153 Southwestern, 21 (Kentucky), February, 1913.

FAILURE TO INSTRUCT INEXPERIENCED MINER.

A mine operator can not be charged with negligence for failure to instruct an inexperienced miner that loose coal might be discovered by tapping, where such failure to instruct and where the want of tapping the coal was not the proximate cause of an injury.

Carney Coal Co. *v.* Benedict, 129 Pacific, 1024 (Wyoming), February, 1913.

NOTICE TO MINE FOREMAN.

Knowledge of the fire boss and the mine foreman that a "squeeze" or settling of the roof had set in, was notice to the company operating the mine.

Gennaux *v.* Northwestern Improvement Co., 130 Pacific, 495 (Washington), February, 1913.

DUTY TO INSPECT MINE.

A mine operator is bound to inspect at reasonable intervals the roof of a mine where miners are at work, and to remove any insecure rock or other material that threatens the safety of the miners whose service compels them to use the particular part of the mine; and a failure of a mine operator to inspect the roof at reasonable intervals and where reasonable inspection would have disclosed any existing danger is sufficient to sustain a charge of negligence, and to show that such failure to inspect was the proximate cause of an injury to a miner.

Goode *v.* Central Coal & Coke Co., 151 Southwestern, 508 (Missouri), November, 1912.

INSPECTION BEFORE MINERS BEGIN WORK.

The statute of Illinois requires a mine owner or operator to visit the mine before miners are permitted to enter and see that the air current is traveling in its proper course and in proper quantity, to determine the quantity of air in different portions of the mine and the amount of air passing in the last crosscut or break-through in each pair of entries as well as in the last room of each division, and to note the condition of the mine in a book kept for that purpose before miners are permitted to enter the shaft; and the failure to make such examination and to inform the miners of the presence of gas is such negligence as will render the mine owner and operator liable for an injury to a miner occasioned by an explosion of gas in the entry or room in which he was working.

Colesar *v.* Star Coal Co., 99 Northwestern, 709 (Illinois), October, 1912.

FAILURE TO INSPECT MINE.

It is actionable negligence for a mine owner or operator through his mine boss to fail to inspect properly the places where blasting is done and to examine after each blast the holes charged with dynamite

to see if any have failed to go off, and in case of any such failure, to give proper notice to the miners drilling the blast holes, and any such mine owner or operator is liable to an injured miner for negligence in this respect.

Cook *v.* Cranberry Furnace Co., 76 Southeastern, 473 (North Carolina), November, 1912.

A coal-mine operator was held liable for damages to a driver caused by a fall of slate where the operator negligently failed to inspect a place where coal had been loosened and to remove the loose coal, or to place timbers thereunder or notify the driver of the dangerous condition, and where it was not the duty of the driver to inspect the mine for loose coal, and such negligent failure on the part of the mine operator to properly inspect the mine was held to be the proximate cause of the injury.

Prairie Creek Coal Mining Co. *v.* Kittrell, 153 Southwestern, 59 (Arkansas), December, 1912.

FAILURE TO FURNISH SAFETY LAMPS.

The Legislature of Washington in recognition of the hazards of working in coal mines has made careful provisions for their inspection and imposed imperative duties upon those who own and operate them and requires among other things that under certain circumstances safety lamps shall be furnished the miners, and a failure to observe this provision is negligence per se; but a failure to furnish such safety lamps is not negligence in the absence of evidence showing that the development work being prosecuted was approaching a place where there was likely to be an accumulation of excessive gases or that there was imminent danger from excessive gases.

Dollar *v.* Northwestern Improvement Co., 129 Pacific, 578, p. 580 (Washington), January, 1913.

FAILURE TO PROP ROOF.

The question of the negligence of a mine owner to properly support the roof of a crosscut in which the miners were not required to work, but in which a miner was injured by a falling of roof while eating a meal, is one of fact to be determined by the jury under all the circumstances of the case.

Kennis *v.* Ogden, 138 Northwestern, 467 (Iowa), November, 1912.

FAILURE TO FURNISH PROPS.

The statute of Kentucky imposes on the owner or operator of the mine the duty of furnishing suitable props for securing the roof and for making the working place of the miner safe. A failure to

supply such props is such a breach of this statutory duty as will render the operator liable for any resulting injury to a miner.

Bartley *v.* Elkhorn Consolidated Coal & Coke Co., 152 Southwestern, 955 (Kentucky), January, 1913.

FAILURE TO SUPPORT ROOF AFTER NOTICE.

A mining company is liable for negligence in permitting the roof of an entry in its mine to become unsafe, and for failure to properly support the roof after notice of its dangerous condition, where by reason of such negligence a miner was injured by the fall of the roof after the mine foreman had promised to remedy its dangerous condition, and where the miner was carrying out the immediate directions and orders of the mine foreman.

Broadway Coal Mining Co. *v.* Robinson, 150 Southwestern, 1000 (Kentucky), November, 1912.

PROOF OF NEGLIGENCE—INJURY FROM FALLING ROCK.

In an action for the death of a miner caused by a fall of rock from the roof of a mine at a place that was not his working place, a court is not authorized to direct a jury to return a verdict for the plaintiff without reference to the issues of whether or not the dangerous character of the rock would have been discoverable to an ordinarily careful and prudent mine operator in the exercise of due care toward his miner, and whether or not the mine operator did employ due care in the discharge of his duty in this respect. Under such circumstances the fact that rock fell of itself was not sufficient proof of negligence, and the burden of proof in such case was on the plaintiff to satisfy the jury that the rock not only was in a dangerous condition but that such condition would have been discovered by the mine operator had reasonable care been exercised in time to have prevented the injury.

Goode *v.* Central Coal & Coke Co., 151 Southwestern, 508 (Missouri), November, 1912.

FAILURE TO SUPPLY MACHINERY.

The failure of a mining company operating a coal mine to furnish its mine boss with machinery and materials necessary to remove any dangerous slate or stone in the roof of the mine and otherwise make it secure, upon notice by the mine boss of his inability to make the mine roof safe on account of lack of materials or facilities, is such negligence that renders it liable for an injury to an employee caused by a fall of such loose slate or stone.

Peterson *v.* Paint Creek Collieries Co., 76 Southeastern, 664 (West Virginia), November, 1912.

USING DEFECTIVE MACHINERY.

A coal-mine operator is guilty of actionable negligence in using a worn and dangerous feed chain used in drawing forward a coal-mining machine, with knowledge of its condition and by reason of which a miner was injured.

Bradley *v.* Northern Central Coal Co., 151 Southwestern, 180 (Missouri), November, 1912.

FAILURE TO REMOVE LOOSE COAL OR ROCK.

Where it becomes impracticable to secure loose coal, slate, or rock overhead in a working place in a mine by means of timbers or props, then it is the duty of the mine operator to have such loose coal, slate, or rock removed before the miners are permitted to resume work, and the failure to do so will constitute negligence.

Peabody Alwert Coal Co. *v.* Yandell, 100 Northeastern, 758 (Indiana), February, 1913.
Domestic Block Coal Co. *v.* De Armey, 100 Northeastern, 675 (Indiana), January, 1913.

FAILURE TO MAKE REFUGE HOLES.

A mine owner or operator is not chargeable with actionable negligence for an injury resulting to a miner because of his failure to make refuge holes along motor roads in a coal mine, as the statute imposes this duty on the mine foreman and not on the mine operator.

May *v.* Davis Coal Co., 76 Southeastern, 342 (West Virginia), October, 1912.

INJURY TO MINER BY ELECTRIC WIRE.

A court can not say as a matter of law that a miner is not entitled to recover for an injury caused by contact with an unprotected trolley wire where the miner was engaged in carrying a rubber hose bound with wire, and where, by reason of the wet and slippery condition of the floor of a level, he slipped and the wire-bound hose accidentally came in contact with the live wire and the miner thereby received the injury for which he sues.

Williams *v.* Bunker Hill & Sullivan, etc., Mining Co., 200 Fed., 211, October, 1912.

OPERATING MINE CAR AT DANGEROUS SPEED.

It is negligence for a mine operator to run a car carrying a miner through a slope with a low and dangerous roof at such a rate of speed as to extinguish the light on the miner's cap and leave him in the dark, thereby unable to distinguish such low and dangerous place in the roof, by reason of which he was injured; and the movement of the car with such undue speed may be regarded as the efficient proximate cause operating in unbroken sequence to bring about the injury.

Republic Iron & Steel Co. *v.* Fuller, 60 Southern, 475 (Alabama), December, 1912.

INJURY TO ROPE DRIVER—SCOPE OF EMPLOYMENT.

It was the duty of a rope driver in a coal mine to look after the rope and the equipment of the train of cars drawing coal from the mine and to remedy any trouble that might come up in connection with the operation of the train, and such rope driver was acting within the line of his employment and was doing what his duty required him to do when he attempted to stop a train of coal cars for the purpose of releasing the rope which had caught under the end of some of the exposed ties supporting the track; and the coal company was held liable for an injury occurring to the rope driver while thus performing his duty, because of its negligence in permitting the ties to be so laid and exposed as to catch and hold the rope.

Stony Fork Coal Co. *v.* Lingar, 153 Southwestern, 6 (Kentucky), February, 1913.

NEGLIGENCE OF FELLOW SERVANT.

A rope driver working on cars used to haul coal out of a mine whose duty it is to superintend the movement of cars in and out of a mine and to fasten and unfasten the cable by which the cars are operated and the engineer employed to operate the stationary engine that furnished power to move the cars on signals from such rope driver are fellow servants, and such rope driver can not recover from the mine operator for injuries caused by the negligence of the engineer.

Bell-Knox Coal Co. *v.* Gregory, 153 Southwestern, 465 (Kentucky), February, 1913.

WRONG SIGNAL TO MINER.

A coal operator is liable for damages for the death of a miner caused by a rock from blasting where the foreman negligently called to the employees to return to work by hallooing "all over," meaning as was the custom that the shots had all been fired, and the deceased miner in response to this customary signal started from his safe hiding place to return to work, when a rock from the second blast struck and killed him.

Chenoa-Hignite Coal Co. *v.* Philpot, 153 Southwestern, 457 (Kentucky), February, 1913.

PROOF OF SUBSEQUENT REPAIRS NOT ADMISSIBLE.

In an action against a coal-mining company for the death of a miner caused by an alleged insecure platform under a tipple used in connection with a coal screen, proof of repairs made upon the platform subsequent to the time of the accident is not admissible for the purpose of proving negligence and to show that the platform was insecure at the time of the accident.

Interstate Coal Co. *v.* Shelton, 153 Southwestern, 1 (Kentucky), February, 1913.
Bell-Knox Coal Co. *v.* Gregory, 153 Southwestern, 465 (Kentucky), February, 1913.

PROOF OF SUBSEQUENT REPAIRS—EXCEPTION.

While ordinarily proof of subsequent repairs is not admissible for the purpose of showing negligence yet where in an action by a rope driver working on cars hauling coal out of a mine he introduced evidence to show the defective and dangerous condition of the track, and where the mine operator introduced evidence to show that the person who succeeded the injured rope driver in his position continued the work without accident and without any change being made in the tracks at the place where the injury occurred, the injured rope driver then has the right to show as a matter of fact that the track was repaired subsequent to the time of his injury and at the particular place where the accident happened.

Bell-Knox Coal Co. *v.* Gregory, 153 Southwestern, 465 (Kentucky), February, 1913.

LIABILITY FOR BURIAL EXPENSES.

Under the statute of Oklahoma the duty of burying the dead bodies of miners whose lives were lost in a mine disaster is cast upon the mine owner where it does not appear that they had relatives or friends present to perform this duty, and where no person in fact claimed the bodies.

Kali Inla Coal Co. *v.* Craig, 128 Pacific, 117 (Oklahoma), November, 1912.

G. CONTRIBUTORY NEGLIGENCE OF MINER.

VOLUNTARY EXPOSURE TO DANGER.

A miner can not maintain an action against a mine operator for damages for an injury resulting from a known peril to which he voluntarily continued to expose himself.

Republic Iron & Steel Co. *v.* Fuller, 60 Southern, 475 (Alabama), December, 1912.

KNOWLEDGE OF DANGER.

A driver of coal cars in a mine is not entitled to recover for injuries received from falling coal where the dangerous condition of the coal was open, patent, or of such a nature as to be discoverable by any driver passing along the entry in the discharge of his duty, and if by the use of his eyes, or by ordinary care, he could have seen the danger, and if he knew and apprehended the dangers and failed to exercise ordinary care in avoiding the same.

Prairie Creek Coal Mining Co. *v.* Kittrell, 153 Southwestern, 59 (Arkansas), December, 1912.

KNOWLEDGE OF DEFECTIVE APPLIANCES.

A miner operating a coal-mining machine with knowledge that the feed chain used in drawing the machine forward was defective is not to be charged with contributory negligence in case of an injury, as

under such circumstances he had the right to continue in the service, provided a reasonably careful person in his situation would have concluded that he could work with the chain without subjecting himself to danger of immediate injury.

Bradley *v.* Northern Central Coal Co., 151 Southwestern, 180 (Missouri), November, 1912.

AVOIDING DANGER IN EMERGENCY.

A miner exposed to a danger that by reason of another's negligence is suddenly enhanced by an unfavorable change of the conditions under which it is to be met, due to such negligence, is not necessarily chargeable with contributory negligence because he did not exercise the best judgment in the measures taken for his own safety, as the law does not under such circumstances hold him infallible in his endeavor to escape harm, and his conduct is to be weighed in the light of his surroundings at the time and he is to be held to no more than the exercise of such reasonable care and diligence as would be expected of a prudent and reasonable man under similar circumstances.

Republic Iron & Steel Co. *v.* Fuller, 60 Southern, 475 (Alabama), December, 1912.

BURDEN OF PROOF.

The burden of proof is on a mine operator to show that a youthful and inexperienced miner failed to use ordinary care for his own safety, but for which he would not have been injured.

Bartley *v.* Elkhorn Consolidated Coal & Coke Co., 152 Southwestern, 955 (Kentucky), January, 1913.

DEFENSE AND BURDEN OF PROOF.

Under the statute of North Carolina the contributory negligence of a miner is a matter of defense, and in an action for personal injury to a miner the burden is on the mine owner or operator to establish such contributory negligence, unless the testimony of the plaintiff himself shows that his contributory negligence was the proximate cause of his injury.

Cook *v.* Cranberry Furnace Co., 76 Southeastern, 473 (North Carolina), November, 1912.

MITIGATION OF DAMAGES.

The statute of Tennessee makes it a misdemeanor for a miner to fail to keep the roof of his working place properly propped and timbered to prevent the falling of coal, slate, or rock. Under the statute, if a miner was guilty of negligence that contributed to his injury, but if the mine operator was guilty of negligence which was the direct or proximate cause of the injury, then the miner may recover, but the damages recoverable should be reduced or mitigated by reason of the miner's contributory negligence.

Proctor Coal Co. *v.* Beaver, 152 Southwestern, 965 (Kentucky), January, 1913.

VIOLATION OF ORDERS.

A miner whose duty it is to drill blast holes is guilty of contributory negligence in drilling into a failed hole in violation of the orders and directions of the mine boss, and can not recover for an injury occasioned thereby, where he knew it was the duty of the mine boss to examine the blast holes after each shot to ascertain if there was any exploded charge, and where he was not to resume work until the mine boss had so reported, and in case of any unexploded charge until such charge was exploded or removed.

Cook *v.* Cranberry Furnace Co., 76 Southeastern, 473 (North Carolina), November, 1912.

DISOBEYING FOREMAN'S ORDERS.

A miner engaged in mining out pillars in a coal mine can not recover for an injury caused by a fall of slate from the roof if he violated the orders of the mine foreman or did not perform the work in the manner in which he was directed to perform, or if it was his duty to prop the roof of the mine at the place and failed to do so.

Ada Coal Co. *v.* Linville, 153 Southwestern, 21 (Kentucky), February, 1913.

OBEDIENCE TO FOREMAN'S ORDERS.

A coal miner with no experience in shaft mines can not be charged with such contributory negligence as would defeat a recovery for injuries where he was ordered by the foreman to go to another part of the mine and where obedience to such orders made it necessary that he should pass through the elevator shaft, and where, before passing through the shaft, he looked up the shaft but could neither see nor hear the descending elevator, but was injured by an elevator while passing through the shaft.

Fluehart Collieries Co. *v.* Elam, 151 Southwestern, 34 (Kentucky), December, 1912.

COMPLIANCE WITH CUSTOM.

A miner assisting in sinking a prospecting shaft is not to be charged with contributory negligence as a matter of law because he was riding back from the dump on the car used to haul away the excavated earth, or because he stepped on the car to attach the rope to the hoisting bucket, and thereby the car ran over the block or bumper on the track and threw him into the shaft, unless the act of riding or getting on the car was necessarily and inevitably so dangerous that a prudent person would not have done the particular act. And under such circumstances, evidence showing he complied with a custom known to and expressly or impliedly sanctioned by his employer is generally sufficient to turn the scale in this respect in his favor, and free him from the charge of contributory negligence.

Killeen *v.* Barnes-King Development Co., 127 Pacific, 89 (Montana), October, 1912.

CHOOSING DANGEROUS METHOD OF WORKING.

The rule that where a servant has two ways of doing a thing, one of which is dangerous and the other safe, and chooses the dangerous and is injured by reason thereof, he is guilty of such contributory negligence as prevents recovery, is applicable to miners; but the rule does not apply unless the miner knew, or ought to have known, that one method was dangerous and the other safe. And a circumstance which tends to negative the inference that the miner was guilty of contributory negligence is that the course of action which he was pursuing at the time he received the injury was the one customarily followed by himself and other miners under similar circumstances with the approval or tacit acquiescence of the employer.

Killeen *v.* Barnes-King Development Co., 127 Pacific, 89 (Montana), October, 1912.

INJURY TO BOY OF PROHIBITED AGE.

A mining company employing a boy to work in its coal mine, in violation of a specific statute, can not screen itself from liability for an injury sustained by such boy in its service on the ground that the injury was occasioned through such negligence, imprudence, or childish traits as gave rise to the statute, as a boy so employed and injured can not, under the law, be chargeable with negligence contributing to his injury.

De Soto Coal Mining & Development Co. *v.* Hill, 60 Southern, 583 (Alabama), December, 1912.

MINER USING EXCESSIVE BLAST.

Under the Tennessee statute making it a misdemeanor for a miner to fail to properly prop the roof of his working place, a miner is guilty of such contributory negligence as will defeat his recovery for injuries caused by falling rock where he used so large a charge of powder in shooting the coal as to knock down the props and dislodge the slate in the roof.

Proctor Coal Co. *v.* Beaver, 152 Southwestern, 965 (Kentucky), January, 1913.

FALL OF SLATE FROM ROOF.

A mine owner and operator is not guilty of actionable negligence and is not liable to a miner injured by a fall of slate from the roof of an entry where the miner himself with another was engaged in timbering the entry, and where it was their duty to discover and determine the particular part of the entry or roof that was dangerous and that required timbering.

Owens *v.* Norwood White Coal Co., 138 Northwestern, 483 (Iowa), November, 1912.

A miner receiving injuries from the falling roof of a mine is not to be charged with contributory negligence where he had had but slight

acquaintance with the mine, and did not really know whether or not the loose slate would fall; and a court can not as a matter of law say that the danger was so imminent to the miner that he should not have continued work, especially after the pit boss, with his experience and superior knowledge of the particular mine, had assured the miner that the place was safe and ordered him to go on with his work.

Braddich *v.* Phillips Coal Co., 138 Northwestern, 406 (Iowa), November, 1912.

MINER'S FAILURE TO PROP ROOF.

The statute of Tennessee makes it a misdemeanor for a miner to fail to properly prop the roof of his working place, and the failure of a miner to comply with this statute will prevent his recovery for a consequential injury when the action is brought in the courts of Kentucky if, but for his negligence, the injury would not have occurred; and the Tennessee rule that contributory negligence may be applied to the mitigation of damages does not obtain in Kentucky.

Proctor Coal Co. *v.* Beaver, 152 Southwestern, 965 (Kentucky), January, 1913.

MINER KILLED BY TROLLEY WIRE.

In an action against a company operating a coal mine for damages for the death of a miner caused by coming in contact with a live trolley wire where it appeared that the wire had become detached from a clamp holding it to the wall of the mine and the miner while attempting to replace the wire under the clamp accidentally came in touch with the wire, the question of the contributory negligence of the miner under such circumstances was one of fact to be determined by a jury.

Meola *v.* Quincy Mining Co., 140 Northwestern, 460 (Michigan), March, 1913.

LIABILITY FOR DEATH OF CONVICT WORKING IN MINE.

Where a complaint in an action against a coal mine operator for damages for wrongful death charged that the plaintiff's intestate was being worked as a convict under an unsupported roof in a mine, an answer setting up contributory negligence must go beyond a mere averment of negligence as a conclusion, and must aver facts to which the law attaches that conclusion, as the ordinary rule of contributory negligence does not apply to a convict miner.

Sloss-Sheffield Steel & Iron Co. *v.* Weir, 60 Southern, 851 (Alabama), January, 1913.

MULE DRIVER INJURED WHILE NOT IN LINE OF DUTY.

A boy employed as a mule driver can not recover of a coal mine operator, where his complaint charged that he was injured while engaged in and about the discharge of his duties as such mule driver

in the mine, where the evidence showed that his duty as a mule boy was to pull empty cars from the mouth of an entry to the head of it to be loaded by the miners, and where the evidence also showed that on the occasion of the accident he was standing by the side of a slope at one end of the entries when five loaded cars in charge of the chainers passed out of an entry and up the slope, and while plaintiff was stooping down in obeying directions of a chainer to shut the latch for him he was struck by two cars that had broken loose from the train and dashed down the mine slope, as this constituted a fatal variance between the pleading and the proof.

Maxie *v.* Sloss-Sheffield Steel & Iron Co., 61 Southern, 269 (Alabama), February, 1913.

INJURY TO ROPE DRIVER.

A court can not say as a matter of law that a rope driver superintending the movements of cars in and out of a coal mine and fastening and unfastening the cable by which the cars are operated was guilty of contributory negligence because at the time of the injury he was riding with one foot in the car and the other foot on the bumper, where there was some evidence to the effect that such a position was safer than if the rope driver rode with both feet in the car, and under such circumstances the question of contributory negligence is one of fact to be determined by a jury.

Bell-Knox Coal Co. *v.* Gregory, 153 Southwestern, 465 (Kentucky), February, 1913.

INJURY FROM BLASTING—PROPER PLACE OF CONCEALMENT.

An employee in a mine, killed from being struck by a rock from a blast, was not chargeable with contributory negligence as a matter of law in concealing himself or seeking shelter behind a tree when warned of an approaching blast, instead of taking refuge in an airway, where it was his custom and that of other men working with him at a distance of two or three hundred yards from the blasting to take refuge behind trees and where the tree behind which he stood was 167 feet from the place of the blast and was of greater diameter than his body.

Chenoa-Hignite Coal Co. *v.* Philpot, 153 Southwestern, 457 (Kentucky), February, 1913.

H. ASSUMPTION OF RISK BY MINER.

1. RISKS ASSUMED.

BURDEN OF PROOF.

The burden of proof is on a mine operator to show that a youthful and inexperienced miner took the risk of injury from falling rock or slate with knowledge of the danger.

Bartley *v.* Elkhorn Consolidated Coal & Coke Co., 152 Southwestern, 955 (Kentucky), January, 1913.

KNOWLEDGE OF DANGER.

An inexperienced miner 23 years of age is chargeable with knowledge of the law of gravitation and the liability of loose coal to fall, and when he and a coemployee fired a shot to loosen coal he assumed the risk of injury from the fall of coal loosened by such shot where the danger was obvious.

Carney Coal Co. *v.* Benedict, 129 Pacific, 1024 (Wyoming), February, 1913.

MINER INJURED BY FALL OF ROOF.

An employee and miner in a coal mine assumes the risks and dangers of the employment which he knows and appreciates, and he also assumes those which an ordinarily prudent person of his capacity and intelligence would have known and appreciated in his situation.

Kennis *v.* Ogden, 138 Northwestern, 467 (Iowa), November, 1912.

A miner employed to assist another in inspecting and timbering the roof of an entry in a mine, and in making such entry and the roof safe for other miners, assumes the risk naturally and necessarily incident to such work.

Owens *v.* Norwood White Coal Co., 138 Northwestern, 483 (Iowa), November, 1912.

PROMISE OF MINE FOREMAN.

An experienced miner who reported to a mine for work pursuant to a previous promise made by the mine foreman at some distance from the mine to the effect that he would be given work in a safe place, and who was, after several days, put to work in a stope, the character of which was constantly changing, and the dangerous condition of which was well known to the miner, assumed the risk, and could not recover for an injury subsequently received while working in the stope, notwithstanding the promise of the mine foreman.

Creede United Mines Co. *v.* Hawman, 127 Pacific, 924 (Colorado), November, 1912.

NATURE AND USE OF EXPLOSIVES.

A miner is presumed to know that unusual dangers attend him while working in a stope; and he will likewise be presumed to know that high explosives used therein, such as dynamite and giant powder, not only displace rock, ore, and other mineral matter adjacent to the shot, but also have a tendency to, and do, loosen other rock and material in the vein in places more or less remote from the point where the shot is fired.

Creede United Mines Co. *v.* Hawman, 127 Pacific, 924 (Colorado), November, 1912.

DANGERS FROM ELECTRICITY.

Where tram cars in a mine were operated by electric motor receiving its power from a copper wire attached to the top or hanging walls by means of an insulated swivel held by a clamp and where if at any

time the wire was out of order for any reason the miners and the motorman were required to push the cars by hand past the defective place in the wire, and a miner who, on finding the wire defective and released from the clamp, instead of pushing the car by hand past the defective place, attempted to move the car past such defective place by means of the electric power, assumed the risk of all danger of coming in contact with the trolley wire.

Meola *v.* Quincy Mining Co., 140 Northwestern, 460 (Michigan), March, 1913.

DANGEROUS EMPLOYMENT—MINING OUT PILLARS.

The work of mining out pillars or "pulling stumps" in a coal mine is a hazardous employment, and a miner accepting such employment assumes all the risks incident to the work not due to the negligence of the company operating the mine.

Ada Coal Co. *v.* Linville, 153 Southwestern, 21 (Kentucky), February, 1913.

2. RISKS NOT ASSUMED.

KNOWLEDGE OF DANGER.

A miner can not, as a matter of law, be charged with the assumption of risk of danger from a falling roof where he was but slightly acquainted with the particular mine, though he knew that the roof sounded "loose and drummy," but where the pit boss assured him that he knew from his greater experience that the place was safe, and thereupon ordered him to continue work, unless the danger was so apparent that a reasonably cautious man would have seen and appreciated it.

Braddich *v.* Phillips Coal Co., 138 Northwestern, 406 (Iowa), November, 1912.

WANT OF KNOWLEDGE OF DANGER.

A miner who, by reason of his youth and inexperience, is unacquainted with the dangers incident to his employment, does not assume the risk thereof where the mine operator has failed to warn him of the danger to which he is exposed and instruct him how to do his work and avoid the danger.

Bartley *v.* Elkhorn Consolidated Coal & Coke Co., 152 Southwestern, 955 (Kentucky), January, 1913.

KNOWLEDGE OF DANGER—NEGLIGENCE.

A miner familiar with all parts of a mine, and with knowledge of the danger of a low place in the roof of a slope, assumed the risk of being injured in riding on a car under such dangerous low place, but his continuance in the work with full knowledge of the existence of such danger did not have the effect of a voluntary assumption by him of the further peril involved in the improper or negligent opera-

tion of the car on which he was carried; and by consenting to be carried and assuming the danger of the low place in the roof, he did not consent to be carried at a speed too great for the safety of such a trip and such dangerous place.

Republic Iron & Steel Co. *v.* Fuller, 60 Southern, 475 (Alabama), December, 1912.

PRESUMPTION AS TO SAFETY.

A driver of coal cars hauling coal out of a mine has the right to presume that the coal mine operator has discharged his duty to him in making an entry a reasonably safe place in which to perform his duties, and as such driver he was not required to inspect the road or side of the entry, or to search for defects therein, but was only required to use ordinary care for his own safety, being such care as a reasonably prudent person would exercise under like circumstances and conditions.

Prairie Creek Coal Mining Co. *v.* Kittrell, 153 Southwestern, 59 (Arkansas), December, 1912.

PRESUMPTION AS TO SAFE CONDUCT OF BUSINESS.

When a miner enters the employment of a mine operator he is not required to use ordinary care to see that the operator's business is conducted in a reasonably safe manner and he does not assume the risks arising from the failure of the mine operator to do its duty unless he knows of its failure and the attendant risks, or where in the ordinary discharge of his own duty he must necessarily acquire such knowledge.

Consumers Lignite Co. *v.* Hubner, 154 Southwestern, 249 (Texas), March, 1913.

DANGERS NOT DISCOVERABLE.

An experienced miner while engaged for the first time in driving a coal car drawn by a mule in and out of a mine is not as a matter of law to be charged with the assumption of the risk of danger from a rock protruding from the rib to a point directly perpendicular over the rail and but slightly above the edge of the car, and where his position as driver was not favorable to the discovery of the particular danger, and where the rock protruding was not so obvious that the miner was bound to know it.

Ek *v.* Phillips Fuel Co., 138 Northwestern, 547 (Iowa), November, 1912.

DANGERS IN ADJACENT WORKINGS.

A miner does not assume the risk of dangers in his place of work resulting from the condition of adjacent workings not under his control nor subject to his inspection.

Gennaux *v.* Northwestern Improvement Co., 130 Pacific, 495 (Washington), February, 1913.

FAILURE OF MINE OPERATOR TO FURNISH SAFE PLACE.

A miner by accepting employment in a coal mine assumes the risk of such accidents and resulting injuries as may happen to him in the ordinary and customary course of his employment, but he does not assume any risk from accident or injury caused by the failure of the mine operator to exercise ordinary care to furnish him a reasonably safe place in which to work, as the risks which he assumes does not embrace or include risks that are brought about by the failure of the master to perform his duty.

Fluehart Collieries Co. *v.* Elam, 151 Southwestern, 34 (Kentucky), December, 1912.

INJURY TO BOY OF PROHIBITED AGE.

A mining company employing a boy in its coal mine in violation of the Alabama statute can not, in an action by such boy for injuries resulting to him in the course of such employment, invoke the defense of assumption of risk.

De Soto Mining & Development Co. *v.* Hill, 60 Southern, 583 (Alabama), December, 1912.

INEXPERIENCED AND YOUTHFUL MINER.

A youthful and inexperienced miner does not assume the risk of injury from falling rock or slate where he was directed by the foreman to procure coal for an engine and where he blasted it as directed by the foreman, and where he was ignorant as to any danger from rock or slate falling from the roof and had not been advised as to such danger or instructed in any manner in respect to his duties, except as to how and where to shoot the coal.

Bartley *v.* Elkhorn Consolidated Coal & Coke Co., 152 Southwestern, 955 (Kentucky), January, 1913.

DEFECTIVE MACHINERY.

A miner does not and can not assume risks caused by the negligence of the mine operator, and although the breakage of a feed chain used to draw a coal-mining machine might occur on occasions of unusual and unavoidable stress on the machine, and accordingly the risks of injury from such causes being natural and incidental to the service would be assumed by a miner operating the machine, yet the miner did not assume the risk resulting from continuing to use a chain so defective as to be unsafe for ordinary uses.

Bradley *v.* Northern Central Coal Co., 151 Southwestern, 180 (Missouri), November, 1912.

DEFECTIVE APPLIANCES.

A miner was engaged with others in sinking a prospect shaft, and for the purpose of carrying on the work and removing the dirt excavated a car was operated over a track extending up to and over a part of the collar of the shaft, and a wooden block or bumper was placed over one of the rails to prevent the car from passing over the

end of the rail, and by reason of the car wheels coming in contact with the block it became worn and defective and the car passed over it and precipitated the miner into the shaft to his injury. In an action by the miner to recover for such injuries it was determined that the miner was not called upon to conduct a series of experiments to ascertain the extent of the damage occasioned by each contact of the car wheels with the block or the force necessary to move the car over the block, and unless the bumper was manifestly insufficient to perform the service required of it the miner is not chargeable, as a a matter of law, with the assumption of the risk.

Killeen *v.* Barnes-King Development Co., 127 Pacific, 89 (Montana), October, 1912.

DANGER FROM LIVE ELECTRIC WIRES.

A court can not decide as a matter of law that a miner assumed the risk of dangers arising from the presence of a live trolley wire where he knew that contact with such wire would shock a person, but did not know there was sufficient power to seriously hurt or harm a person.

Williams *v.* Bunker Hill & Sullivan Mining, etc., Co., 200 Fed., 211, October, 1912.

DANGER FROM UNGUARDED ELECTRIC WIRES.

The fact that a miner has knowledge of some danger by contact with a live electric wire does not necessarily imply that the results of such contact are appreciated by the miner, and it can not be said, as a matter of law, that a miner unskilled in the uses of electricity comprehends or appreciates that if, while obeying his superior and performing his ordinary work, he should touch an uncovered wire with a metal-bound hose he would receive probably severe or fatal injuries by reason of the electric current passing through his body; and though a miner may have knowledge of such danger without an actual appreciation of the risk to which he is exposed, and though the miner assumes the ordinary risks and dangers of working in a mine, as well as the ordinary risks which he knows and appreciates, yet he does not assume the risk of the employer's negligence where the effect of such negligence is not plainly to be observed by the miner upon the reasonable use of his senses.

Williams *v.* Bunker Hill Mining, etc., Co., 200 Fed., 211, October, 1912.

CHANGING CONDITIONS.

The rule that a miner assumes the risk where the conditions are constantly changing and the risks are incident to the operation does not apply where such changed conditions are in an adjacent chute or chamber and are not due to the progress of the work of the miner, but to a "squeeze" of which the operator had knowledge and of which the miner himself had neither knowledge nor warning.

Gennaux *v.* Northwestern Improvement Co., 130 Pacific, 495 (Washington), February, 1913.

FAILURE TO TIMBER ROOF.

An employee in a mine whose duties were those only of a loader does not assume the risk of the operator's failure to properly timber and support the roof of an entry in the mine, where such employee had nothing to do with respect to making the working place safe.

Peabody Alwert Coal Co. *v.* Yandell, 100 Northeastern, 758 (Indiana), February, 1913.

WANT OF KNOWLEDGE OF DANGEROUS STAIRWAY.

A mine employee who had made but one trip down into the shaft of a mine and was escorted down into the mine by two other miners, the purpose being to show him the way down the shaft and where his attention was not called to the fact that the bottom flight of the stairway was without banisters, did not on entering the mine on the second day to begin work assume the risk of an injury due to his falling on such lower stairway while reaching for the missing banister after the light on his cap had been extinguished by some falling substance.

Consumers Lignite Co. *v.* Hubner, 154 Southwestern, 249 (Texas), March, 1913.

CONVICT MINER NOT CHARGED WITH THE ASSUMPTION OF RISKS.

A convict working in a mine under involuntary servitude can not be held to have assumed the risk of negligence on the part of the coal operator's employees in the mine nor of his fellow convicts at work in the mine.

Sloss-Sheffield Steel & Iron Co. *v.* Weir, 60 Southern, 851 (Alabama), January, 1913.

I. PROMISE OF OPERATOR TO REPAIR—EFFECT.

MINER MAY RELY ON PROMISE.

A miner has the right to rely on the promise of a mine foreman to remedy the dangerous condition of the roof of an entry in a mine where the miner was carrying out the immediate directions and orders of such foreman and where the danger was not imminently obvious.

Broadway Coal Mining Co. *v.* Robinson, 150 Southwestern, 1000 (Kentucky), November, 1912.

A miner with but slight acquaintance with the particular mine in which he was working may rely on the promise of the mine operator to do the necessary timbering as soon as the timbers could be gotten into the mine from the surface, although he knew that the roof of his room sounded "loose and drummy," but the pit boss assured him that he knew from his greater experience the place was safe and ordered him to continue work, and where the danger was not so apparent that a reasonably cautious man would have seen and appreciated it.

Braddich *v.* Phillips Coal Co., 138 Northwestern, 406 (Iowa), November, 1912.

MINING LEASES.

A. Leases Generally—Construction
B. Coal Leases.
C. Oil and Gas Lands.
D. Phosphate Lands.

A. LEASES GENERALLY—CONSTRUCTION.

LEASEHOLD INTEREST IN MINING CLAIM.

A leasehold interest in a mining claim under a lease for five years is not a freehold estate.

Equitable Mines Corporation *v.* Maxwell, 127 Pacific, 243 (Colorado), October, 1912.

DEVELOPMENT AND FORFEITURE.

Leases of lands for the exploration and development of minerals are generally executed by the lessor in the hope and upon the condition, express or implied, that the land shall be developed for minerals; and it would contravene the nature and spirit of such a lease to permit the lessee to hold it any considerable length of time without making any effort whatever to develop the land according to the express or implied purpose of the lease. And though equity abhors a forfeiture, yet when such a forfeiture works equity and is essential to public and private interests in the development of minerals in land, then the lessor as well as the public will be protected from the laches of a lessee, and a forfeiture under such circumstances will be decreed.

Killebrew *v.* Murray, 151 Southwestern, 662 (Kentucky), December, 1912.

SURRENDER OF LEASE—FORFEITURE.

A common form of lease of undeveloped lode mining property which the lessor seeks to have developed at the expense of the lessee who assumes the burden of expense of developing the property in the hope of finding a paying mine is nonforfeitable so long as the lessee properly performs the required labor, but failing to perform the required work the lessor may forfeit the lease, and the lessee may after the performance of a certain amount of labor upon the property abandon or surrender the lease, if the prospect for profitable mining will not warrant a continuation, as the law assumes that it was in the contemplation of the parties that the showing of conditions upon the leased premises that would not justify further expenditures upon the part of the lessee warrants him in terminating the lease.

Girton *v.* Daniels, 129 Pacific, 555, p. 557 (Nevada), February, 1913.

DUTY OF LESSEE TO PROTECT SURFACE.

The lessee of a mining lease must protect the surface of the ground in which a mine is located.

Gulf Pipe Co. *v.* Pawnee-Tulsa Petroleum Co., 127 Pacific, 252 (Oklahoma), October, 1912.

LEASE NOT ACCEPTED.

A mining company can not be held liable under the terms of a lease which it never in fact accepted or acted upon.

Stiritz *v.* Big Muddy Mining Co., 100 Northeastern, 968 (Illinois), February, 1913.

DELIVERY OF LEASE IN VIOLATION OF CONDITIONS.

A person in the possession of a mining lease and authorized to deliver the same to the lessee only after it had been submitted to and approved by a certain named person can not make a valid delivery of such lease to the lessee without its being submitted to and approved by the person named.

Stiritz *v.* Big Muddy Mining Co., 100 Northeastern, 968 (Illinois), February, 1913.

CONSIDERATION FOR ASSIGNMENT OF LEASE.

The assignment of a mining lease for the development of mining property, where work done under the lease may disclose a mine of great value, is a sufficient consideration to support an agreement on the part of one assignee to bear one-third of the expenses of developing the mine, though the subsequent development of the property shows that the lease was in fact valueless.

Girton *v.* Daniels, 129 Pacific, 555, p. 557 (Nevada), February, 1913.

ORAL AGREEMENT TO SHARE IN LEASE.

An oral agreement by which three persons agree to be equal coowners of a mining lease and each contributes the equal one-third part of the work and expenses in developing the mining claims covered by the lease, and share equally in any profits arising from the business, is not void as being within the statute of frauds, where the lease under its provisions could have been terminated by the act of the parties within a year, and one of the three persons failing to contribute his part of the assessment work is liable to the others.

Girton *v.* Daniels, 129 Pacific, 555 (Nevada), February, 1913.

B. COAL LEASES.

SUIT TO CANCEL COAL LEASE.

A lessor may maintain a bill to cancel and annul a coal-mining lease where the terms of the lease have been violated by reason of the failure to pay rents and royalties, and failure to work the mines with

reasonable diligence, and failure to open and operate the mine in a skillful and minerlike way, and where it is averred that the defendant, assignee of the lease, is insolvent and unable to work the property as contemplated by the lease.

Peerless Coal Co. *v.* Lamar, 60 Southern, 837 (Alabama), January, 1913.

RIGHTS UNDER COAL LEASES.

A lease by which the lessor leased certain coal lands, together with certain surface privileges for mining purposes, to the lessee for a stated period or until the coal and minerals were worked out does not authorize the lessee to use the leased premises or the openings and apertures to the mine on the leased lands for the purposes of mining coal from adjacent lands not belonging to the lessor, and such improper use of the leased lands by the lessee will be enjoined, as the uses expressly granted are equivalent to a negative covenant on the part of the lessee that the leased premises would not be used for purposes other than those stipulated.

Brasfield *v.* Burnwell Coal Co., 60 Southern, 382 (Alabama), December, 1912.

RIGHTS OF LESSEE UNDER LEASE FOR SEPARATE TRACTS OF COAL LANDS.

A lessor who leased a particular tract of coal land to the lessee for a stated period or until the coal or minerals were all worked out, with the necessary surface rights, may enjoin such lessee from using the surface rights for the mining of coal from an entirely separate tract of land held under another and distinct lease from a different lessor.

Brasfield *v.* Burnwell Coal Co., 60 Southern, 382 (Alabama), December, 1912.

RIGHT OF LESSEE UNDER COAL LEASE.

A lease of separate tracts of coal lands to a lessee for a stated period or until the coal was mined out, with the necessary surface privileges for mining, did not authorize the lessee, after mining the coal from one tract, to extend its tunnels from the tract so mined through adjoining coal lands owned by a different person in order to reach a separate tract held under his lease, and to mine out, by extending such tunnels and by the use of the surface privileges, the coal in such adjoining tract, though this was the most practical and economical method of mining under his lease the coal in the separate tract.

Brasfield *v.* Burnwell Coal Co., 60 Southern, 382 (Alabama), December, 1912.

AUTHORITY TO DUMP REFUSE ON SURFACE.

A lease of coal lands gave the lessee certain surface privileges for the use of mining, including the dumping of slate taken from the leased premises in the operation of the mine, but it did not either

expressly or impliedly authorize the lessee to dump slate on the surface taken from coal mines held under a separate and distinct lease from other lessors.

Brasfield *v.* Burnwell Coal Co., 60 Southern, 382 (Alabama), December, 1912.

C. OIL AND GAS LEASE.

CONSTRUCTION.

Oil and gas leases must be construed in the light of surrounding circumstances. It is a matter of common knowledge that anyone can not estimate the exact time within which a well can be completed; that delays due to trivial or grave accidents and other causes beyond the possibility of accurate anticipation are likely to occur; and that under such circumstances adherence to the strict letter of an extension clause of a lease might inflict disastrous losses upon diligent and honest lessees, a consequence obviously not within the intent of either party. Such leases are drawn for all sorts of territory, some known to be rich in minerals and others not known to contain any, and accordingly their terms are varied to allow for such differences, and in territory remote from profitable operation such leases are often taken without reasonable expectation of immediate advantage to the lessor other than a nominal rental in the form of delay money and with the expectation of delay in drilling until neighboring lands are shown to contain minerals sufficient to justify exploration and operation.

South Penn Oil Co. *v.* Snodgrass, 76 Southeastern, 961 (West Virginia), January, 1913.

IMPLIED COVENANT.

There is always an implied covenant on the part of a lessee in an oil and gas lease to operate the leased property for the mutual benefit of both parties, and such covenant imposes on the lessee a duty to drill as many wells on the leased premises as are necessary to obtain therefrom all the oil and gas that is reasonably fair and profitable to extract and market; but this implied covenant is subject to the right of the lessees at any time wholly to cease operations and to abandon the property, in the absence of an express covenant to operate the premises, and under such implied covenant the lessee has an option to give up his lease at any time without liability, or to exhaust the mineral resources of the leased premises, but choosing the latter he must operate in a skillful, diligent, and just manner as long as he occupies and uses the premises.

Hall *v.* South Penn Oil Co., 76 Southeastern, 124 (West Virginia), October, 1912.

DILIGENCE AND GOOD FAITH—OPERATIONS AND DISCOVERY.

Under the ordinary oil and gas lease mere discovery of mineral vests an estate, and without actual production gives a right to continue operations, and cessation of actual production is excused by

adverse conditions and miscarriages which must have been contemplated by the parties, though not specified in the lease; the tests of duty and right are diligence and good faith in almost all cases when the terms read in the light of the conditions and circumstances will permit their observance.

South Penn Oil Co. *v.* Snodgrass, 76 Southeastern, 961 (West Virginia), January, 1913.

REASONABLE TIME TO ENTER AND PROSPECT.

While a "reasonable time" to enter upon premises and prospect under an oil and gas lease is in a sense uncertain, vague, and indefinite, and may be dependent upon surrounding circumstances, yet a lessee under such a lease acquires substantial rights that will receive the same consideration and protection at law and in equity as will those of a lessee whose period for entry and prospecting is definitely fixed.

Smith *v.* Guffy, 202 Federal, 106, October, 1912.

PRODUCTION OF OIL IN PAYING QUANTITIES.

A stipulation in an oil and gas lease to the effect that the term shall continue as much longer thereafter as oil or gas shall be found in paying quantities requires that oil or gas shall be actually discovered and produced in paying quantities within the term; and, under such stipulation, it is not enough to complete a well having some indications of oil, or a well that might be developed into a well producing oil in paying quantities, but the lessee must actually find oil in paying quantities.

South Penn Oil Co. *v.* Snodgrass, 76 Southeastern, 961 (West Virginia), January, 1913.

LESSEE ENTITLED TO EXCLUSIVE POSSESSION.

A lessee entitled to the exclusive right of gas and oil produced on the tract of land under an unexpired lease from the owner of the land may enjoin any trespass thereof, and the threatened drilling of a well by a stranger for the purpose of extracting the oil and gas, as the damages that would accrue in such a case are regarded as incapable of definite ascertainment and an action at law does not give adequate relief.

Campbell *v.* Smith, 101 Northeastern, 89 (Indiana), March, 1913.

EXCLUSIVE RIGHT—EFFECT OF RELEASE.

An oil and gas lease gave the lessee the exclusive right to drill and sink wells for oil and gas on the leased premises and to take and remove the same therefrom, and the right to dig and use water wells thereon, with the exclusive right to lay pipes and mains, and an ex-

clusive right of way to conduct the oil and gas from and through the leased premises. Subsequently, the lessor platted a portion of the leased premises as an addition to a village and dedicated streets and alleys to the public, and thereupon the lessee, for a valuable consideration, released all right to drill for oil, gas, or water on the lots or streets so platted, as well as the right to lay pipes and mains in or across such platted premises; and the release further provided that if the lessor thereafter granted the right to drill for oil or gas upon any of such lots or streets or to remove oil or gas therefrom or lay gas or oil pipes therein, then the original lease shall be reinstated in full force and effect. In an action between the lessee and a gas company supplying gas as a public-service corporation to the inhabitants of the village it was decided by the court that the grant of the right by the village to such public-service corporation to lay its pipes and mains through the streets of such platted part of the original leased premises did not, under the terms of such release, revive the exclusive right of the original lessee to carry on its operations upon such platted and released part of the original leased premises, as the original lessor had nothing to do with, and no power over, the granting of the right to such public-service company to lay its pipes and mains in the public streets, and where no right was given to such public-service company by the lessor to drill or sink any such enumerated wells upon any of the lots of such platted portion of the original leased premises.

Carroll *v.* Silver Creek Gas & Improvement Co., 139 New York Supp., 161, October, 1912.

LESSEE CAN NOT MAINTAIN INJUNCTION BEFORE PROSPECTING.

A lessee in an oil and gas lease providing for the payment of a royalty to the lessor on the production of oil or gas, and requiring the lessee to complete a well within a stated time or pay a stipulated sum during the period of delay, and giving the lessee the option to cancel it at any time on payment of a nominal sum, can not, prior to the discovery of any oil or gas by him, maintain a suit in equity against either the lessor or a subsequent lessee who has with notice of the prior lease entered upon and is operating the premises, for the protection and enforcement of the right conferred by the lease, but must depend solely upon his remedy at law.

Smith *v.* Guffy, 202 Fed., 106, October, 1912.

LESSEE MAY ENJOIN SUBSEQUENT LESSEE FROM OPERATING.

An oil and gas lease for certain described premises, with the right to enter thereon and with the ordinary privilege of operating the same for oil and gas, gives to the lessee a vested interest in the oil obtained from such premises and authorizes the lessee to maintain

an action for damages and to enjoin a subsequent lessee of the same premises claiming under a second lease from the landowner from operating the premises and from taking and removing oil therefrom.

Kahle *v.* Crown Oil Co., 100 Northeastern, 681 (Indiana), January, 1913.

SECOND LESSEE NOT WILLFUL TRESPASSER.

Where a court of general and competent jurisdiction declared an oil and gas lease invalid and canceled the same and on the faith of such determination the landowner leased the same premises to another person who thereupon operated the same and mined and removed oil therefrom, such second lessee can not be regarded as a willful trespasser and held liable in damages as such where the original lessee subsequently appealed his case to the supreme court and the judgment of the lower court was reversed and his lease held valid.

Kahle *v.* Crown Oil Co., 100 Northeastern, 681 (Indiana), January, 1913.

DUTY AS TO PLACE OF DRILLING.

The lessee of oil and gas under a large tract of land can not drill a well where it will endanger the property and lives of others who are lawfully using the surface when such lessee can drill at other places that are equally advantageous to him and will not endanger the lives and property of those using the surface.

Gulf Pipe Line *v.* Pawnee-Tulsa Petroleum Co., 127 Pacific, 252 (Oklahoma), November, 1912.

ASSIGNMENT OF LEASE—EFFECT AND VALIDITY.

Under the statute of Pennsylvania a prothonotary of a common pleas court is not authorized to take the probate of an unacknowledged assignment of an oil and gas lease to qualify it for record, and the record of such an assignment is a nullity and confers no right upon the assignee.

Midland Gas Co. *v.* Jefferson County Gas Co., 85 Atlantic, 853 (Pennsylvania), November, 1912.

ASSIGNMENT OF OIL LEASE AND RIGHTS OF ASSIGNEE.

A pretended assignee claiming an oil and gas lease under an invalid assignment can not estop the lessor from executing a second lease, the original having been surrendered and canceled, by inducing him to accept the rentals stipulated in the first lease for a failure to complete a well on the premises within the specified time by falsely representing that a fraud had been perpetrated in the cancelation and surrender of the lease and that he was in fact the rightful owner of such a lease.

Midland Gas Co. *v.* Jefferson County Gas Co., 85 Atlantic, 853 (Pennsylvania), November, 1912.

LEASE OF INDIAN LANDS—ASSIGNMENT.

The recordation laws of Arkansas extended to and put in force in the Indian Territory before statehood, and there construed, do not require the recording of an assignment of an oil and gas lease of Indian lands in order to give the assignment validity.

Scott *v.* Signal Oil Co., 128 Pacific, 694 (Oklahoma), December, 1912.

LEASE OF INDIAN LANDS—ASSIGNMENT OF ROYALTY.

An assignment of royalty due under a gas and oil lease given by a Quapaw Indian on his allotment of land is not an alienation of a part of his land within the meaning of the act of March 2, 1895 (28 Stat., 907), making such allotments inalienable for 25 years.

Wat-tah-noh-zhe *v.* Moore, 129 Pacific, 877 (Oklahoma), January, 1913.

LIABILITY OF ASSIGNEE.

In an action by a lessor of an oil and gas lease against an assignee of the lease, where the fact of the assignment of a lease arose out of a transaction, of which the lessor was not cognizant, between the lessee and the defendant in the action, proof of possession of the leased premises by such defendant is sufficient to warrant an inference that the lease is assigned and that the defendant is in possession of the premises as an assignee of the lessee, and it may be inferred that a contract between such assignee and the lessor, as to the drilling of additional wells, was made with reference to the original lease, and especially where it is shown that the assignee had in his possession the original lease.

Indiana Natural Gas & Oil Co. *v.* Duling, 100 Northeastern, 96 (Indiana), December, 1912.

FAILURE TO OPERATE—REMEDY OF LESSOR.

Under an oil lease the failure of the lessee to drill additional wells under conditions imposing the duty to do so makes the lessee liable in damages to the lessor for which the remedy at law is adequate, but such failure affords no ground for either part or entire cancellation or rescission of the lease, in the absence of a stipulation to that effect.

Hall *v.* South Penn Oil Co., 76 Southeastern, 124 (West Virginia), October, 1912.

TERMINATION AND EXTENSION OF LEASE.

Under an oil and gas lease for a term of 10 years, and as long thereafter as oil or gas is produced from the leased premises, the discovery of oil, though in unremunerative quantities, by the drilling of a well within the specified term of 10 years, will extend the term where there

has been a faithful, diligent, and expensive effort to make the well produce in paying quantities and otherwise develop the leased premises, under the rule that discovery of oil within the term vests an estate, terminates the mere right of exploration, and creates the relation of landlord and tenant until the end of the fixed term, and the estate so vested can be brought to an end within the term only by a declaration of forfeiture for abandonment or surrender.

South Penn Oil Co. *v.* Snodgrass, 76 Southeastern, 961 (West Virginia), January, 1913.

CONDITIONS AND FORFEITURE.

A lease of oil lands providing that if a well was not drilled on the premises within one year the lease should be void, unless the lessee should within 60 days from the beginning of each year pay a rental of 25 cents per acre until a well was drilled or the lease canceled, requires the lessee either to drill a well within one year or to pay the required rental, and is in effect an option agreement, and by the lessee failing to do either the lease became forfeited and no rent was due thereunder.

Deming Investment Co. *v.* Lanham, 130 Pacific, 260 (Oklahoma), February, 1913.

BREACH OF CONDITION—FORFEITURE.

An oil and gas lease requiring the lessee to commence operation within four months and continue with diligence until completed, unavoidable delays and accidents excepted, and providing that the lease shall, upon the failure to complete a well as provided, be null and void, is forfeited and is of no effect where the lessee drilled one unproductive well and drilled another well to a depth of about 1,200 feet and then abandoned the premises, removed all drilling machinery, and made no further effort to develop the leased premises; and such abandonment by the lessee was conclusive on the question of his construction of the lease, and conclusively shows that he understood that the lease became void by its express terms, and he could, therefore, confer no right by a subsequent pretended assignment of the lease.

Shannon *v.* Long, 60 Southern, 273 (Alabama), December, 1912.

CANCELLATION—PLEADING.

In an action to cancel an oil lease because of the lessee's failure properly to develop the premises and to drill wells sufficient to prevent loss by drainage of the oil or gas from the leased premises through wells owned by the lessee on adjacent lands the complaint must state facts showing with reasonable certainty such drainage in substantial quantities, and should show a clear intent on the part

of the lessee to obtain the oil and gas from the leased premises through his own wells on adjacent lands by his failure and refusal properly to develop and drill on the leased premises.

Hall *v.* South Penn Oil Co., 76 Southeastern, 124 (West Virginia), October, 1912.

CANCELLATION—WAIVER.

A vendor of real estate reserving a vendor's lien to secure the unpaid purchase money, and reserving also one-half the oil and gas can not, after the foreclosure of his lien and the purchase of the property on decretal sale, maintain an action to cancel an oil lease on the land executed by the vendee during his rightful possession where such vendor has continued to receive and accept the rentals payable for such one-half of the oil and gas reserved by him, as he thereby recognized the right of his vendee to make a lease of the entire oil and gas interest, on payment to him of such rentals for the oil and gas thus reserved.

Batten *v.* Hope Natural Gas Co., 76 Southeastern, 889 (West Virginia), December, 1912.

LEASE NOT AFFECTED BY SUBSEQUENT DEED.

A landowner leased his lands to a lessee for oil and gas development, the lease providing for the delivery to the lessor, in a pipe line, of a stipulated part of all oil produced and for the payment to the lessor of a stipulated sum per year for each gas well used. A subsequent deed by the landowner granting a certain portion of all the oil and gas found within a part of such leased tract did not grant such stipulated part of the oil and gas in place in the ground, but only passed to such grantee the right to have delivered in the pipe line, by the lessee, such stipulated part of the oil produced and the stipulated part of the rental for the gas wells.

Horner *v.* Philadelphia Co., etc., 76 Southeastern, 662 (West Virginia), November, 1912.

JOINT LESSORS—SINGLE LEASE.

An oil and gas lease executed by three several owners of contiguous lands that describes the leased lands as a single tract without any intimation of several ownerships of parts thereof, or any suggestion of intent to make separate tenancies, and stipulates for a single well on the premises, or in lieu thereof the payment of a lump sum of money as rental, and provides for the liquidation of all rentals upon the completion of the well, is, as between the lessors and the lessee, a joint lease of a single tract of land, and the drilling of a well and production from any place on the premises would be a compliance with the terms of the lease and would, according to its provisions, extend the lease for another term of equal duration.

South Penn Oil Co. *v.* Snodgrass, 76 Southeastern, 961 (West Virginia), January, 1913.

CONDITIONAL TENANCY.

An oil and gas lease for a stated term of years and as much longer as oil or gas is produced from the leased premises that recites a nominal consideration and imposes conditions for nonperformance by which forfeiture is imposed, but contains no covenant on the part of the lessee to drill a well or to pay money for failure to do so, creates only a conditional tenancy that until its expiration is binding upon the lessor in accordance with the terms of the lease, if the stipulated conditions are performed.

South Penn Oil Co. *v.* Snodgrass, 76 Southeastern, 961 (West Virginia), January, 1913.

CONTRACT FOR SELLING OIL LEASES—STATUTE OF FRAUDS.

A parol contract for the sale of oil leases is within the statute of frauds, but where such an agreement has been executed and the contract of sale fully performed by proper transfer of the leases and nothing remains to be done except paying the purchase price, the statute of frauds can not be invoked as a means of defeating an action for the purchase price.

Love *v.* Kirkbride Drilling & Oil Co., 129 Pacific, 858 (Oklahoma), January, 1913.

OWNERSHIP OF OIL IN PLACE.

An oil and gas lease of certain described real estate with the exclusive right of drilling for gas and oil does not create in the lessee an ownership of the oil and gas in the earth, but gives to the lessee the exclusive right to mine for oil and gas on the premises, and as oil and gas are not the subject of property until reduced to possession, the lease is no more than an agreement for the exclusive right to prospect and market the product, and creates the difference between a lease of mines and a license to work mines—the former being a distinct conveyance of an actual interest or estate in lands, while the latter is only the incorporeal right to be exercised in the lands of others and may be held apart from the possession of the land.

Campbell *v.* Smith, 101 Northeastern, 89 (Indiana), March, 1913.

D. PHOSPHATE LANDS.

REASONABLE TIME FOR BEGINNING OPERATION.

In the absence of a provision as to the time for the commencement of operations in a lease of lands for mining phosphate, the presumption is that operations were to begin within a reasonable time; but where the lease fixed a time within which operations should begin, then the time fixed must be regarded as a reasonable

time, and on failure to begin the mining operations within the time fixed, or within a reasonable time in the absence of any fixed time, such failure may be treated by the grantor as an abandonment by the grantee of the leased premises.

Killebrew *v.* Murray, 151 Southwestern, 662 (Kentucky), December, 1912.

TERMINATION OF LEASE.

A lease for mining phosphate from certain lands for a period of 10 years, and by the terms of which the lessee may at any time, by written notice, terminate the lease, is in legal effect terminable at the will of the lessor, under the rule that a lease terminable at the pleasure of the lessee is also terminable at the will of the lessor.

Killebrew *v.* Murray, 151 Southwestern, 662 (Kentucky), December, 1912.

ABANDONMENT.

The failure to begin mining operations within a reasonable time under a lease of phosphate lands may be construed as an abandonment of the lease, the same as the failure to begin operation under an oil or gas lease; but the failure of a lessee to proceed with the work of development would operate as an abandonment of an oil or gas lease in a shorter time than if such failure were to result in the case of a coal or phosphate lease, because of the greater danger of loss by delay in the former by reason of the migratory character of oil and gas.

Killebrew *v.* Murray, 151 Southwestern, 662 (Kentucky), December, 1912.

CANCELLATION OF LEASE.

A lease of certain land for the sole purpose of mining and excavating for phosphate and phosphate-bearing rock for a term of 10 years and so long thereafter as such phosphate or phosphate-bearing rock may be found in quantities considered by the lessee as profitable, and providing for a certain stipulated royalty per ton and the payment of an annual nominal sum whether the lands are mined or not, and providing that the lessee might determine when and how much of such land shall be mined during each year, evidences an intention on the part of a lessor to obtain an income or profit in royalties from the lessee's mining operation, and especially where it appeared that the lessee represented that the mining of the phosphate on such land would pay in royalties as much as $500 per acre, and where it also appeared that the lessee represented that he would begin the work of mining within a year or 18 months. It is not to be presumed in such case that the lessor would have encumbered his land with such a lease for the annual payment of a nominal amount, but it may be

presumed that the real consideration or inducement for the granting of the lease was the mining of the phosphate which would be commenced within a reasonable time. The lease is therefore lacking in mutuality and is only a unilateral executory contract, unenforceable by either party, and on failure of the lessee to begin mining operations within a reasonable time the lessor may compel a cancellation of the lease.

Killebrew *v.* Murray, 151 Southwestern, 662 (Kentucky), December, 1912.

MINING PROPERTIES.

A. TAXATION.
B. INSPECTION.
C. TRESPASS.

A. TAXATION.

TAXATION OF MINERALS.

The constitution and statutes contemplate that taxes shall be levied on all lands in proportion to the true value, and this end can not be attained by permitting mineral lands to escape the burden of all values except agricultural ones.

Board, etc., of Greene County *v.* Lattas Creek Coal Co., 100 Northeastern, 561 (Indiana), January, 1913.

TAXATION OF COAL IN PLACE.

Where there has been no severance of title the owner of the fee holds the land taxable for its entire value, including that of the underlying minerals; but where there has been a severance the owner of the fee or the surface is properly assessable with the value of the surface, and the owner of the mineral with its value, and on this theory coal in place is subject to taxation where there has been a severance from the surface ownership.

Board, etc., of Greene County *v.* Lattas Creek Coal Co., 100 Northeastern, 561 (Indiana), January, 1913.

TAXATION—RELEASE BY STATE.

The constitutional provision by which the State of Texas released to the owner or owners of the soil all mines and minerals thereon subject to taxation was curative in its nature and retrospective in its effect, and was intended as an extinguishment of the rights of the State in only those mines and minerals in soil owned at the time of its adoption, and accordingly the title of the State to all other mines and minerals in lands of the public domain remained unimpaired and unaffected. And the State could provide by statute that any

sale or disposition of mineral lands should be understood to be with the reservation of the minerals thereon, and to be subject to location as provided.

Cox *v.* Robinson, 150 Southwestern, 1149 (Texas), November, 1912.

ASSESSMENT OF MINERALS—METHODS OF VALUATION.

The difficulty in obtaining a correct valuation of coal in place does not of itself render such coal nontaxable, and under the statutes of Indiana the assessor in obtaining the value of coal in place has a right to examine the owner or the officers of a corporation in order to elicit from them the result of any exploration or developments for coal or mineral and to ascertain the purchase price of such coal and to consider any development in the immediate neighborhood as well as sales of mineral rights or other facts constituting elements of value.

Board, etc., of Greene County *v.* Lattas Creek Coal Co., 100 Northeastern, 561 (Indiana), January, 1913.

TAXATION OF MINERALS.

It is the duty of taxing officers to assess the entire real estate holdings of the owner not severed or detached by his own act as a single body, and they have no authority to assess them severally for the purpose of taxation; and this rule applies where a tract of land has been assessed as a whole and part of the surface or minerals has been sold.

McCormick *v.* Berkley, 86 Atlantic, 97 (Pennsylvania), January, 1913.

SEVERANCE OF SURFACE AND MINERALS.

Where a landowner sold an entire tract of land, including the mineral therein, and reserved a part of the surface only, the part so reserved was severed from the residue of the tract, but the whole of the residue, surface as well as mineral, continued to be a single body of real estate, the title to which was vested by the single conveyance in a subsequent owner, and it was the duty of the taxing officers to assess the surface and the minerals together as an entire body of real estate belonging to the owner, and the minerals should not be separated from the surface and assessed separately.

McCormick *v.* Berkley, 86 Atlantic, 97 (Pennsylvania), January, 1913.

PATENTED CLAIMS.

The constitution of Nevada provides for a uniform rate of assessment and taxation of all property, except mines and mining claims, and provides also that the proceeds of these, when not patented,

shall be assessed and taxed, and when patented each patented mine shall be assessed at not less than $500, except when $100 in labor has been actually performed on any such patented mine during the year in addition to the tax on the net proceeds. This is construed to mean that patented mines shall be assessed at not less than $500 if $100 in labor has not been actually performed upon such patented mine during the year, but if such labor is so performed upon a patented mine it becomes exempt from assessment and taxation, except on the net proceeds, the same as an unpatented claim. The evident purpose of the legislature was to stimulate the prospecting and operation of patented mines and not encourage the owners to have such mines lie dormant and unprospected, and to require them to pay a tax if they did not perform annual labor worth $100, but to exempt them from this tax if they did perform the labor.

Goldfield Consolidated Co. *v.* State, 127 Pacific, 77 (Nevada), October, 1912.

B. INSPECTION.

RIGHT OF STOCKHOLDER.

A stockholder of a mining corporation has the right to visit and inspect the mines of the corporation, and this right rests upon the theory that the persons in charge of the corporation are merely the agents of the stockholders who are the real owners of the property, and for the further reason that from the nature of mining property an inspection of the books would afford no information of the nature of the ore bodies exposed or the manner in which the work was carried on.

Hobbs *v.* Tom Reed Gold Mining Co., 129 Pacific, 781 (California), February, 1913.

C. TRESPASS.

MEASURE OF DAMAGES.

A person who, in the honest belief that he is in the lawful exercise of his rights, unintentionally enters upon the property of another and removes ore or minerals is liable in damages for the value of such ore or minerals in its original place, and for no more, but in case of a willful and intentional trespass the wrongdoer is liable for the full value of such ore or mineral taken at the time of its conversion without any deduction for the labor bestowed or expense incurred in mining the same.

Kahle *v.* Crown Oil Co., 100 Northeastern, 681 (Indiana), January, 1913.

WILLFUL TRESPASS—MEASURE OF DAMAGES.

In case of a willful or negligent trespass in mining and removing oil the trespasser is charged with the value of the oil taken, without any deduction for the cost of taking it out; but if the trespasser was inno-

cent of the fact that he was trespassing, and guilty of no negligence in entering upon the ground and extracting the oil, then the cost of extracting should be allowed him.

Campbell *v.* Smith, 101 Northeastern, 89 (Indiana), March, 1913.

TRESPASS ON VEIN BELOW SURFACE—REMEDY.

In an action by one mining company against another for damages, to determine the ownership of a vein having its apex within the exterior boundaries of a claim of the suing company and which extends on its dip outside of the exterior boundaries of such claim and underneath the surface boundaries of the defendant company's claim, and from which the defendant company is working and extracting large amounts of ore, the refusal of the trial court to grant an injunction to prevent the defendant company from working such vein and from removing the ore therefrom until the controversy is settled will not be disturbed on appeal unless it clearly appears that the trial court has abused its discretion.

Stewart Mining Co. *v.* Ontario Mining Co., 129 Pacific, 932 (Idaho), January, 1913.

DAMAGES FOR INJURIES TO MINERS.

ELEMENTS OF DAMAGES.

In determining the damages to be assessed for the death of a miner a jury may consider his age at the time of his death; his habits or industry, his ability to labor, his capacity to earn money, the wages earned at the time of his death, the amount he had been in the habit of contributing to his family, his expectancy, his possible illness, his possible want of employment, the effect upon his earning capacity of his advancing years, as well as the expectation of the lives of the members of his family.

Meola *v.* Quincy Mining Co., 140 Northwestern, 460 (Michigan), March, 1913.

A driver of coal cars injured by the falling of loose coal, through the negligence of the coal-mine operator, had a right of action against the operator, as soon as the injury occurred, for all damages he sustained, and the true measure for the loss of earning power is the present value of such damages during the expectancy of his life had the injury not occurred, and the fact that he was rendered a helpless and hopeless paralytic, with a total loss of earning power for the full period of his expectancy, was one element of his damages, and his bodily pain and mental anguish on account of his condition, which he must endure as long as he lives, are other and proper elements of damages.

Prairie Creek Coal Mining Co. *v.* Kittrell, 153 Southwestern, 59 (Arkansas), December, 1912.

PERMANENT INJURIES—LIFE TABLES AS EVIDENCE.

In an action by a miner for damages for permanent injuries, standard life tables showing the ordinary expectancy of life are admissible in evidence on the question of damages, the same as in actions for death, as in either case the question is one of the destroyed capacity to earn money, and whether this is a part or a total destruction is not material.

Proctor Coal Co. *v.* Beaver, 152 Southwestern, 965 (Kentucky), January, 1913.

EXCESSIVE DAMAGES.

In an action for the wrongful death of a miner 35 years of age and capable of earning $65 per month a judgment for $18,000 was regarded as excessive, and no recovery in excess of $14,000 should be permitted.

Delaski *v.* Northwestern Improvement Co., 127 Pacific, 421 (Washington), September, 1912.

A verdict for $5,040 for the death of a miner was regarded as excessive where, based upon the evidence of his past contributions to his family, the miner if he had lived and had kept up such contributions during his entire expectancy would have contributed less than $1,300.

Meola *v.* Quincy Mining Co., 140 Northwestern, 460 (Michigan), March, 1913.

DAMAGES NOT EXCESSIVE.

A verdict for $500 for damages for injuries to a miner who was mashed and bruised by a fall of slate and was laid up for several weeks and was compelled for a time to go on crutches and suffered from an abscess on his back can not be regarded as excessive.

Ada Coal Co. *v.* Linville, 153 Southwestern, 21 (Kentucky), February, 1913.

A judgment for $2,500 was not excessive for an injury to a miner where it appeared that his leg was broken and his ankle dislocated, and that after the fracture healed it left him with a permanently crooked and deformed leg.

Stony Fork Coal Co. *v.* Lingar, 153 Southwestern, 6 (Kentucky), February, 1913.

A court can not say as a matter of law that a verdict of $18,000 is excessive where a miner 29 years old, strong and well and capable of earning on an average of $4 a day, is crippled for life and can earn practically nothing, is partly paralyzed, and suffers constant pain.

Gennaux *v.* Northwestern Improvement Co., 130 Pacific, 495 (Washington), February, 1913.

PUBLICATIONS ON MINE ACCIDENTS AND METHODS OF MINING.

The following Bureau of Mines publications may be obtained free by applying to the Director, Bureau of Mines, Washington, D. C.:

BULLETIN 10. The use of permissible explosives, by J. J. Rutledge and Clarence Hall. 1912. 34 pp., 5 pls., 4 figs.

BULLETIN 15. Investigations of explosives used in coal mines, by Clarence Hall, W. O. Snelling, and S. P. Howell, with a chapter on the natural gas used at Pittsburgh, by G. A. Burrell, and an introduction by C. E. Munroe. 1911. 197 pp., 7 pls., 5 figs.

BULLETIN 17. A primer on explosives for coal miners, by C. E. Munroe and Clarence Hall. 61 pp., 10 pls., 12 figs. Reprint of United States Geological Survey Bulletin 423.

BULLETIN 20. The explosibility of coal dust, by G. S. Rice, with chapters by J. C. W. Frazer, Axel Larsen, Frank Haas, and Carl Scholz. 204 pp., 14 pls., 28 figs. Reprint of United States Geological Survey Bulletin 425.

BULLETIN 44. First national mine-safety demonstration, Pittsburgh, Pa., October 30 and 31, 1911, by H. M. Wilson and A. H. Fay, with a chapter on the explosion at the experimental mine, by G. S. Rice. 1912. 75 pp., 7 pls., 4 figs.

BULLETIN 45. Sand available for filling mine workings in the Northern Anthracite Coal Basin of Pennsylvania, by N. H. Darton. 1913. 33 pp., 8 pls., 5 figs.

BULLETIN 46. An investigation of explosion-proof mine motors, by H. H. Clark. 1912. 44 pp., 6 pls., 14 figs.

BULLETIN 48. The selection of explosives used in engineering and mining operations, by Clarence Hall and S. P. Howell. 1913. 50 pp., 3 pls., 7 figs.

BULLETIN 51. The analysis of black powder and dynamite, by W. O. Snelling and C. G. Storm. 1913. 80 pp., 5 pls., 5 figs.

BULLETIN 52. Ignition of mine gases by the filaments of incandescent electric lamps, by H. H. Clark and L. C. Ilsley. 1913. 31 pp., 6 pls., 2 figs.

BULLETIN 56. First series of coal-dust tests in the experimental mine near Bruceton, Pa., by G. S. Rice, L. M. Jones, J. K. Clement, and W. L. Egy. 1913. 115 pp., 5 pls., 28 figs.

BULLETIN 59. Investigations of detonators and electric detonators, by Clarence Hall and S. P. Howell. 1913. 79 pp., 10 pls., 5 figs.

BULLETIN 62. National mine-rescue and first-aid conference, Pittsburgh, Pa., September 23–26, 1912, by H. M. Wilson. 1913. 74 pp.

BULLETIN 65. Oil and gas wells through workable coal beds; papers and discussions, by G. S. Rice, O. P. Hood, and others. 1913. 101 pp., 1 pl., 11 figs.

TECHNICAL PAPER 6. The rate of burning of fuse as influenced by temperature and pressure, by W. O. Snelling and W. C. Cope. 1912. 28 pp.

TECHNICAL PAPER 7. Investigation of fuse and miners' squibs, by Clarence Hall and S. P. Howell. 1912. 19 pp.

TECHNICAL PAPER 11. The use of mice and birds for detecting carbon monoxide after mine fires and explosions, by G. A. Burrell. 1912. 15 pp.

TECHNICAL PAPER 13. Gas analysis as an aid in fighting mine fires, by G. A. Burrell and F. M. Seibert. 1912. 16 pp., 1 fig.

TECHNICAL PAPER 14. Apparatus for gas analysis at coal mines, by G. A. Burrell and F. M. Seibert. 1913. 24 pp., 7 figs.

TECHNICAL PAPER 17. The effect of stemming on the efficiency of explosives, by W. O. Snelling and Clarence Hall. 1912. 20 pp., 11 figs.

TECHNICAL PAPER 18. Magazines and thaw houses for explosives, by Clarence Hall and S. P. Howell. 1912. 34 pp., 1 pl., 5 figs.

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