In this case, the Warden found no reason to depart from a literal application of the written description and ruled there was no need to refer to the map.

The decision indicates the danger of describing an application for an exploration licence commencing from a starting point which is not a feature that has been surveyed and thus correctly plotted on the Mines Department Public Plan. There is a danger for an applicant who applies for an exploration licence by reference to a point which is not surveyed, unless he checks the ground for the actual position of the starting point. The usual practice of applying by reference to the Mines Department Public Plan is dangerous where a starting point is not a surveyed feature.

NORTHERN TERRITORY*

LEGISLATION

THE VALIDATION (MINING TENEMENTS) ACT 1987

This Act (for details of which see (1987) 4 AMPLA Bulletin 105) commenced on 28 August, 1987.

MINING AMENDMENT ACT 1988

The commencement date for this Act was 15 June, 1988.

In a commentary to the *Validation (Mining Tenements) Act* 1987 (previously referred to) concern was expressed as to the need to cover the provisions of s 191(16) and (17) of the Mining Act 1980. Section 191(16) provided that where there was a mineral claim or dredging claim granted under the 1939 Mining Act that claim continued in force after the commencement of the 1980 Act as though the 1980 Act had not come into operation.

By s 191(17) of the 1980 Act the holder of such a claim could apply within 12 months of the commencement of the 1980 Act (1 July, 1982) for the agreement of the mineral claim or in the case of a claim for extractive minerals for an extractive mineral lease. The Mining Amendment Act 1988 provides that such a mineral claim or dredging claim previously declared under s 191(17) to have been granted or purported to have been granted shall be deemed validly granted notwithstanding that the area of that original mineral claim or dredging claim may have exceeded 20 hectares.

* P.W. Walker, N.T. Information Services Reporter.

THE MINING AMENDMENT ACT 1989

This Act which commenced on 13 April, 1989 contains approximately 100 amendments to the Mining Act 1980. The most important are:

(i) A requirement that the holders of Exploration Licences ("E.L.") and Exploration Retention Licences include in their annual reports details of their "expenditure on exploration activities". Whilst E.L.s have always contained an annual expenditure covenant, there was no previous requirement on the licensee to reveal his expenditure. Presumably, this will also be used for statistical purposes.

(ii) The holder of two or more E.L.s having a common point or boundary can apply to the Minister to have a single E.L. issued in substitution thereof. The replacement E.L. shall cover all or part of the existing E.L.s and shall be for a term not exceeding four years. Upon the grant of the replacement E.L., the existing E.L.s are automatically cancelled despite the fact that only part of those existing E.L.s may have been incorporated in the replacement E.L.

There is no requirement that the replacement E.L. can only extend for the remaining term of the existing E.L.s and accordingly, this amendment appears to allow a possibility for E.L.s to continue for a period well after the land which they originally covered would have ceased to be subject to that Licence.

(iii) Exploration Retention Leases are now called Exploration Retention Licences ("E.R.L.").

(iv) The maximum area of an E.R.L. is increased from 1,000 to 4,000 hectares and Ministerial approval is required before the area held under E.R.L.s and mining tenements granted from that original E.L. can exceed 4,000 hectares.

The increase in size of E.R.L.s allows the possibility of a Mineral Lease of maximum size being granted from each E.R.L.

(v) Apart from applying for an E.R.L. to cover "an ore body or anomalous zone", the applicant for, or the holder of, an E.R.L. may apply for a further E.R.L. which the Minister may grant for a purpose to "assist in evaluating, either directly or indirectly, the development potential of an ore body or anomalous zone . . .". This will allow an E.R.L. to be granted for purposes ancillary to mining. An example would be where a miner has applied for an E.R.L. over an ore body but has foreseen the need to secure ground for a possible water supply, etc. in the future.

(vi) The Minister is given a discretion as to whether he will grant an M.C. or E.R.L. over all or part of the area applied for.

This amendment will enable the Minister to grant an M.C. or E.R.L. which may have conflicted with some existing tenement thus allowing him to grant the application in respect of the available land.

(vii) Mineral Claims ("M.C.") as well as Mineral Leases ("M.L.") can now be derived from E.R.L.s.

This amendment recognises that small ore bodies may be discovered on E.R.L.s which do not warrant the grant of an M.L.

(viii) The maximum size of an M.C. has been increased from 20 hectares to 40 hectares.
This amendment is designed to lessen the cost to the miner, reduce the proliferation of pegs and clearing on Pastoral Leases and also ease the work load with the Department of Mines and Energy.

(ix) Time of priority for M.C.s will be from the time of marking off rather than the time of lodgement of the application.

(x) Extractive Mineral Permits will now be capable of transfer.

(xi) Private land owners have had their power of veto within 50 metres of a residence expanded to all classes of tenements not just Mineral Leases.

(xii) Substantial compliance with the marking out procedures will be sufficient to ensure legality of title.
This change is a direct result of *Hunter Resources Ltd. v. Melville* (1988) 62 ALJR 88.

(xiii) The ability of the Wardens Court to hear offences of a criminal nature against the Act (such as illegal mining) has been clarified in that such offences can now be dealt with by a Court of Summary Jurisdiction.
This is the long awaited amendment foreshadowed in this reporter's comments in (1978) 6 AMPLA Bulletin 107. People dealing with this Act should bear in mind that there are apparent inconsistencies and errors in the drafting.

THE METEORITES ACT 1988

This Act which commenced on 15 June, 1988 provides that all Meteorites and Tektites in the Territory (regardless of how they are attached to land) are the property of the Northern Territory. A Meteorite which had been severed or otherwise removed from the ground prior to the commencement of the Act is deemed not to be the property of the Territory. The management and control of Meteorites is vested in the Museums and Art Galleries board established under the Museums and Art Galleries Act.

SUPREME COURT DECISIONS

KEN DAY PTY. LTD. v. M.L. NIDDRIE ET ORS.
(NT Supreme Court, 10 November, 1987)

The Plaintiff sought a declaration that it had an interest in certain mining tenements and for specific performance of two agreements made between the various Defendants. The agreements were for the sale and transfer to the Plaintiff by the Defendants of their respective interests in certain mining tenements.

In October, 1987 the Plaintiff obtained an interim order, ex parte restraining the Defendants' mining activities. Some of the Defendants applied to set aside the interim injunction. The Plaintiff's application was

under Supreme Court Rules, Order 37 Rule 1. The Court held that the Rule was limited to specific property and does not extend to profits a prendre which represent the legal character of mining tenements.

Part of the consideration for the two Sale Agreements was the issue of Vendor shares in Territory Resources N.L., a Company listed on the Stock Exchange on the 4 September, 1986. The Plaintiff contended that under the Rules of the Stock Exchange the Vendor shares in the Company could not be alienated or assigned nor the scrip for those shares be handed over before the 4 September, 1987 but had to be held in escrow by a Bank or authorised Trustee Company. This contention was intended to meet an argument by the Defendants that for a 12 months period the Plaintiff was unable (and therefore not ready and willing) to carry out its obligations under the Agreements. The Court held that the Plaintiff was in breach of the Sale Agreements.

WARDEN'S COURT DECISIONS

NIDDRIE ET ORS. v. TERRITORY RESOURCES N.L.
(Darwin Wardens Court, 18 November, 1987)

The Plaintiff sought:

(i) a declaration as to the boundaries of certain mineral tenements;
(ii) a permanent injunction preventing the Defendant mining land the property of the Plaintiff's;
(iii) a permanent injunction preventing the Defendant from using a road constructed over the Plaintiff's tenements; and
(iv) a permanent injunction preventing the Defendant from conducting further roadworks.

The Defendant had failed to make a proper application for the construction of a road pursuant to s 182 of the Mining Act 1980. The Warden found that the Defendant had unlawfully constructed the road, and granted an Interlocutory Injunction restraining the Defendant from entering onto, conducting mining work, dealing with, conducting roadworks and travelling over the mineral claims.

J. NIDDRIE ET ORS. v. DAY; J. NIDDRIE ET ORS. v. TERRITORY RESOURCES N.L.
(Darwin Wardens Court, 21 December, 1987)

These two matters were actions brought because of the Defendant's failure to comply with the injunctions granted by the Warden in *Niddrie v. Territory Resources N.L.* (reported above). Both Defendants pleaded guilty on 24 counts of failing to comply with the injunctions. Day (Managing Director and Principal Shareholder of Territory Resources) and Territory Resources were each fined $500.00 on each of 24 counts, $24,000.00 in total.

CYPRUS GOLD AUSTRALIA CORPORATION ET OR. v. MARY RIVER CATTLE COMPANY PTY. LTD.
(Darwin Wardens Court, 10 August, 1988)

The Warden had previously recommended that the Applicants' application for a Mineral Lease be granted and that the pastoralists' objections be rejected. The Warden also found that he could exercise his discretion in favour of the Applicants and award costs in their favour. The Applicants sought costs on the Supreme Court Scale rather than the Local Court Scale. Regulation 42 of the Mining Regulations provided:

> "Where a Warden has power to order costs to be paid by a party in a proceeding in a Wardens Court, the costs shall be in accordance with the scale of costs in force from time to time under the Local Court Act."

The Local Court Scale of fees was somewhat lower than the Supreme Court Scale, hence the application. The Warden was referred to Rule 151 of the Local Court Rules which provided:

> "If the Stipendiary Magistrate thinks that the scale or any item in the scale is inadequate for some special reason, he may order that the costs of an action or proceeding or matter shall be according to a higher scale or shall be increased by a percentage to be named by him or may fix the amount of the costs of the action proceeding or matter at such larger scale as he thinks proper."

The question for the Warden was whether there was some special reason for him thinking that the Local Court Scale was inadequate.

The proceedings lasted four days. The Applicants were represented by Junior Counsel while the Objector was represented by one of its directors. There were ten objections and those that were "strictly speaking objections . . . did not raise complex issues of fact or law".

The Warden recognised that the capital cost of the Applicant's project and indeed the value of the Pastoral Lease affected by the Application, both easily exceeded $10,000.00 which is the minimum statutory limit to Supreme Court actions. However, because the Mineral Lease could cover an area of some 4,000 hectares and be granted for a period of up to 25 years, the Warden recognised that there would be significant impact on a Pastoral Lease and that the Objector was entitled to object.

The Warden ruled that the matter was nothing "other than a run of the mill defended hearing of an application for a Mineral Lease and the objections to that application" and awarded costs to be taxed on the higher scale of the Local Court Rules.