MINER v. LANDOWNER: THE CONFLICT OVER MINING ON PRIVATE LAND IN QUEENSLAND

It is ironic that land, one of Man's most abiding symbols of peace, should have been the cause of more strife than perhaps any other single factor: men have fought bitterly over its ownership and the rights of ownership, in the international as in the local scene. Every Western fan knows of the 'range wars' between farmer and cattle-man, but relations between miner and landowner—whether grazier, farmer, or (occasionally) householder or businessman—have rarely been entirely happy either, even if the protagonists fought their battles in parliament or the law courts, rather than with bullets.

In Queensland, governments have expended much time in trying to watch the interests of both sides, yet the result has been a bewildering variety of tenures, and squabbles over rights of entry to the land, over compensation for damage to property, and over title to the minerals discovered on it. The complexity of the situation arose partly out of the fact that amendments to the law did not apply retrospectively, it being generally held that a tenure, once granted, must retain the rights with which it had originally been endowed. It was usual, when a statute was amended or repealed, to state specifically that such repeal or amendment would not affect any rights, claims or liabilities already accrued or incurred under the former Act.[1] This admittedly equitable policy produced a vast number of different forms of tenure held under Crown Lands Acts, Goldfields Homestead Acts, Mineral Lands Acts and Mining Acts, each with different provisions regulating mining on the land, and affording profitable employment to the legal fraternity. Some friction did arise out of the issue of Agricultural (or Homesteads) Leases on established mining fields, but most of the dissension sprang from attempts to mine land already occupied by pastoralists, farmers, or even townspeople.

It was maintained from the beginning of large-scale mining in Queensland that a holder of a 'miner's right' should be entitled to enter not only vacant Crown land, but also leased land, and to dig for and remove any minerals, on payment of compensation for damage, the amount of such damage to be determined by arbitration.[2] In 1874 this was further clarified[3] as the right to take possession of, mine and occupy Crown lands for mining purposes, 'Crown lands' being defined as

1. The Crown Lands Act of 1884 (48 Vic., No. 28), in its sweeping changes, did ignore this principle.
2. Under the Crown Lands Alienation Act of 1868 [31 Vic., No. 46, s.51(4)].
3. Goldfields Act of 1874 (38 Vic., No. 11, ss.9, 2, 26, 25).

> "all lands vested in Her Majesty which have not been dedicated to any public purpose or which have not been granted in fee or lawfully contracted to be so granted or which are not under lease for purposes other than pastoral purposes."

Certain further Crown land was exempted: that

> "lawfully and bona fide used as a yard garden cultivated field or orchard or upon which any house outhouse shed or other building shall have been erected provided the same be in actual use and occupation or any artificial dam or reservoir which shall have been made."

However, this exemption was to cease upon payment of compensation, to be determined by arbitration. Thus while compensation had to be paid for any damage to his 'improvements', the pastoral leaseholder had to endure the presence of miners on his land, and indeed to suffer cancellation of his lease if a goldfield were proclaimed upon it. Freeholders, on the other hand, were not subject to these provisions.

It was not surprising that friction should thus develop between the mining community and the grazier, in spite of the local market for meat that the fields began to offer, but apart from demanding large sums in compensation, there was little the pastoral leaseholder could do. However, one attempt at rebellion was made in 1889. The Crown Lands Act of 1884 had introduced two new types of lease—small agricultural and grazing farms divided into part-lease, part Crown land. It was specifically provided[4] that minerals in or under these leases be reserved, with the right of entry to prospect for or work them, on payment of compensation for any damage. However, the necessary regulations to allow entry were not issued. In 1889 an attempt was made to force some miners to pay £1 per acre for entry to a pastoral lease which, it was contended, now was issued on the same terms as the agricultural and grazing farms, and limited the miner's right of entry to that part of the run not described as Crown land.[5] It was also claimed that a mining lease could not be granted on top of another form of lease.[6]

The case created something of a sensation at the time, since it struck at the whole security of the mining industry. Several other attempts at exorbitant demands on miners at once appeared, and an amending Act had to be hurriedly passed,[7] repealing the compensation provision of the original Act and making it clear that the term 'Crown lands', as defined by the Goldfields Act of

4. 48 Vic., No. 28, ss.109, 110.
5. *Gympie Times* 2-3-89.
6. Queensland Parliamentary Debates (hereafter referred to as QPD) 1889, LVII, 267.
7. 53 Vic., No. 14, ss.12, 13, 14.

1874 and the Mineral Lands Act of 1882[8] (for minerals other than gold) applied to pastoral leases, depasturing runs, occupation areas and grazing farms, though not to agricultural farms. Compensation, if any, would be paid by the government if the lessee applied to have part or all of his run resumed for this purpose. It was still a source of complaint that, since one lease could not be issued over another, the miner had to wait until the land was resumed before he could acquire a mining lease on it, a delay which was said to be a serious obstacle to the industry. But the problem of *access* to pastoral leases had been settled in law, even though friction between miner and grazier continued. Another aspect of the growing pains of the colony—access to freehold land—was not so quickly solved.

The question of a prospector's access to land held in fee simple took a very long time to settle, for the power of landowners was strong enough to prevent it for many years. There were repeated warnings that the longer an Act was delayed, and the greater the area of land that was alienated, the more determined the opposition would become,[9] and these predictions were justified. Although mining interests—working-miners, mine-managements, newspapers, election candidates and parliamentary representatives (when out of office!)—year after year urged a Mining on Private Property Act, it did not materialise until 1909. Each successive government had evaded the issue, apparently because of the strength and opposition of the landed interest.

Governments were generally reluctant to grant much freehold on goldfields or mineral districts, but a newly proclaimed field might well include a large area already alienated. Even after proclamation of a field, some freehold grants— chiefly of building allotments within the townships—were made from time to time.

8. 46 Vic., No. 8, s.3. In such Acts, 'mineral lands' or 'mining districts' were lands which could be mined for any mineral or metal other than gold. Gold-mining was regulated under Goldfields Acts or under the major section of general Mining Acts. Coal was also sometimes given a separate section because of its special mining conditions, and from 1925 was regulated under special Coal Mining Acts (e.g. 16 Geo. V, No. 30, which consolidated the coal provisions of previous Acts). Petroleum also needed special new Acts from 1923 (e.g. 14 Geo. V, No. 26). The Mining on Private Lands Act of 1909 (9 Edw. VII, No. 15, s.5) defined the nature of a mine as that of its most profitable metallic product, and listed the 'minerals as distinguished from gold' in some detail (s.4). This list was further elaborated in the Mining Acts Amendment Act of 1925 [16 Geo. V, No. 8, s.21A(1)] to include not only the more obvious metals such as silver or tin, but also coal, precious and semi-precious stones, various ceramic and abrasive materials, rare earths, mineral fertilizers and pigments. Further additions were made in 1954 (3 Eliz. II, No. 7, s.4).
9. Southern examples were cited: an Act was passed in Victoria in 1884, but only after its twenty-seventh presentation, according to the *Gympie Miner* (23-4-88). It prevented future alienation on goldfields and reserved the right to mine on all land grants except in mallee country (QPD 1892, LXVIII, 1337) New South Wales passed an Act in 1897, after 35 years' legislative debate [*Worker* 21-3-96, p. 5, for earlier comment. See also Votes and Proceedings of the Queensland Parliament (hereafter referred to as V&P) 1897, IV, 506].

During the first, alluvial, stage of mining, the diggers' outcry against locking up land was strong enough to prevent grants in fee simple, and land was invariably leased for non-mining purposes, as residence, business and homestead areas. But once the alluvial was worked out, and the quartz reefs thought to be located, some Ministers of Mines did gradually sell land within the townships,[10] to meet residents' persistent demand for a more secure tenure that would enable them to build on, mortgage or transfer their land, on terms equal to those in non-mining centres. The desire to encourage permanent settlement and town progress was a strong factor in their favour, against the equally persistent arguments of the working-miners that it was unwise to close land to prospecting and mining. When some of the Charters Towers reefs were found to run under the township, much of which was freehold land, even more difficulties than usual were created. By 1889 the Warden there felt that his predictions of injury to the mining industry, through alienation of land on goldfields, had been fulfilled: the quantity sold might be generally inconsiderable, and chiefly on the main streets, but immense sums had already had to be paid for the right to mine under freeholds, and there had been many lawsuits over the question.[11] The matter developed rather unusually in Charters Towers, into an alleged blackmail of the freeholders by a company which leased the streets and surrounded their land, but in most areas the problem was one of freeholders either refusing point-blank to allow mining on their property, or demanding excessive compensation for damage to improvements, and exorbitant royalties for any gold found.

Governments were continually torn between miners' demands for access to the land, strengthened by the desire to see as much mineral production as possible, and other residents' desire for a secure tenure. It was once argued that mining townspeople should be ready to accept insecurity of tenure as inseparable from the welfare of the industry which gave them their livelihood,[12] but this point of view did not commend itself to many of them. In 1880 the premier (Griffith) in response to a deputation of Gympie traders, had proposed a compromise—to sell the surface of the land while reserving the mineral rights below the surface, as in Great Britain. Miners would have to pay compensation for surface damage.[13] If right of access had been provided this might well have prevented much later difficulty, but the Minister for Mines protested at this wholesale alienation: such a Bill would be

10. A total of 553 acres had been sold by 1897, 220 acres on the Charters Towers field and 153 on the Gympie field, these being the two most important goldfields (V&P 1897, IV, 465, Question 7852 by the Royal Commission of that year).
11. V&P 1890, III, 316.
12. *Gympie Miner* 30-9-89.
13. QPD 1880, XXXII, 438 ff.

a greater blow to the interests of the miners than any he had seen in twenty years. The miner needed to be able to mine from the surface directly above, not from outside the area, and when he was asked to pay a tax before breaking the surface he ceased to prospect at all. This view was generally supported.

As Griffith had pointed out, whereas his Bill would have combined security of tenure with full mining rights, under the existing Crown Lands Alienation Act of 1868[14] the miner had no right of entry to freeholds, and minerals were not reserved under them, so that freeholders had exclusive rights to both surface and sub-surface. A mining lawyer later maintained that it was by practice and not by law that freeholders took possession of the minerals under their land,[15] but whatever the legal niceties of the question, this was and remained the general practice to 1909, and it was in this way that the Mount Morgan Company was able to keep and mine its 640 acres of freehold. On other fields, miners did sometimes come to an agreement with freeholders, the right to mine being granted in return for payment of compensation and/or royalties.[16]

A similar suggestion of a 'surfacehold' title, to a depth of 50 feet, was put forward in Gympie in 1890, rousing an extraordinarily violent reaction among some of the miners, who saw such a title as no better than freehold and the proposal as an attempt to alienate the whole of the goldfields.[17] What the working-miners demanded was a full-scale Mining on Freeholds Act that would not only allow access to freehold land but also apply retrospectively—but this was still a Utopian project.

However, *some* results were achieved two years later, partly as a culmination of many protests, partly to meet a specific case, that of mining under land granted to railway companies. The traditional policy of Queensland governments had been that railways could be constructed only by the State, but the hotly debated Railways Construction (Land Subsidy) Act of 1892[18] was a radical departure from this principle, granting land adjacent to the railway to the company which contracted to build it. During the course of the debate on this Bill, an attempt was made to introduce a clause reserving to the Crown all minerals in the land grants, and providing right of access to search for or work any minerals, on payment of compensation for any actual damage. It was contended, however, that the amendment would prevent

14. 31 Vic., No. 46.
15. *Gympie Times* 2-3-89. See also Gold-mining on Freehold Lands Bill of 1893 (QPD 1893, LXX, 985-6). See below for further discussion of this question.
16. In Victoria, £10 or £12 per acre had sometimes been demanded, plus royalties of 7% on the gross yield of gold, the *Gympie Times* predicting the same type of 'blackmail' for Queensland [14-9-81].
17. A long debate in the *Gympie Miner,* ranging from 30-9-89 to 25-6-90.
18. 56 Vic., No. 11.

railways from being built at all, except in the recognised pastoral districts; in some areas it was only the possibility of finding minerals that would make the land grants worth having. Why should these investors be penalised more than other freeholders in the colony? The amendment was negatived, and the most the government would concede was a clause protecting mining rights already acquired before the grant of land to a company.[19] A few months later, however, the Mineral Lands (Sales) Act of 1892 met quite a number of the objections which had been raised, reserving all gold and silver in land which might *in future* be alienated or leased on goldfields or in Mining Districts, and giving miners the rights to search and mine for them.[20] This was quite a significant step forward, in spite of its limitations, but some of the mining members tried to secure a more general Bill to apply to all freeholds, past or future, anywhere in the colony. This the government was not prepared to risk.[21]

That its caution was not unfounded can be seen from the opposition which even this limited Bill met among pastoralists and farmers in the Legislative Council. To one of them, the Bill was a revolutionary measure which would subordinate every interest in the colony to the holder of a miner's right.[22] Although the Bill passed into law, the opposition to it did indicate the antagonism between miners and landholders, and the real or assumed fears of the latter that unlimited right of access by the miner might seriously injure a holding. These fears were not unjustified, and even the fiercely Labour *Gympie Truth* admitted that the miners often did malicious injury to the homesteader, as well, by agisting stock on his land outside their mining leases, wilfully leaving rails down, and in other ways "doing their level worst to aggrieve the homesteader", with whom, on the Gympie field especially, they had a long-standing feud. The farmer, however, was held to be equally to blame since he often demanded prohibitive compensation, sometimes with the obvious intention of excluding miners from his land[23]—and not, it would seem, without some excuse.

The right of access had been the main omission of previous Bills: access even to leases was not properly reserved until 1889, as has been shown, while on freeholds the miner became a trespasser as soon as he crossed the boundary. In introducing the 1892 Bill, the Minister for Mines claimed that this right had now been secured, but a lawyer member maintained that this was so

19. QPD 1892, LXVII, 736-46. 751-2.
20. 56 Vic., No. 31, ss.3, 4, 5 (inter alia).
21. QPD 1892, LXVIII, 1337 ff, 1582 ff.
22. QPD 1892, LXVI (Council), 191 ff.
23. *Gympie Truth* 3-10-96. Some of these homesteaders were on leased land. See *Booth* & *another* v. *Julin*, [1956] Qd. R. 389 (Full Court) for the damage that could be done to the land.

only where a prospector knew the exact spot where gold was to be found—he had no right to *look* for it, for it was still a trespass to step on to the freehold.[24] The satisfactory compromise was reached that the miner might enter and search for gold or silver with the sanction of the Warden; and other caluses further protected the holder by forbidding mining within seventy feet of the surface, except on the small surface area ceded to the miner,[25] and by providing that compensation for possible damage be deposited with the Warden *before* mining operations were begun.[26] It is significant of the timidity of the government in this type of legislation that several fears were expressed that fossickers might blackmail landowners by scratching here and there over their whole area. In this particular instance the predominant fear of the government seems to have been that to give miners too many rights on freehold land would frighten capital away from railway building, which it was hoped to encourage by the recent Railways Construction (Land Subsidy) Act.[27]

In spite of the continued reluctance to permit mining under freeholds that had already been granted, one small concession was made in relation to 'way-leaves' or rights of way, which in the Mineral Lands (Sales) Act Amendment Act of 1894 and the Mining Act of 1898[28] were allowed to be driven under freehold where it separated leases. In these circumstances, of course, the freehold surface was not disturbed, and it was provided that such 'drives' should not interfere with any other workings under the freehold.[29] This was not, strictly speaking, mining under freehold, but it *was* a concession forced on freeholders and it *was,* after 1894, made retrospective to all previous grants; this did represent some small progress.

However, it did not take matters very far, though mining members were making every attempt to expedite them. At every opportunity they tried to secure at least the reservation of several minerals and right of access on future freehold grants outside the mining fields.[30]

24. QPD 1892, LXVIII, 1583 1634.
25. The Labour spokesmen for the miners strongly criticised this provision, and one of them suggested reduction of the depth-limit to thirty feet (V&P 1897, IV, 401, Question 620 before the Royal Commission).
26. 56 Vic., No. 31, ss.5(1) and 6.
27. No railways were built under this Act, but this was due rather to its tremendous unpopularity among the newspapers and general public, and to the growing economic depression. The Mineral Lands (Sales) Act also remained largely inoperative, no regulations being gazetted, and to 1897 only one grant in fee simple had been made under it (V&P 1897, IV, 240, Question 334, Warden Mowbray).
28. 58 Vic., No. 24, s.3, and 62 Vic., No. 24, s.62.
29. See below for further comment.
30. For example in an amendment to the Crown Lands Bill of 1894. The initial success of this amendment brought a government threat to abandon the whole Bill if the vote were not reconsidered, and the amendment was lost.

To 1889 it had been generally accepted that the freeholder could mine his own land if he wished—that he had a right to the sub-surface as well as to the surface. A number of important gold mines, the most notable being Mount Morgan with 640 acres of freehold, and Mills' Day Dawn United mine on the Charters Towers field, had been worked on this principle, but in 1889 the right was questioned. The lawyer-politician Horace Tozer pointed out that the Crown had never actually relinquished its right to the gold beneath the surface, and had merely suffered the freeholders to take it.[31] Some had surrendered their holdings to the Crown in return for a preferent right to a gold-mining lease, which did grant ownership of any gold found, and in 1892 the Mineral Lands Sales Act of that year declared this procedure legal for freeholds surrendered under its provisions.[32] However, this type of surrender had been rare—chiefly on the Charters Towers field, where the reefs had belatedly been found to run right under the town; it was done there to allow streets or reserves to be included with this other land in one lease, so that the surface of the reserve need not be disturbed.[33] The majority of freeholders mining their land did not want to surrender their title, since they were free of the exasperating restrictions—notably those concerning the employment of a minimum work-force—which governments insisted on placing on leased land.

For a time the anomalous position seemed to exist that the freeholder had no legal right to the minerals under his land, but no one else—not even the Crown—could trespass on the land without his permission and without meeting any conditions he cared to impose. The matter came to a head when Mr. Justice Harding of the Supreme Court decided that a freeholder had no right of action against a 'trespasser' who removed gold from his land. The grounds on which this decision was based were that a 'royal mine' of gold or silver, to which under English common law the Crown held title, comprised not only the precious metal

31. *Gympie Times* 2-3-89; QPD 1891, LXV, 2093 (Tozer was then Attorney-General). The Crown Lands Alienation Acts of 1860 (24 Vic., No. 15) and 1868 (31 Vic., No. 46), and the Mineral Lands Act of 1872 (36 Vic., No. 15), conveyed to purchasers the right to silver and base metals on or under the land, but gold was always reserved to the Crown.
32. 56 Vic., No. 31, s.9.
33. The question of mining under reserves and streets also led to a number of legal tangles. It was prevented for many years, and even when it was forced on the government, in 1886, by the discovery that the rich Charters Towers reefs ran under the streets and probably the school reserve, the Act failed to provide proper access (50 Vic., No. 15, s.3(2)), and it was not until 1892 that a regulation remedied the anomaly by permitting reserves to be worked from adjacent freehold (V&P 1892, IV, 385). The surface of a reserve could not be broken, and Mills United, which took up a lease of the streets alone, had been reported for non-fulfilment of labour requirements on the lease itself, even though it had gained permission to sink its shaft on adjoining freehold. This mine became involved in many bitter disputes with the freeholders bordering its streets, on questions of access.

but also the whole stratum in which it was found; that until specifically severed from the title of the Crown and vested in a subject, that metal and its stratum were not an incident of the soil in which they were found, and remained the property of the Crown. Thus a grant in fee simple included only the soil above and below any such 'royal mine'.[34]

However, after this decision, the government stepped in, asserted its rights to the gold, and returned it to the freeholder; as the Minister for Mines pointed out, the Crown had no wish to claim the gold from freehold land, for no one would then mine on it at all. But to have the matter finally decided, two members of Mills United engaged in a friendly lawsuit. The contention of the plaintiff was that, as the gold and silver on land in fee simple was reserved to the Crown by the Goldfields Act of 1874, it remained Crown property and came under the definition of Crown land in that Act. A lease could therefore be granted for the gold strata under the freehold surface. This was supported by legal opinion in Queensland and abroad, but the Full Court decided unanimously that the Act of 1874 had dealt only with rights to gold and silver on Crown lands of which no part had been transferred; and by a majority of two to one over-ruled the earlier decision of Harding J. that a freeholder had no right to prevent a trespasser entering his land and taking gold.[35]

This decision certainly strengthened the freeholder's position, but the government had brought in a Gold-Mining on Freehold Lands Bill in 1893 which, if it had been passed, would have made the freeholder's title unassailable, though at considerable expense to himself. This Bill proposed

> "to validate the extraction of gold from freehold lands in the past, to license the owners of freeholds to take out the gold now in the land, and to further tax them and charge royalty of 1s. an ounce on all the gold taken out by them after the passing of the Bill."[36]

There were public demonstrations in Charters Towers to protest against this "attempt to grant special advantages to Mount Morgan and Mills United monopoly shareholders", and local Labour delegates were instructed to defeat the Bill if possible, and at the least to contend for a sliding scale of royalties in order to press more heavily on these wealthy companies than on the small-holder. There was also opposition from mine-owners against

34. Harding, J. in *Plant and others* v. *the Attorney-General and others* [1893] 5 Q.L.J., 57. See QPD 1894, LXXII, 973 for parliamentary comment about the case.
35. *Plant* v. *Rollston* [1894] 6 Q.L.J. 98 (Full Court), Griffith, C.J., Harding and Real, JJ. Harding J. maintained his earlier position on this second point, citing *inter alia* Lord Watson in the Judicial Committee of the Privy Council, in *Attorney-General of British Columbia* v. *Attorney-General of Canada,* 14 App. Cas. 295.
36. QPD 1893. LXX, 986.

the proposed royalty,[37] and probably the combined opposition was too strong for the government to proceed with the Bill: it did not proceed beyond the first reading.

A different approach was made in 1894 when a Mineral Lands Sales Act Amendment Act extended the right, already granted to freeholders by the permissive 1892 Act, of surrendering their titles in return for a lease.[38] There had been some doubt about the priority rights of freeholders to leases of their land under the 1892 Act; the 1894 amendment now assured them a priority of thirty days to apply for a lease if they wished to surrender their freehold title. However, it also imposed a royalty of a shilling per ounce on the gold extracted.[39] This was not a particularly attractive concession to the freeholder, who was faced not only with payment of a royalty but also with the need to comply with the normal labour requirements for leases. But it did give him a secure title, and it was probably for this reason that the Mount Morgan Company, which was continually being assailed by would-be 'jumpers', soon brought its mine under the Act.[40] It was in fact alleged that the Bill had been brought in specially to give a secure title to that Company, frightened by recent litigation.[41]

The royalty was probably a general attempt to build revenue at a time of depression, but it was also clearly hoped to extract more money from Mount Morgan, which was already paying a very large sum in dividend duty.[42] There was something of an uproar over the royalty, even from Labour men, for mines already paid dividend tax, duty on machinery, rents, and licence and other fees. There was a solid Labour vote for taxing only nett proceeds, and even those who approved the principle of a royalty wanted a graduated scale to favour the small holder, and application to all mines, freehold or leasehold. The non-Labour newspapers were even more scathing about the injustice to freeholders, one of them bringing forward an example of two actual mines of exactly similar history and circumstances, one of which would now be required to pay £1000 a year more than the other.[43] There seemed, indeed, little equity in the imposition, and certainly little inducement to freeholders to sacrifice their concrete advantages to guard against what seemed a fairly nebulous danger. However, the danger *was* always there, with the repeated demands for a Mining on Private Property Act.

37. QPD 1893, LXX, 989-990; *Worker* 14-10-93, p. 4.
38. 56 Vic., No. 31, s.9.
39. 58 Vic., No. 24, ss.5, 7, 10.
40. V&P 1895, I, 14.
41. QPD 1894, LXXII, 982, 1218, 1220, 1224. A perhaps facetious attempt had also been made during the passage of the Bill to have all the gold remaining in the Company's freehold resumed by the Crown.
42. £15,000 in the finanical year 1896-7, plus £7904-15-0 royalty on that vear's yield.
43. *Northern Miner* 13-10-94.

Such demands were becoming steadily more pressing. The Royal Commission into Queensland mining in 1897, for example, considered the introduction of such an Act to be a much-needed reform—not unnaturally, since four of the five Commissioners had been intimately connected with mining.[44] And after their Report was presented, such a Bill was introduced. But it is rather significant that it was felt necessary to bring it forward separately from the vital general Mining Bill—wisely enough since it might have killed the latter: the Mining on Private Property Bill did not get further than a first reading. The general Act—the comprehensive Mining Act of 1898—did repeat the relevant provisions of the 1892 Mineral Lands (Sales) Act, that is, confining access to freeholds alienated in future on goldfields and mineral fields, or those subject to the Mineral Lands (Sales) Act of 1892 and its amending Act of 1894.[45] The only changes made were the reservation to the Crown of other minerals— copper, tin, opal and antimony—as well as gold and silver, and permission to mine above seventy feet where the Warden declared it safe.[46] This depth restriction had been one of the Labour Party's complaints. They pointed out that, on the average, that depth was the water level, and that when a miner started from the surface he expected to meet the expenses of heavy water out of his returns from work to that depth. It was unfair, then, to make him *start* work on the difficult ground.[47]

Further abortive attempts at a full-scale Mining on Private Lands Act were introduced into parliament in 1901, 1906 and 1908, but not until 1909 was the long-awaited measure finally passed. It was still limited, in that it did not apply to silver in land alienated under the Crown Lands Alienation Acts of 1860 (24 Vic., No. 15) and 1868 (31 Vic., No. 46), and the Mineral Lands Act of 1872 (36 Vic., No. 15) (these Acts, now repealed, had not reserved silver or base metals to the Crown); nor to coal on alienated land except under the Agricultural Lands Special Purchase Act of 1901 (1 Edw. VII, No. 23); nor to copper, tin, opal and antimony on land previously alienated on a gold or mineral field before 1899, or outside a gold or mineral field before March 1910; nor to other minerals on land previously alienated.[48] But it did at last allow *gold* mining on any private property (except gardens, orchards, cemeteries, churches, etc.) alienated in the past or in the future, and *all* minerals were to be reserved in future when land was alienated. The freeholder, however, was given a prior right to a mining lease of his land between March

44. V&P 1897, IV, 217.
45. 62 Vic., No. 24, Part VII, ss.58-61.
46. *Ibid.*, ss.58 and 59.
47. QPD 1898, LXXX. 1207.
48. 9 Edw. VII, No. 15, s.4.

and September 1910, and the Governor-in-Council could exempt or resume specified land if necessary.[49] Nevertheless after September, miners could enter, prospect and mine the land, paying no royalty but only compensation for surface damage.

The important demands of the mining interests—on this question, at least—had at long last been secured, and the principle had been by this time so well advertised that even the farming representatives, its most bitter critics, no longer opposed it; even the Legislative Council, the stronghold of the landed element, accepted it at last as equitable, or perhaps only as inevitable. Other States—Victoria, New South Wales, Western Australia—and New Zealand had long had such an Act; as usual, Queensland was very much to the rear in her legislation. It is significant that a measure backed by the whole of the mining interest, investing, managerial and labour, and by the growing power of the Labour Party, should have taken so long to materialise. Its long postponement was a clear illustration of the strength of squatter and farmer interests in Queensland, even at the height of mining influence.

However, the exceptions to the general principle continued to be a source of annoyance, and it was pointed out that because of the few early Acts under which the right to minerals had been sold with the land—usually for a very low price—much land known to contain minerals had remained untouched.[50] Thus in 1925 a Labour government, imbued with the party's traditional hostility to any measure that permanently 'locked' land away from future generations, took the almost unprecendented step of repudiating long-standing rights, gained by legal purchase. The Mining Acts Amendment Act of that year insisted that gold and *all* minerals on *all* land, whether alienated or not, and if alienated, whenever alienated, were Crown property, and that land held as freehold under the formerly exempted Acts must be converted into a mining tenement within twelve months, or it would be open to the first applicant for a mining lease.[51] But this revolutionary move was passed only against bitter opposition, and once a non-Labour government was back in power it lost no time in amending the detested clause—again only after long and angry debate.[52] It was not surprising that a party which feared for the

49. *Ibid.*, ss.6 and 7.
50. QPD 1925, CXLV, 531; QPD 1929, CLIV, 2075 ff, 2186 ff. One case was cited in which copper, badly needed during the war, could not be extracted from one freehold property where it was known to exist.
51. 16 Geo. V, No. 8, s.4 (amending s.21A of the Principal Act—the Mining on Private Lands Act of 1909, 9 Edw. VII, No. 15).
52. QPD 1929, CLIV, 2075 ff. Mining Acts Amendment Acts of 1929 (20 Geo. V, No. 35, s.4) and 1930 (21 Geo. V, No. 32 ss.35, 36). The rights of those who had already acquired mining tenements under the 1925 Act were protected, and the amended clause still included the sub-section that had permitted it.

rights of property should be alarmed at a step which might set a general precedent for repudiation of those rights. However, the general provision survived that minerals on most other land, whether alienated or not,[53] should be regarded as Crown property, and that there should be right of access to search for them. This, in itself, was quite an important extension of the encroachments on the privileges of 'private land'.[54]

The general principles of Crown ownership of minerals, and of prospecting rights over alienated land had therefore largely been settled for minerals already being mined in Queensland, but technological developments, new discoveries and new working methods continued to make occasional amendment necessary. In 1923, for example, the first Petroleum Act had taken care to state that petroleum and helium "are and always have been the property of the Crown", and reiterated the right to mine any land in the State, on payment of compensation to the landowner or leaseholder, unless petroleum had already been reserved to the Crown in his grant or lease.[55]

As far as coal was concerned, the Crown had not claimed ownership until 1909, so that, except under the Agricultural Lands Special Purchase Act of 1901 (in which the Crown had, in buying up a few estates which were then alienated for agricultural settlement, reserved the coal under them)[56] coal on all land alienated before 1910 remained the property of the grantee of the land, or his successors. The only exceptions were a few cases in which the original deeds reserved coal to the Crown.[57] But the Labour Party, as has been shown, regarded minerals as a national heritage whose exploitation no private individual should be able to prevent. It felt this particularly strongly when such minerals were needed by the community, as was the case with the coal of the West Moreton district which supplied Brisbane's needs, but where virtually all the coal had been alienated before 1910. The Labour

53. Exceptions, apart from those under the 1860, 1868 and 1872 Acts already mentioned, were coal on land alienated before 1910; and (since Section 6 of the Principal Act was allowed to survive) apparently copper, tin, opal and antimony on land alienated on mineral fields before 1899, or outside them before 1910.
54. 'Private land' has had varying definitions. It normally comprised freehold land alienated by grants in fee simple, but in 1927 the definition was extended to include 'perpetual leases' (a tenure initiated by the Land Act of 1910 (1 Geo. V, No. 15) and irrigation holdings (under the Irrigation Act of 1922, 13 Geo. V, No. 29) (Mining Acts Amendment Act of 1927, 18 Geo. V, No. 16, Part III, s.5). In 1965 it was maintained that the existing definition was obscure and could be interpreted as any land that might possibly be freeholded at some future date (QPD 1964-5, Vol. 240, p. 2631), and the definition was again reduced and simplified (Mining on Private Land Amendment Act of 1965, 14 Eliz. II, No. 20, s.8, amending s.21A of Principal Act).
55. 14 Geo. V, No. 26, ss.5 and 7.
56. 1 Edw. VII, No. 23, s.5.
57. The Mining on Private Land Act of 1950 (14 Geo. VI, No. 6, s.4, amending s.21A of the Principal Act) made it clear that the Act of 1925 had not nullified this right of the Crown.

government of 1950 considered trying to demand the reversion of all such coal to the Crown, but eventually decided—probably because of the failure of the 1925 attempt—that such repudiation of purchased rights was undesirable.[58] The alternative adopted was to follow the New South Wales procedure of granting coal-mining leases over *any* private land, whether the coal on it had been reserved to the Crown or not, in return for a royalty which would then be paid to the owner of the coal. This would, it was hoped, ensure that the much-needed coal was worked, while at the same time protecting the freeholder by giving him (or anyone already entitled to mine the land) priority of application for a limited period. At the same time, it also prevented him from demanding an exorbitant royalty.[59]

It is rather surprising that this solution, the main principle of which was not opposed by the Liberal-Country Party,[60] should not then have been extended to the similarly protected exceptions in other minerals, already cited.[61] These were not perhaps felt by this date to be quite so vital as coal, but it might well have disposed of the (to the Labour government) irritating anomalies which still tied up potential State wealth. Once the Labour Party lost office in 1957, of course, it was unlikely that the Liberal-Country Party government would take such action.

At the same time, both parties did have to make certain concessions to the claims of *both* protagonists. Non-Labour governments had always had to accept some limitation of the rights of the freeholder, in the interests of mining expansion, for they also were concerned to foster the mineral wealth of the State—perhaps placing more emphasis than did Labour on the need to encourage the investor.[62] So, too, Labour governments had to admit that the freeholder was entitled to reasonable safeguards and to compensation for damage. With the increased interest in rutile mining, after 1955, there was considerable publicity about the annoyance to freeholders from the search for minerals on their land, and in 1956 the Labour Minister for Mines stated that, while the entry of prospectors must of course be authorised, his Department would administer the Mining on Private Land Acts in what he saw as their 'spirit'—a minimum of interference with the freeholder. Thus, for example, the new amending Bill

58. QPD 1950-1, Vol. 198, pp. 447-8.
59. Coal Mining Acts Amendment of 1950 (14 Geo. VI, No. 7, s.6, amending s.12 of Principal Act; and s.9, introducing Part IIA, s.33A into Principal Act; and s.10, introducing s.33 B and C.
60. The question of fixing the maximum royalty at the low rate received for coal on Crown land occupied the long and angry debate.
61. Changes in the Coal Mining Acts did make minor amendments necessary in the Mining on Private Land Acts, as in 1950 (14 Geo. VI, No. 6) and 1951 (15 Geo. VI, No. 38), but these were merely 'machinery' amendments and roused little debate.
62. For an expression of this attitude, see QPD 1950-1, Vol. 198, p. 505 (Hiley).

he was introducing would block the activities of those speculators who kept renewing applications for permits to prospect small areas that could quite well be tested quickly; the small advance deposit against damage to the property was slightly increased; and no mining lease would be granted on or within fifty yards of improved freehold, or on land of less than half an acre inside a town, without the written consent of the freeholder.[63]

However, while thus protecting the interests of the freeholder, some limitation on him was also stressed. A case had recently come before the Full Court, in which it had been mentioned (in passing) that Section 15 of the Mining on Private Land Acts, 1909 to 1954, gave the owner of the land a priority over other applicants for a mining tenement of his land.[64] Although the clause in question surely made it clear that this right was limited to owners who had made application for such a tenement over their land *before 1st September* 1910, the government nevertheless felt it advisable to put the matter beyond doubt. Its own interpretation of the Act was that the freeholder had no greater rights to the minerals than a stranger had, or any special preference over him, but it was now feared that freeholders might try to nullify entry permits granted to strangers, by pegging the ground and applying for a lease without first acquiring a similar permit. Accordingly, the 1956 Act made it quite clear that the freeholder also required a permit to prospect before he could mine.[65]

This was a far cry indeed from the days when the owner of land had been held to have the sole right to mine his own land, or to charge any other prospector whatever he liked in the way of rent or royalty. These rights had been lost in 1909, and although compensation for surface damage was still obtainable, such compensation could no longer be based on the value of any gold or mineral known or supposed to be under the land.[66] Even so, it has still been thought necessary, in the most recent amending Act, specifically to prevent the Minister for Mines from approving any agreement in which the compensation is based on the quantity or value of the minerals in the land.[67]

63. QPD 1956-7, Vol. 215, p. 1469. Mining on Private Land Amendment Act of 1956, 5. Eliz. II, No. 23.
64. *Booth and another* v. *Julin*, [1956] Qd. R. 389 (Hanger J.). The case itself was not concerned with this point.
65. 5 Eliz. II, No. 23, s.5, amending s.15 of Principal Act.
66. 9 Edw. VII, No. 15, s.18. The government now extracts a royalty on all gold and other minerals won from mining leases granted after 1955. This is based on a percentage of the profits, or of the value of the gold or mineral won (up to 1½%), or of the amount per ton (or other measurement) of the mineral won. (Mining Acts Amendment Act of 1955, 4 Eliz. II, No. 41, s.5, amending s.48 of the Mining Acts, 1898-1951).
67. Mining on Private Lands Amendment Act of 1965, 14 Eliz. II, No. 20, s.7.

This 1965 Act was described as introducing no radical changes but merely removing anomalies, clarifying procedure, and extending the application of the Principal Act to cover modern methods.[68] New rules concerning the necessary 'permit to enter' private land, and a new clause requiring also an 'authority to prospect' were to bring prospecting for gold and other minerals into line with the provisions of the Coal and Petroleum Acts.[69] The result is a general tightening-up of the legislation, but whether the usual professed purpose—of stimulating prospecting while adequately protecting the rights of landholders—will be achieved, remains to be seen. It is a familiar objective, but generations of legislators have struggled for a really satisfactory compromise.

From the beginning the interests of the miner and the landowner had been enormously difficult to reconcile. In their attempts to find a solution, early governments had shown either a disposition to favour the landowner, or a fear of offending him, that worked to the disadvantage of the mining industry. The long postponement of a Mining on Private Land Act, with the inevitably cumulative opposition to it as more and more land passed into private hands, was indication of this. In a period when both parties, and particularly the Legislative Council, included a large proportion of landed men, the delay is not especially surprising. Nor is it surprising that the rise of the Labour Party should have affected the situation. Labour men were not, of course, the only advocates of facilitating mining on private land, but they were strong and vocal supporters of the prospector and 'digger' against men whom they saw as monopolising the land and locking up its wealth. And the rise of Labour power, while it alienated many who feared its assault on the general rights of property, nevertheless by battering away at those rights did gradually accustom men's minds to the inevitability of some change. However, in this case Labour had, for once, the support of the mining industry as a whole, since many big companies were also affected by the demands—or the restrictions—of the freeholder. So the Act finally achieved in 1909 was not, in fact, a Labour measure, though the party had indirectly contributed much to its shaping.

Once the principle of the right of entry onto private land had been established, the major problem had been settled, but the exceptions to the general rule remained a minor though exacerbating issue. The Crown's right to all minerals, and thus its right to grant access for their recovery, was gradually extended, to a retrospective degree once unthinkable, but the one attempt to repudiate rights specifically granted had a very short life.

68. QPD 1964-5, Vol. 240, pp. 2633, 3115.
69. 14 Eliz. II, No. 20, s.3 (replacing s.12 of Principal Act), and s.4 (introducing new s.12A).

Both the decline of the early mining industries, and the rise of new ones, have paradoxically had the same effect—of increasing the demand for prospecting rights, in the hope of stimulating mining production as much as possible. But at the same time the extent of freehold land, especially when the Country Party is in office, makes it inevitable that the interests of the landowner will not be ignored. The conflict of interest is a continuing one, and probably inevitable since mining activities can badly damage the land. Legislation on the vexed question has been—equally inevitably— to some extent weighted on one side or the other according to the composition of the party in power. Yet the produce of both the surface and sub-surface of the land is vital to the community; reiteration of the need for an equitable balance is necessarily more than lip-service on the part of any government, whatever its private inclinations may be.

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