

MINES.

CHAPTER LXVIII.

DEFINING THE MANNER OF LOCATING MINERAL LODES.

AN ACT Concerning Mines.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

SECTION 1. That the length of any lode claim hereafter located within this territory, may equal, but shall not exceed, fifteen hundred (1500) feet along the vein or lode. Length of lode defined.

SEC. 2. The width of lode claims shall be one hundred and fifty (150) feet on each side of the center of the vein or crevice: Width of lode defined. *Provided*, That any county may, at any general election, determine upon a greater width not exceeding three hundred (300) feet on each side of the center of the vein or lode, by a majority of the legal votes cast at said election; and any county, by such vote at such election, may determine upon a less width than above specified: Majority of votes authorized to change width. *Provided*, That not less than twenty-five (25) feet on each side of the vein or lode shall be prohibited.

SEC. 3. That the discoverer of a lode shall, within three (3) months from the date of discovery, record his claim in the office of the recorder or register of deeds of the county in which such lode is situated, by a location certificate, which shall contain Discoverer to record his claim.

- 1st. The name of the lode;
- 2d. The name of the locator;
- 3d. The date of location;
- 4th. The number of feet in length claimed on each side of the discovery shaft;
- 5th. The number of feet in width claimed on each side of the vein or lode;
- 6th. The general course of the lode as near as may be.

What certificate to contain.

When location certificate to be void.

SEC. 4. Any location certificate of a lode claim which shall not contain the name of the lode, the name of the locator, the date of location, the number of lineal feet claimed on each side of the discovery shaft, the number of feet in width claimed, the general course of the lode, and such description as shall identify the claim with reasonable certainty, shall be void.

Manner of locating claim.

SEC. 5. Before filing such location certificate, the discoverer shall locate his claim by first sinking a discovery shaft thereon sufficient to show a well defined mineral vein or lode; second, by posting at the point of discovery, on the surface, a plain sign or notice containing the name of the lode, the name of the locator and the date of discovery, the number of feet claimed in length on either side of the discovery, and the number of feet in width claimed on each side the lode; third, by marking the surface boundaries of the claim.

Manner of marking surface boundaries.

SEC. 6. Such surface boundaries shall be marked by eight (8) substantial posts, hewed or blazed on the side or sides, facing the claim, and sunk in the ground, to-wit: One at each corner, and one at the center of each side line, and one at each end of the lode. When it is impracticable on account of rock or precipitous ground to sink such posts, they may be placed in a monument of stone.

What shall be sufficient for location.

SEC. 7. Any open cut, cross cut or tunnel, at a depth sufficient to disclose the mineral vein or lode, or an adit of at least ten (10) feet in along the lode, from the point where the lode may be in any manner discovered, shall be equivalent to a discovery shaft.

Length of time discoverer may have to perform labor.

SEC. 8. The discoverer shall have sixty (60) days from the time of uncovering or disclosing a lode, to sink a discovery shaft thereon.

What location certificate construed to contain.

SEC. 9. The location or location certificate of any lode claim shall be construed to include all surface ground within the surface lines thereof, and all lodes and ledges throughout their entire depth, the top or apex of which lie inside of such lines extended vertically, with such parts of all lodes or ledges as continue, by dip beyond the side lines of the claim, but shall not include any portion of such lodes or ledges beyond the end lines of the claim or the end lines *contained*, [continued] whether by dip or otherwise, or beyond the side lines in any other manner than by the dip of the lode.

SEC. 10. If the top or apex of the lode in its longitudinal course extends beyond the exterior lines of the claim at any point on the surface, or as extended vertically downward, such lode may not be followed in its longitudinal course beyond the point where it is intersected by the exterior.

Discoverer cannot claim beyond exterior lines of claim.

SEC. 11. All mining claims now located, or which may be hereafter located, shall be subject to the right of way of any ditch or flume for mining purposes, or of any tramway or pack-trail which is now in use, or which may be hereafter laid out across any such location: *Provided always*, That such right of way shall not be exercised against any location duly made and recorded, and not abandoned prior to the establishment of the ditch, flume, tramway or pack-trail without consent of the owners except by condemnation, as in case of land taken for public highways; parol consent to the location of any such easement, accompanied by the completion of the same over the claim, shall be sufficient without writing: *And provided further*, That such ditch or flume shall be so constructed that the water from such ditch or flume shall not injure vested rights by flooding or otherwise.

Mining claims subject to right-of way.

Proviso.

SEC. 12. When the right to mine is in any case separate from the ownership or right of occupancy to the surface, the owner or rightful occupant of the surface may demand satisfactory security from the miner, and if it be refused, may enjoin such miner from working until such security is given. The order for injunction shall fix the amount of bond.

When owner of mine may demand security from miner.

SEC. 13. If at any time the locator of any mining claim heretofore or hereafter located, or his assigns, shall apprehend that his original certificate was defective, erroneous, or that the requirements of the law had not been complied with before filing, or shall be desirous of changing his surface boundaries, or of taking in any part of an overlapping claim which has been abandoned, or in case the original certificate was made prior to the passage of this law, and he shall be desirous of securing the benefit of this act, such locator or his assigns may file an additional certificate subject to the provisions of this act: *Provided*, That such relocation does not interfere with the existing rights of others at the time of such relocation, and no such relocation or the record thereof shall preclude the claimant or claimants from proving any such title or titles as he or they may have held under previous locations.

Concerning the filing of an additional or amended certificate.

Amount of work to be performed annually.

SEC. 14. The amount of work to be done or improvements made during each year to hold possession of a mining claim, shall be that prescribed by the laws of the United States, to-wit: One hundred dollars annually.

Affidavit of labor to be made.

SEC. 15. Within six (6) months after any set time or annual period herein allowed for the performance of labor or making improvements upon any lode claim, the person on whose behalf such outlay was made, or some person for him, shall make and record an affidavit in substance as follows:

Form of affidavit.

TERRITORY OF DAKOTA, }
County of }

Before me the subscriber personally appeared,
....., who being duly sworn, says that at least
..... dollars worth of work or improvements were performed or made upon (here describe claim or claims, or part thereof,) prior to the day of, A. D. 18...
situate in mining district, county of
Territory of Dakota. Such expenditure was made by or at the expense of, owners of said claim, for the purpose of holding said claim.

[Jurat.]

[Signature.]

And such certificate when recorded in the office of the register of deeds of the county wherein such claim is located, shall be *prima facie* evidence of the performance of such labor.

Manner of re-locating abandoned claims.

SEC. 16. The relocation of abandoned lode claims shall be by sinking a new discovery shaft and fixing new boundaries in the same manner as if it were the location of a new claim, or the relocater may sink the original shaft, cut or adit to a sufficient depth to comply with sections five (5) and (7) of this act, and erect new or adopt the old boundaries, renewing the posts if removed or destroyed. In either case, a new location stake shall be erected. In any case, whether the whole or part of an abandoned claim is taken, the location certificates may state that the whole or any part of the new location is located as abandoned property.

No certificate can claim more than one location.

SEC. 17. No location certificate shall claim more than one location, whether the location be made by one or several locators; and if it purport to claim more than one location, it shall be absolutely void, except as to the first location therein described; and if they are described together, or so that it

cannot be told which location is first described, the certificate shall be void as to all.

SEC. 18. The register of deeds shall be entitled to receive the sum of one dollar for each location certificate recorded and certified by him, and shall furnish the locator or locators with a certified copy of such certificate when demanded, for which he shall be entitled to receive fifty cents. Fee of register of deeds for recording.

SEC. 19. All acts or parts of acts conflicting with this act are hereby repealed. Conflicting acts repealed.

SEC. 20. This act shall take effect and be in force on and after its passage. When to take effect.

Approved, January 6, 1875.

CHAPTER LXIX.

RELATING TO DISPUTED MINING PROPERTY.

AN ACT relating to mining property in dispute, and for the protection of miners.

Be it enacted by the Legislative Assembly of the Territory of Dakota :

SECTION 1. That in all actions in any district court of this territory wherein the title or right of possession to any mining claim shall be in dispute, the said court or the judge thereof may, upon application of any of the parties to such suit, enter an order for the under-ground as well as surface survey of such part of the property in dispute as may be necessary to a just determination of the question involved. Such order shall designate some competent surveyor not related to any of the parties in such suit, or in anywise interested in the result of the same; and upon the application of the party adverse to such application, the court may also appoint some competent surveyor, to be selected by such adverse applicant, whose duty it shall be to attend upon such survey, and observe the method of making the same; said second survey to be at the cost of the party asking therefor. It shall also be lawful in such order to specify the names of witnesses named by either party, not exceeding three on each side, to examine such property, who shall be allowed to enter into such prop- Judge may order surface or subterranean survey of mine.

Witnesses to attend survey.

Order can only be made in open court.

erty and examine the same; such court or the judge thereof may also cause the removal of any rock, debris, or other obstacle in any of the drifts or shafts of said property when such removal is shown to be necessary to a just determination of the question involved: *Provided, however,* That no such order shall be made for survey and inspection except in open court or in chambers, upon notice of application of such order of at least six days, and not then except by agreement of parties or upon the affidavit of two or more persons that such survey and inspection is necessary to the just determination of the suit, which affidavits shall state the facts in such case, and wherein the necessity for survey exists; nor shall such order be made unless it appears that the party asking therefor had been refused the privilege of survey and inspection by the adverse party.

Judge to have power to issue writs of injunction.

SEC. 2. The said district courts of this territory or any judge thereof, sitting in chancery, shall have, in addition to the power already possessed, power to [issue] writs of injunction for affirmative relief, having the force and effect of a writ of restitution, restoring any person or persons to the possession of any mining property from which he or they may have been ousted, by force and violence, or by fraud, or from which they are kept out of possession by threats, or whenever such possession was taken from him or them by entry of the adverse party on Sunday, or a legal holiday, or while the party in possession was temporarily absent therefrom. The granting of such writ to extend only to the right of possession under the facts of the case, in respect to the manner in which the possession was obtained, leaving the parties to their legal rights on all other questions as though no such writ had issued.

Penalty where through force or threats obtain possession of mine.

SEC. 3. In all cases where two or more persons shall associate themselves together for the purpose of obtaining the possession of any lode, gulch, or placer claim, then in the actual possession of another, by force and violence, or by threats of violence, or by stealth, and shall proceed to carry out such purpose by making threats against the party or parties in possession, or who shall enter upon such lode or mining claim for the purpose aforesaid, or who shall enter upon or into any lode, gulch, placer claim or quartz mill, or other mining property, or not being upon such property, but within hearing

of the same shall make any threats, or make use of any language, sign or gestures, calculated to intimidate any person or persons at work on said property, from continuing to work thereon or therein, or to intimidate others from engaging to work thereon or therein, every such person so offending shall, on conviction thereof, be fined in a sum not exceeding two hundred and fifty dollars, and be imprisoned in the county jail not less than thirty days nor more than six months; such fine to be discharged either by payment or by confinement in such jail until such fine is discharged at the rate of two dollars and fifty cents (\$2.50) per day. On trials under this section proof of a common purpose of two or more persons to obtain possession of property as aforesaid, or to intimidate laborers as above set forth, accompanied or followed by any of the acts above specified by any of them, shall be sufficient evidence to convict any one committing such acts, although the parties may not be associated together at the time of committing the same.

SEC. 4. If any person or persons shall associate and agree to enter or attempt to enter by force of numbers and the terror such numbers is calculated to inspire; or by force and violence, or by threats of violence against any person or persons in the actual possession of any lode, gulch or placer claim, and upon such entry or attempted entry, any person or persons shall be killed, said persons and all and each of them so entering or attempting to enter, shall be deemed guilty of murder in the first degree, and punished accordingly. Upon the trials of such cases any person or parties cognizant of such entry, or attempted entry, who shall be present and aiding, assisting or in any wise encouraging such entry, or attempted entry, shall be deemed a principal in the commission of said offense.

When party seize possession of mineral property, and killing ensues, deemed murder.

Who deemed principals.

SEC. 5. All acts and parts of acts inconsistent herewith are hereby repealed so far as they shall affect the enforcement of this act.

Conflicting acts repealed.

SEC. 6. This act shall take effect and be in force from and after its passage.

When to take effect.

Approved, January 6, 1875.