

New Zealand.



ANALYSIS.

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1930, No. 41.

Title. AN ACT to assist the Kawarau Gold Mining Company, Limited, and its Lessees of Claims to amalgamate their Interests in One Company, and to enable the Amalgamated Company to investigate the Practicability of mining its Claims on the Kawarau River, and to enable it to put into Operation any Practical Method that may be discovered of so doing. [25th October, 1930.]

Preamble. WHEREAS the Kawarau Gold Mining Company, Limited, a company incorporated under the Companies Act, 1908 (hereinafter referred to as the parent company), is the holder under the Mining Act, 1926, of certain mining claims, leases, and privileges to mine the Kawarau River from its outlet from Lake Wakatipu to its junction with the Clutha River (with the exception of certain portions of the said stretch of river in respect of which rights were acquired by other persons), including a license to erect a dam across the said river at its said outlet: And whereas part of the consideration for granting the license to erect such dam was an undertaking by the licensee to construct a public roadway

above such dam : And whereas the parent company divided the said stretch of river into one hundred and twenty-eight claims and offered such claims for lease under tribute agreements for a term of seven years, subject to each of the lessees of any of such claims (hereinafter referred to as claimholders) entering into a collateral agreement to provide his share of the cost of the undertaking by contributing to the parent company up to the sum of one thousand pounds in respect of each claim held by him : And whereas one hundred and twenty-six claims were so leased and the sum of eight hundred and seventy pounds was called up in respect of each claim : And whereas thirty-one limited companies have been registered which are claimholders and the Crown has received a large sum in fees under the Companies Act, 1908, in respect of such companies and under the Mining Act, 1926, from all the claimholders and from the parent company : And whereas a total sum of one hundred and four thousand six hundred and thirteen pounds two shillings has been received by the parent company in respect of such calls and expended in the carrying-out of the said undertaking : And whereas the said public roadway above the dam has been constructed at a cost of four thousand nine hundred and sixty-seven pounds six shillings and sevenpence : And whereas individual claimholders expended further moneys upon their claims : And whereas the plan of mining the said stretch of river by independently working claims throughout its length has proved entirely impracticable : And whereas the leases of claimholders will all have expired by the year nineteen hundred and thirty-two, and unless an amalgamation of the interests of claimholders and the parent company is effected the whole of the capital subscribed by claimholders will be entirely lost : And whereas such an amalgamation would afford an opportunity of undertaking investigations as to any practicable method of mining the said stretch of river : And whereas the parent company has entered into an agreement bearing date the sixteenth day of June, nineteen hundred and thirty, with George Alfred Charles Robieson and others as trustees for a new company to be formed to promote such an amalgamation broadly upon terms that claims shall be purchased from claimholders who have paid the said calls up to eight hundred and seventy pounds in respect of each of their said claims by the issue of shares in the new company to the nominal value of one thousand pounds for each claim, each one thousand pounds of such shares to be issued paid up to the sum of eight hundred and seventy pounds, and that the assets of the parent company shall be purchased by the issue of fully-paid-up shares in the new company to the nominal value of one hundred and twenty-five pounds for every claim so purchased as aforesaid : And whereas the full terms of such proposed amalgamation are set out in a form of agreement attached to the said agreement of the sixteenth day of June, nineteen hundred and thirty, and marked " A " : And whereas the said form of agreement marked " A " contains a provision to enable claimholders who are in default with their said calls but are able and willing to make good such default to come into the amalgamation : And whereas a copy of the said agreement which is dated the sixteenth day of June, nineteen hundred and thirty, with the said form of agreement marked " A " attached thereto has been lodged with the Minister of Mines and marked N. 12-122 : And whereas the carrying-out of the said agreement

would involve great expense beyond the means of the claimholders, and it is just and equitable in the circumstances and also in the public interest that the Crown should facilitate the carrying-out of the amalgamation with a minimum of expense and in such a manner as to afford the new company a reasonable opportunity with a minimum of expense of investigating as to practical methods of working the said stretch of river with a view to working the same if a practicable method of so doing is found: And whereas by a deed dated the twenty-third day of October, nineteen hundred and twenty-six, and made between His Majesty the King of the first part, the Public Trustee of the second part, and the parent company of the third part, it was declared that a sum of ten thousand pounds deposited with the Public Trustee by the parent company should be held by the Public Trustee upon trust to invest the same in the Common Fund of the Public Trust Office, and upon trust to pay the said sum and interest thereon, or any part or parts thereof respectively, to such persons and in such manner as the Minister of Public Works should direct: And whereas it was by the said deed declared that the said sum should be available for the purpose of satisfying all claims, whether by the Crown or by any person other than the Crown, arising in connection with the collapse of the said dam or any part thereof, or in respect of the use of or in connection with the said dam, as therein set out: And whereas it is desirable that statutory authority should be given to the said Minister and to the Public Trustee to release the said sum of ten thousand pounds and interest thereon to enable the debts and liabilities of the parent company to be paid and discharged, and the expenses of and incidental to such amalgamation and investigations to be paid, and the balance to be transferred to the amalgamated company, subject to the condition that the said sum of ten thousand pounds shall be redeposited before the said dam is again used for mining operations: And whereas the Southland Hospital Board at a sitting of the Warden's Court at Queenstown on the eighteenth day of January, nineteen hundred and twenty-four, withdrew certain objections duly lodged by it to an application for a license for the said dam which had been lodged by the parent company, on that company undertaking to supply free of cost to the Frankton Hospital, an institution under the said Board's control, electric power for lighting and also water (such supplies to be adequate for the requirements of the said hospital as at the eighteenth day of January, nineteen hundred and twenty-four) during the term of the said license, to the satisfaction of the Inspector-General of Hospitals, and a license for the said dam was accordingly granted to the parent company: And whereas the functions of the Inspector-General of Hospitals have since been transferred to the Director-General of Health:

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title.

1. This Act may be cited as the Kawarau Gold Mining Amalgamation Act, 1930.

Interpretation.

2. In this Act, if not inconsistent with the context,—

“Amalgamated company” means the company proposed to be formed and intituled the Amalgamated Kawarau Gold Mining Company, Limited, as herein mentioned:

“Amalgamation” means the proposed amalgamation of the interests of claimholders and the parent company as set out in the form of agreement marked “A” that is hereinbefore referred to.

3. The Registrar of Companies is hereby directed to accept for registration without payment of any fees a limited company to be named “The Amalgamated Kawarau Gold Mining Company, Limited,” provided that the Registrar is satisfied that such company is formed primarily for the purpose of effecting the amalgamation; and the Registrar is hereby further directed not to charge any annual license fees or other recurring fees in respect of the said company for a period of three years from the passing of this Act:

Amalgamated company to be registered without fee, and to be exempt from annual fees for three years if no dividend paid.

Provided that if within that period the amalgamated company pays a dividend to its shareholders then the usual annual fees shall be charged for the year in respect of which such dividend is paid and thereafter.

4. The Mining Registrars are directed not to charge any rentals or fees under the Mining Act, 1926, for a period of two years from the thirty-first day of December, nineteen hundred and thirty, in respect of any mining privileges of claimholders or of the parent company that are to be transferred or assigned to the amalgamated company:

Exemption from mining-privilege rentals for two years

Provided that if within such period a practicable method of working the said river is discovered and put into operation the Governor-General may, by Order in Council or successive Orders in Council, direct that the rentals or fees payable in respect of all or any of such mining privileges shall again become payable as from a date to be named in the Order in Council.

5. Until the Governor-General by Order in Council directs otherwise with regard to all or any of the mining privileges referred to in the last preceding section the same shall not be liable to forfeiture or be deemed to be abandoned.

Protection of mining privileges against forfeiture.

6. (1) An extraordinary resolution as defined by section ninety-two of the Companies Act, 1908, shall be sufficient to authorize the parent company and any claimholder that is a limited company to transfer all or any of its assets in pursuance of the said amalgamation agreement to the amalgamated company and to wind up the company passing the same; and it shall not be necessary to call any subsequent meeting to confirm any such resolution.

Mode of parent company and claimholding companies entering into amalgamation.

(2) Upon the winding-up of any of the said companies it shall be lawful for such company to distribute all or any of its assets, including any fully or partly paid-up shares in the amalgamated company, in specie among its members, notwithstanding that there may be no provision in its memorandum or articles of association it thereunto enabling.

7. The rights of any claimholder which is or was a limited company to enter into the amalgamation shall not be lost by reason only of such claimholder being in course of liquidation or liquidated or dissolved or struck off the register of companies, and notices shall be sent to the liquidator of such company or to the company at its last address known to the parent company as if such company were an existing claimholder. The liquidator or any director or former director of such company may call an extraordinary general meeting of the shareholders

Provisions as to claimholding companies liquidated or dissolved.

of such company to consider whether or not such company shall enter into the amalgamation. If at such meeting it is resolved by an extraordinary resolution as defined by the Companies Act, 1908, that such company shall enter into the amalgamation, then the Supreme Court on an application made by any such company or a member thereof may, if the company has been dissolved, make an order upon such terms as the Court thinks fit declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved; or, if the company has been struck off the register, may order the name of the company to be restored to the register, and upon an office copy of the order being delivered to the Registrar of Companies for registration the company shall be deemed to have continued in existence as if its name had not been struck off; and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position, as nearly as may be, as if the name of the company had not been struck off, and, in either case, may make such orders as to service and costs as the Court thinks fit.

Powers of liquidators
of companies
entering into
amalgamation.

8. (1) Upon the winding-up of any of the said companies, and in order to facilitate any distribution of assets in specie that shall have been determined upon, the following provisions shall apply as an addition to and extension of all other powers vested in liquidators.

(2) The liquidator shall—

(a) Settle a list of the shareholders of the company in liquidation with particulars of the assets that he has allotted to each shareholder, the allotments to be proportioned as nearly as practicable to the shares in the company held by each such shareholder:

(b) Give to each such shareholder a notice in writing containing particulars of the assets so allotted to him, and requiring him within a number of days to be specified in such notice as hereinafter provided to reply in writing to the liquidator at an address in New Zealand to be specified in such notice that he accepts the assets so allotted or a specified proportion of such assets.

(3) In the said notice the liquidator may also invite the shareholder to state how many shares in the amalgamated company he is prepared to purchase and at what price, in the event of there being any such shares not accepted and available for sale.

(4) The time to be stated in such notice shall be—

(a) In the case of a shareholder whose address shown in the company's register is in New Zealand, not less than fourteen days:

(b) In the case of a shareholder whose said address is in Australia or its dependencies or in a dependency of New Zealand, not less than forty-two days:

(c) In other cases not less than one hundred and five days.

(5) Notices by the liquidator may be delivered or posted in New Zealand by registered letter addressed to the shareholder at his said address, and shall be deemed to be given when so delivered or posted. Replies from shareholders shall be deemed to be given when received at the said address of the liquidator.

(6) In every case where a shareholder in his reply to the liquidator accepts less than his said allotment the liquidator shall divide such

shareholder's holding of shares in the company in liquidation into two parts, one of which shall bear as nearly as practicable the same proportion to the shareholder's total holding as the rejected portion of the allotment bears to the whole allotment, and in respect of such part of the holding the liquidator shall treat the shareholder as a shareholder who has refused to accept allotment.

(7) Shareholders who do not accept allotment within the times limited in the said notice shall be deemed to have refused allotment:

Provided that the liquidator may at any time thereafter in his discretion permit any such shareholder to take an allotment so long as any assets remain unallotted.

(8) The liquidator shall sell for what they will realize such of the assets of the company in liquidation as have been offered for allotment but not accepted by shareholders, and the net proceeds of such sale (after deducting the expenses of such sale) shall be distributed rateably among the shareholders who have not accepted such allotment:

Provided that any debts, calls, or contributions payable by any such shareholder to the said company or the liquidator shall be set off against the share of such shareholder in the said proceeds.

(9) An acceptance of allotment shall constitute a contract to accept the assets thereby accepted, and such contract so far as it relates to shares in a limited company shall be deemed to be an acceptance of allotment or of a transfer of the shares therein accepted, and on receipt of any such acceptance the company whose shares are thereby accepted shall allot such shares to the acceptor or register a transfer thereof to him as the case may be.

9. Nothing in this Act shall operate to deprive any claimholder who decides not to join in the amalgamation of the benefit of any contract or right of action that such claimholder may have against the parent company or any other claimholder.

Saving of rights of claimholders not entering amalgamation.

10. (1) Subject to the provisions of subsection three hereof, the Minister of Public Works may from time to time, if he thinks fit, release any part of the said sum of ten thousand pounds held by the Public Trustee upon trust as aforesaid and the interest thereon for the purpose of paying and discharging the debts and liabilities incurred or to be incurred by the parent company (including any liability to pay or transfer any part or parts of such sum and interest to the amalgamated company); and the said Minister may from time to time, by notice in writing, direct the Public Trustee to pay the moneys so released, or any part or parts thereof, for the purpose aforesaid, to such persons and in such manner as the said Minister thinks fit.

Provisions as to release of deposit of £10,000.

(2) The notice in writing of the said Minister shall be a sufficient authority to the Public Trustee for the payment of any such moneys as aforesaid, and the receipt for the same of the person to whom such moneys are by such notice directed to be paid shall be a full and complete discharge to the Public Trustee, and the Public Trustee shall not be concerned to inquire into the propriety of the application or be responsible for the misapplication or non-application of any moneys so paid.

(3) The said Minister shall not release more than six thousand pounds of such moneys under subsection one hereof until after the expiration of the period of three months from the passing of this Act, and if within such period any action is commenced against the parent

company for damages, compensation, or other relief in respect of the use of the said dam the sum of four thousand pounds, or so much thereof as the said Minister deems necessary, shall be available in accordance with the provisions of the said deed dated the twenty-third day of October, nineteen hundred and twenty-six, for the payment of all moneys, if any, that become payable by the parent company to the plaintiff as a result of such action.

Dam not to be used except for experimental purposes until £10,000 redeposited.

11. (1) Except as provided in the next succeeding subsection, it shall not be lawful for the said dam to be used for mining operations unless and until the holder for the time being of the license for the said dam has deposited with the Public Trustee the sum of ten thousand pounds to be held by the Public Trustee upon the same trusts, *mutatis mutandis*, as are set out in the said deed dated the twenty-third day of October, nineteen hundred and twenty-six. Every breach of the provisions of this subsection shall be deemed to be a breach of the conditions of the said license.

(2) Subject to the provisions of section thirteen hereof, the holder for the time being of the said license may from time to time, with the consent of the Minister of Public Works granted upon such terms and conditions as he thinks fit, close, open, and use the said dam for the purpose of repairing it, or for experimental purposes, or generally for the purpose of investigating the practicability of mining the said stretch of river, without depositing the said sum of ten thousand pounds, and without complying with the conditions of the said license requiring indemnities and securities to be given to the Crown in respect of the use of the said dam.

Saving of conditions of dam license and power to impose further conditions on transfer.

12. (1) Save as provided in subsection two of the last preceding section, nothing in this Act shall be deemed to abrogate any of the conditions of the said license or to waive compliance therewith.

(2) In granting his consent to any transfer of the said license the Minister of Public Works may impose such further conditions as he thinks fit upon the transferee, and all such conditions shall have the same force and effect as if they were set out in the Second Schedule to the said license.

Restrictions as to closing and opening of Kawarau Falls Dam or other dams.

13. (1) The amalgamated company shall not be entitled to close or open the said dam, or any other dam that it may construct in the Kawarau River or any tributary thereof, except as permitted by the special Board constituted by Order in Council of the twenty-third day of August, nineteen hundred and twenty-six, for the purpose of controlling the gates of the said dam.

(2) All the powers and authorities of the said Board with respect to the said dam shall extend and apply to every such dam.

Licensee may be required to vest piers and superstructure of dam in Crown upon expiration of license.

14. On the expiration, surrender, cancellation, or other determination of the license for the said dam, or on the vesting of the said license in the Crown, the Minister of Public Works may require the licensee to execute or obtain the execution of such assurances as may be necessary in order to vest in the Crown the piers and superstructure of the said dam (but not the gates or the machinery for working them).

Amalgamated company to assume parent company's obligations to Southland Hospital Board.

15. As from the date of the acquisition by the amalgamated company of any assets from the parent company pursuant to the amalgamation, the hereinbefore-recited obligations of the parent company to the Southland Hospital Board for the supply of electric power for

lighting and of water to the Frankton Hospital for the unexpired term of the said license for the said dam, to the satisfaction of the Director-General of Health, shall be assumed by the amalgamated company, which shall thereafter be liable to the Southland Hospital Board for such supply accordingly :

Provided that nothing herein contained shall be deemed to prevent the parent company or the amalgamated company from contracting with the Southland Hospital Board to terminate or vary the said obligations.