



# Derbyshire Mining Customs and Mineral Courts Act 1852

1852 CHAPTER clxiii 16 and 17 Vict

## I Short title.

In citing this Act in other Acts of Parliament and in legal Instruments, and on all other Occasions, it shall be sufficient to use the Expression “The *Derbyshire* Mining Customs and Mineral Courts Act 1852;” and the Schedules to this Act shall be considered as forming Part thereof.

## II Interpretation of Terms.

In construing this Act the following Words and Expressions shall have the Meaning hereby assigned to them, unless there be something in the Context of the Act repugnant to such Construction; that is to say,

The Word “Steward” shall include Deputy Steward, and the Word “Barmaster” shall include Deputy Barmaster, and all the Enactments herein contained with reference to the Great and Small Barmote Courts, the Steward, and the Barmaster shall apply equally and indifferently to each of the several great and small Barmote Courts, Stewards, and Barmasters by this Act established and authorized to be appointed respectively:

The Words “County Court” shall mean any County Court in the County of *Derby*:

The Word “Gift” shall mean the setting out by the Barmaster of any Ground in manner herein-after provided:

The Word “Founder” shall mean the Point at which a Vein of Ore shall be first found, and the Words “Founder Meers” shall mean the Two First Meers to be set out to the Finder under the Provisions of this Act:

The Words “Mine or Mines,” “Vein or Veins,” shall mean a Mine or Mines, Vein or Veins of Lead Ore, and shall include Parts of or Shares in any Mine or Vein as well as entire Mines and Veins, and all Minerals containing Lead Ore:

The Word “Ore” shall mean Lead Ore exclusively:

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*Changes to legislation: There are currently no known outstanding effects for the Derbyshire Mining Customs and Mineral Courts Act 1852. (See end of Document for details)*

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The Words “Mineral Property” shall include Mines and Veins of Lead, and Parts of or Shares in any such Mines or Veins, and the Works, Rights, and Appurtenances connected therewith, and also Lead Ore, and all Tools, Materials, Goods, Chattels, and Effects used in searching for, getting, cleansing, or preparing Lead Ore, whether such Tools, Materials, Goods, Chattels, or Effects be found upon any Mine or Works or elsewhere.

### III Appointment of Steward of Wirksworth Barmote Court.

From and after the passing of this Act it shall be lawful for the Queen and Her Successors to nominate and appoint from Time to Time, by Letters Patent under the Seal of the Duchy of *Lancaster*; a fit and proper Person, being a Barrister-at-Law of Five Years standing, or a Member of One of the Inns at Court who has practised as a Special Pleader for Ten Years, or [<sup>F1</sup>a solicitor of the Supreme Court] of Seven Years standing, to be and to be called the “Steward of the *Wirksworth* Barmote Courts,” and such Steward shall hold his Office during the Will and Pleasure of the Queen and Her Successors.

#### Textual Amendments

- F1** Words substituted by virtue of [Supreme Court of Judicature \(Consolidation\) Act 1925 \(c. 49\), s. 224\(1\)](#) and [Solicitors Act 1974 \(c. 47\), s. 89\(6\)](#)

### IV As to Appointment of Stewards of private Liberties.

From and after the passing of this Act it shall be lawful for the respective Persons for the Time being entitled to the First Estate of Freehold in the Mineral Duties respectively payable within the several Manors or Liberties of *Ashford, Hartington, Peak Forest, Tideswell, Stoney Middleton and Eyam, Youlgreave, and Litton*, by Writing under their respective Hands, to appoint fit and proper Persons, qualified as is therein-before provided with respect to the Steward to be appointed by the Queen, to act as Stewards for the aforesaid Manors or Liberties respectively, and each such Steward shall hold his Office during the Will and Pleasure of the Person or Persons by whom he shall have been appointed; where several Manors are united into One Liberty for the Purposes of this Act, as herein-after provided, One Steward only is to be appointed for each united Liberty.

### V Saving Rights of C. Clarke.

Nothing in this Act contained shall be construed to alter or affect any Right which *Charles Clarke*, the present Barmaster of the Soke and Wapentake of *Wirksworth*, may have to appoint the Steward of the Barmote Courts within the said Soke and Wapentake, or to alter or affect any other Right or Privilege of the said *Charles Clarke* as such Barmaster as aforesaid, so long as he shall continue to hold the said Office of Barmaster.

### VI As to Appointment of Steward of the Manor or Liberty of Crich.

From and after the passing of this Act it shall be lawful for the respective Persons for the Time being entitled to the First Estate of Freehold in the Mineral Duties respectively payable within the Manor or Liberty of *Crich*, or any One or more of

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them, to give Notice, by Advertisement in some Newspaper published in the County of *Derby*, of a Meeting of the Persons so entitled as aforesaid, for the Purpose of appointing a fit and proper Person, qualified as is herein-before provided with respect to the Steward to be appointed by the Queen, to act as Steward for the said Manor or Liberty of *Crich*, and the Parties present, personally or by Proxy, at such Meeting, or a Majority in Value of such Persons, shall and may appoint a Steward, Barmaster, and any Number of Deputy Barmasters for the said Manor or Liberty accordingly, who shall hold their respective Offices during the Will and Pleasure of the Persons for the Time being entitled as aforesaid, who may, at a Meeting convened and held in manner aforesaid, displace such Officers or any of them, and appoint new ones in their Stead; and whenever any Vacancy shall arise in the Offices of Steward, Barmaster, or Deputy Barmasters for the said Manor or Liberty of *Crich*, the like Proceedings may be taken for the Appointment of fit and proper Persons to supply such Vacancies.

#### **VII One Person may be appointed Steward to several Courts.**

It shall not be necessary that a different Person should be appointed to the Office of Steward of the said Soke and Wapentake and of each of the said several Manors or Liberties, but the same Person may hold the Office of Steward of the said Soke and Wapentake and of any One or more of the said Manors or Liberties, or of more than One of the said Manors or Liberties, at the same Time.

#### **VIII Provision for Appointment of Steward in case of Disability.**

If at any Time the First Estate of Freehold mentioned in the Fourth and Fifth Sections shall be vested in any Person as a Trustee or Mortgagee, such Trustee or Mortgagee shall not have the Right of appointing the Steward, or any other Rights by this Act annexed to such First Estate of Freehold, but the Person entitled to the first equitable Estate of Freehold shall have such Rights of Appointment; and if at any Time the Estate to which such Rights are annexed shall be vested in or belong to more Persons than One, then the Majority in Value of such Persons shall, in the event of any Difference of Opinion, exercise the Right of Appointment and such other Rights as aforesaid; and if at any Time the Estate to which such Rights are annexed shall be vested in or belong to more Persons than One, and any One or more of such Persons shall be an Infant, Idiot, [<sup>F2</sup>person of unsound mind], or Person *non compos mentis*, then the Right of Appointment and such other Rights as aforesaid shall belong to the other or others of such Persons, to the Exclusion of such Infant, Idiot, [<sup>F2</sup>person of unsound mind], or Person *non compos mentis*; and if any Time the Person in whom the Right of Appointment shall be vested shall from any Reason whatsoever be incapable of exercising such Right, or shall for the Space of Three Calendar Months after the Office shall have been vacant have refused or neglected to appoint a Steward, then the Right of appointing such Steward for that Vacancy shall belong to the Chancellor of the Duchy of *Lancaster* for the Time being, and shall be exercised by him by Writing under his Hand.

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#### **Textual Amendments**

**F2** Words substituted by virtue of [Mental Treatment Act 1930 \(c. 23\), s. 20\(5\)](#)

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## IX Steward may appoint a Deputy.

It shall be lawful for the Steward, by Writing under his Hand, to appoint from Time to Time a Deputy Steward, qualified to be appointed Steward, to act for him at any Time when he shall be prevented by Illness or unavoidable Absence from acting in such Office, and to remove such Deputy at his Pleasure; and such Deputy, while acting under such Appointment, shall have the like Powers and Privileges, and be subject to the like Provisions, Duties, and Penalties for Misbehaviour, as if he were the Steward of the Court for the Time being.

## X Duties of Steward.

The Duties of the Steward shall be to receive and enter Plaints in a Book to be kept by him for that Purpose: to issue Summonses; to hold and preside at the Great and Small Barmote Courts; to issue Precepts under his Hand to the Barmaster for summoning the Attendance of the Grand Jury on Views, and at the Great Barmote Courts, and also Precepts to the Barmaster for summoning and impannelling Jurors for the Trials of Causes at the Small Barmote Courts; to administer Oaths to the Barmasters, Jurors, Witnesses, or other Persons at and out of the Great and Small Barmote Courts; to preside as Judge on the Trial of Causes at the Small Barmote Courts; to tax Costs in all Cases where, by this Act, Costs are or may be given; to attend and preside at Views; to sign and issue Subpoenas for the summoning of Witnesses, and the Process of the Courts, both mesne and final, and all Rules and Orders of the Courts, and Warrants for enforcing the Judgments of the Courts, and levying Penalties; to make Returns to <sup>F3</sup>orders of certiorari]; to advise the Barmasters and Grand Juries and other Juries upon Matters of Law, and all other Matters connected with their respective Duties; to affix the Seal of the Barmote Courts to such Documents as require the same; to hear and determine Applications to the Courts which do not require the Intervention of a Jury, and to make Orders thereon upon such Terms as to the Payment of Costs by either Party, or otherwise, as may to him seem just; to keep the Verdicts, Judgments, Books, and Proceedings of the Great and Small Barmote Courts, and the Seal of the said Courts, and also all Books and Accounts herein-after provided to be kept and delivered to the Steward by the Barmaster, safe and in good Condition, and to deliver up the same to his Successor whenever required; and generally to do and perform such other Acts and Duties as are in this Act mentioned as Acts and Duties to be performed by the Steward.

### Textual Amendments

**F3** Words substituted by virtue of [Administration of Justice \(Miscellaneous Provisions\) Act 1938 \(c. 63\), s. 7\(5\)](#)

## XI Great and Small Barmote Courts to be held for the Soke and Wapentake of Wirksworth, and Small Barmote Courts for the Manors or Liberties.

Two Great Barmote Courts shall be held every Year within the Soke and Wapentake of *Wirksworth*, One within a Month next after the Twenty-fifth Day of *March*, and the other within a Month next after the Twenty-ninth Day of *September*; and Small Barmote Courts shall be held in the said Soke and Wapentake and Manors or Liberties respectively from Time to Time as Occasion shall require, but not on the Days appointed for the holding of the Great Barmote Courts: The Great and Small Barmote Courts for the Soke and Wapentake of *Wirksworth* shall be held at *Wirksworth*, and the

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Great and Small Barmote Courts for the said Manors or Liberties respectively shall be held at any Place within the Jurisdiction of the said Courts respectively which may be appointed by the Steward, which Place may be varied at any Time or from Time to Time.

**XII Great Barmote Courts to be held for the Manors or Liberties of Ashford, Tideswell, Peak Forest, Hartington, and Stoney Middleton and Eyam.**

The Manors or Liberties of *Ashford, Tideswell, Peak Forest, and Hartington* shall and are hereby declared to be united and form One Liberty of *Ashford, Tideswell, Peak Forest, and Hartington*, for the Purpose of holding the Great and Small Barmote Courts, and for such other Purposes as are herein mentioned; and the Manors of *Stoney Middleton and Eyam* shall and are hereby declared to be united and form One Liberty of *Stoney Middleton and Eyam* for the Purpose of holding the Great and Small Barmote Courts, and for such other Purposes as are herein mentioned; and One Great Barmote Court shall be held every Year for each of the said united Manors or Liberties; and the said Court shall be held within a Month after the Twenty-fifth Day of *March*, and at such Place within any of the said respective Manors or Liberties aforesaid as the Steward shall from Time to Time appoint.

**XIII Great Barmote Court for the Manor or Liberty of Crich.**

It shall not be requisite to hold a Great Barmote Court within the Manor or Liberty of *Crich*, except at such Times and Places as the Steward of the said Manor shall by Advertisement in some Newspaper published in the County of *Derby* appoint; and the Grand Jurors and other Jurors for the Soke and Wapentake of *Wirksworth* shall have Power and be required to perform all such Duties and Acts in and for the said Manor or Liberty of *Crich* as they are authorized and empowered to do and perform within the said Soke and Wapentake.

**XIV Great Barmote Court for the Manor or Liberty of Litton.**

It shall be lawful for the said *Nathaniel Baron Scarsdale*, his Heirs or Assigns, or the Person for the Time being entitled to the First Estate of Freehold in the Mineral Duties payable within the Manor of *Litton*, or the Husband, Guardian, or [<sup>F4</sup>receiver for] such Person, if such Person be a Feme Covert, Infant, Idiot, [<sup>F5</sup>person of unsound mind], or Person *non compos mentis*, to hold at his Discretion One or more Great Barmote Courts in every Year within the said Manor or Liberty, and the Periods for holding the same may be within a Month after the Twenty-fifth Day of *March*, and within a Month after the Twenty-ninth Day of *September*.

**Textual Amendments**

- F4** Words substituted by virtue of [Mental Health Act 1959 \(c. 72\), Sch. 6 Pt. IV para. 26](#)  
**F5** Words substituted by virtue of [Mental Treatment Act 1930 \(c. 23\), s. 20\(5\)](#)

**XV Great Barmote Courts to be held for the Manor or Liberty of Youlgreave.**

It shall be lawful for the said *John Henry Duke of Rutland*, his Heirs and Assigns, or the Person for the Time being entitled to the First Estate of Freehold in the Mineral Duties payable within the Manor or Liberty of *Youlgreave*, or for the Husband, Guardian,

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or [<sup>F6</sup>receiver for] such Person, if such Person be a Feme Covert, Infant, Idiot, [<sup>F7</sup>person of unsound mind], or Person *non compos mentis*, to hold at his Discretion One or more Great Barmote Courts in every Year within the said Manor or Liberty of *Youlgreave*; and the Periods for holding the same may be within a Month next after the Twenty-fifth Day of *March*, and within a Month next after the Twenty-ninth Day of *September* in any Year.

#### Textual Amendments

- F6** Words substituted by virtue of [Mental Health Act 1959 \(c. 72\)](#), [Sch. 6 Pt. IV para. 26](#)
- F7** Words substituted by virtue of [Mental Treatment Act 1930 \(c. 23\)](#), [s. 20\(5\)](#)

#### XVI Business at Barmote Courts.

The Matters to be transacted at the Great Barmote Courts shall be the swearing in of the Grand Jury, and such other Matters as are in this Act mentioned as being Matters to be transacted at the Great Barmote Courts; and the Matters to be transacted at the Small Barmote Courts shall be the Trial of Actions of Title, Trespass, and Debt, and such other Matters as are in this Act mentioned as being Matters to be transacted at the Small Barmote Courts.

#### XVII Seal of the Courts.

There shall be a Seal or Stamp provided by the Steward, with Words thereon to specify the particular Court of which it is the Seal, and all Proceedings in the Great and Small Barmote Courts which are required to be signed by the Steward shall be sealed or stamped therewith.

#### XVIII Barmaster for the Soke and Wapentake of Wirksworth.

It shall be lawful for the Queen and Her Successors, by Letters Patent under the Seal of the Duchy of *Lancaster*; from Time to Time as a Vacancy shall happen, to appoint a fit and proper Person to serve the Office of Barmaster of the Soke and Wapentake of *Wirksworth*, and to be called the Barmaster of the Soke and Wapentake of *Wirksworth*; and such Barmaster may, by Writing under his Hand, nominate and appoint from Time to Time One or more fit and proper Persons to serve the Office of Deputy Barmaster within the said Soke and Wapentake of *Wirksworth*, and to remove such Deputy or Deputies respectively at his Will and Pleasure; and the said Barmaster for the Time being of the said Soke and Wapentake of *Wirksworth* may also, by Writing under his Hand, nominate and appoint One of such Deputy Barmasters to execute all such Summonses and Warrants, and to perform such other Acts and Duties as are in this Act mentioned to be executed and performed by the Barmaster of the said Soke and Wapentake.

#### XIX Barmasters for the private Liberties.

It shall be lawful for the several Persons hereby authorized to appoint Stewards for the said several Manors or Liberties, by Writing signed by them respectively, to appoint during Pleasure only fit and proper Persons to act as Barmasters for the said several Manors or Liberties respectively; and every such Barmaster (excepting in the Manor or Liberty of *Crich* herein-before provided for) may (with the Consent in Writing of

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the Person under whom he holds his Appointment) nominate One or more fit and proper Persons to serve the Office of Deputy Barmaster within the Manor or Liberty in which such Barmaster shall act; and such Deputy Barmasters shall respectively continue in Office during the Continuance in Office of the Barmasters by whom they were respectively appointed, or until they shall be removed by the Persons hereby respectively authorized to appoint such Barmasters.

**XX Barmaster not to be answerable for Deputy.**

The Barmaster shall not be answerable for the Acts of the Deputy Barmasters.

**XXI Barmasters to be sworn.**

The Barmasters may act as such without being sworn, but shall, before or at the Great Barmote Court next after their respective Appointments, be respectively sworn well and truly to serve the Office to which they are appointed, or such Appointment shall be void.

**XXII Duties of Barmaster.**

The Duties of the Barmaster shall be to execute all such Precepts and Warrants as shall be directed to him and signed by the Steward and sealed with the said Seal, to attend on Views with the Steward and Deputy Barmaster of the District in which the Mine to be viewed is situate, and where there is no Deputy appointed for any District to perform all the Duties of the Office of Deputy until a Deputy is appointed, and generally to do and perform such other Acts and Duties as are in this Act mentioned as being Acts or Duties to be done or performed by the Barmaster.

**XXIII Duties of Deputy Barmaster.**

The Duties of the Deputy Barmaster, whether the Barmaster be absent or present, shall be to serve Summonses in Actions in the Small Barmote Courts of their respective Districts, to serve Summonses on Jurors, and to attend Views on Mines within their respective Districts, to collect the Dues payable within their respective Districts, to keep Accounts of such Dues, to keep a Book, and make therein written Entries and Particulars of all Meers of Ground which shall be measured and set out by them under the Provisions of this Act, and also of all Transfers of Mines which may be made as herein-after provided, and also of all Freeings, Gifts, and other Matters connected with the Mines within their respective Districts, to sign such Book, and to deliver the same half-yearly, together with a fair Copy of the aforesaid Accounts also signed by them respectively, each such Half-yearly Account to end with the Twenty-fifth of *March* or Twenty-ninth of *September*; to the Steward at the Great Barmote Court next after the Day to which such Accounts shall be made up, or with the Consent of the Steward at any Adjournment of the said Court, or at any subsequent Great Barmote Court, to produce any such Book, and to make and deliver other fair Copies of the aforesaid Accounts at any other Time upon Demand being made by the Steward for the Production of any such Book or for any such Copy, and (in all other Cases in which the Barmaster shall not be present and choose to perform such Duties in Person) to perform within their respective Districts all such Duties as are in this Act mentioned as forming Part of the Duties or Business of the Barmaster, and generally to assist the Barmaster, when required by him so to do, in any other Matters forming Part of or

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connected with the Duties of Barmaster, whether in their own District or elsewhere within the Jurisdiction of the Barmaster.

#### **XXIV Courts to be Courts of Record.**

The Great Barmote Court and the Small Barmote Court shall be Courts of Record, and the Steward shall be Judge of each of them, and may out of Court do all such Acts of the Courts respectively as do not require the Presence of a Jury.

#### **XXV Jurisdiction and Customs.**

The Jurisdiction of the Great and Small Barmote Courts for the Soke and Wapentake of *Wirksworth* shall extend over the whole of the *King's Field* within the said Soke and Wapentake, and the Jurisdiction of the Great and Small Barmote Courts of the said several Manors or Liberties respectively shall extend over such Manors or Liberties respectively, and the Mineral Laws and Customs of the said Soke and Wapentake, and Manors or Liberties, shall be such as are mentioned and comprised in this Act, and no other alleged Custom or Practice shall be valid.

#### **XXVI Provisional Exemption of certain Lands in Eyam.**

Whereas the Owners of certain Lands and Hereditaments within the said Manor or Liberty of *Eyam*, usually called "ancient Freeholds," claim to be exempt in respect of the said Lands and Hereditaments from all Mineral Customs heretofore in force, and from the Jurisdiction of all Barmote Courts heretofore in Existence, and of any Steward thereof: until it shall be found by Law that the said Lands and Hereditaments are subject to such Customs and to such Jurisdiction, nothing in this Act or the Schedule hereto contained shall extend or be construed to extend any Mineral Law or Laws, Custom or Customs, to the said Lands and Hereditaments, or any of them, nor to give any Authority to search for Mines or Veins of Lead Ore, in, under, or upon any of the said Lands or Hereditaments, nor to extend the Jurisdiction of any Great or Small Barmote Court, or the Steward thereof, to the said Lands or Hereditaments, or any of them, nor otherwise to affect any Right or Interest whatsoever of any of the Owners of the said Lands and Hereditaments: Provided always, that until it shall be found by Law that the said Lands and Hereditaments are subject to such Customs and such Jurisdiction, the Authority of the Barmote Courts and Steward (if any), and all Customs (if any) to which such Lands and Hereditaments are now subject, shall remain in full force.

#### **XXVII Practice of Courts.**

The Steward may in any Case, and upon such Terms as to the Payment of Costs by either Party or otherwise as to him shall seem just, make Orders for granting Time to the Plaintiff or Defendant to proceed in the Prosecution or Defence of any Action, and also may from Time to Time adjourn any Great or Small Barmote Court, or the Hearing or further Hearing of any Cause or other Proceeding in the said Courts, or either of them, or before the Steward, in such Manner as to the Steward may seem fit; and when any Court is adjourned, the Grand Jurymen and other Jurymen who shall have been summoned to such Court shall attend at the adjourned Court without any further summoning, and shall be liable to the same Penalties for not attending at an adjourned Court as for not attending upon a Summons: Provided always, that the further Hearing of any Cause, or other Proceeding of which the Hearing shall have been commenced,



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and in which any Evidence shall have been given, shall not be adjourned for any longer Period than until the Day next after that on which the Adjournment takes place, or if such next Day be *Sunday, Good Friday, Christmas Day*, or any Day appointed for a Public Fast or Thanksgiving, then until the Day next but One after that on which the Adjournment takes place; and at the Hearing or Trial of any Action, or on any other Proceeding under this Act, the Wives of the Parties shall be competent Witnesses, and compellable to give Evidence.

### **XXVIII Persons giving false Evidence guilty of Perjury.**

Every Person who, in any Examination upon Oath or solemn Affirmation before the said Steward, shall wilfully and corruptly give false Evidence shall be deemed guilty of Perjury, and shall be liable to be indicted and subject to the same Punishments as may be imposed on Persons guilty of Perjury in any of the Superior Courts [<sup>F8</sup>at the Royal Courts of Justice].

#### **Textual Amendments**

**F8** Words substituted by virtue of [Supreme Court of Judicature \(Consolidation\) Act 1925 \(c. 49\), s. 224\(1\)](#)

### **XXIX Penalty for refusing to give Evidence.**

If any Person appearing as a Witness shall refuse to give Evidence, or to answer any lawful Question, it shall be lawful for the Steward to impose upon any such Person such Penalty not exceeding Ten Pounds as the said Steward shall think fit.

### **XXX Penalty for insulting Steward or Barmaster.**

If any Person shall wilfully insult the Steward or create any Disturbance during the Sitting of any Great or Small Barmote Court, or at any View, or shall obstruct the Barmaster at any Time when in the Execution of his Office, it shall be lawful for the Steward to impose upon any such Person such Penalty, not exceeding Five Pounds, as the Steward shall think fit; and the Steward shall fix a Day on or before which, and a Person to whom, such Penalty shall be paid.

### **XXXI Grand Jury.**

From and after the passing of this Act the Grand Jury of the said Soke and Wapentake shall consist of Twelve Men, and the Grand Juries for the united Liberty of *Ashford, Tideswell, Peak Forest, and Hartington*, and for the united Liberty of *Stoney Middleton and Eyam*, shall also respectively consist of Twelve Men, who shall be summoned from and be competent to act for any Part of the said united Liberties respectively; and the Grand Jury for each of the remaining Manors or Liberties shall also consist of Twelve Men, and all Members of the respective Grand Juries shall be selected by the Barmaster from amongst Persons resident or working within the respective Jurisdictions of the said Great and Small Barmote Courts, and as far as conveniently can be done it shall be the Duty of the Barmaster to select Persons experienced in practical Mining, but a Want of such Experience shall be no Ground of Objection to any Person serving on the Grand Jury if summoned so to do, nor of Exemption from such Service; and at the Second Great Barmote Court which shall be held after the passing of this Act, Six of the Grand Jury to be determined by Lot shall

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be discharged, and Six new Grand Jurymen substituted; and at every subsequent Great Barmote Court Six of the Grand Jury, being those who have been longest in Office, shall be discharged, and Six new Grand Jurymen shall be substituted in their Stead, so that every Member of the Grand Jury shall serve for a Period extending over the holding of Two Great Barmote Courts; and as often as any of the Grand Jury shall die, or become incompetent to act, the Barmaster shall select another Person in his Place, without waiting for the holding of a Great Barmote Court; and every Member of the Grand Jury shall be sworn in by the Steward as soon as conveniently may be, either at a Great or Small Barmote Court or out of Court, as may be most convenient, but every such Member shall be competent to act immediately upon his Appointment as One of the Grand Jury without waiting for being sworn as aforesaid.

### **XXXII Duties of Grand Jury.**

The Duties to be performed by the Grand Jury may, in Cases where no other Provision is made by this Act, be performed by any Eight of the Body, and such Duties shall be to attend at the Great Barmote Courts, and at any other Time upon the Summons of the Barmaster, such Summons to be delivered to all the Members of the Grand Jury, or to be left at their respective usual or last known Places of Abode, at least Twenty-four Hours before the Time at which their Attendance is required, to go into or upon any Mine, Vein, or Mineral Works, and view the same, and give their Opinion on such Matters as are required of them in any Bill of Directions or Cross Bill delivered to them, and generally to do and perform all such Acts and Duties as are in this Act mentioned as being Acts to be done or Duties to be performed by the Grand Jury.

### **XXXIIISmall Barmote Courts.**

The Steward shall upon the entering of any Plaintiff cause a Summons to be issued, and shall on a Day to be mentioned in such Summons, and within One Calendar Month after the entering of the Plaintiff, hold a Small Barmote Court for the Trial of the Cause, and the Plaintiff and Defendant, or their respective [<sup>F9</sup>solicitors] or Agents, shall appear at the Time and Place appointed for the Trial, and the Steward shall proceed in a summary Way to try the Cause, leaving all Matters of Fact in issue in the Cause to be determined by the Jury sworn for the Trial, and shall give Judgment, and the Judgment of the Court shall be enforced by Warrant to be issued under the Hand of the Steward and the Seal of the Barmote Courts, and the Defendant shall be allowed to give Evidence of any special Matter of Defence.

#### **Textual Amendments**

**F9** Word substituted by virtue of [Solicitors Act 1974 \(c. 47\), s. 89\(6\)](#)

### **XXXIVService of Summons.**

The Summons shall be served upon the Defendant by the Barmaster Fourteen clear Days at least before the Day appointed for the Trial, by leaving such Summons at the usual or last known Place of Abode of such Defendant, or, if the Defendant shall not reside within the Jurisdiction of the Barmote Court, by affixing a Copy thereof at the Place where the last preceding Great Barmote Court was held, and by serving another Copy of such Summons upon the Agent of the Mine, if such Agent is resident within the Jurisdiction of the Barmote Court; and upon Proof of the Service of such Summons,

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the Plaintiff shall be at liberty, if the Defendant do not appear, to proceed to Trial, and if the Steward shall think that he is entitled to recover he shall have Judgment: Provided always, that in Cases where there are more Defendants than One, Service on One of such Defendants, and on the Agent of the Mine (if any) resident as aforesaid, shall be deemed sufficient.

#### **XXXV Proviso in case Plaintiff shall not proceed in the Action.**

If the Plaintiff in any Action of Title, Trepass, or Debt shall not proceed to Trial at the Time and Place appointed, the Steward shall cause Judgment as in Case of Nonsuit to be entered for the Defendant in such Action.

#### **XXXVINew Trials.**

The Steward may grant new Trials, and set aside Judgments and other Proceedings, and may stay Proceedings; and in so doing he is hereby directed to act as far as may be on the same Principles as are acted upon in similar Cases by the Superior Courts [<sup>F10</sup>at the Royal Courts of Justice].

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##### **Textual Amendments**

**F10** Words substituted by virtue of [Supreme Court of Judicature \(Consolidation\) Act 1925 \(c. 49\), s. 224\(1\)](#)

#### **XXXVICosts.**

The Party who has Judgment in his Favour, in whatever Way such Judgment may be obtained, shall by the same Judgment recover his Costs of Suit or Defence, as the Case may be.

#### **XXXVIAppeal.**

It shall be lawful for the [<sup>F11</sup>High Court], or for any Judge of any of the Superior Courts [<sup>F12</sup>at the Royal Courts of Justice], on the Application of either Plaintiff or Defendant in an Action in the Small Barmote Court, either before or after Trial, on Cause shown by Affidavit to the Satisfaction of such Court or Judge that an impartial or satisfactory Trial cannot be or has not been had in such Barmote Court, or for any other Cause which to such Court or Judge shall seem reasonable, to allow a Certiorari to be issued out of the [<sup>F11</sup>High Court] for removing all Proceedings which may have been had in such Action into the [<sup>F11</sup>High Court].

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##### **Textual Amendments**

**F11** Words substituted by virtue of [Supreme Court of Judicature \(Consolidation\) Act 1925 \(c. 49\), ss. 18\(2\), 224\(1\)](#)

**F12** Words substituted by virtue of [Supreme Court of Judicature \(Consolidation\) Act 1925 \(c. 49\), s. 224\(1\)](#)

#### **XXXIXPleadings not to be repeated.**

When a Cause is so removed, the Pleadings in the Court below shall stand and need not be repeated in the [<sup>F13</sup>High Court], and shall be of the same Effect there as in

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*Changes to legislation:* There are currently no known outstanding effects for the Derbyshire Mining Customs and Mineral Courts Act 1852. (See end of Document for details)

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the Court below; and if the Pleadings are not complete in the Court below, the same Pleadings shall be adopted, and with the like Effect, in the [F13High Court] as might have been adopted in the Court below; and the [F13High Court] shall give the same Judgment as it shall to the said Court appear ought to have been given if the Cause had been determined in the Court below; and the [F13High Court], or any Judge of One of the Superior Courts, may otherwise deal with the said Cause, when removed, and make such Rules and Orders in or relating to the same, as to them or him may seem just; and all Rules or Orders made by any such Judge shall be liable to be enforced, set aside, or varied by the [F13High Court] in the same Way as Judges Orders may ordinarily be enforced, set aside, or varied; and when Judgment is given in the [F13High Court], a Copy of such Judgment, signed by One of the Masters of the Court, shall be lodged with the Steward, and shall thereupon become a Record of the Court below from which the Cause was removed, and shall be enforced by the last-mentioned Court in the same Way as if the Judgment had been given by such Court and the Cause had never been removed.

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**Textual Amendments**

**F13** Words substituted by virtue of [Supreme Court of Judicature \(Consolidation\) Act 1925 \(c. 49\)](#), **ss. 18(2), 224(1)**

**XL Service of Subpœna on Witnesses.**

Every Subpœna to attend and give Evidence upon any Trial in the Small Barmote Court, if served personally upon the Person required to give Evidence in any Part of England or Wales, shall be as valid and effectual in Law, and shall entitle the Party suing out such Subpœna to all and the like Remedies by Action as if the same had been issued out of the [F14High Court], in any Cause depending in that Court; and in case the Person served shall not appear as required by the said Subpœna it shall be lawful for the said Steward, upon Oath or Affirmation taken in open Court of the personal Service of such Subpœna and of the Tender to the Person so served at the Time of such Service of a reasonable and sufficient Sum of Money to defray the Expenses of coming and attending to give Evidence, and of returning from giving such Evidence, to give to the Party complaining of such Default a Certificate of such Default, under the Hand of the Steward and Seal of the Court; and the Party complaining of such Default having obtained such Certificate may apply to the [F14High Court], and the said last-mentioned Court shall thereupon (if it seems to them just to do so) proceed by Attachment or otherwise, according to the Course and Practice of the same Court, against the Person so having made default, in like Manner as the same Court might have done if such Person had neglected or refused to appear in obedience to a Writ of Subpœna issued to compel the Attendance of Witnesses out of such last-mentioned Court, but such Certificate shall not be conclusive either of the due Service of the Subpœna or of the same having been disobeyed, or of any other Matter.

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**Textual Amendments**

**F14** Words substituted by virtue of [Supreme Court of Judicature \(Consolidation\) Act 1925 \(c. 49\)](#), **ss. 18(2), 224(1)**

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## **XLI Execution may be issued.**

Where a Plaintiff obtains Judgment in an Action of Title, and the Defendant shall refuse, for the Space of Three Days next after the Day on which Judgment is given, to deliver Possession to the Plaintiff, it shall be lawful for the Plaintiff to apply to the Steward, and the Steward shall thereupon issue a Warrant, and the Barmaster shall forthwith execute such Warrant and deliver Possession accordingly: Provided always, that no Entry or Seizure under any such Warrant, or under the Warrant next hereinafter mentioned, shall be made on a *Sunday, Good Friday, or Christmas Day*, or on any Day appointed for a Public Fast or Thanksgiving, or at any Time except between the Hours of Nine in the Morning and Four in the Afternoon; and where a Defendant shall, for the Space of Three Days after the Day when the Judgment is given or Order made, omit to pay any Debt or Damages recovered or awarded to be paid by any Judgment of the Small Barmote Court, or where either Plaintiff or Defendant shall, for the Space of Three Days, omit to pay any Money or Costs recovered or awarded to be paid by any such Judgment, or by any Order made by the Steward, or where any Person shall omit to pay any Penalty imposed by the Steward under the Authority of this Act within the Time appointed by the Steward for Payment thereof, it shall be lawful for the Steward and he is hereby required, upon the Application of the Party in whose Favour or for whose Benefit such Judgment or Order shall have been given or made, or in the Case of a Penalty at his own Discretion, to issue a Warrant, and the Barmaster shall thereupon forthwith take possession of any Mineral Property within the Jurisdiction of the said Barmote Courts which shall belong to the Party so omitting to pay such Debt or Damages, or Money or Costs, or Penalty, and shall sell the same either by Ticket or by Public Auction, or so much thereof as may be necessary to raise the Sum mentioned in such Warrant, and the Fees allowed by this Act for executing the same, and shall return any surplus Monies arising from such Sale that may remain after paying such Debt or Damages, or Money or Costs, or Penalty and Fees as aforesaid, to the Defaulter; and if the Party against whom the Warrant issues has, before the issuing of such Warrant, in fact paid the Debt, Damages, Money, Costs, or Penalty, or any Part thereof, and the Warrant issues for too much, the Steward shall not therefore be liable to any Action, except in Cases where he issues the Warrant of his own Motion, and with Knowledge of the Payment, but the Party who sues out the Warrant, or the Steward, if he issues it of his own Motion and with such Knowledge as aforesaid, shall be alone responsible in such Cases for the improper issuing of the Warrant, and for what is done thereunder; and in case the Person against whose Mineral Property such Warrant shall have been issued shall not have any Mineral Property within the Jurisdiction of the Barmote Court out of which such Warrant shall have issued, or not sufficient to answer the Amount mentioned in such Warrant after deducting such Fees as aforesaid, it shall be lawful for the person who shall have obtained such Judgment or Order, or in case of a Penalty for the Steward, to recover the Amount or Deficiency by Action of Debt in the County Court, if the Amount of the Debt or Deficiency shall not exceed Fifty Pounds, otherwise in any Superior Court [<sup>F15</sup>at the Royal Courts of Justice]; and the Certificate of the said Steward of the Amount of the Debt or Damages, or Money or Costs, or Penalty, or of the Proportion thereof, which has not been recovered under such Warrant, shall be Evidence, but not conclusive Evidence, that the Sum therein mentioned to be not recovered was due and unpaid at the Date of such Certificate; and the Count in the Declaration in any such Action in One of the Superior Courts may be simply to the Effect that the Defendant was indebted to the Plaintiff in a Sum (naming it) by virtue of this Act, and of a Certificate thereunder granted by the Steward of the Barmote Courts, which Sum the Defendant had not paid.

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*Changes to legislation: There are currently no known outstanding effects for the Derbyshire Mining Customs and Mineral Courts Act 1852. (See end of Document for details)*

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### Textual Amendments

**F15** Words substituted by virtue of [Supreme Court of Judicature \(Consolidation\) Act 1925 \(c. 49\), s. 224\(1\)](#)

## **XLII Return to be made of Executions.**

All Warrants issued by the Steward shall be in force for One Calendar Month from the Date thereof, and shall be returned by the Barmaster to the Steward within Six Weeks from the Date thereof, with a Memorandum or Return endorsed thereon, and signed by the Barmaster, stating when it was executed, or if from any Cause the Barmaster shall have been unable to execute it, then stating why it has not been executed; and in the latter Case the Warrant may be renewed, and Returns made from Time to Time until it is executed; and every renewed Warrant shall be in force for One Calendar Month from the Date thereof; and every Return to a renewed Warrant shall be made within Six Weeks after the Re-issuing of the Warrant, but the Omission to return any Warrant shall not make any one a Trepasser for having obeyed the same, nor shall it be necessary to state or prove any such Return in order to justify anything done in obedience to the same.

## **XLIII Jurors at Small Barmote Courts.**

The respective Barmasters shall every Year make out in Writing a List of all, if the Number shall not exceed Forty-eight, and if it shall exceed Forty-eight then of not less than Forty-eight, Miners, Owners, or Maintainers of Mines, not being Members of the Grand Jury for the Time being, but being resident within the Jurisdictions of such Barmasters respectively, and fix the same upon or near the outer Door of the Place where the respective Great Barmote Courts are usually or were last respectively held, and shall afterwards copy such List into a Book to be called the Jury Book, and to be kept by him; and Three Days before any Small Barmote Court the Barmaster shall cause to be summoned Twenty-four Persons named in the said Book, to attend at the Time and Place appointed for holding the Small Barmote Court; and every Summons shall be served either personally or by leaving the same at the usual or last known Place of Abode of the Person summoned.

## **XLIV Proviso for Small Barmote Courts within Stoney Middleton and Eyam, and several other Places.**

And whereas it may happen that a sufficient Number of Miners, Owners, or Maintainers of Mines, not being Members of the Grand Jury, may not be resident within the united Liberty of *Stoney Middleton and Eyam*, or within the said united Liberty of *Ashford, Tideswell, Peak Forest, and Hartington*, or within the said Manor or Liberty of *Litton*, or within the said Manor or Liberty of *Youlgreave*, from which the Barmaster may make a List of Forty-eight Persons liable to serve upon the Jury: It is therefore declared, That whenever a Small Barmote Court is held for the said united Liberty of *Stoney Middleton and Eyam*, or for the said united Liberty of *Ashford, Tideswell, Peak Forest, and Hartington*, or for the said Manor of *Litton*, or for the said Manor or Liberty of *Youlgreave*, respectively, it shall be lawful for the Barmaster of the Manor or Liberty in which a Small Barmote Court is required to be held to summon either the whole Number or so many Persons as may be necessary to form a Jury of Twenty-four Persons, either from his own List or from the Lists of the other Liberties mentioned

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in this Section, which last-mentioned Lists shall be produced for the Inspection of the Barmaster requiring the same.

#### **XLV As to Appointment of Juries, and challenging Jurors.**

The Barmaster shall make a List of the Jurors so summoned, together with their Places of Abode and Conditions, and shall permit such List to be inspected by the Plaintiff and Defendant if they shall require it; and the Barmaster shall cause the Names of the Jurors to be written severally on Slips of Paper and put into a Box, and the Names shall be drawn out of the Box by the Barmaster, and each Party may, until no more than Twelve remain, object to any Person whose Name is drawn out, without assigning any Cause, but so that not more than Six such Objections be made by either Party, and if any Objection is made to the Twelve so remaining, it must be stated to, and the Validity or Invalidity thereof decided upon, by the Steward, and the Twelve First Persons to whom no Objection has been made shall be the Jury to be sworn for the Trial, and any Person against whom an Objection has been made and disallowed by the Steward shall be considered as a Person against whom no Objection has been made; and if after drawing out the Names of all the Jurors there shall not appear to be Twelve Persons against whom no Objection has been made, then the Names of all the Jurors against whom Objections have been made shall be returned to the Box and drawn again, without any further Objection being allowed to any of them, until a sufficient Number be drawn to make a Jury of Twelve, and such Jury of Twelve shall be the Jury to be sworn for the Trial to take place at such Small Barmote Court; and the Jury so drawn as aforesaid shall be sworn by the Steward, and shall hear the Evidence of the Witnesses in the Cause, and shall be required to give an unanimous Verdict upon all Matters of Fact at issue in such Trial, which Matters of Fact shall be submitted by the Steward to the Jury for their Determination.

#### **XLVI Provision in case of more than One Cause.**

If there shall be more than One Cause to be tried at any Small Barmote Court the Jury sworn for the Trial of the First Cause may and shall, with the Consent of the Parties to the second or other subsequent Causes, be sworn for and be the Jury for the Trial of such second and subsequent Causes: Provided always, that any Party to such second or subsequent Causes, or the Steward, may require a fresh Jury to be drawn.

#### **XLVII Penalty on Jurors for Non-attendance.**

If any Person liable to act as a Grand Juryman or Juryman shall have been duly summoned to attend on any Occasion on which the Grand Jurymen or other Jurymen are by this Act respectively required to attend, and shall not attend in pursuance of such Summons, or being called shall not answer to his Name, or if any such Person, being present, after having been called, shall not duly appear, or after his Appearance shall wilfully withdraw himself, or shall refuse to act or to perform the Duties required of him, it shall be lawful for the Steward to impose such Penalty, not exceeding Ten Pounds, upon every such Person so making default, as to the said Steward shall seem meet, unless some reasonable Excuse shall be given to the Satisfaction of the Steward, and the Steward shall fix a Day on or before which and a Person to whom such Penalty shall be paid; and if such Penalty shall not be paid within the Time ordered by the Steward, it shall be lawful for the Steward to issue his Warrant for the levying thereof, with all the Costs and Charges attending such levying; and such Penalty may be imposed in the Absence of the Party making default, and without calling on him to

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show Cause why it should not be imposed; and it shall be no Objection to the Execution of such Warrant that the Party had no Notice of such Penalty, but if any Person shall think himself aggrieved by the Imposition of such Penalty or the Execution of such Warrant, the Steward may grant him such Relief as to the Steward may seem just.

#### **XLVIII Subpoenas.**

The Parties to the Suit, or any other Proceeding under this Act, may obtain at or from the Office of the Steward Subpoenas to compel the Attendance of Witnesses, with or without a Clause requiring the Production of Books, Deeds, Papers, and Writings in their Possession or Control; and in any such Subpoena any Number of Names may be inserted, and such Subpoenas shall be served upon the Witnesses in like Manner as Subpoenas issuing out of the Superior Courts [<sup>F16</sup>at the Royal Courts of Justice].

#### **Textual Amendments**

**F16** Words substituted by virtue of [Supreme Court of Judicature \(Consolidation\) Act 1925 \(c. 49\), s. 224\(1\)](#)

#### **XLIX Execution may be superseded.**

If the Party against whom an Execution shall be issued shall, before an actual Sale of the Property seized, pay or cause to be paid or tendered unto the Barmaster the Sum or Sums of Money ordered to be levied, or such Part thereof as the Person entitled thereto shall agree to accept, in full of his Debt or Damages and Costs, together with the Fees hereby allowed, the Execution shall be superseded, and the Property of the said Party shall be discharged and set at liberty.

#### **L Barmaster not to be liable for anything done under Provisions of this Act.**

No Barmaster, and no Person acting at the Request and in aid of any Barmaster, shall be liable to any Action for anything done or authorized by such Barmaster, in obedience or necessary for Obedience to any Writ, Precept, Warrant, or Process signed by the Steward, and sealed with the said Seal, although the same be void or irregular, or an Excess of Jurisdiction; nor shall any Act done by any such Barmaster or other Person, while acting under any such Writ, Precept, Warrant, or Process, make him a Trespasser *ab initio*, though it be not in obedience or not necessary for Obedience to such Writ, Precept, Warrant, or Process; but the Party committing such last-mentioned Act shall be liable to an Action for the same if it be illegal.

#### **LI Steward not to be liable.**

The Steward shall not be liable to any Action for anything done in obedience or necessary for Obedience to any Writ, Precept, Warrant, or Process signed by him and sealed with the said Seal, if such Writ, Precept, Warrant, or Process be not an Excess of his Jurisdiction.

#### **LII Register of Summonses, &c.**

The Steward shall carefully preserve the Books and Accounts mentioned in this Act, and shall also cause a Register of all Summonses, Subpoenas, Orders, Judgments, Warrants, Executions, and Returns thereto, and of all Penalties, and of all other



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Proceedings of the Great and Small Barmote Courts, and of all Bills of Directions, Cross Bills of Directions, Opinions of the Grand Jury, and other Proceedings on Views, to be fairly entered from Time to Time in a Book belonging to the Courts, which shall be kept at the Office of the Steward; and such Entries in the said Book or Copies thereof, or of any of them, and also Copies of the Entries in the Books and Accounts mentioned in this Act, or of any Part thereof, purporting to bear the Seal of the Court, and purporting to be signed and certified as a true Copy by the Steward, which Copies the Steward is hereby required to furnish to all Persons requiring the same upon Payment of the Fees herein-after specified, shall at all Times be admitted in all Courts and Places whatsoever as Evidence of such Entries, Customs, Articles, Rules, and Orders, and of the Proceedings referred to by such Entries, and of the Regularity of such Proceedings, without any further Proof.

**LIII Documents in Custody of Steward or Barmaster to be open to Inspection.**

All Persons shall be at liberty, at convenient Times in the Daytime, to search and examine all Books and Documents in the Custody of the Barmaster or Steward by virtue of this Act, upon Payment of the Fees herein-after specified.

**LIV Interpleader Clause.**

If any Claim shall be made to or in in respect of any Mineral Property taken in execution under the Process of any Great or Small Barmote Court, or in respect of the Proceeds or Value thereof, by any Person not being the Party against whom such Process has issued, it shall be lawful for the Steward, upon the Application of the Officer charged with the Execution of such Process, as well before as after any Action brought against such Officer, to appoint and hold a Small Barmote Court, and to issue a Summons calling before the said Court as well the Party issuing such Process as the Party making such Claim; and upon the issuing of such Summons any Action which shall have been brought in any of Her Majesty's Superior Courts of Record, or any local or inferior Court, in respect of such Claim, shall be stayed, and the Court in which such Action shall have been brought, or any Judge thereof, or if the Action be in any Superior Court [<sup>F17</sup>at the Royal Courts of Justice], any Judge of any other of the Superior Courts, on Proof of the Issue of such Summons, and that such Mineral Property was so taken in execution, may order the Party bringing such Action to pay the Costs of all Proceedings had upon such Action after the Issue of such Summons by the Steward; and if either of the Parties so summoned appear, the Steward shall, whether the other Party appear or not, adjudicate upon such Claim, and make such Order between the Parties in respect thereof, and of the Costs of the Proceedings before him, and of the Proceedings in the Action prior to such Summons, and of the Payment of Compensation to any Party by any other Party, as to him shall seem fit; and such Order, so far as the same may be for Payment of Money or Costs, shall be enforced in like Manner as any Order made in any Suit brought in the Small Barmote Court; and so far as such Order be not for the Payment of Money or Costs, Disobedience to the same may be punished in manner following; that is to say, any Person considering himself aggrieved by such Disobedience may complain to the Steward, who may thereupon summon the disobedient Party before him, and may, if he thinks the Complaint proved, and whether the Party complained of shall appear or not, order the Party complained of to pay to the complaining Party such Sum of Money as he may think a sufficient Compensation, with or without the Costs of the Application, at his Discretion; and if he thinks the Complaint not proved, he may make an Order dismissing the same Complaint with or without Costs, at his Discretion; and the Order which the Steward

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shall make in the Premises may also be enforced in like Manner as any Order made in the Small Barmote Court.

**Textual Amendments**

**F17** Words substituted by virtue of [Supreme Court of Judicature \(Consolidation\) Act 1925 \(c. 49\)](#), s. 224(1)

**LV Penalties.**

All Penalties imposed by virtue of this Act (except the Penalties imposed upon the Barmaster, and which are otherwise provided for) shall be recovered by levying the same under a Warrant of the Steward upon the Mineral Property of the Person upon whom such Penalty shall be imposed which shall be within the Jurisdiction of the Barmote Courts; and if the Barmaster shall make a Return to the Steward that there is no Mineral Property within such Jurisdiction, or not sufficient to raise the whole of the Penalty and the Fees allowed for the Execution of the Warrant, then such Penalty, or so much thereof as the Produce of the Sale of such Mineral Property shall not, after paying the Fees allowed for the Execution of the Warrant, be sufficient to satisfy, shall be recovered by Action of Debt in the County Court, such Action to be brought in the Name of the Steward, and a Certificate, signed by him, and sealed with the said Seal, certifying the Imposition of such Penalty and the Amount thereof, or so much thereof as shall not have been satisfied by such Execution, shall be evidence, but not conclusive Evidence, that the Sum therein mentioned not to be recovered was due and unpaid at the Date of the Certificate.

**LVI Application of Penalties.**

An Account shall be kept by the Steward of all Penalties imposed upon any Person under the Authority of this Act, and such Penalties shall, except in Cases where it is by this Act otherwise provided, be received by or on account of the Steward, and shall, in the Soke and Wapentake of *Wirksworth*, be paid by the Steward when received as to One Moiety thereof to the Queen and Her Successors in right of Her Duchy of *Lancaster*, and as to the other Moiety thereof to the Lessee for the Time being of the Duties of Lot and Cope, if there shall be any such Lessee; and if there shall be no such Lessee, then the whole of such Penalties shall be paid to the Queen and Her Successors in right of Her Duchy of *Lancaster*, and such Penalties in the said several Manors or Liberties shall be paid by the Steward, when received, to Her Majesty in right of Her said Duchy; and if any Action or other Proceedings, other than an Execution under the Warrant of the said Steward, shall be necessary for the Recovery of any Penalty, such Action or other Proceedings shall be taken in the Name of the Steward.

**LVII Forms of Proceedings.**

The Proceedings of the Barmote Courts shall be in the Forms given in the Second Schedule to this Act, or to the like Effect; and in any Proceeding not thereby provided for, it shall be lawful for the Steward to adopt such Form as he shall think fit and applicable to such Proceeding.

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### **LVIII Fees.**

The Fees which shall be paid, had, and taken by the Steward, Barmaster, Grand Jury, [<sup>F18</sup>solicitors], and other Persons shall be such as are contained in the Third and Fourth Schedules to this Act, and no other Fee, Gratuity, or Reward whatever shall be demanded, had, or taken by any of the said Persons on any Pretence whatever.

#### **Textual Amendments**

**F18** Word substituted by virtue of [Solicitors Act 1974 \(c. 47\)](#), s. 89(6)

### **LIX Limitation.**

For the Protection of Persons acting in the Execution of this Act, it is hereby declared, That all Actions and Prosecutions to be commenced against any Person for anything done in pursuance of this Act shall be laid and tried in the County where the Fact was committed, and shall be commenced within Six Calendar Months after the Fact committed, and not afterwards or otherwise; and Notice in Writing of such Action, and of the Cause thereof, shall be given to the Defendant One Calendar Month at least before the Commencement of the Action; and no Plaintiff shall recover in any such Action if Tender of sufficient Amends shall have been made before such Action brought, or if after Action brought a sufficient Sum of Money shall have been paid into Court with Costs by or on behalf of the Defendant; and in any such Action the Defendant may not only plead the Tender or Payment into Court, as the Case may be, but may also plead any other Plea or Pleas in bar, or a general Demurrer.

### **LX Removal of Proceedings.**

No Proceedings in the said Courts, or either of them, or before the Steward or Barmaster, shall be removed into any other Court by Certiorari or otherwise, except in the Cases herein provided for.

### **LXI Costs.**

In any Action brought under the Provisions of this Act, in the County Court, or in any of the Superior Courts, the Plaintiff and Defendant shall respectively be entitled to recover Costs in the same Cases and to the same Extent as they would be entitled if the Action were a common Action of Debt on simple Contract in the County Court, or in any of the Superior Courts respectively.

### **LXII Proceedings pending.**

Nothing in this Act contained shall affect any Action, Suit, or other Proceeding now pending in any Court of Law or Equity, but such Action, Suit, or other Proceeding shall be dealt with and determined as if this Act had not been passed.

### **LXIII Parties may proceed in any other Court than Small Barmote Court.**

Nothing in this Act contained shall preclude any Person from proceeding in any other Court having Jurisdiction therein in respect of any Matter hereby made triable in the Small Barmote Court.

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#### **LXIV Expenses of Act.**

The Clerk of the Peace for the County of *Derby* shall, as soon as conveniently can be done after the passing of this Act, ascertain and settle the Amount of the Costs, Charges, and Expenses of and incident to the applying for and obtaining the passing of this Act, and the Amount so ascertained and settled shall be distributed between the said Soke and Wapentake and the said Manors or Liberties, in proportion to the Amount of Lot and Cope collected in the *King's Field* within the said Soke and Wapentake and in the said Manors or Liberties respectively, during the Period of Seven Years immediately preceding the passing of this Act; and the Amount declared to be payable by the said Soke and Wapentake and Manors or Liberties respectively shall be certified by the said Clerk of the Peace by Writing signed by him to the Stewards of the said Soke and Wapentake and Manors or Liberties respectively; and the Amount so certified shall be paid accordingly by the Duchy of *Lancaster* for the said Soke and Wapentake, and by the several Persons entitled to the Mineral Duties within the said respective Manors or Liberties to the said Stewards respectively, to be applied by them in the Discharge of such Costs, Charges, and Expenses: Provided always, that the Amount so certified to be paid by the said Duchy of *Lancaster* for the said Soke and Wapentake shall not exceed the Sum of Seven hundred Pounds; and the Amount to be paid in respect of the Interest of the said *Sir Richard Tufton* in the said Manors or Liberties of *Eyam* and *Stoney Middleton* and *Crich* shall be paid by the Trustees of the said Will of the said *Henry* Earl of *Thanet*, and the Amount to be paid in respect of the Interest of other Persons in the said last-mentioned Manors or Liberties shall be retained and paid by the Barmasters for those Manors or Liberties respectively out of the Duties of Lot and Cope received by them respectively after the passing of this Act.

#### **LXV Not to extend Customs to Lands not now subject to them.**

Provided always, That nothing in this Act contained shall extend the Mineral Laws, Usages, and Customs herein-before mentioned, and by this Act defined and amended, over any Lands or Hereditaments within any of the Manors or Liberties herein-before mentioned which are not now subject to Mining Customs, nor be held to subject or make liable any Lands or Hereditaments to the said Customs which are now exempt therefrom, nor to give Authority to search for Mines and Veins of Lead Ore in or upon any Lands or Hereditaments over which the Mineral Customs of the said *King's Field*, or of the said Manors or Liberties, or some of them respectively, have not heretofore extended.

#### **LXVI Rights of Proprietors of Spar and Limestone within the Manor of Crich not to be prejudiced.**

And whereas *Sir Richard Tufton* Baronet, *Francis Hurt* Esquire, *Samuel Travis* Esquire, and several other Persons, are Proprietors of and entitled to the Spar lying under certain Lands within the Manor of *Crich* aforesaid, and the said *Sir Richard Tufton*, *Francis Hurt*, *Samuel Travis*, and several other Persons, are Proprietors of and entitled to the Limestone in and under certain Lands lying within the said Manor: It is hereby declared, That nothing contained in this Act shall prejudice or take away the Rights of the said Proprietors to the Spar and Limestone respectively lying in or under the Lands now subject to such Rights, situate within the Manor of *Crich* aforesaid.

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**Changes to legislation:** *There are currently no known outstanding effects for the Derbyshire Mining Customs and Mineral Courts Act 1852. (See end of Document for details)*

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### **LXVII Rights of Tithe Owners not to be prejudiced.**

That nothing in this Act contained shall in any way affect, alter, lessen, or abridge the Rights of any Person or Persons whomsoever to any Tithes which may be due or payable or liable to be rendered for or in respect of the Lead Ore to be gotten and raised within the said Soke and Wapentake, and Manors or Liberties respectively, or any of them, or any Part or Parts thereof respectively.

### **LXVIISaving Rights of the Crown.**

Except as is herein provided, nothing in this Act contained shall extend to prejudice, diminish, alter, or take away any of the Rights, Privileges, Powers, or Authorities vested in or enjoyed by the Queen, Her Heirs and Successors, either in right of Her Crown or in right of Her Duchy of *Lancaster*.

**Changes to legislation:**

There are currently no known outstanding effects for the Derbyshire Mining Customs and Mineral Courts Act 1852.