

79. Covenants included in mortgage

- (1) A mortgage may contain such covenants, provisions, stipulations and powers as may be agreed between the parties.
- (2) Except as is otherwise provided by a mortgage there shall be deemed to be included in every mortgage —

- (a) stipulations to the following effect:

That during the continuance of the security the mortgagee may (at the expense of the mortgagor) when the mortgagor neglects or refuses so to do, do all such acts and things as may be necessary for the preservation or protection of the property comprised in the mortgage and of the title thereto and in particular may fulfil the conditions applicable to that property, and obtain exemptions from those conditions.

- (b) powers to the following effect:

That if default is made by the mortgagor in repayment or discharge of the moneys secured by the mortgage for a period of one month after demand, or if the mortgagor fails to perform or observe any of the covenants contained in the mortgage and on the part of the mortgagor to be observed and performed the mortgagee may —

- (i) enter upon and take possession of the property comprised in the mortgage, or any part thereof, and work or let the same, subject to the provisions of the Act, but in that case the mortgagee shall be liable to account to the mortgagor for the rents and profits of such property until the mortgagor's right to redeem the same has been determined by sale or otherwise; or

- (ii) cause the property comprised in the mortgage, or any part thereof, together with any right, title or interest the mortgagor may have in any mining product from the property, to be sold by auction after having not less than 30 days clear before the date of sale —

- (I) advertised his intention so to do by such means as the Minister approves; but —
- (II) the mortgagee shall, at any such auction be at liberty to bid for and purchase the property or any part thereof;
- (III) if the mortgagee is unable to obtain at any public auction a sum sufficient to discharge the debt or liability due to him from the mortgagor he may sell the property, or any part thereof, by private contract;
- (IV) if, after sale, there remains a balance over and above the amount due to the mortgagee, he shall lodge a statement of account at the office of the mining registrar together with such balance for payment to any other mortgagees according to their respective priorities, and to the mortgagor.