

LAW NO. 21 OF 1896,

ON THE DIGGING FOR AND DEALING IN PRECIOUS METALS AND PRECIOUS STONES  
WITHIN THE SOUTH AFRICAN REPUBLIC.

*As amended and approved of by the Second Volksraad Resolution, Article 1358, August 24th, 1896, and accepted for notice by the Honourable the First Volksraad under Article 1554, September 14th, 1896.*

CHAPTER I.

GENERAL PROVISIONS.

1. The right of mining for and disposal of all precious stones and precious metals belongs to the State. The r  
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2. This law is applicable to diamonds, rubies, gold, and such other precious stones and precious metals as the State President, with the advice and consent of the Executive Council, with reference to this article of this law, shall make known. Meant  
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3. The words "public diggings" shall signify a proclaimed area thrown open by lawful authority for prospecting, digging, and mining. The word "claim" shall signify either that portion of the fields on which a person or persons or companies have obtained a legal right to dig or to prospect, or the right to dig or prospect on such a piece of ground. "Private ground" shall signify the ground belonging to private persons or companies, as shown by the title deed or deed of transfer. Claim.  
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"Government ground" shall signify all ground belonging to the State. Goverr  
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The words "coloured person" shall signify every African, Asiatic native, or coloured American person, Coolie or Chinese. Colour

"Unwrought gold" or "unwrought precious metal" shall signify gold or precious metal in whatever form, which, although smelted, is not manufactured or made up into any article fit for trade. It includes also raw gold or other precious metal, amalgam, and slimes. Unwro

Further, all words shall be understood in the sense in which they are ordinarily used. Words  
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In the case of *Donovan vs. The Turffontein Estate* (decided 16th September, 1895, Off. Rep., Vol. II., part 3, p. 298), the question was whether the plaintiff was entitled to dig for clay for the purpose of making bricks, etc., on a certain piece of ground leased to him by agreement of 12th December, 1891. Article 7 of the agreement of lease gave the lessee the right "tot alle mineralen, edelgesteenten, metalen, of andere delfstoffen, met het recht om daarvoor te prospecteeren en te delven"; that is, "to all minerals, precious stones, metals, or other minerals, with the right to prospect and dig for the same." It was held that the word "delfstoffen" must be taken in its ordinary sense as understood in South Africa, and that clay was not as ordinarily understood a "delfstof," and that therefore the plaintiff was not entitled to dig for clay.

4. The State President shall have power, with the advice and consent of the Executive Council, to take measures for the establishment of a police force, and, further, to take such steps in conformity with this law as he may consider necessary. Establis  
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for the general welfare and the good order of the fields. The said police force shall stand under the orders of the official charged with the criminal jurisdiction.

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<sup>u-</sup> 5. The State President shall also have power, with the advice and consent of the Executive Council, to make provisions and regulations, whether general or special (for instance, for one or more fields), for the regulation of matters mentioned in this law or connected therewith, provided they are not in conflict with this law, as, for instance, regulations with regard to the method of digging and mining, taking measures for safety, the registration of the quantity of gold won, and such other subjects as shall appear to him to require further regulation, under which may also be included the registration of and the issue of passes to coloured people. Under the provisions and regulations mentioned in this article are also included provisions for penalties and taxes. These provisions and regulations shall have the force of law from the date of publication in the *Staatscourant*; they shall be submitted at the first ensuing session of the Volksraad. Special provisions and regulations shall be of force on every proclaimed field immediately after proclamation in the *Staatscourant*.

<sup>d</sup> The State President shall have the power, with the advice and consent of the Executive Council, to make any alterations in or additions to the said special provisions on the propositions of the Mining Commissioner, in consultation with the Head of the Mining Department.

Such alterations or amendments shall be of force fourteen days after publication in the *Staatscourant*.

6. All former laws, resolutions of the Volksraad, and regulations with regard to diggings, in conflict with this law, are hereby repealed.

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<sup>h</sup> The rights obtained to claims under Article 16 of the appendix to Law No. 1 of 1883 shall remain in force under this law.

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<sup>u-</sup> 7. Whenever it may be found necessary in the general interest for public purposes, such as for railways, large water-courses, etc., to take away, wholly or in part, rights once granted, the Government shall have the right to do so on compensation to be mutually agreed upon between the interested parties and the Government. In the event of such an agreement being impossible, the amount of compensation shall be fixed by way of arbitration by one or more persons appointed by both sides, with reference to an umpire chosen by the arbitrators and named beforehand, who, if the arbitrators cannot agree on one or more points in dispute, shall decide on such points.

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<sup>sa</sup> 7a. The Head of the Mining Department, in conjunction with the State Mining Engineer, shall have the right, when such is necessary for the more adequate exploitation of a mine, to grant permission to tunnel through another's claim or mineral ground, but under the condition always that this tunnelling does not hinder or obstruct the working of such mineral ground; that the obtainer of the right to such tunnelling is answerable for all damage caused thereby; and, further, that all minerals found thereby in the mining ground of others shall be returned free of cost to the possessors, with this understanding, that this article shall only be applicable for the present to the Kaap diggings.

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<sup>st</sup> 8. When according to this law a person is sentenced to a money fine, on default of payment this fine shall be replaced by imprisonment. The duration of this imprisonment shall be fixed when judgment is given as far as possible in proportion to the fine inflicted, with this understanding, however, that such imprisonment may not exceed the period of one month in case the fine inflicted amounts to £5 or less, of three months if the fine amounts to from £5 to £20, of six months if the fine amounts

to from £20 to £100, and of one year if the fine amounts to more than £100. It may be stipulated when judgment is given that such imprisonment shall be coupled with hard labour.

CHAPTER II.

OF THE DEPARTMENT OF MINES.

9. There exists a Department of Mines in this Republic. At the head of this department shall be someone with the title of Head of the Mining Department, who shall at the same time have to possess the qualifications laid down in Article 4 of Law No. 6, of 1890, and is responsible according to the instructions framed by the Honourable Volksraad, in resolutions Articles 939-944, 946 and 947, dated 9th and 10th July, 1888.

Head of Mining Department. Qualifications.

The Head of the Mining Department shall be assisted by a properly qualified expert, to be appointed by the Government after consultation with the Head of the Mining Department, with the title of State Mining Engineer, whose duty it shall be in every district, to make investigations concerning, and to report fully upon, the minerals there present, and, further, to give advice and be of assistance to the Government, in all matters relating to mines and the development of the mineral resources of this land, under such regulations as the Government, subject to the later confirmation of the people's representatives, may determine.

State Mining Engineer. Duties of.

The State Mining Engineer shall be assisted by Mining Inspectors and Boiler Inspectors on the diggings.

Mining Inspector and Boiler Inspector.

10. The Government has the right, from time to time, to appoint one or more commissions of trustworthy and competent persons to investigate any question relating to mines, and to report to it thereon.

Commissioners appointed of.

11. For each prospecting and proclaimed field, a competent person shall be appointed, if necessary, by the Government, as Mining Commissioner, whose salary shall be fixed by the Executive Council, until later resolution thereanent by the First Volksraad. The Government shall, moreover, have the right to appoint, if necessary, for every prospecting or proclaimed field, a special judicial official, with the title of Special Landdrost, with criminal and civil jurisdiction equal to that of the Landdrost.

Mining Commissioner. Salary.

On the appointment of such judicial official, the boundaries within which he shall have jurisdiction shall have to be accurately defined by the Government. Within these boundaries the Landdrost of the respective district shall no longer have criminal and civil jurisdiction.

Special Landdrost — jurisdiction of. Limits of jurisdiction.

In the exercise of jurisdiction by this Special Landdrost, the Laws and customs in use in Landdrost Courts shall be applied. The same rules shall also apply with regard to appeals to a higher court. This Special Landdrost shall have, within the boundaries of the field over which he has jurisdiction, the same powers with regard to marriages as are given to a Landdrost by the Marriage Ordinance. The Government shall also have the right to appoint, besides the Special Landdrost, other judicial officials with the jurisdiction of a Landdrost in criminal and civil cases, and power to hold preliminary examinations, and further to lay down instructions for such officials. With regard to the salary of these officials, the same regulations as above-mentioned shall apply.

Landdrost with no civil criminal jurisdiction within these limits. Laws and customs applicable. Appeals.

Powers with regard to marriages. Other judicial officials. Salary.

12. The Mining Commissioner shall be given a clerk, who, if there be no Special Landdrost, shall also be Public Prosecutor and Registrar of the Lower Court.

13. If required, the Government shall assign one or more clerks to the department of the Mining Commissioner.

14. The Government has the power, if necessary, to appoint for every field one or more Claim Inspectors, and to make such regulations with regard to their duties as it may consider necessary.

With regard to the salary of all the above-mentioned officials, the same provision as that in the first paragraph of Article 11 applies.

15. The Mining Commissioner shall have the supervision of the field, or fields, over which he is appointed. He shall also be clothed with authority to regulate and direct all matters relative to the diggings in accordance with this law, and all regulations which may by virtue of this law be published by the Government.

He will also have regard to the grievances of the diggers, and do all that may be conducive to the general interest, to the promotion of the prosperity of the diggings and the sanitary condition of their population, he shall define the places where no digging or prospecting may be carried on, the keeping open of roadways, under which are also included roads, or paths from the claims to the batteries and places suitable for water-rights, and such other places concerning which the Government may give instructions from time to time. He shall regulate the issue of stand licences, and define the places which may or may not be built on.

Where, however, more than five stands would adjoin or be near each other, he must first, through the Head of the Mining Department, obtain the consent of the Government, before issuing licences for stands in excess of that number.

The Government shall have the power to depute to him, or another person under him, the collection of personal taxes within the boundaries of his field, under such regulations as the Government, after consultation with the Head of the Mining Department, shall deem necessary to make. If no Special Landdrost has been appointed, he shall have criminal and civil jurisdiction equal to that of the Landdrost.

He shall, *ex-officio*, be a Justice of the Peace for the whole Republic.

With regard to the exercise of civil and criminal jurisdiction by the Mining Commissioner, the laws and customs in use in Landdrost Courts shall be applied.

The same rules shall also apply with regard to appeal to a Higher Court.

If no Special Landdrost has been appointed the Mining Commissioner, within the boundaries of the field over which he is appointed, shall have the same powers with regard to marriages as are granted to a Landdrost by the Marriage Ordinance.

Article 28 of Law 18 of 1892 does not give the Mining Commissioner of Johannesburg the right to refuse to issue licences to peg off claims on portion of a proclaimed area within his jurisdiction on the ground that he wished to reserve the said ground for stands in view of the probable extension of Johannesburg.—*J. Nicolls vs. W. J. Leyds, N.O., C.L.J., vol. X. p. 337; decided 13 July, 1893, coram Kotzé, C.J., De Korte and Ameshoff, J.J.*

Article 28 of Law 18 of 1892 confers on the Mining Commissioner the power to reserve what he considers the most suitable portions of a farm, about to be proclaimed a public gold-fields, for the purpose of water-rights, and to refuse to allow any pegging on such portions.

The Court will not interfere with the discretion of the Mining Commissioner when he acts *bona fide* and does not exceed the powers conferred on him by law. *Kempin vs. The Modderfontein G.M. Coy., Ltd., and the Mining Commissioner of Boksburg. C.L.J. vol. xii; p. 153 decided 2 December 1893, coram Kotzé, C.J., and Jorissen, J.*

(a) In Kempin's case the Court read the words "en op plekkin geschikt voor waterrechten" as though the word "op" did not appear, the chief justice saying "we should place too narrow an interpretation on the words of the article if we construed it as simply and solely referring to roads over places suitable for water-rights, and not as conferring on the Mining Commissioner the power to decide what portions of the farm are most suitable for water-rights, and then to define these water-rights accordingly." The Court also pointed out the distinction between Kempin's case and Nicolls's case. The word "op" is left out in Article 15 of this law.

With regard to Article 28 see further the remarks of Kotzé, C.J., on pages 81 and 82 of the C.L.J. vol. x. in the case of *The Witwatersrand G.M. Coy. Ltd. vs. R. Young*, decided 12 January, 1893, *coram* Kotzé, C.J. and De Korte and Morice, J.J. It was there held that, where the plaintiffs with the knowledge and tacit consent of the Government had for four years occupied a portion of ground proclaimed a public gold-diggings, outside but in the vicinity of their "mijnpacht," and had erected buildings thereon, and laid a tramway for the better working of their mine and battery, such portion of ground was not open ground, and no third party was entitled to peg off the portion of ground so occupied, under prospectors' licences, or otherwise interfere with plaintiffs' occupation.

Article 15 of Law 19 of 1895 corresponds with Article 15 of this Law.

*Cf.* also *Ginsberg vs. The Gansf Syndicate and the Mining Commissioner of Boksburg* (C.L.J. August 1896) given in Appendix C.

16. The grounds reserved, according to Article 54, for houses, buildings, water-furrows, gardens or lands, as also those under Article 28 for "mijnpachten," and further all pieces of ground which are wholly enclosed by a public digging or prospecting field, shall be under the jurisdiction of the Mining Commissioner, or, if there be such, of the special judicial officials of that digging or prospecting field. The Government shall also have the right, by proclamation, to bring under the jurisdiction of the officials on the public diggings, farms or portions of ground adjoining such public diggings or situated in the neighbourhood thereof.

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17. All admitted advocates, attorneys, notaries, agents, conveyancers, and sworn translators, who, according to the law of the land, are entitled to practise in the civil courts of the land and to carry out their profession, shall be allowed to practise on the fields. The tariff of licences required to enable the carrying out of one of these professions on the fields shall be according to established ordinances. No unadmitted and unlicensed person shall have the right to conduct cases in any court for others or to carry on the business falling under the professions of the aforementioned practitioners. It shall however be free to any person, should he so desire, to conduct his case in person before a court on the fields or to transfer in person any stand, claim or any portion thereof, as otherwise being his lawful property. He shall, however, not have the right to draw up bills of costs of the defence of his case or to claim costs for any deed of cession, transfer or otherwise, except for witnesses' expenses, court fees, summons or stamp dues.

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18. From the decision of the Mining Commissioner or of the Special Landdrost, if there be such, there shall be an appeal to the Circuit Court, the judge sitting *in Camera* at Pretoria, or the High Court.

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19. The Mining Commissioners shall be obliged to keep proper books of all revenue and expenditure. He shall also keep proper registers of all licences and rights granted by him to persons or companies and such other registers as the head of the Mining Department may from time to time prescribe.

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Inspection of these registers shall be granted to the public, but it must be previously stated by the parties interested whereof information is required. For simple inspection the sum of 1s. 6d. shall be paid for each inspection. For written information the sum of 5s. in each instance must be paid, consisting of stamps, which must be attached to the document and cancelled.

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20. The Mining Commissioners shall further be bound to send their statements monthly to the Treasurer-General, and to pay in monthly into his office the public moneys in their possession.

21. The Government, after consultation with the head of the Mining Department, shall, on such fields as it may deem desirable and necessary, appoint one or more of the clerks of the Mining Department as responsible clerk or clerks.

The Government, after consultation with the head of the Mining Department, shall have the right to assign to such responsible clerks, separate stands on different portions of the proclaimed field. The responsibility of the Mining Commissioner is not removed by the responsibility of such a clerk serving in the head office of the Mining Commissioner himself.

A responsible clerk may issue all licences falling under his division; he may also receive transfer dues (a) auction dues, fines, market fees, rents and other special revenue; he may also do such other work as may be given to him from time to time by the Mining Commissioner.

Licences signed and issued by such a clerk shall confer the same rights as if they had been signed and issued by the Mining Commissioner himself.

Responsible clerks having their own division, shall be obliged to keep proper registers of all licences issued by them, and shall as soon as possible deposit with the Mining Commissioner all moneys received by them, and within four days after the end of each month send in their reports and monthly statements to the Mining Commissioner.

The Government shall have the power to invest such a responsible clerk with the powers and jurisdiction of a Resident Justice of the Peace within such limits as the Government shall determine.

(a) Transfer dues on transfer of claims paid through mistake of law cannot be recovered. *Rooth q.g. vs. The State*, decided 2 October, 1888, *coram* Kotzé, C. J., and Esselen and De Korte, J. J. C.L.J., vol. v., p. 304. Under Law 8, of 1885, there was no transfer duty payable on the transfer of claims. It was introduced by Law 9, of 1888, § 33. In the case of *Dell vs. The State*, decided prior to the passing of Law 9, of 1888, it was held that the transfer of claims was not subject to the payment of transfer dues.

22. Strict attention shall be paid to the following by the Mining Commissioner and responsible clerks:—

- (a) That no one shall carry on any calling or trade, or shall dig or prospect without a proper licence.
- (b) That their clerk or clerks keep proper records and minutes of all cases dealt with or decided in their Court, and that their subaltern and subordinate officials fulfil their duties and render account of everything deputed to them or of monies entrusted to them.
- (c) That all Government offices, buildings and gaols, tents, goods, etc., etc., are kept in good order.
- (d) That all import duties according to tariff on goods imported from abroad, and on which no duty has yet been paid, are carefully collected.
- (e) That the stamp duties and transfer duties due to the Government on all transfers of claims (a) and stands are properly paid.
- (f) That all fees or other monies payable to the State in pursuance of this law or later laws and regulations are promptly paid and that all official documents are subject to stamp duty.
- (g) All fines and Court fees received at the office of the special Landdrosts, must be paid monthly to the Mining Commissioners, together with a specified statement of the persons fined.

(a) The Paarl Ophir G.M. Coy. ceded three claims to the Pioneer G.M. Coy. The latter company employed one Gutman as agent to receive transfer of the claims. The transfer was in Gutman's name. He then fraudulently transferred to Graham. It was held that the transfer in the first instance was to Gutman as agent, and that therefore neither he nor Graham had any title, but that the claims belonged to the Pioneer G.M. Coy.

*The Pioneer G.M. Coy., Limited and the Paarl Ophir G.M. Coy., Limited vs. Gutman and Graham.*

23. The Mining Commissioner shall take the same oath as the Landdrost. All officials, on whatever diggings appointed, shall be duly sworn on taking office. Oath to  
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24. The head of the Mining Department and the officials of his department, as also Special Landdrosts and Assistant Landdrosts, Judicial Commissioners and the officials of their department on a prospecting and proclaimed field, are not permitted, directly or indirectly, to hold claims, to carry on any business, to conduct any kind of agency whatever, or to have any share in a mining company, or in any syndicate or partnership relating to mining matters. Landdrosts, head officials, and their subordinates are also prohibited from being connected with a mining company as directors, advisers, controllers or as officials. Should it be discovered that the above-mentioned officials are guilty of contravening the provisions contained in this Article they may be, according to the nature of the case, suspended from office by the Government for a certain time or dismissed. Official  
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Where plaintiff had sued defendants on a contract relating to certain gold claims, and an exception taken by them to the summons on the ground that plaintiff being State Mining Engineer, was disqualified by Article 29 of Law 18 of 1892 from suing on such a contract, was upheld by the Court, and plaintiff then petitioned the Volksraad, which, while accepting the decision of the Court, removed the disability for the purposes of this particular action, by passing a resolution granting him dispensation from the provisions of the said Article 29:—Held, that it was competent for the Volksraad to pass such a resolution, and that, provided it was in order, the Court was bound to give effect to it; Held, further, that the merits of the case had not been touched upon in the first exception, and plaintiff could therefore institute the action afresh now that the disability had been removed.

*Joseph Klimke vs. Ludwig Pogge, Frans Zboril and Herman Seelig; C.L.J. Vol. XI., p. 65, decided 13 Nov., 1893, coram Kotzé, C. J., and Jorissen and Morice, J.J.*

Article 29 of Law 18 of 1892 corresponds with Article 24 of this Law.

The resolution of the Volksraad referred to is First Volksraad Besluit of the 8th of August, 1893, Article 1,029.

### CHAPTER III.

#### CONCERNING SEARCHING, DIGGING, AND MINING.

##### *Section 1. Prospecting by, or with permission of, the owner.*

25. It shall be free to every landowner (after having given notice of his intention to the Landdrost of his district or to the nearest Mining Commissioner or Responsible Clerk) to search for precious stones and precious metals within the boundaries of his property without a licence, and to employ for that purpose, besides coloured persons, not more than four white persons drawing wages, and to exploit mines on his ground or cause the same to be exploited under the conditions herein-after described. No one, except the State President, with the advice and consent of the Executive Council, shall be allowed to throw open his ground to the public as public diggings. The Government shall always have the right to cause an investigation to be made of the prospecting. Right of c  
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On the discovery of precious metals and precious stones on private ground, the owner shall be obliged to give notice thereof, within seven days after the discovery, to the nearest Mining Commissioner, Responsible Clerk, or Landdrost, as also of the particulars thereof, under penalty of a fine not exceeding £5 on neglecting to do so. Notice of dis  
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is- 26. Anyone having written permission from the owner of a private farm or piece  
W- of ground to search on his property shall be able to obtain the necessary prospecting  
act licence, on payment of the licence money, from the Landdrost of the district where he  
de. desires to search, or from such other officials as shall be appointed by the Govern-  
ment, for the period mentioned in such written permission, not exceeding a period of  
six months.

led When, however, the said permission is granted for a longer term than six months,  
ner the Landdrost or such other official as shall be appointed by the Government shall,  
f 6 after the expiration of the first six months, have the right, after proper investigation,  
to extend the term for which the licence was granted in accordance with the permis-  
sion, as long as such extension does not exceed a further period of six months.

Where the Modderfontein G. M. Coy. granted "vergunningen" to a certain Dettalbach to peg off 1,110 claims on the farm Modderfontein, on the understanding that the said claims were to belong to the Company, and not to Dettalbach, and the Mining Commissioner of Boksburg, on the strength of the "vergunningen" granted to Dettalbach, issued licences for 1,110 claims to the representative of the Company before issuing licences to the plaintiff Gauf, notwithstanding that the latter had been the first to apply for 110 licences on the morning of proclamation, and the Mining Commissioner subsequently refused to renew the licences for the 110 claims claimed by Gauf on the ground that these 110 claims were included in the 1,110 claims pegged off by the Company, Held (De Korte, J., diss.), in an action by the plaintiff Gauf to have the 110 claims declared his property, that he was entitled to succeed.

The owner of a farm is entitled to certain defined rights as owner under the Gold Law, and he cannot grant "vergunningen" to a mere "dummy" to peg off claims on the understanding that such claims shall belong to him and not to the "dummy," as this is a way of getting possession, by indirect means, of a greater number of claims than he would be entitled to directly as owner, and is therefore *in fraudem* of the Gold Law. *Gauf vs. The Modderfontein G. M. Coy. Ltd. and the Mining Commissioner of Boksburg.* C.L.J. vol. xii. p. 217; decided 12th January, 1895, *coram* Kotzé, C.J. and De Korte and Ameshoff, J.J. Article 8 of Law 18 of 1892 corresponds with Article 26 of this Law.

The plaintiffs obtained leave to prospect on the unproclaimed farm Rhenosterspruit from the owners, and pegged off 62 claims. The defendants got the right to prospect on the claims, and undertook to pay the monthly licence moneys for six months. They found no payable quartz, and ceased to pay licence money, in consequence of which the claims lapsed to the owners. The plaintiffs instituted an action for damages. The Court found it very difficult to assess the damages, seeing that the claims were of very little value, and eventually awarded £37 4s. to the plaintiffs, this being 12s. per claim for the 62 claims for one month. *Stow and others vs. Chester and Gibb*, decided on the 17th February, 1890, *coram* Kotzé, C.J. and Esselen and De Korte, J.J. (unreported).

The plaintiff, on the 27th of June, 1894, the day when the farm Modderfontein was proclaimed a public goldfields, pegged off one claim on the aforesaid farm under prospector's licence, and the defendant Company, the owner of the farm, also pegged off the same claim on the same day under prospector's licence; but the Company obtained its licence before the plaintiff obtained his, on account of the fact that it was the holder of "vergunningen" granted *in fraudem legis* to its "dummy," a certain Dettalbach Held,—on the authority of *Gauf vs. The Modderfontein G. M. Coy.*, that the plaintiff was entitled to the claim in dispute as against the defendant Company. The plaintiff, on the 6th of December, 1894, also pegged off 71 claims, and on the 3rd January, 1895, 150 claims under prospector's licences on the same farm. These claims had previously, on the 27th of June, 1894, been pegged off by the defendant Company in the same way as the one claim above-mentioned. Held,—that the defendant Company was entitled to these claims on the ground that the "vergunningen" had expired long before the date of the plaintiff's pegging, at which date the claims in dispute were being held by the Company under ordinary prospector's licences which had already been renewed several times, and on the ground that the plaintiff was aware that the said claims were being held by the Company.

Held, further, that there is nothing in the Gold Law to prevent an owner of a proclaimed farm from pegging off claims on such farm as an ordinary member of the public, notwithstanding the fact that he is entitled to certain privileges in his capacity as owner of the farm.

Held, further, that a Company can lawfully employ a representative to peg off claims for it, notwithstanding the personal nature of Article 61 (c) of Law 18 of 1892, seeing that there is no direct prohibition of such action in the Gold Law. *Frische vs. The Modderfontein G. M. Coy. Ltd. and the Mining Commissioner of Boksburg.* C.L.J., Vol. xiii., p. 76, decided 2nd of December, 1895, *coram* Kotzé, C.J. and Jorissen J.

Article 61 (c) of Law 18 of 1892 speaks of "every white person," as also does Article 61 of Law 18 of 1892. Cf. Article 63 of this Law.

Section 2. Judgment as to Payableness.

27. The State Mining Engineer, or such other experts nominated by him, delegated by the head of the Mining Department, either separately or as a commission, shall be the competent judges of the payableness of precious metals or precious stones.

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Section 3. Exploitation under "Mijnpacht" or Concession.

28. The owner of a farm or piece of ground on which precious metals or precious stones have been found by the owner himself, or, in accordance with Article 26, by a prospector, who desires to possess the right to open and exploit mines on such farm or piece of ground, must be in possession of a "mijnpachtbrief," to be obtained from the Government. Of the private grounds or farms published for setting open for a public digging, the "mijnpachtbrief" must be issued for one-tenth portion of the area of that farm or piece of ground.

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In the measuring of ground for "mijnpachtbrieven," the reef may not be taken in its length only, but the proportion of its breadth to length must be at the most as one to two.

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In no case shall the Government have the right to refuse a "mijnpacht," even if the Government should decide not to proclaim the ground as a public diggings or prospecting field.

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Where, in accordance with Article 54, homestead grounds are reserved by the owner before the proclamation of the farm, he shall be entitled to a "mijnpacht" on such grounds, and over the whole surface thereof.

Mijnpacht  
homes  
grounds.

The Government shall not have the right to refuse such "mijnpacht."

Where certain "mijnpachts" were intended to be reserved to the owners of ground about to be proclaimed as a public gold diggings, and everything necessary for the granting of such "mijnpachts" had been done before the proclamation, except that the "mijnpachtbrieven" had not been actually signed till three weeks after such proclamation, but the Government considered the grant as complete; Held, that such informality was immaterial in an action instituted years later for portion of the ground pegged off within the "mijnpacht." *James Parker Rothwell vs. The New Rietfontein Estates Gold Mines, Ltd., and Dr. W. J. Leyds, N.O., C.L.J., Vol. XI., p. 48, decided on the 22nd July, 1893, coram Kotzé, C.J., and De Korte and Morice, J.J.*

In the case of the *Jewel G.M. Co. vs. Oosthuizen* (decided on the 13th of June, 1890, *coram Kotzé, C.J., and Esselen and De Korte, J.J., unreported*) the plaintiff claimed to be declared the owner of certain blocks of claims on the farm Sterkfontein, on which the defendant was alleged to have trespassed. The defence was that the claims had been wrongfully pegged off by the plaintiff on ground which had been duly reserved by the defendant as a "mijnpacht" before the proclamation of the farm. The Court gave judgment for the plaintiff on the ground that in the proclamation of the farm Sterkfontein no portion had been reserved as a "mijnpacht," and that the defendant had failed to prove that a "mijnpacht" had been beaconed off.

Cf also *Cathcart vs. The Main Reef G.M. Coy.* in Appendix C. Also the case of the *Nabob G.M. Coy. vs. The Phoenix G.M. Coy.* in Appendix C.

29. The "mijnpachtbrief" referred to in Article 28 shall be granted for a period of not less than five, and not more than twenty years. The holder of such "mijnpacht-brief" shall, however, be at liberty to renew the said "mijnpacht" for another term of twenty years or less, subject to the provisions of the law then existing. This right of renewal shall also be given to holders of "mijnpachten" already granted, after the expiration of the term for which the "mijnpachtbrief" was granted.

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The sum of 10s. per morgen per annum shall have to be paid on the "mijnpachtbrief," payable in advance to the official under whose administration the "mijnpacht" is situated, while the holder of such "mijnpachtbrief" is subject to the following conditions:—

- (1) He shall keep proper account of all finds, and use such forms for that purpose as the Government may find necessary to prescribe.
- (2) Inspection of the books shall at all times have to be granted to the Mining Commissioner or official under whose administration the "mijnpacht" is situated, or to any other official appointed for that purpose.
- (3) The Government shall at all times have the right to demand, instead of the payment of 10s. per morgen, payment of 2½ per cent. of the value of the finds during the past year, as indicated by the books or other means.
- (4) If such is demanded by the Government officials, the accuracy of the returns in the books shall have to be verified on oath by the owner or his book-keeper.
- (5) Such other conditions as the Government shall consider desirable, not, however, in conflict with the spirit or the provisions of this law.

When the payment for the "mijnpachtbrief" for such "mijnpachten" is six months in arrear, the Mining Commissioner or official under whose administration the "mijnpacht" is situated shall call for payment of the same in the *Staatscourant*, and by notice in writing to the owner.

The Mining Commissioner or official under whose administration the "mijnpacht" is situated shall be obliged to make this demand immediately after expiration of the six months.

If within three months after the date of the publication of such demand payment of all monies due has not been made, the Government shall have the right to declare the "mijnpachtbrief" to have lapsed.

30. All angles of a "mijnpacht" must be indicated by stone beacons of masonry, as stated in Article 43, and bear the inscription: "Mijnpacht" No.....(being the number of the "mijnpachtbrief"), as also the official beacon number, to be given by the Claim Inspector, while the sides must be indicated as stated in Article 44.

For the proper maintenance of these beacons to the satisfaction of the Mining Commissioner the holder of the "mijnpachtbrief" shall be responsible, according to Article 3 of Law No. 3, 1864, as approved by the resolution of the Volksraad, Article 519, dated 22nd of March, 1866. These beacons shall, on neglect, be erected and maintained by the Government at the expense of those entitled to the "mijnpacht," after notice has been given in accordance with Article 45.

The absence or the imperfect condition of the beacons can never give rise to a dispute as to the size of the "mijnpacht," according to the approved diagram, and according to the "mijnpachtbrief" granted.

See the case of the *Nabob G.M. Coy. vs. Phoenix G.M. Coy.* in Appendix C.

31. Anyone hiring a portion of a farm or of a piece of ground from the owner thereof for the purpose of exploiting mines thereon can, in the same way and on the same conditions as the owner, obtain a "mijnpachtbrief," provided he causes his lease to be drawn up notarially and registered. This "mijnpacht" shall be renewable as long as he remains the lessee.

The Langlaagte Estate G.M. Coy, owner of the farm Langlaagte, leased the mineral rights on a portion of the farm to the Crown Reef G.M. Coy. When the farm was proclaimed the Crown Reef G.M. Coy. obtained a "mijnpacht" and owners' claims on the said portion. Then that portion of the farm was closed by the Government with the exception of the "mijnpacht."

The Langlaagte Estate G.M. Coy. then laid out a township on the said portion which was closed. The Crown Reef G.M. Coy. began making a tram line through the township from the "mijnpacht" to the railway line for the carriage of coal, alleging it had a right of passage over the said ground. The Langlaagte Estate G.M. Coy. obtained a provisional interdict against the making of the tram line. The Court confirmed the provisional interdict, holding that if the Crown Reef G.M. Coy. had a right of passage, such right should be exercised *civitate* and the Langlaagte Estate G.M. Coy. should be consulted as to where the tram line should run. *The Langlaagte Estate G.M. Coy., Ltd., vs. The Crown Reef G.M. Coy., Ltd.* (decided on the 23rd February, 1892, *coram* Kotzé, C.J. and De Korte and Morice, J.J., unreported).

See also the cases of *Kraft vs. Bok, N.O.*, and the *Witwatersrand Gold Mining Company and Du Preez and others vs. Meyer and Van der Walt and Taylor and Claridge vs. Van Jaarsveld and Nellmapius* referred to under Article 51.

32. "Mijnpachten" and leased grounds with licences or "mijnpachten" thereon may be transferred wholly or in part from one person to another, subject to the regulation laid down in Article 14, Law No. 7 of 1883.

On the division of a "mijnpacht" the holders of the portions render themselves responsible, jointly and severally, to the Government from the date on which the registration of the transfer of the portions accruing to them took place, for the payment in full of all moneys due according to the original "mijnpachtbrief," and for the strict carrying out of the legal regulations applicable to "mijnpachten."

These regulations, shall as regards division, also be applicable to "mijnpachten" already granted.

Every deed of transfer shall have to bear a stamp according to Law No. 5 of 1882, Schedule A.

In the case of a sale in execution of "mijnpachten" and leased grounds the same regulations shall be applicable as in the case of a similar sale of immovable property.

33. In regard to the renewal of "mijnpachten" under Articles 31 and 32, the following rules shall be applicable:—

- (1) That no "mijnpachten" shall be renewed except in the name of the persons or companies in whose favour they were last registered unless transfer has previously been made in the name of the new applicant.
- (2) That the renewal of a "mijnpacht" to a lessee according to Article 31 of this law shall take place only when it appears from the contract to be produced by him and notarially registered that the lease is still unexpired or has been properly renewed.
- (3) That when a person was formerly a lessee, but since that time has also become owner of the ground on which the "mijnpacht" is situated, and it appears that he has in consequence the owner's rights as well as the mineral rights in his possession, the renewal may take place.
- (4) That in case a "mijnpacht" term has expired and it is desired, on renewal of this "mijnpachtbrief," to divide the "mijnpacht" in accordance with Article 32, then this shall be effected for as many parts as application for renewal is made for, in which divided "mijnpachtbrieven" the obligations mentioned in Article 32 must appear, and provided that with each such divided "mijnpachtbrief" proper surveyor's diagrams in quadruple are produced.

When at the renewal of a "mijnpachtbrief" it appears that the "mijnpacht" belongs to more than one owner and that some or any of those owners do not desire to renew their portion or portions, the portion wherefore application is made can be renewed provided that at each such partial renewing proper surveyor's diagrams in quadruple are produced, and in cases of undivided "mijnpachten" such applicant or applicants shall be entitled to take out their accruing portion of the "mijnpacht," in terms of paragraph 3 of article 28, while the Government must then, within six months after the day of expiration, proclaim the remaining portion of the original "mijnpacht" public diggings.

- (5) That the extension or renewal may be effected for from five to twenty years, as in the case of a new "mijnpachtbrief," in conformity with Article 29 of this law.
- (6) That the "mijnpachtbrief" shall be granted on the payment and on the conditions now laid down by law or to be laid down later.
- (7) That in case of the division of an unexpired "mijnpachtbrief" of the portion to be sold a new "mijnpachtbrief" shall be issued by virtue of a notarial session, with proper diagrams, and that on application the original "mijnpachtbrief" must also be sent in, in order that a note of the division may be made thereon by the Registrar of Deeds, which shall also have to be done when a portion of a "mijnpacht" is afterwards subdivided.

34. No concessions on Government ground shall in future be granted. When however, localities are discovered where the working of claims by individual diggers is not sufficiently payable, or where the ground, after having been worked as claims, has been abandoned, such localities may be given out under "mijnpacht" to a digger or diggers for a fixed number of years, for the purpose of working them by machinery or otherwise, on the following conditions:—

- (a) The extent of pieces of ground given out under "mijnpacht" shall not be less than 150 by 150 yards or greater than 500 by 500 yards.
- (b) Every application shall be posted for one month at the office of the Landdrost of the respective district, or should the ground be under a Mining Commissioner, at his office, and also on the ground applied for, and shall contain a full description of the ground as to extent, situation, and whether it has been already worked or not.
- (c) Anyone concerned has the right to raise objections to the granting under "mijnpacht" of a piece of ground, which must be done in writing giving the grounds of his objections, the validity of which the Landdrost or Mining Commissioner shall enquire into.
- (d) Immediately after the expiration of the time of notice, the Landdrost, or the Mining Commissioner, shall send in the application to the Head of the Mining Department, with his report. If the Government, after consultation with the Head of the Mining Department, approves of it, then the "mijnpacht" shall be granted, according to the form appearing in the schedules of this law.
- (e) For this "mijnpacht" a yearly rental, always payable in advance, shall be paid, calculated at 10s. per morgen yearly. The "mijnpachtbrief" shall have to bear a stamp of the value of £2 10s.

- (f) "Mijnpachten" may be transferred in the same manner and under the same conditions as claims and other mining rights.
- (g) If the ground for which a "mijnpachtbrief" has been granted is not worked, the "mijnpachtbrief" shall not be renewed except with the express written consent of the Government.
- (h) Such other conditions as the Government shall consider desirable.

See the cases of *Boyne and Nightingale vs. The Spitzkop G.M. Company*, and *the Spitzkop G. M. Company vs. Stanley and Tate*, referred to under Article 62.

See also the cases of *Gilbaud and Co. vs. Walker and others*; *Cohen, Goldschmidt and Co. vs. Stanley and Tate*; *Stanley vs. Goldschmidt and Co.* in Appendix C.

35. When, within private ground which has been proclaimed as public diggings, localities are discovered where the working of claims by individual diggers is not sufficiently payable, or where the ground, after having been worked as claims, has been abandoned, the Government, after consultation with the Head of the Mining Department, shall have the right to give out "mijnpachten" on such localities, in accordance with the provisions contained in Articles 28, 29, and 31 of this Law.

36. Persons or companies holding concessions or "mijnpachten" on private or on<sup>1</sup> Government ground, shall be at liberty, without violating the concessions or "mijnpachten," to permit persons to dig on their own behalf on such grounds under concession or "mijnpacht," under such lawful agreements as the said concessionaries or "mijnpacht" holders and persons may mutually enter into; provided that each person so digging takes out a licence from the official under whose administration the<sup>s</sup> ground is situated. On such a licence it shall be clearly stated on which "mijnpacht" or concession the same is granted, while the payment shall be the ordinary licence money per claim.

The regulations regarding claims are applicable here, excepting those relating to<sup>B</sup> the reversion to the Government in case of non-payment of the licence monies, while further the extra licence monies, according to Article 86, second paragraph, need not be paid. The 2½ per cent. mentioned in Section 3 of Article 29 shall not be levied on these claimholders.

The concession or "mijnpacht" holder is obliged to give notice to the official<sup>N</sup> under whose administration the said ground is situated, of every permission granted. Every contravention shall be punished with a fine of not more than £10, or, in default<sup>Pe</sup> of payment, with imprisonment as laid down in Article 8.

37. Diggers on ground under a concession or "mijnpacht" shall be under the<sup>D</sup> Mining Commissioner under whose administration such ground falls, or the nearest<sup>i</sup> Mining Commissioner or the Landdrost of their district, according to the decision of<sup>i</sup> the Government.<sup>t</sup>

38. The concessionaire or "mijnpacht" holder who allows diggers to dig on the<sup>C</sup> ground which he holds under a concession or "mijnpacht," in accordance with Article<sup>o</sup> 36, shall be entitled at the end of every month to receive from the Government three-<sup>b</sup> fourths of the money paid for licences.<sup>r</sup>

*Section 4. Proclamation and Throwing Open as Public Diggings.*

39. The State President has the power, with the advice and consent of the Execu-<sup>Stat</sup> tive Council, to proclaim and throw open as public diggings Government ground<sup>hu</sup> and, after consultation, if possible, with the owner, also private ground, or to<sup>pi</sup> attach the same to an already proclaimed field, whereby it must be kept in view that<sup>th</sup>

no ground shall be proclaimed that is not necessarily required for the diggings. The issuing of such a proclamation of Government and private ground shall, however, not take place except after publication of notice during six weeks in the *Staatscourant*; such notice shall further be posted up either at the office of the Mining Commissioner within whose jurisdiction the said ground is situated, or at the office of the nearest Landdrost. The proclamations of Government and private ground shall, however, after the expiration of the notice above-mentioned, have to be published in the *Staatscourant* at least 30 (thirty) days previously, stating day and date of throwing open.

In future no private or Government ground, declared a public diggings by proclamation, shall be available for the pegging off of claims, before that the proclamation has been read by the official under whose jurisdiction such ground is situated in front of his office, and where also the licences shall be issued for the first time. No person shall have the right to peg off claims before he or his deputy is on the ground he intends to peg, with his licences.

40. So long as the owner himself does not prospect, or has not given permission to others to do so, the State President, with the advice and consent of the Executive Council, shall have no power to proclaim his ground as a public diggings or prospecting field, nor shall anyone else be able to force him to allow his ground to be prospected.

41. The Government shall give notice of its intention in the *Staatscourant* to the owner of the farm or piece of ground which it wishes to throw open as a public diggings or prospecting field, three months before the proclamation of the throwing open takes place, so as to enable the owner to peg off his owner's claims according to Article 48, and to take out his "mijnpachtbrief" and to define his homestead, building, and arable lands according to Article 54.

The Government must observe the law from which it derives its power.

The Government cannot decide whether or not a person has forfeited his rights.

The Government is bound to give the owner notice, in the way prescribed by law, of the intended proclamation of the farm as a public gold diggings.

It is for the Court to decide whether or not the Government has exceeded the power given it by law.

The receipt of the owner's share of the licence money for claims pegged off on "mijnpacht" ground is not sufficient to empower the Government of its own accord to deprive such an owner of his "mijnpacht" right.

Possessors of claims on ground wrongfully proclaimed have no *locus standi* or right to intervene in an action to set aside such a proclamation instituted by the real owner against the Government, and must endeavour to maintain their right by way of a separate action. *The United Langlaagte G.M. Co., Ltd. vs. The State and the Langlaagte Royal and the Rand G.M. Co., Ltd. Official Reports. Vol. I., Part 1, p. 54* (decided on the 10th February, 1894), *coram* Kotzé, C.J., and Ameshoff and Morice, J.J.

42. Before the proclamation of a public diggings takes place all private grounds shall be properly surveyed and diagrams thereof shall be made, which diagrams must be approved of according to law. The lines between the beacons shall also be beacons off, according to Article 44, by a duly admitted land surveyor.

All Government grounds to be proclaimed as public diggings shall in like manner be surveyed and put into diagram, where possible, previous to proclamation. The lines between the beacons shall, however, in every case be beacons off, according to Article 44, by an admitted land surveyor.

If private grounds to be proclaimed are not surveyed by or on behalf of the owner of such grounds within three months after the date of the notice to do so, and the diagrams sent in to the office of the Surveyor-General, the Government shall have the right to cause the survey to be done at the expense of the owner.

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43. All angles of all surveyed proclaimed grounds shall be indicated by square beacons of solid masonry, four feet high, bearing a notice in which the name and the number of the farm, agreeing with the registers of the Registrar of Deeds, besides the official number of the beacon, shall appear.

44. The sides of all surveyed proclaimed grounds, farms, portions of farms, being divisions of proclaimed public diggings, shall, except where natural boundaries exist, be indicated at clearly visible distances by round intermediate beacons of masonry, three feet high, and also, should the Head of the Mining Department, after consultation with the Surveyor-General, consider it necessary, where the nature of the ground admits such, by a trench at least six inches deep. The distances of such beacons from each other shall not be less than one thousand (1,000) yards.

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45. The erection of the beacons referred to in Articles 43 and 44 shall, on State ground, be effected by the Government at the expense of the State after calling for proper tenders. In the case of private grounds, written notice shall be given to the owner by the Government within seven days after the State President has decided to proclaim such grounds under this law, to erect the beacons; should the owner not comply therewith within six weeks after the date of this notice the Government shall, after calling for proper tenders, cause the beacons to be erected at the expense of the owner.

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46. A number of claims, not exceeding sixty, may be granted by an owner of a farm of 2,000 morgen or less as "vergunning" claims to other persons and allotted prior to the proclamation of such farm or piece of ground subject to the ordinary licence after proclamation. For every hundred morgen that the farm or the piece of ground consists of in excess of 2,000 morgen the owner has the right to give out two claims more under the same conditions as laid down in the foregoing paragraph.

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See the cases of *Gauf vs. The Modderfontein G.M. Co., Ltd.*, and *The Mining Commissioner of Boksburg; Frische vs. The Modderfontein G.M. Co. and the Mining Commissioner of Boksburg*; and *Stow and others vs. Chester and Gibb*, referred to under Article 26 of this law.

The limitation of the number of "vergunning" claims was introduced by Law 14 of 1894, Article 10.

47. The discoverer of precious metals or precious stones in payable quantities on private farms or Government grounds, at least six miles distant from an already worked locality, shall, on the proclamation of such farm or ground, be entitled to retain and beacon off six claims, whether they be reef or alluvial, which shall be called and registered as prospector's or searcher's claims. Moreover, he may work thereon without licence as long as he remains owner thereof.

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48. Should the State President, with the advice and consent of the Executive Council, desire to proclaim or throw open a farm or piece of ground, or a portion thereof, the owner shall have the right to peg off his owner's claims for himself before diggers (the searcher or prospector who discovered the precious metal or precious stones excepted).

The owner or owners of a proclaimed farm or farms shall be entitled to peg off for himself or themselves a number of claims, whether they be reef or alluvial, which shall be called owner's claims, viz., for a piece of ground of 50 morgen or less, one claim; for a piece of ground of from 50 to 200 morgen, two claims; and for every

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ma. 250 morgen in addition, one claim more, with a maximum of ten claims for a farm; and to hold these claims under licence, after the prospector, who discovered the precious metal or precious stones in payable quantities, has pegged off his prospector's claims. After this pegging off of prospector's "vergunnings" and owner's claims, diggers may peg off claims for themselves according to law.

See *Gauf vs. The Modderfontein G.M. Co., Ltd.* and *Frische vs. The Modderfontein G.M. Co., Ltd.*, referred to under Article 26 of this law. With Article 48 of this Law compare Articles 14 and 17 of Law 18 of 1892.

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the 49. The prospector who, in accordance with Articles 26 and 47 of this law, discovers precious metals or precious stones in payable quantities, shall not lose his rights through the unwillingness of the Government to proclaim the ground a public diggings or to attach the same by proclamation to an already proclaimed farm or diggings.

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digger. 50. The holder of a prospecting licence shall, immediately after investigation has been made on his report, and the Government has decided as to the payableness of the precious metal or precious stones in the grounds discovered by him, as is provided in the foregoing article, enjoy all the rights of an ordinary digger, over and above his special right as prospector, and he shall have these rights on private ground even though the same be not proclaimed as a public diggings. He shall in that case, in order to be able to work his claims, be entitled to such use of the water on the farm as may be agreed upon in writing between him and the owner of the farm.

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ap- This article shall not be applicable when a landowner specially hires somebody to prospect for him, or when a separate agreement is made before the granting of the written permission mentioned in Article 26, whereby the prospector, in order to obtain the written permission, waives his claim in writing to the benefits under this article.

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nce 51. The owner of the private proclaimed ground, on which digger's and prospecting licences are issued, shall receive half of the proceeds of the digger's and prospecting licences monthly.

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mer. The accounts for all these monies shall always be made out in the name of the owner, and the monies, even in case of lease (*a*), shall be paid out to the owner or his authorised representative only.

In the case of *Kraft vs. Bok, N.O., and the Witwatersrand Gold Mining Company* (decided on the 20th of June, 1887, *coram* Esselen and Jorissen, J.J. C.L.J., Vol. V., p. 14), the question was whether the lessee of the mineral rights on a farm obtained thereby the right that would otherwise, under Article 15 of the Gold Law of 1885, belong to the owner, of receiving half of the monies paid to the Government for prospecting and digger's licences on such farm after it had been proclaimed a public goldfield under Article 10 of the Gold Law. The plaintiff in the case, who was the owner of the farm Driefontein, had before the proclamation of the farm entered into a contract with H. W. Struben, by which the former leased to the latter "all the mineral rights of whatever sort accruing to the first undersigned (Kraft) as owner of the farm; and the action arose through Kraft's claiming from the Government the half of the licence monies paid to the Government for claims pegged out on the farm after it was proclaimed, which monies the Government had been proceeding to pay to the Witwatersrand Gold Mining Company, as assignatory from H. W. Struben of the lease. The decision of the Court was that the owner of the farm, the plaintiff, was entitled to the half of the licence monies, as the right to receive such monies was not a right to minerals, and was, therefore, not included under the words "all the mineral rights of whatever sort accruing to the first undersigned (the lessor) as owner of the farm" used to describe the rights passing to the lessee.

It must be noted that when this case was decided (20th of June, 1887) Law 10 of 1887 had not come into force. The words "the accounts of all these monies shall always be made out in the name of the owner, and the monies, even in case of lease, shall be paid out to the owner or his authorised representative only" do not appear in Article 15 of Law 8 of 1885. They were introduced by Article 5 of Law 10 of 1887. This, as is remarked by Mr. Morice (now Mr. Justice Morice) in his article in the "Cape Law Journal," Vol. V., p. 15, would seem to indicate that the judgment was in accordance with the intention of the legislature.

In the case of *Du Preez and others vs. Meyer and Van der Walt* (decided on the 23rd of February, 1887, *coram* Kotzé, C.J. and Esselen, J., C.L.J., Vol. V., p. 15) it was held that under the Gold Law the lessee of a farm on an ordinary, *i.e.*, an agricultural lease, obtains no rights as regards the precious metals or pegging out claims, though the owner cannot exercise his mining rights to the prejudice of the lessee in the enjoyment of his rights under the lease. The same case also decided that it is not necessary to make the Government a party to an action for setting aside a "mijnpacht."

In the case of *Taylor and Claridge vs. Van Jaarsveld and Nelmapius* (Feb. 26th, 1887, *coram* Kotzé, C.J. and Esselen, J., C.L.J., Vol. V., p. 18) the plaintiffs sued for specific performance of a verbal contract by which the first defendant bound himself to give the plaintiffs the exclusive right of prospecting for six months, with the right, if they had found payable minerals, to take out a lease of the mining rights of the farm, which subsequent lease was to be executed according to law. It was argued for the defendants that this verbal contract was void in virtue of Article 14 of Law 7 of 1883 (upon transfer dues), which states that "no cession of a right to minerals assumed to be present or actually present on a farm, shall be valid unless embodied in a notarial document and duly registered in the office of the Registrar of Deeds," and goes on to enact that transfer dues must be paid, such cessions specially referring to leases. The Court decided that the contract of the first defendant was not a cession or lease, but merely gave the option of taking a lease at a future time; and, therefore, did not require to be notarially drawn and registered. Whether the contract could be described as an agreement as to the cession of mineral rights, and, therefore, included in the words of the Volksraad resolution of August 12th, 1886, was expressly left an open question by the Court, the contract being prior to the date of such resolution. The resolution above mentioned is to the effect that all agreements as to the cession (*omtrent den afstand*) of rights to minerals shall be void, unless notarially drawn and registered in the Deeds Office.

See also *Pearce vs. Olivier and others* in Appendix C, and *Steyn vs. Bezuidenhout* in Appendix C.

52. When a desire is expressed by way of memorial by inhabitants or by occupiers of a location that town commonages or native locations be thrown open either wholly or in part, and such appears to the State President desirable and practicable, he shall have the power, with the advice and consent of the Executive Council, after consultation with the head of the Mining Department, to throw open these grounds, either wholly or in part, for prospectors, or to declare them public diggings under the provisions laid down in this law for Government ground, provided, however:

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That no right to prospect or to dig on the town commonage shall be granted unless application therefor is made by at least two-thirds of the burghers and inhabitants of a town.

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That no right as above shall be granted unless the town commonage of any town is of sufficient size to cause no interference in that respect with the requirements of cattle-grazing.

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That no trees or other wood shall be used or removed for carrying into effect the rights to be granted.

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That no encroachment shall be made on any existing rights to the leading and the use of water, whether it be for public or private purposes, and such encroachment shall be punished in accordance with the penalty clauses of Article 146.

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That all rules and regulations with regard to public diggings on Government grounds, as laid down in the now amended Law No. 8 of 1885, as far as the same are compatible with prospecting and digging on town commonages, shall be observed.

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That a certain portion of the nett revenue of the diggings, to be fixed later by the State President, with the advice and consent of the Executive Council, shall be applied for the benefit and for the improvement of the town.

The State President shall be empowered, with the advice and consent of the Executive Council, after consultation with the head of the Mining Department, to make such further provisions as may be necessary for the regulation of affairs, provided they are not in conflict with the above rules or principles.

53. When a chief, with the advice of his council, desires that investigations should be made as to the presence of precious stones and precious metals on the location which he occupies with his people, he may request the Government to cause such to be done by white persons.

The persons proposed by the chief and his council shall enjoy the consideration of the Government in the first place. Should the Government consider it desirable to authorise other persons, this can be done without reasons being given; those persons excepted whose farms were expropriated by the Government for the purposes of the extension of the location, to whom the preference shall be given. The Government shall cause to be pointed out to the person or the persons authorised by it what portion of the location is made available for prospecting.

When it appears through prospecting that precious stones or precious metals are found in payable quantities within such locations the State President shall have the right, with the advice and consent of the Executive Council, to declare these grounds, either wholly or in part, public diggings, under the regulations laid down in this law for government grounds, provided, however:

- (1) That grazing rights shall be left to the chief and his people.
- (2) That their "kraals" (cattle pens) and lands shall be excluded and shall not be disturbed except with their consent.
- (3) That sufficient water shall be left for their domestic use and for their cattle.
- (4) That a "mijnpacht" may be granted to the person or persons authorised by the Government to prospect, when they give sufficient proof of the payable-ness of the grounds, under the provisions of this law, the size to be fixed in consultation with the Superintendent of Natives and with the head of the Mining Department, but in no case greater than the maximum fixed for private grounds by Article 28, par. 2 and 3 of this law, computed according to the number of morgen to be thrown open.
- (5) That compensation, computed at a fourth of the proceeds of the licence and "mijnpacht" monies, shall be granted to those chiefs and their people who have received the locations gratis from the Government.
- (6) That compensation, computed at a third of such proceeds, shall be granted to those chiefs and their people who have acquired the location grounds, wholly or in part, at their own expense.
- (7) The Government is empowered to make such regulations as it may deem fit with regard to the portion of licence and "mijnpacht" monies to be awarded to Moshette and the kaffir chiefs standing on an equality with him.

54. Where private grounds are proclaimed public diggings, or are attached by proclamation to already proclaimed fields, or are made available for prospectors, the Government shall first consult with the owner, if possible, to determine on what plots of ground, such as plots which are built on, homestead ground, gardens, burial

grounds, "kraals," lands, and watercourses in the neighbourhood thereof, it shall be prohibited to prospect and to dig. On unworked farms or portions of ground, where there is no occupation, the owners in conjunction with the Government, the Mining Commissioner or the Landdrost of the district, may beacon off a "werf" (homestead ground) which shall be reserved for homestead, building and cultivation lands. The stipulations of Article 28 par. 3 shall be applicable to these "werven" (homestead ground).

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See the case of the *Witwatersrand G. M. Coy. Ltd.*, vs. *Young*, referred to under Article 15 of this law.

55. Under any circumstances sufficient water shall remain free for the use of the owner, his family, his cattle, and for the watering of all gardens and lands existing at the time of the proclamation, and for the working of "mijnpachten" granted under the provisions of this law.

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owners.

The quantity of the water required for these purposes shall, before the proclamation as public diggings, by order of the head of the Mining Department be gauged and determined by him. This water, so gauged, may afterwards be used by the owner for other purposes or disposed of by him.

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The rest of the water and the water that is not so used shall at all times be allowed to flow away unobstructed. The use thereof shall be regulated by the lawful authorities, according to the provisions of this law. Lessees, servitude-holders, or others entitled to water, retain the right to such water in so far as they make use thereof at the time of the proclamation for the purposes mentioned in the first paragraph, and after the quantity thereof shall have been fixed by the head of the Mining Department, which shall take place before proclamation. In this respect the provisions of the second paragraph of this article apply.

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The farm Zandrivier (Zoutpansburg) was proclaimed a public gold-fields on October the 6th, 1887, but a portion of the farm containing the dwelling-house and lands of the plaintiff was reserved. The plaintiff obtained his water supply from a spruit running through the farm. The defendant company secured a water-right higher up on the same spruit. The plaintiff instituted an action against the defendant company for a declaration of rights to have it declared that the company was not entitled to take water from the spruit for its battery. He also sought a perpetual interdict against the company preventing it from using the water and from allowing its tailings to run into the spruit and thence into his dam, maintaining that owing to the reservation of his dwelling and lands no water-right could be granted under the Gold Law so as to affect his rights. It was held by the full Court (De Korte, Ameshoff and Morice, J.J.) that under Section 30 of Law 10 of 1887, the water-right was rightly granted to the company, although it affected the rights of the plaintiff.

Held, further, that § 47 of Law of Law 8 of 1885 must be interpreted strictly, and does not permit the filling up of furrows or other watercourses with tailings.

An interdict was accordingly granted, restraining the Company from allowing its tailings to run into the spruit, and it was further ordered to remove such tailings as had run into it, and to pay the plaintiff £200 as compensation. *J. J. Maré vs. Mount Maré G. M. Coy., Ltd.*, decided on the 2nd of February, 1892 (unreported).

§ 30 of Law 10 of 1887 gave to the old Digger's Committee the right to frame regulations with regard to the division and use of water.

*Cf.* § 128 of this Law.

§ 47 of Law 8 of 1885 is replaced by § 125 of this Law.

In the case of *Steyn vs. Johnson and the Diggers' Committee of the Witwatersand Goldfields* (11th Nov., 1887, C.L.J., Vol. V., p. 15), an application was made by Steyn as owner of a farm to set aside a grant of a water-right on his farm by the Diggers' Committee on the ground that it had been granted contrary to the Gold Law. The judge refused to decide the matter on affidavits, but, giving the owner the advantage of being regarded as in possession, decided that the digger who had obtained the grant of the right from the Diggers' Committee must make good his right by action.

56. The Government shall further have the right to require from the owner or his representative that these grounds for occupation be properly enclosed, and that a diagram thereof be made within a time to be fixed by the Government, which time, however, shall not be shorter than three months.

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If within the time fixed this be not complied with the Government shall have the right to do the said work at the expense of the owner or his representative.

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57. On the private grounds referred to in this article the Government shall have the right, as long as the proclamation continues, to occupy and to build thereon without payment, such pieces of ground as shall be necessary for offices and other public buildings, for the deposit of rubbish, for burial grounds, and for other general purposes. Such pieces of ground shall, if possible, after consultation with the owner, be beacons off by the Mining Commissioner at the expense of the State, and a diagram thereof shall be drawn up by a qualified surveyor, and these places may not be pegged off.

The buildings referred to in the previous paragraph shall remain the property of the State.

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58. On private proclaimed farms, two years after the proclamation of the same, pieces of ground may be given out for gardens and plantations, on places where it appears that there are no gold-bearing reefs or alluvial deposits present, under the following conditions:

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(1) The issue of such grounds is effected by the Government, on the request of the owner, under such conditions as it may determine, after investigation by the Mining Commissioner concerned, and on the proposition of the head of the Mining Department.

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(2) If it should afterwards appear that gold-bearing reefs do exist there, that portion which such reefs pass through shall be given out in the ordinary way, with this proviso, however, that if damage is done to gardens or plantations, such damage shall be paid for by the licence holder or holders according to assessment to be fixed by arbitrators.

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59. When pieces of ground are given out, according to the foregoing article, for gardens and plantations, such pieces of ground may not be used for any other purpose.

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60. Where, on the various proclaimed diggings, a person or company, holder of claims or a "mijtpacht," desires to make a dam for the collecting of tailings (a) or run water (provided it be not from an existing water-course or fountain), to lay down tube, pipe, or other conductor, for the bringing of water to his or its machine stand, or to construct a roadway for the conveyance of quartz or material from the claims or "mijnpacht" to the machine stand, whether it be for ordinary wagons drawn by draught animals, or for so-called trucks conveyed along rails, provided such trucks be not propelled by steam or electricity, the Mining Commissioner may grant permission for that purpose.

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If such water-races, ordinary roads, or truck rails go over claims, "mijnpacht," water-courses, streets, railways, tramways, or stands of other persons, the applicant in order to obtain the necessary permission for the construction and exploitation of the same, shall have to make a written application therefore to the Mining Commissioner concerned. This application shall be published for a month in the *Staatcourant*, and in one of the local papers, by and at the expense of the applicant for the information of parties, who must within that time send in their objections and claims to compensation to the Mining Commissioner concerned. Any person constructing such water-races, dams, roads, etc., over claims, "mijnpachts," etc., without having obtained the permission of the Mining Commissioner to do so, shall be punished with a fine not exceeding £10, or on default of payment, with imprisonment for a period not exceeding six weeks, without prejudice, however, to the right of the

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