

owner or the owners of the surface to compensation. The amount of such compensation shall be determined by two arbitrators. One of them shall be chosen by the applicant and the other by the interested party. Should the arbitrators differ, the Mining Commissioner shall act as referee, from whose decision there shall be an appeal to the Head of the Mining Department, whose decision shall be final.

Compensation fixed by arbitration. Mining Commissioner refers Appeal from Mining Commissioner head of Mining Department

See the case of *The Langlaagte Estate G.M. Coy., Ltd., vs. The Crown Reef G.M. Coy., Ltd.*, referred to under Article 31 of this law.

(a). The plaintiff company allowed its tailings for two years to run down a creek and took no steps to prevent their being entirely washed away. The defendants afterwards pegged off the ground on which the tailings had been washed. The company in an action claimed the tailings, but the Court held that there had been total abandonment, and gave judgment for the defendants.

Sheba G.M. Company Ltd. vs. Vautin, Millbourne and Steers, decided on the 5th of March 1889, *coram* Esselen, Jorissen and De Korte, J.J. (unreported).

61. The Government may, by special agreement, grant permission for the laying of conductors for the transmission of electrical currents for the use of the mines and mining works.

Permission to conductors electrical currents.

62. An area once declared a public diggings or portion thereof may not be closed either wholly or in part, except in the single case when the number of diggers within the boundaries of such portion which it is requested or proposed should be closed is less than a number computed at one digger for every twenty morgen, provided always that the closing of such proclaimed ground shall not affect the rights and claims to machine stands, tailing deposit sites, water-rights, or other possessory rights already obtained. In the event of the closing of a public diggings or portion thereof six months' previous notice thereof shall be given in the *Staatscourant*, and at least once a month in a local paper, should there be one, in the latter case at the expense of the applicant. A diagram of the digging or farm or portion thereof, the closing of which has been requested, shall lie for inspection at the office of the Mining Commissioner during the period of the said six months. All objections filed during the said six months shall be heard on the last day of such term, or, if this day fall on a Sunday or holiday, the day after. Moreover proper provision shall be made for the continuance of the work of those whose claims have not yet been exhausted, or compensation shall be granted. The amount of such compensation shall be fixed by mutual agreement between the Government and interested parties and, in case they cannot agree, by way of arbitration.

When a p claimed area may be closed.

Six months' notice.

Diagram shall lie for inspection.

Hearing of objections.

Compensation.

Arbitration.

The farm Elandsfontein was proclaimed a public gold diggings. Subsequently the defendant company prevailed on the Government to close a certain portion of the proclaimed farm under § 60 of Law of 1890. The plaintiff went and pegged off claims on the portion thus closed, maintaining that the closing was illegal, on the ground that the number of claimholders on the proclaimed area exceeded one to every 20 morgen of ground. The defendant company ordered the plaintiff to remove his pegs and refused to allow him to peg off claims on the abovementioned portion. The plaintiff sought the confirmation of a provisional interdict restraining the defendant company from interfering with his pegging. The company maintained that the words "zoodanige delverij," appearing in § 60 of Law 8 of 1890, referred to the portion closed and not to the area proclaimed, and alleged that there was not one claimholder to every 20 morgen of ground on the portion closed.

Held (per Kotzé, C.J., De Korte, and Morice, J.J.), that the interdict must be confirmed.

Held (per De Korte and Morice, J.J. ; Kotzé, C.J., reserving his opinion until action brought) that Article 60 lays down the condition under which alone the Government has the right to close any public diggings, and that the words "zoodanige delverij" refer to the whole area proclaimed and not to the portion closed only.

Williams vs. The Geldenhuis Estate Gold Mining Coy., Ltd., and Dr. W. J. Leyds, N.O., decided on the 14th of November, 1893 (unreported). N.B.—The application for confirmation of the interdict is not reported, but the subsequent action is (*vide infra*).

Held, by the majority of the Court (Kotzé, C.J., diss.), that the correct construction of Article 60 of the Gold Law of 1890 is that the Government can only close a portion of any proclaimed area when the number of diggers on the entire proclaimed area average less than one digger to every 20 morgen.

Held, also, that where the Court has placed an interpretation on a point of law, and the reading of the Volksraad differs therefrom, the Volksraad should not assign to it a construction conflicting with the decision of the Court, but the proper course would be for the Volksraad to modify the terms of the law to accord with its (the Volksraad's) view, while accepting the Court's decision.

Semble, the number of licences issued is no test of the number of diggers present. *Williams vs. The Geldenhuis Estate and Gold Mining Coy., Ltd., and Dr. W. J. Leyds, N.O.* (C.L.J. Vol. XI., p. 128.)

See First Volksraad Besluit of the 13th June, 1893, which alters section 60 of the Gold Law, and speaks of one digger to every 20 morgen of the portion to be closed.

In 1889 a portion of the proclaimed farm Doornfontein was given to Fawcus by the Government for the purposes of a township, and notice given thereof in the *Staatscourant*. In November, 1891, the agreement between the Government and Fawcus was cancelled and the cancellation duly notified in the *Staatscourant* of the 25th November, 1891. On the 27th November, 1891, the plaintiff pegged off certain claims on the abovementioned portion. In December, 1891, the Mining Commissioner refused to renew the licences for these claims. Held, in an action for damages for wrongful refusal, that the plaintiff was entitled to a renewal of his licences. Held, further, that when the Mining Commissioner definitely refuses to renew the licences, it is unnecessary to tender powers of attorney, etc. Held, further, that, when a proclaimed area is closed by proclamation or notice in the *Staatscourant*, the same means (i.e., proclamation or notice in the *Staatscourant*) ought to be adopted when it is again thrown open to diggers. *Van Diggelen vs. Leyds, N.O.*, decided on the 13th April, 1895, *coram* De Korte, Jorissen, and Morice, J.J.

See all the remarks of Kotzé, C.J., on the last point in *Blomfield vs. The Mining Commissioner of Johannesburg and F. J. Bezuidenhout, Jr.* (Official Reports) L, 1, p.p. 135-136.

See also *The Langtaagte Estate G.M. Coy., Ltd., vs. The Crown Reef G.M. Coy., Ltd.*, referred to under section 31 of this law.

In July, 1888, Braamfontein was proclaimed a public goldfields. In January, 1889, the plaintiff pegged off certain claims there. In February, 1890, a portion of Braamfontein was closed by the Government. In an action by the plaintiffs it was held that they were entitled to the money spent in purchase of claims, as also to the licence monies paid. Money paid in exploiting the ground, to find out whether it contained gold in payable quantities could not be claimed, as it was too vague and remote a claim. The value of certain buildings erected on the ground was allowed, but not the cost of erecting the beacons, because the obligation to erect them was imposed by the law. *Berea Syndicate vs. Leyds, N.O.*, decided on the 30th of June, 1891, *coram* Kotzé, C.J. and De Korte and Jorissen, J.J. (unreported).

In the case of *Boyne and Nightingale vs. The Spitzkop Gold Mining Company* (C.L.J., Vol. IV., p. 71, decided on December 4, 1886), *Coram* Kotzé, C.J., and De Korte and Jorissen, J.J., it was held that the concessionaires of the sole right to dig for gold on a farm which had been deproclaimed were answerable only for direct damage caused by the granting of the concession, and not for damage not directly resulting from the granting of the concession, but from the withdrawal of the proclamation and the refusal to issue licences.

See also the case of *The Spitzkop Gold Mining Company vs. Stanley and Tate* (decided in August, 1895, and referred to in Cape L.J., Vol. IV., p. 72.).

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

In the case of *Eloff vs. Dr. Loyds, N.O.* (decided by Kotzé, C.J., in Chambers, on the 29th November, 1895, (Off. Rep. Vol. 2, part 3), the applicant (Eloff) alleged in his petition that a proclamation dated the 5th of June, 1888, was published in the *Staatscourant*, of the 13th of June, 1888, by which a certain portion of Braamfontein, in the district of Heidelberg, was thrown open to prospectors; that on the 22nd of July, 1895, a proclamation was issued to the effect that the above-mentioned ground would be closed from the 24th of August, 1895; that on the 16th of August, 1895, and therefore before the closing took place, he applied for licences to peg off certain claims on the said ground, and that the Mining Commissioner of Johannesburg refused to issue the licences, notwithstanding the fact that everything necessary had been done according to law; that he (the applicant) thereupon pegged off the claims which, on being surveyed, were found to be 90 in number. He therefore asked for an order to compel the Mining Commissioner to issue the licences.

The Mining Commissioner answered that on the 22nd of June, 1889, he received a telegram from the State Secretary ordering him to issue no further licences on Braamfontein, and that on the 3rd of February, 1890, notice was given in *The Mining Argus* that no further licences would be issued on the said ground, and that, therefore, when the applicant pegged in August, 1895, the ground was not open ground.

Kotzé, C.J., delivered the following judgment:

"The Court is of opinion that a proclamation published in the *Staatscourant* can only be withdrawn by a later proclamation (with a reservation of rights already acquired) unless the Law prescribes otherwise in any particular case. The instructions from the Government and the notice published by the Mining Commissioner in *The Mining Argus* cannot therefore set aside the proclamation of 1888. The later proclamation of the 22nd of July, 1895, first came into force on the 24th of August, 1895, therefore

before the 24th of August, a person could make application for, and obtain prospecting licences, according to law. The Mining Commissioner did not, therefore, act according to law. The applicant is entitled to prospecting licences for 90 claims. The Court must consider the application and deal with it *nunc pro tunc*. The Mining Commissioner is ordered to issue the licences, and applicant is entitled to his costs."

Section 5. *Exploitation of Claims under Licence.*

63. Every white person of full age, of the male sex, who submits to the laws of the land and produces (a) to the official charged with the issue of the licences referred to in this Article, the receipt or the certificate that he has paid his personal tax according to law for the current year, shall be entitled to twelve digger's licences to dig or to mine on a public field for precious metals or precious stones; on one claim for every licence obtainable on payment of twenty shillings per month per licence. This licence of twenty shillings may, however, only be demanded for claims on which machinery has already been erected, and is in working order; or if, no matter where, use is already made of machinery for the crushing of quartz coming from these claims. Where, in other cases, the Mining Commissioner orders the taking out of a digger's licence, only fifteen shillings per month need be paid for it. Every person as above-mentioned, provided he complies with the same conditions, is also entitled to obtain twelve prospecting licences, which shall give him the right to search on Government ground, situated within the jurisdiction of the official who issues the licences, and made available for prospecting by the Government, or on private ground, in accordance with the provisions of this law. For every licence to prospect on private ground, five shillings per month must be paid, and on Government ground two shillings and six pence per month, besides a stamp of 1s. 6d. per claim for the first month in every case of pegging off or taking out of claim licences.

Every male full digger's licence

When applicable

When Twelve inch

See, for mining private and Government ground

A male married person may, besides those for himself, also peg off as many claims as laid down in paragraph 4 of letter b, Article 65, for his wife and children in his own name, without power of attorney, provided that a certificate from the Field-Cornet is produced showing that he is married, and actually has as many children as he states in the certificate, which must be sworn to before the Field-Cornet concerned or a Justice of the Peace.

Married may claim own wife's children or from net of the

No advantage could be taken of an incorrect description in the licence, where there was clear proof of the identity of the claim, and the intention always existed to acquire the same, and to hold it under the Gold Law. *Cohen vs. The Johannesburg Pioneer G.M. Company*, decided on the 15th of November, 1889, *coram* Kotzé, C.J., and Esselen and De Korte, J.J. (unreported).

Prospecting licences were taken out to peg claims on the farm "Elandsfontein, Simmer and Jack's portion," and claims pegged in January or February, 1889, for the plaintiff's predecessor. The farm was divided into two portions, the Simmer and Jack and the Geldenhuis. The peggers did not know exactly where the dividing line was. They pegged on the Geldenhuis portion. These claims were amalgamated and licences were paid. In September, 1889, Ballott found out the mistake, and in November, 1889, pegged off the claims, knowing they belonged to the plaintiff. Held:—The Court will not allow a person, who, knowing better and being fully acquainted with the circumstances, disturbs another in his occupation or possession of claims, simply because there is an informality or wrong description in the licences, to take advantage of such informality or wrong description, where it appears that the person in possession has acted *bona fide*. The claims were therefore adjudged to the plaintiff.

S. Syndicate vs. John Ballott G.M. Company, Ltd.; decided on the 15th of January, 1891, *coram* Kotzé, C.J., and De Korte and Ameshoff, J.J., (unreported).

(a) The text is clearly wrong here. It reads "en aan den ambtenaar belast met de uitreiking van de in dit artikel bedoelde licenties, *en de kwitantie*, etc." The second *en* ought not to be there. See the remarks of Kotzé, C.J., in the case of *Kempin vs. Leyds, N.O.*, and the *Modderfontein G.M. Company*, referred to under Article 15, with regard to the preposition "op."

See also the case of the *Paarl Pretoria G.M. Company vs. Donovan and Wolff, N.O.*, in Appendix C.

64. If under this law an area is declared a public diggings by proclamation, the person, or the persons, who has or have pegged off for themselves prospector's claims on that area under prospecting licences, shall be entitled to remain in possession of such claims, provided this law be complied with.

See Gauf vs. The Modderfontein G.M. Company, Ltd., and The Mining Commissioner of Boksburg referred to under Article 28 of this law.

65. With regard to causing the pegging off, and thereafter the holding of digger's or prospector's claims, by means of a holder of a power of attorney, the following rules apply:—

- (a) Male and female persons, residing within the country, may cause digger's or prospector's claims to be pegged off, and thereafter held, by a holder of a power of attorney, provided, in case they are married women, they are assisted by their husband.

Male persons of full age, acting for themselves or as husband, shall have to produce, with their power of attorney, the receipt or the certificate mentioned in Article 63.

- (b) Every person who wishes to peg off or cause to be pegged off a claim or claims under power of attorney, must have the said power of attorney certified by the Field-Cornet or Assistant Field-Cornet of his ward, and must produce the receipt for the tax paid for the current year.

This official must further certify that the holder of the power of attorney is entered on his Field-Cornet's list, is known to him as an inhabitant of his ward, and is obedient to the laws of the land.

In case such a person also takes out powers of attorney for his wife, the Field-Cornet or Assistant Field-Cornet must certify that the statements of the holder are correct. Should he doubt the truth of the statements of the holder of the powers of attorney, he can demand that the truth of the powers of attorney should be confirmed under oath.

On no power of attorney from one person shall more than twelve claims be pegged off.

Every male child of sixteen years or more has the right to peg off, or cause to be pegged off, twelve claims, provided the Field-Cornet or Assistant Field-Cornet of his ward certifies that he is entered on his Field-Cornet's list, is known to him as a resident of his ward, and obedient to the laws of the land.

Unmarried female persons of full age and widows shall also have the right to peg or cause to be pegged off twelve claims. All persons mentioned in this article who do not pay any personal taxes under the laws of the land shall have to produce a certificate that their father, guardian, or husband has paid his personal taxes for the current year. Persons mentioned in this article who are not subject to personal taxes, and are also not assisted by father, guardian, or husband, shall have to produce a certificate to that effect from their Field-Cornet or Assistant Field-Cornet for the purposes of this article.

The Field-Cornet or Assistant Field-Cornet shall for the signing of the certificate and the inspection of his books attach a shilling stamp on each certificate, to be paid by the holder of the power of attorney, whereof 6d. shall be returned to him monthly by the Government for each certificate. The Field-Cornet or Assistant Field-Cornet must keep a proper register of the certificates issued, and shall render monthly to the official of his district concerned a certified list with his account. The Field-Cornet or Assistant Field-Cornet who renders incorrect statements or accounts, certified as correct and true, shall be punished with a fine of not less than £5, and no more than £25, and in default with imprisonment not exceeding three months, with or without hard labour.

Stamp of Field-cornet on certificate

Field-cornet fully certifying false

- (c) Male persons of full age residing outside the country may cause to be pegged off, and thereafter hold, one digger's or prospecting claim, by means of a holder of a power of attorney, provided the power of attorney be notarially drawn up and duly legalised, and this power of attorney, in addition to the ordinary stamp of 1s. 6d. per claim, carry a stamp of this Republic of one pound (£1) sterling.

Male person full age residing outside country peg a claim means of holder. Power to be notarially drawn up and legalised. Stamp of £1

This stamp shall have to be renewed yearly, and is valid for that year for every power of attorney used by the same person on any goldfield of this Republic.

To be renewed yearly.

The holder of the power of attorney can obtain a receipt or duplicate receipt for the same from the official who cancelled the stamp on the first power of attorney of that power given for that year.

Receipt.

No women or minors residing outside the country shall be able to cause digger's or prospecting claims to be pegged off by a holder of a power of attorney.

Women and minors residing outside the country cannot peg claim by means of power-holder

An error in amalgamating, i.e. a *bona fide* mistake made with the advice of the Mining Commissioner in amalgamating 36 claims in three blocks of 12 each, for which the same 12 names were used in each case, whereas there were really 36 powers of attorney, did not deprive the syndicate of its right.

Madeline Reef Syndicate vs. Coetzee and others (C.L.J., Vol. V., p. 16; Official Reports, I. 1. pp. 134-135), decided on the 13th January, 1888, *coram* Kotzé, C.J., and Esselen and Jorissen, J.J.

If the powers of attorney by virtue of which a man obtains licences to peg off claims are false, the licences are invalid, and the pegging gives no title. It was proved that the powers of attorney relied on by the defendant Croft were not signed in the presence of the witnesses, and that some had not been signed by the alleged principals at all. Held, that the licences granted to Croft were invalid, and that he had no title to the claims. The powers of attorney ought to be signed by the principals in the presence of the witnesses, or the principals ought to acknowledge their signatures to the witnesses. *Nigel Coy. vs. Croft and the Beatrice Syndicate*, decided on the 12th of April, 1890, *coram* Esselen, De Korte, and Ameshoff, J. (unreported).

Where, in pegging off claims, a certain number of them are pegged off under invalid powers of attorney, and a third person, hearing of this, pegs off afresh a number of such claims, equal to the number of the invalid powers, the Court will not grant such second pegger a rule nisi preventing the first pegger from alienating the claims pegged off afresh, on which licence monies are being regularly paid by the latter, pending an action for declaration of rights, unless he can show that the claims thus pegged off again by him are precisely those which were originally pegged off under the faulty powers. *Sylvester vs. Jacobs* (official reports, I. 2. p. 20), decided on the 26th of April, 1894, *coram* Ameshoff, J.

66. Articles 63 to and including 65 shall not be applicable as regards powers of attorney to alluvial goldfields, where a person shall not be able to peg off more than three claims in his own name.

Articles 63 to 65 not applicable to alluvial goldfields. One claim in person's own name.

67. Every licenced digger shall be entitled to hold under his licences on each proclaimed farm three alluvial claims and as many reef claims as provided in Articles 63, 64 and 65 of this law. He shall also be at liberty to purchase a number of claims from other licensed claimholders: he shall in that case have to hold a digger's licence for each claim, unless the Mining Commissioner considers a prospecting licence sufficient for the time being.

When the joint claimholders of an amalgamated block have had their respective shares registered for the purpose of this article with the Mining Commissioner or responsible clerk concerned on payment of five pounds (£5) sterling, each one of them shall be allowed to peg off afresh one claim or to give a power of attorney afresh for that purpose.

The same power of attorney may be used only once and shall be returned on issuing the licences to the licence holder, after cancellation of the stamps, noting the number of first licence granted thereon, as also the number of the register of registration, and noting on the power of attorney that it may not be used for any other claim.

To the discoverer of payable gold reefs on and in proclaimed public diggings and on prospecting fields twelve claims shall be awarded without powers of attorney over and above the twelve claims allowed him in subsection *b* of Article 65, but subject to an impost of 6s. 6d. per claim for the first month and after that the ordinary licence.

68. If on a quartz reef claim alluvial gold or *vice versa* on an alluvial claim quartz reef gold is also found and worked, a double amount of licence money shall be paid for such a claim.

69. The registration of one or more searcher's (prospector's) claims shall be effected by a Mining Commissioner when the discovered precious metal or precious stone-bearing ground is situated within the boundaries of his field, or otherwise by Landdrost of the district wherein the said ground is situated.

70. Diggers or prospectors, being holders of adjoining claims to the number of not more than twelve, who wish to amalgamate their claims, may cause the said claims to be registered as amalgamated, with all the water-rights belonging to such claims, on application at the office of the Mining Commissioner or responsible clerk concerned.

On registration the share of each digger or prospector must be clearly and distinctly described.

On the granting of the certificate of such amalgamation, under a stamp of two pounds (£2) sterling, the holders of the amalgamated claims shall enjoy the usual privileges as per regulations thereon on the fields where they are situated.

The amalgamation of claims does not lapse through licences being changed.

See the case of the *Madeline Reef Syndicate vs. Coetzee and Others*, referred to under Article 65.

71. Every application for a "mijnpacht," right to lead water, protection, amalgamation of claims, and other similar applications, must bear a stamp of the value of five shillings.

72. Pegging off claims between sunset and sunrise is forbidden, as also pegging off on Sundays and Christian holidays recognised by law.

Pegging off at such forbidden times shall be considered illegal, shall not be recognised and shall give no rights whatever.

The plaintiff alleged that the defendant pegged off certain claims between sunset and sunrise, and that he, believing the defendant to have no legal title, pegged off the claims on a subsequent date. The Court granted absolution from the instance. *Tinling vs. Lang*, decided on the 26th of November, 1894, *coram* Ameshoff, Jorissen and Morice, J.J. (unreported).

73. Every owner of a reef claim, or of an amalgamated block of reef claims, or of a digger's claim or block of claims shall be obliged to deposit with the Mining Commissioner, Responsible Clerk or Landdrost concerned, within one month after the date of the first licence, a surveyor's diagram, or if there be no surveyor, a sketch plan of the situation of the claims or blocks, and signed by the person who made the survey. Such claims may not be transferred without a proper land surveyor's diagram. For alluvial digger's claims it shall be sufficient to deposit a sketch plan only so long as they are not transferred, in which case a surveyor's diagram is obligatory. The stipulations of the foregoing paragraph shall not be applicable to the unhealthy gold localities.

Diagram sketch of situation claims to deposited Mining Commission within one month.

74. Every holder of a reef claim or an amalgamated block of reef claims under digger's licence shall be obliged within six months after the date of the first licence to deposit with the Mining Commissioner, Responsible Clerk or Landdrost concerned approved surveyor's diagrams in triplicate of a survey of his ground, made by a surveyor, and compiled on such a scale as shall be fixed by the Surveyor-General.

Transfer claims can take place without surveyor's diagram.

Sketch sufficient for alluvial claims and transferred.

Deposit with six months with Mining Commissioner of diagrams claims under digger's licence.

Nature of survey diagrams.

Such survey must show all works, buildings, tramlines, roads, footpaths, machine stands and the local conditions of the ground, and must be connected by trigonometrical or other survey with such fixed points or permanent beacons of another survey as the Surveyor-General shall determine, or in such other way as the Surveyor-General shall deem sufficient to define the place accurately. These diagrams shall be examined and approved at the office of the Surveyor-General. The Surveyor-General shall, before the diagrams are signed by him, make known by a notice in the *Staatscourant* that these diagrams have been sent in and that they will be signed by him if within the time of one month from the date of publication no protest is lodged against the same.

Approval of Surveyor-General. Notice of.

When a protest is lodged the same must be proceeded with within the period of one month, failing which the diagram shall be signed by the Surveyor-General just as though no protest had come in against the same.

Protest against

Regarding diagrams already approved under this article and hereafter to be approved, the same regulations regarding legality and cancellation of faulty diagrams shall apply as enacted in Article 109. Before a surveyor may survey claims or ground, the beacons thereof must be shown by the owner or his representative with the claim inspector of the respective fields.

The defendant syndicate sent in a diagram of claims to the Surveyor-General for his approval in accordance with the Gold Law. The plaintiff syndicate filed a protest, alleging that the said diagram comprised more than the defendant was entitled to in that it included sixteen claims belonging to it (the plaintiff). Held, that the plaintiff had not succeeded in making good its protest, and that the defendant had a better title to the said claims inasmuch as it had pegged the claims in February, 1892, while the plaintiff had pegged only in July, 1892. *Okums Syndicate vs. The Rand Exploring Syndicate* (C.L.J. vol. XIII. s. 165), decided on the 7th February, 1896, *coram* De Korte and Ameshoff, J.J.

In an action for renewal of licenses for certain claims, the defendants excepted to the summons on the ground that the diagram attached to it was vague, and did not indicate the exact position of the claims. It was held that it was not necessary to attach a diagram to the summons at all, but even if it were necessary, the diagram attached was sufficiently clear. *Doyle vs. Leyds, N. O. and the Rand Exploring Syndicate and Nonpariel Syndicate vs. Leyds, N. O. and the Rand Exploring Syndicate*, decided on the 6th August, 1896, *coram* Kotzé, C.J. and Jorissen, J. (unreported).

75. The provision of Article 74 shall also apply with respect to diggers' claims pegged off before the taking effect of this provision, and for these claims the period for sending in the diagrams shall be six months after the taking effect thereof.

Art. 74 shall apply to digger's claims pegged before taking effect of this law.

76. The period for sending in the diagram referred to in Article 74 may for well-founded reasons be extended by the Head of the Mining Department.

Extension of time for sending in diagram

77. When a person has more ground than he holds a licence for, anyone provided that the proper number of licences shall be at liberty to peg off afresh within the

Re-pegging of surplus ground

pegs or beacons of that person, the excess number of claims pegged off, with this understanding, however, that such newly pegged out claims must lie together and on one of the sides of the block or portion of ground, but in no case on worked places or to the obstruction of the other claim holder.

The second pegger is obliged, within 24 hours of such pegging off, to give written notice thereof to the Mining Commissioner or Responsible Clerk of the field concerned, as well as to the holder or holders of the claims, and he must further, within 14 days thereafter, send in to the official concerned a surveyor's diagram of the whole block of claims, showing not only the claims pegged off by him, but also the exact situation of the other claim holder, after which the Mining Commissioner may grant the excess of ground pegged to the re-pegger. From the decision of the Mining Commissioner, appeal may be entered within 14 days after judgment, to the Head of the Mining Department, whose decision shall be final.

Should it appear that the second pegger has pegged out within the beacons and pegs of the holder of the claims, without these being open ground, then shall the second pegger be punished with a money fine of £100 to £500, or in default, with imprisonment according to Article 8.

78. Surveyors, who are engaged in surveying claims, shall have the right to enter for that purpose on another's ground, after giving notice to those entitled to such ground or their representatives, if they are on such ground, and to place there the necessary instruments, flags, etc., for the survey.

Everyone who prevents them or obstructs them therein, or puts difficulties in the way of the operations for the survey, shall be punished with a fine not exceeding £25.

79. All surveyors shall be obliged to supply the Head of the Mining Department, through the Surveyor-General, with a copy of all diagrams which they have framed for Companies, Syndicates, or private persons, in so far as they refer to public diggings.

(1) He who does not comply with the depositing of diagrams and sketches prescribed in Articles 73, 74, and 75 within the time fixed shall be punished with a fine not exceeding £15.

(2) If this fine be not paid within the time fixed for the purpose, the renewal of the licence shall be postponed until the fine shall be paid.

(3) In the sentence a time may be fixed within which the deposit shall have to be made.

81 An alluvial claim for digging for precious metals shall be in extent 150 by 150 feet, and shall be beacons off with clearly visible pegs and trenches at right angles in the direction of the sides.

A claim for digging for precious stones shall be in extent 30 by 30 feet square.

A quartz reef claim shall be in length 150 feet (*i.e.*, in the direction of the reef) and 400 feet in breadth, in such a way that each claim, if possible, forms a rectangle, the breadth to be taken on one or both sides of the reef, as desired.

In respect of a quartz reef claim two central pegs shall be sufficient pegs for the first seven days.

After the expiration of that time, four corner pegs shall have to be substituted, and the direction indicated by beacons as prescribed by law.

In the case of quartz reef blocks of amalgamated claims four corner pegs shall be sufficient for each block, but the names of the respective claimholders in the block must be legibly marked on each peg, with the date of amalgamation.

Nobody shall have the right to fence in his claim or "mijnpacht" without the previous written consent of the Head of the Mining Department, who shall decide

after consultation with the Government, and in no case shall a larger portion of the ground be fenced in than is necessary to protect the works, and to guard against obstructions and trouble with the workmen.

The use of barbed wire for fences or for other purposes is forbidden on pro-claimed or prospecting fields, as also on grounds surrounded by public diggings.

Barbed wire
bidden.

All fences made or to be made without permission as aforesaid shall be removed by those entitled to the ground thus fenced in, and in default of this the Government shall cause the same to be removed at their expense. Contraventions of this article shall be punished with a fine not exceeding £25, or, on default of payment, with imprisonment according to Article 8 of this law.

Removal of
fences put
without
permission.

See the case of the *Berriman Syndicate vs. Simpson* in Appendix C.

82, The corner pegs or beacons of a claim shall be not less than three feet above the ground.

Height of cor-
ner pegs.

These corner pegs or beacons shall be not less than three inches in diameter.

Where the nature of the ground permits, at each peg or beacon two trenches must be dug, which shall form a right angle at the peg or beacon, three feet long, half-a-foot wide, and one foot deep, which trenches must indicate the direction of the boundaries; moreover, the sides of a claim or amalgamated block of claims shall be shown in a clear manner by trenches or piles of stones at least one half-foot high and three feet long, and boundary beacons placed at distinct mutually visible distances, or other marks.

Trenches
at
claims.

When there is a surveyor's diagram of claims, or of amalgamated blocks of claims, it shall be sufficient to erect the corner beacons, and to dig the furrows round the claims.

All claims and amalgamated blocks of claims must have on each corner beacon a board at least nine inches square, on which shall be clearly and legibly written, printed, or painted, the official number to be given by the Claim Inspector, the names of the mining property and the claimholder or the claimholders, the date of the licence and the date of the pegging off.

Notice board at
corner pegs.

When the Claim Inspector finds that any of the provisions in this Article have not been complied with, he shall have the right to inflict a fine therefor of at least two shillings and sixpence and at the highest five shillings per claim. He shall give notice thereof to the owner or his representative and he shall at the same time inform the Mining Commissioner thereof.

Non-compliance
with this pro-
vision.
Duty of Claim
Inspector.

The person fined has the right to appeal within eight days to the Special Land-rost, should there be one, or otherwise to the Mining Commissioner; if after expiration of this period fixed for the appeal, no appeal has been noted and the fine has not been paid at the office of the Mining Commissioner and the beacons not brought into order, the Mining Commissioner shall issue no further licence for the claims in respect of which the law has been contravened, till such time as the fine shall have been paid and the beacons brought into order. Article 86 shall apply in this case.

Appeal.

Suspension of
licence.

83. When on a public field a digger wishes to abandon his claim or claims in order to peg off for himself a new claim or claims, he shall have the right to do so provided he pulls out the pegs of the claims which he wishes to abandon, and puts up a notice a week on the ground to the effect that it has been abandoned, and also gives notice the same effect to the Mining Commissioner or responsible clerk, in default of which he shall be liable to a fine not exceeding £10 or imprisonment for from fourteen days to three months, with or without hard labour.

Abandonment of
claims.

Week's notice.

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On receipt of such notice the Mining Commissioner or responsible clerk shall cause such claim or claims to be sold by public auction in accordance with Article 86.

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He may, before giving out such claims, first institute an inquiry, and shall be entitled to refuse to give out such claims and to cause them to be sold by auction for the benefit of the State.

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The renewal of a prospecting or digger's licence shall be refused by the Mining Commissioner or responsible clerk when claims have been pegged off on places where according to Articles 117 and 15 of this Law it is forbidden to search or to dig, and on places which in the opinion of the Mining Commissioner or responsible clerk are in indisputable lawful possession of others.

See the cases of the *Witwatersrand G.M. Coy. vs. Young, Kempin vs. The Mining Commissioner of Boksburg and The Modderfontein G.M. Co. and Nicolls vs. Leyds N.O.*, referred to under Article 15.

See also the case of *Ginsberg vs. The Gauf Syndicate and the Mining Commissioner of Boksburg* in Appendix C.

When damages are claimed on the ground of the refusal to issue licences for ceded claims, the deed of cession must be attached to the summons. *Chunleigh Syndicate vs. The State and Rand Exploring Syndicate* (Official Reports I., 1, p. 45), decided on the 2nd of February, 1894, *Coram Kotzé, C. J. and Ameshoff and Morice, J. J.*

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84. No holder of a reef claim situated higher up shall have the right to allow the débris from his claim to be a nuisance to another or to obstruct him who is working lower down.

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In case holders of claims require ground for depositing tailings or other débris from the batteries, for placing sumps or pans, dams instead of pans or reservoirs, or for storing quartz, such ground may be given to them on their own claims, after written application has been made therefor by the Claim Inspector and a surveyor's diagram has been handed in at the office of the Mining Commissioner or responsible clerk concerned, which officials may grant this application if there are no well-founded objections thereto. For this no extra licence need be paid. This provision shall not apply to those storage stands which have already been given out under licences at 2s. 6d.

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The regulations laid down in Article 102 with regard to the non-payment within the proper time of the licences on specially registered claims are also applicable to this Article. Applicants must, within a month after award, hand in plans in triplicate to the said officials, framed as indicated in Article 73 of this Law.

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85. On proclaimed fields the Mining Commissioner may determine where prospecting can be carried on under prospecting licences, and also determine on which places digger's licences must be taken out.

The Mining Commissioner shall have the right, if application be made therefor to change the digger's licences, under which claims are held, to prospecting licences after due investigation, and after having received the report of the claim inspector thereanent.

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On finding that anyone is holding ground under prospecting licence, and is not properly working the same to the satisfaction of the Mining Commissioner, with the object of finding precious metals or precious stones, the Mining Commissioner shall have the right to order him to take out a digger's licence.

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The Mining Commissioner shall in this matter have to take into consideration that when claims have been amalgamated, the working of one of the thus amalgamated claims at a time must be considered as sufficient, which regulation, however, shall not be applicable to claims which were previously held under digger's licence.

The licence holders may, in case they are dissatisfied with such decision of the Mining Commissioner, appeal within thirty days to the Government, through the head of the Mining Department, after which the Government shall finally decide on the latter's report. Every Landdrost may, except on the proclaimed fields and the prospecting fields where a Mining Commissioner has been appointed or assigned, issue prospecting licences within the boundaries of his district.

Appeal Govern

When Lic may issue prospecting lic.

See the case of the *Henry Nourse Gold Mining Coy. vs. Eland* in Appendix C.

86. If a digger's or prospecting licence expires without being renewed on or before the day of expiry, the claim for which the licence was issued may not be pegged off by another person, but lapses to the Government, and such claims shall be dealt with as follows:—

When cl lapse to Governmen

During three months after such day of expiration the former holder of such claims shall be entitled to recover his rights on these claims by taking out new licences therefor, on payment of extra licence monies equal to the amounts of the arrear licence monies. If, however, the new licence be taken out by the former claimholder within fourteen days after the day of expiration, only the licence monies for these days need be paid. After the expiration of the said term of three months, the head of the Mining Department must sell or cause these claims to be sold by public auction. The head of the Mining Department shall, however, be obliged, before such sale takes place, to give back the claims concerned to the original holders thereof, if no further questions exist, on the additional payment of all arrear licence monies, besides the expenses incurred therewith.

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Claims sold three m

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If the claims are not sold by public auction, the head of the Mining Department shall be obliged to declare 30 days after date of the sale such claims open ground, when the ground may be pegged off by the public. Of such public sale a notice shall be published in the *Staatscourant* at least 14 days previously.

If not sold in one t after lap said peri three m they ma pegged again.

These regulations shall be applicable to all claims which have lapsed at the time of the taking effect of this law.

On the 2nd of September, 1887, the plaintiff pegged off certain claims. In October, 1887, these claims lapsed to the Government. On the 14th of January, 1890, the plaintiff bought the claims from the Government under Article 61b of Law 10 of 1887. Between October, 1887, and January, 1890, the defendants pegged off the claims and got their licences renewed from time to time. Held (per De Korte, Ameshoff and Jorissen, J.J.) that the Government was not bound to sell the claims, but could allow them to be re-pegged as open ground; that therefore the defendant's title was better than the plaintiff's, the defendant's pegging being prior to the plaintiff's purchase. *Edwards vs. The Britannia Coy.*, decided on the 1st of September, 1890 (unreported).

N.B. Article 61b of Law 10 of 1887 is spoken of, but it is really Article 37 of Law 10 of 1887, which modifies Law 8 of 1885 by the insertion of Articles 61a and 61b between Articles 61 and 62.

In the case of *Doyle and others vs. Leyds, N.O.*, and *The Rand Exploring Syndicate* (C.L.J. Vol. XIII., p. 157) decided on March 19th, 1896.

Ameshoff, J., with whom Jorissen, J. concurred, said "Article 25 of Law 9 of 1888 is imperative It compels the Government to sell claims in such a way as it pleases it is true, when the licences paid for the same have lapsed without being renewed." Now Article 25 of Law 9 of 1888 is the article which modifies in some unimportant details Article 61b, as laid down by Article 37 of Law 10 of 1887, referred to above. The remarks, therefore, of Ameshoff, J. in *Doyle's* case are hardly consistent with the judgment in the case of *Edwards vs. the Britannia Coy.*, abovementioned.

The plaintiffs alleged that they pegged off certain four claims on the 22nd of June, 1889, that the licences were renewed on the 22nd of July, but that renewal was wrongfully refused on the 22nd of August, though licence monies had been properly tendered. The second defendant alleged that the ground in question was pegged by one Gebhardt on behalf of Schweizer in June, 1889, before the pegging of the plaintiffs took place; that subsequently Schweizer obtained the right to lay out all the ground which he held as claims, including the ground in dispute, as a township, and that it (i.e., the second defendant) obtained all Schweizer's rights by cession. The second defendant further alleged that the plaintiffs had abandoned their claim to the claims, and that they were estopped by their long silence of four or five years from asserting any claim to the ground. Held, by the majority of the Court (Morice J. diss.), that the plaintiffs must succeed.

That the plaintiffs pegged on open ground in June, 1889, and that the renewal of the licences was wrongfully refused by the Mining Commissioner in August.

That as the Mining Commissioner renewed the licences in July and refused the renewal in August, the onus of proving the legality of the refusal lay on him, and that in this he had failed.

That no *animus relinquendi* on the part of the plaintiffs had been proved and that they were not estopped from asserting their claim. The cases of *Walker vs. Leyds, N.O.*, and the *Rand Exploring Syndicate and Judd vs. Leyds, N.O.* and the *Rand Exploring Syndicate* were distinguished. Held (per Morice, J. diss.), that the defendants ought to succeed. That when a person, who lays claim to claims, for a long period of years neither tenders licence monies nor takes legal steps, and when others are thereby prejudiced, the presumption is that such person has abandoned his right to the claims. That this presumption arises in this case and has not been rebutted. *Doyle and others vs. Leyds, N.O.*, and the *Rand Exploring Syndicate* (C.L.J., Vol. XIII., p. 157), decided on the 19th March, 1898, *coram* Ameshoff, Jorissen and Morice, J.J.

See also the case of *Schweizer's Claimholders Rights Syndicate vs. Rand Exploring Syndicate* in Appendix C.

With reference to the lapsing of claims to Government on non-payment of licence monies the case of *Moolman and Coetzee vs. Schaffe and Drury* (decided on the 2nd of March, 1887, *coram* Kotzé, C.J., and Esselen, J.; see C.L.J., Vol. V., p. 13) is of historical interest. It was there decided that under the Gold Law of 1885 the right to a claim lapsed on the expiry of the licence through non-payment of the licence monies, and that the ground on which the claim had subsisted could be pegged off as a claim by a third party. The law was, however, altered by a *Volksraad Besluit*, followed by Article 61b of the Gold Law, as amended by Law 10 of 1887, Article 37, which distinctly says that lapsed claims may not be pegged off again by a third party.

See also the case of *Underwood vs. Barnato Bros. and the Mining Commissioner of Boksburg* in Appendix C.

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87. He who is on commando or has personally responded to a call to maintain order and peace shall *ipso facto* have protection for his claim or claims (whether reef or alluvial) during the time that he is on commando or such special service, and, in the case of commando, also for thirty days after his release from such commando, without its being necessary for such protection to be especially granted, provided he gives notice of such call to the Mining Commissioner concerned.

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During the time of this protection no licence monies on the claims need be paid.

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88. Provisional exemption from the payment of claim licence monies (whether reef or alluvial) may be granted in case of sickness or owing to the unhealthiness of the district, provided that work be done on such claims before and at the time of the application for protection, such as in the opinion of the Mining Commissioner may be considered sufficient to justify the granting of exemption. Every such case of exemption shall be sent as soon as possible by the Mining Commissioners, with a full report, to the Head of the Mining Department, for final approval or rejection by the Government, who may grant or refuse confirmation of the exemption.

The duration of the time of exemption shall be fixed according to the nature of each case, while nothing shall be charged for granting the same.

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89. Claims belonging to the estate of a deceased person shall not lapse unless the executor fails to comply with the provisions of the law for thirty days after receipt of his appointment or the confirmation thereof by the Orphan Master.

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On further regular compliance with the provisions of the law such claims shall be considered as assets of the estate, and as such be dealt with according to the provisions of the Orphan Law.

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90. The possession of a licence for a claim does not include the right of disposing of the surface of the ground, which right of disposal the Government reserves for itself for the purpose of defining roads and other works, etc., without, however, obstructing the working of the claim.

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91. Any person who digs for gold, precious stones, according to Article 2 of this law, be it on his own, be it on another's account, must, if such is desired by an official

qualified thereto by the law or the Government, produce his licence, in default whereof he shall be punished with a fine of £1 to £3, and in default of payment with imprisonment not exceeding fourteen days.

92. Every licenced digger or prospector shall be entitled to have a stand on his claims for his dwelling, for which stand he need pay no licence.

93. Each white person who desires to erect a store, or houses, or dwelling on a proclaimed or prospecting field shall make application to the Mining Commissioner for one or more stand licences, Where five stands are already given out next or near each other, the Mining Commissioner shall not have the right to give out stands within a distance of 300 yards.

Each licence shall give the right to a piece of ground 50 by 50 feet in a locality approved of by the Mining Commissioner, but not so as to interfere with mining operations on a locality known to contain precious metals or precious stones.

The Head of the Mining Department, in conjunction with the Government, shall, however, have the right to give out under a licence stands of greater dimensions where he considers such necessary.

Such stand licence, whether monthly or yearly at the option of the applicant must be renewed either monthly or yearly.

The price for a stand licence on proclaimed ground of 50 by 50 feet shall be 7s. 6d. per month.

When the payment of stand licences on proclaimed ground is three months in arrear, the Mining Commissioner shall demand payment thereof in the *Staatscourant* and in a local paper, if one exists. If one month after publication of the demand, compliance therewith is not made, the Head of the Mining Department shall have the right to declare such stands lapsed.

The price of a stand licence on approved stand townships on Government ground shall be: For stands of 50 by 50 feet, 7s. 6d.; and for stands 50 by 100 feet, 11s. 3d. per month.

In case a stand licence is not renewed at the proper time, the holder of the stand licence shall have the right within a period of three months thereafter, to get his stand back under a new licence on the additional payment of all arrear licence monies and as a fine a sum of money equal to the arrear licence monies.

See the case of *Curtis N.O. vs. The Mining Commissioner of Johannesburg and the Johannesburg Township Co.* in Appendix C.

94. Where on private proclaimed farms stands adjoining each other are given out under licence, so that they together in the opinion of the Government form a town, it shall have the right to impose a special tax of two shillings and sixpence per month per stand. The payment thereof shall take place at the same time as that of the monies due for stand licences, on which the receipt thereof must be noted.

If this tax on a stand is in arrear, the renewal of the licences may be refused for that stand.

95. Transfer and registration of portions of stands may take place provided an approved surveyor's diagram of such portion be deposited in the office, where the registration must take place. Such a portion of a stand shall be considered and registered as a separate stand, for which a separate stand licence shall be due as follows: For portions of stands 50 by 50 feet, 2s. 6d. per month; and for portions of stands of 50 by 100 feet, 3s. 9d. per month. On such a portion of a stand the full tax of 2s. 6d., mentioned in Article 94, must be paid.

Registration of transfer of portions of claims may take place, provided an approved surveyor's diagram of such a portion is deposited in the office where the registration is to take place. Such a portion of a claim shall be regarded and registered as a separate claim.

96. The registration of transfer of claims and stands and portions of claims and portions of stands shall take place at the office of the Mining Commissioner or Responsible Clerk concerned, while the same stamp dues shall be levied as in terms of Law No. 5, 1882.

97. The company or the person who imports machinery for the purpose of working one or more claims shall, over and above his ordinary stand, have the right to acquire stands in extent 150 feet square on his claims (free of cost) and on a locality which is not known to contain precious metals or precious stones under licence at 2s. 6d. per month, for the purpose of erecting the machinery on, where, that is to say, this is practicable without encroaching on the rights of others.

98. No coloured person may be a licence-holder or in any way be connected with the working of the diggings, except as a workman in the service of whites.

Section 6. Special Registration.

99. Each digger's claim or each amalgamated block of digger's claims may be specially registered in the manner hereunder set forth.

100. Persons who desire to have their claim or block of claims specially registered must make application therefor to the Mining Commissioner concerned, as far as possible in the form hereafter prescribed.

This application must be stamped as provided by Article 71, and must be accompanied by a diagram framed by an admitted surveyor. The application with the diagram shall lie for the inspection of the public for one month at the office of the Mining Commissioner.

The Mining Commissioner shall thereupon issue a notice to the applicant, as far possible in the form hereafter prescribed, wherein day and the date of hearing shall be fixed (between the date of publication of notice and the date of hearing there must be a period of at least one month.)

This notice shall be published once in the *Staatscourant*, and twice in a local newspaper, should there be one.

If before the said hearing no notice of objection has been given to the Mining Commissioner and the applicant, and for the rest the law has been complied with, the Mining Commissioner may grant the application, and the special registration shall then take place as is further set forth herein. A notice of objection shall bear a stamp of five shillings, according to Article 71. When before the said hearing such a notice of objection shall be received by the Mining Commissioner the special registration shall for the time being not be granted.

Within ten days after the notice of objection the person who objects must take legal proceedings against the applicant to have his objection declared valid. This declaration of validity may be sought by application. The official charged with the civil jurisdiction on the field shall have jurisdiction herein, and he shall give such an order regarding the special registration as he shall deem necessary.

If the application for special registration of a claim or claims is granted, such registration shall be effected in a separate register to be opened for the purpose, the form of which shall be prescribed by the head of the Mining Department.

A certificate of such special registration shall be issued as far as possible according to the form hereafter prescribed.

This certificate shall bear a stamp of a value calculated at the rate of ten shillings per claim.

No certificate shall be issued unless all monies due on the claim or claims have been paid.

101. The Mining Commissioner shall not be permitted to allow specially registered claims, on which a bond has been passed, to revert so as to be held under prospecting licences.

102. Article 86 is not applicable to specially registered claims.

When the payment of digger's licences for such claims is six months or more in arrear the Mining Commissioner shall demand payment thereof in the *Staatscourant*, and, if considered desirable by the Government, also in a local newspaper.

The Mining Commissioner shall be obliged to make this demand immediately after the expiration of the said six months and at the same time to give written notice thereof to the bondholders per registered letter.

If within three months after the date of publication of the demand the payment of all monies due has not followed, the claim or claims may be publicly sold by the Government in such a way as shall be decided upon by it.

The date of sale shall be published in the *Staatscourant*, and, if deemed advisable by the Government, also in a local newspaper, at least fourteen days beforehand.

Out of the proceeds all monies due to the Government shall first of all be paid. In such monies shall be reckoned an amount of £2 10s. per claim as a fine and for costs. If the claims realise more than the amount of the fine and expenses, half of the remaining amount shall be paid out to the owner of the farm and the other half be deposited in the State coffers.

103. Article 102 shall also be in force in regard to digger's claims or amalgamated blocks of digger's claims for the special registration of which application has been made in terms of Article 100, but provisionally and only so long as progress is made with the application, according to the provisions and within the terms laid down in Article 100, until such application shall be granted or refused.

104. A mortgage can be created on specially registered claims just as on immovable property. The same regulations shall hold good in this respect as in the case of mortgage of immovable property, such as, *inter alia*, with regard to the rights of creditors and sales in execution, also as regards the drawing up of hypothecation and mortgage bonds and the persons entitled to do so. The stamp dues, as laid down by the law in the case of fixed and immovable property, shall also be applicable here.

105. Stands on proclaimed township or townships approved by the Government may be specially registered in the same way as hereinbefore prescribed in respect of digger's claims; no publication of a notice shall, however, be necessary and the Mining Commissioner may in this case immediately grant the special registration and issue a certificate thereof if he has no objections against the same.

106. With regard to the payment of the licences on specially registered stands the rules prescribed in Article 102 with respect to specially registered claims shall apply.

107. A mortgage may be effected on specially registered stands under exactly the

me provisions as herein laid down with respect to mortgage on specially registered claims.

Stands on a proclaimed gold-field, being leases in *longum tempus* for 99 years, partake of the nature of movable rather than movable property. A mortgage of such stands, therefore, in order to be good against the debtor's creditors, must be effected, like any ordinary mortgage of immovable property, *nam lege loci*. The mere deposit of the title deeds with the intended mortgagee is not sufficient. *Hills, N.O., vs. Hugo and the Standard Bank* (C.L.J., Vol. X., p. 344), decided on the 16th of August, 1893, *Coram Kotzé, C.J., and De Korte and Ameshoff, J.J.*

N.B.—Article 107 of this Law corresponds with Article 52*b* of the Gold Law as introduced by title 20 of Law 9 of 1888.

Section 7. "Bezitrecht" (Right of Possession).

108. All "bezit rechten" granted according to law, shall be indisputable, and cannot be contested in law, unless they have been obtained through fraud on the part of the possessor thereof.

109. The Government shall have the right, either after consultation with or on the recommendation of the head of the Mining Department, to instruct the Surveyor-General to cause worked or developed diggings or portions thereof, after notice of at least six weeks, in the manner defined in Article 110, second paragraph, to be surveyed in such a way that every warer-right, "mijnpacht," watercourse, digger's claim, or block of diggers' claims, or any other right or privilege necessary for the development of the diggings, shall be properly delineated on a diagram, and further, be indicated on a general compilation diagram or plan.

These diagrams shall be approved by the Surveyor-General in accordance with Article 74. When these diagrams are once approved and signed, no objection to the boundaries established by this survey shall be taken into consideration by any Court. Should it appear that such a diagram has been incorrectly framed the same shall be amended or cancelled by an order of the High Court, and a new diagram shall be prepared in the usual way. Such cancellation shall be effected in accordance with Law No. 9, 1891, Articles 6 and 7 (General Survey Act), by the Surveyor-General, at the request of the owner.

110. As soon as possible, after the survey, the Mining Commissioner concerned shall issue a notice containing the name of the owner or possessor of the rights, the description of the rights, the number of the diagram relating to the same, and also calling upon all persons who wish to make objections against the same.

This notice shall be published for a period of three months in the *Staatscourant*, and such notice shall further be posted up at the office of the Mining Commissioner within whose jurisdiction the ground is situated, or at the office of the nearest Landpost, and the diagram or diagrams relating thereto shall, during such period, lie for inspection at the office of the Mining Commissioner concerned.

111. If within the appointed time no objections are filed the Mining Commissioner shall issue to the person entitled thereto the diagram approved by the Surveyor-General, in accordance with Article 74, registered and signed, besides a certificate of "bezit recht," in the form to be prescribed by the head of the Mining Department.

112. When objections are filed with the Mining Commissioner he shall fix a day on which the objection or case shall be heard by him. The Mining Commissioner shall decide, awarding the rights to the person who, in his opinion, is entitled to the same.

If one of the parties is dissatisfied with this decision he shall be obliged, within three months after the date of the decision of the Mining Commissioner, to institute an action in the High Court or Circuit Court, in default of which the decision of the

Mining Commissioner shall be considered as final, and the diagrams and the certificate of "bezitrecht" shall be issued in accordance with his decision.

113. The Mining Commissioner shall issue diagram and certificate of "bezitrecht," Cer in case of an action, in accordance with the judgment of the Court. Ir

114. Parties interested are obliged, within two months after notice from the Mining Commissioner, to take out duplicates of the approved diagrams, on payment of a sum to be fixed by the Government in proportion to the expenses incurred by the Government in connection therewith. W n C Dup P G

If the parties interested neglect to take out these diagrams within the two months hereinbefore mentioned, they shall incur a penalty not exceeding £10. Notice shall be given to them by the Mining Commissioner that on failure to take out diagrams within one month after the date of the infliction of the fine, the renewal of their licences or confirmation of their rights may be refused. Pen Ben et fu

115. A "bezitrecht" includes all rights obtained under the grant, contracts, or licences, and may be duly transferred, wholly or in part, by those who have acquired such right, and this "bezitrecht" shall be indisputable. Tra zi Indi

116. Every person or company possessing a claim, block of claims, water-right, truckways, machine stands, or watercourses, can make application to the Mining Commissioner in writing, properly signed, and accompanied with an approved surveyor's diagram, or, if possible, with a surveyor's diagram of the claims or water-right, etc., requesting an investigation of his or their claims to a certificate of "bezitrecht." App w, tif sit

It shall thereupon be lawful and obligatory on the Mining Commissioner to institute an enquiry concerning such claims. Where it shall appear that the formal legal proof of "bezitrecht" is defective owing to:— Enq

- (a) Transfer not having been passed ; or
- (b) Any defect in the competency or the authority of any person who may have given transfer, or may have pretended to give transfer ; or
- (c) The death or absence of the person in whose name the rights in dispute may be registered ; or
- (d) The inability, for any other reason, of the holder in possession of such property to obtain a certificate of "bezitrecht" in the manner hitherto prescribed by law ; or
- (e) The original acquisition of claims through faulty or false powers of attorney or otherwise, provided the person who makes the application for the "bezitrecht," or who holds it, shall not have been a party to the making of such a false power of attorney, and is a *bona fide* possessor ;

Then the Mining Commissioner shall have the right to issue a certificate of "bezitrecht" signed by him to such applicant. Whe gal det

Before the issue of such certificate of "bezitrecht," however, it must first be shown that the applicant is in peaceful possession and enjoyment, and entitled to claim the rights for which he has made application. Appli be i pos

And whether or no the right of the applicant is clear, the Mining Commissioner shall not immediately issue a certificate of "bezitrecht" to him, but shall publish a notice asking for objections to the issue of such certificate of "bezitrecht," to be made within one month from the date thereof. When oles

Such notice shall be published three times in the Dutch language in the *Staatscourant* and at least once in a local newspaper, should there be one, and shall indicate as clearly as possible the situation of the property, the nature of the rights claimed in respect thereof, the name of the person who makes the claim, and in case any other person is registered as the holder, the name of such person.

In case no objections are filed within such period of three months, the decision of the Mining Commissioner shall be final.

In case objections are filed, the Mining Commissioner as such shall decide concerning the same.

In case objections are filed the procedure shall be in accordance with the provisions of Article 112.

On a certificate of "bezitrecht" for claims, or blocks of claims and machine stands a stamp of five shillings per claim and machine stand must be paid and on other certificates of "bezitrecht" a stamp of ten shillings shall be placed on each certificate.

Section 8. Undermining Rights.

117. Prospecting and digging is prohibited on or in towns, villages, stand villages public squares, streets, roads, railways, burial grounds, erven stands, locations, town commonages, gardens, storage sites, machine stands, water-rights, and places where fillings are heaped up, and such grounds as in accordance with Articles 15 and 16, may be pointed out by the Mining Commissioner.

See the cases of *The Witwatersrand G.M. Coy. vs. Young*, referred to under Article 15, *Kempin vs. the Modderfontein G.M. Coy.* and *the Mining Commissioner of Boksburg*, and *Nicolls vs. Leyds, N.O.*, referred to under Article 15.

See also the case of *Ginsberg vs. The Gansf Syndicate and the Mining Commissioner of Boksburg* in appendix C.

118. The Government shall, however, be at liberty to award undermining rights in accordance with Article 117 of this law and in accordance with regulations drawn up by the head of the Mining Department, approved by the Government and confirmed by the Second Volksraad, except under burial grounds.

119. These rights shall be investigated by a Commission, consisting of the head of the Mining Department and two impartial persons to be nominated by the Government, whose task it shall be to institute enquiries in such cases on the gold-fields and assist Government with their advice regarding underground mining.

The Government shall thereupon decide, but in no case shall action be taken therein before the regulations mentioned in Article 118 of this law shall have been confirmed by the Honourable Second Volksraad.

120. Such rights shall be granted:—

- (1). To the holder or possessor under this law of *bona fide* stands on which buildings stand, machine stands and water-rights.
- (2). To the person or persons, holder or holders, possessor or possessors of the surface right, where equity demands such.
- (3). In the remaining cases as follows:—On private proclaimed ground and on Government ground these rights shall be disposed of by Government by way of public sale of leases, of which timely notice shall be given in the *Staatscourant*. The working thereof shall be effected under digger's claim licence.

Of the proceeds of the lease and licence monies on private proclaimed ground half shall go to the registered owner of the farm or portion thereof or his assigns, and the remaining half to the State.

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121. In the case of public squares, streets, roads, railways, and such like, a three-monthly publication and proclamation as afore-mentioned in Article 41 of this law shall take place before a right to mine underground is granted.

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122. Those who have obtained written permission to mine underground from the Government, whether by way of lease or otherwise, shall, within a period to be fixed by the Government, have to deposit security to the satisfaction of the Government and the owner of the surface.

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123. This ground shall have to be paid for after the manner of claims, in accordance with Article 120 of this law, to be calculated according to the superficial area of such ground obtained for underground mining. The licences for the same must be taken out immediately after the grant.

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124. Regulations for the safe working of such underground mines shall be drawn up by the State Mining Engineer, after consultation with the head of the Mining Department, and, after approval by the Government, the same may come into operation until the next following session of the Volksraad, after which such amendments and improvements as shall be deemed desirable by the Hon. Volksraad may be made.

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Section 9. Water-Rights.

125. Owners and occupiers of ground along rivers or other water courses shall have no right of action against the Government or any gold mining company or gold diggers, or other companies or persons, exploiting mines or digging under protection of the laws of the land, for damages for disturbing or rendering muddy the water in the said rivers or watercourses by using it for mining purposes.

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The Government shall, however, have the right to take measures and to make regulations in regard to the disturbing or rendering muddy of rivers or watercourses.

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See the case of *Marté vs. The Mount Marté G.M. Coy.*, referred to under Article 53.

126. With regard to the distribution of water, it is left to the Mining Commissioner of each proclaimed field, subject to the further approval of the Government, after consultation with the head of the Mining Department, to make such regulations with reference to the distribution of water as according to the circumstances of such field may be considered fair and reasonable, regard being had to the rights of private owners.

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With regard to public fields, it is expressly declared that no digger, under any circumstances whatever, shall have any proprietary right in the water running in any river, watercourse or furrow. He shall only have the right to use the said water according to law or regulations. In cases where, under certain circumstances, damages must be paid, the value of the water shall not be taken into consideration.

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The Government may, by agreement, grant special water-rights on Government grounds, and also, for public interests, on proclaimed private grounds.

See the case of *Marté vs. The Mount Marté G.M. Company*, referred to under Article 55.

127. Holders of "mijnpachten" and properly developed digger's claims shall be entitled to obtain water-rights.

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Workers of tailings have the right to obtain and to make use of water-rights

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under such regulations as may be granted thereon by the Mining Commissioner, after consultation with the Head of the Mining Department.

Where K. had let certain ground with water thereon to S., K. and S. both being under the impression that the said ground had been reserved on the proclamation of the farm, and S. afterwards, on finding out that the ground had not been reserved, obtained a water-right from the Government to the same water during the currency of the lease:—Held that S. could not dispute K's title to the lease, and could not refuse to pay the monies due under the contract of lease. *The Salisbury G.M. Company vs. The Klipriviersberg Estate and G.M. Company* (C.L.J., Vol. XI., p. 59, decided on the 21st of August, 1893), *coram* Kotzé, C.J., and Jorissen and Morice, J.J.

The plaintiff Company allowed its tailings for two years to run down a creek and took no steps to prevent them being entirely washed away. The defendant afterwards pegged off the ground on which the tailings had been washed. The Company, in an action, claimed the tailings, but the Court held there had been total abandonment, and gave judgment for defendants. *Sheba G.M. Company vs. Vautin, Millbourne and Steers*, decided on the 5th of March, 1889, *coram* Esselan, Jorissen and De Korte, J.J. (unreported).

Article 48b of Law 10 of 1891, enacted that:—"If before the taking effect of this amended law, water-rights have been granted by Digger's Committees, whose regulations were not approved by the Government, this fact alone shall be no reason for cancellation or non-confirmation of these rights, but parties interested in such water-rights, as well as holders of water-rights which were not yet confirmed by the Head of the Mining Department, shall be obliged, within six months after the taking effect of this amended law, to make application for a certificate of "bezitrecht" for such water-right, in accordance with Article 306, or for confirmation by the Head of the Mining Department, in the manner hereinafter described."

Article 48b, of Law 18, of 1892, re-enacted the same thing. It was held that 48b of the Gold Law of 1892, gives a further term of six months after the lapse of the term granted by Article 48b of Law 10, of 1891. *Lindum G.M. Company vs. The Sexagon Syndicate*, decided on the 13th of April, 1895, *coram* Kotzé, C.J., and Jorissen, J.; Ameshoff, J., dissentiente (unreported).

128. Should it appear that irregularities have taken place, such as, for example, when on the granting thereof they were not connected with claims, "mijnpacht," or right to work tailings, or when such mining right for which they were granted has already lapsed, then no certificate of "bezitrecht" shall be issued for such water-rights and they shall not be confirmed by the Head of the Mining Department.

Where two companies entered into an agreement to make a joint dam on a certain piece of ground for their joint use, and to amalgamate their respective water-rights for that purpose:—Held, that there was a trust and confidence established between the parties to the agreement, and their successors, to hold and use the amalgamated water-right jointly, and that neither party could set up the provisions of a subsequent Statute in justification of its conduct in fraud of the agreement, unless the express language of the Statute clearly sanctioned such a proceeding. *Van Ryn G.M. Company vs. New Chimes G.M. Company* (C.L.J. Vol. XII., p. 60), decided on the 12th of November, 1894, *coram* Kotzé, C.J., and De Korte and Ameshoff, J.J.

129. In future no water-rights shall be granted on proclaimed ground which are not connected with claims, "mijnpacht," or a right to work tailings, except with the express consent of the Government.

130. Applications for water-rights must be made to the Mining Commissioner, and every application must bear a stamp of the value of five shillings, and must be accompanied by plans in quadruple, framed by an admitted surveyor, which must contain such connections and particulars as shall be desired by the Mining Commissioner in accordance with Article 9 of the instructions for claim inspectors. The plans must be signed by the Claim Inspector as correct with the beacons.

The applications must be made in such form as shall be prescribed from time to time by the Head of the Mining Department, and all particulars desired therein must also appear on the plans.

131. Notice of these applications must be published by the applicant three times in the *Staatscourant*, and at least once in a local newspaper, should there be one. This notice shall be issued by the Mining Commissioner in the form prescribed by the Head of the Mining Department.