

The copyright of this thesis vests in the author. No quotation from it or information derived from it is to be published without full acknowledgement of the source. The thesis is to be used for private study or non-commercial research purposes only.

Published by the University of Cape Town (UCT) in terms of the non-exclusive license granted to UCT by the author.

Colonial mining policy of the Cape of Good Hope
An examination of the evolution of mining legislation
in the Cape Colony,
1853-1910

Jade Davenport
(DVNNAT002)

Supervised by: Professor Richard Mendlesohn and
Professor William Nasson

Submitted in fulfilment of the requirements of the Master of Arts Degree
in the Department of Historical Studies at the University of Cape Town

September 2009

Contents

Preface	i
Introduction	iii
1. Copper in Namaqualand and the introduction of the Cape Colony's first mineral leasing regulations, 1684-1856	1
2. Development of Namaqualand's copper resources and the introduction of the first mineral leasing statute, 1856-1865	14
3. Early Cape industrialisation and the introduction of the second mineral leasing statute, 1865-1877	30
4. Diamonds in Griqualand West and the introduction of mining regulations for alluvial and dry diggings, 1867-1880	44
5. Diamond fields incorporation into the Cape Colony and the introduction of the Precious Stones and Minerals Mining Act, 1880-1886	62
6. Gold in Knysna and the introduction of the Gold Mining Law, 1876-1888	77
7. Consolidation of the mining legislation of the Cape Colony, 1888-1899	96
Conclusion	115
Bibliography	118

Preface

The rise of the mining industry in the latter half of the nineteenth century transformed southern Africa. It facilitated the process of industrialisation and enabled the growth and advancement of the region's economy. Owing to the importance of South Africa's mineral revolution as the primary driver for economic development, this subject has assumed a strong theme in South African historiography. However, one subject that has been overlooked by historians is the development and evolution of early mineral law that sought to govern the burgeoning mineral revolution in the nineteenth century.

This is a history of the introduction and evolution of mineral law in the Cape of Good Hope, the region of southern Africa where minerals were first discovered and exploited on a commercial basis. This history examines the development of mining legislation between 1853, when the Cape legislature implemented South Africa's very first mineral leasing regulations to regulate the leasing of land believed to contain copper deposits in Namaqualand, and 1910, when the Cape Colony, Natal, the Transvaal and the Orange Free State joined to form the Union of South Africa.

This is as much a history of mineral legislation as it is a history of mineral discovery and exploitation in the Cape of Good Hope. As well as addressing the legal aspect of the mineral revolution, the dissertation outlines the historical context of the period and addresses the significant economic and political factors that influenced the mineral revolution and, subsequently, the evolution of mineral policy in the Cape Colony.

The examination of the evolution of the mining legislation of the Cape has been undertaken on a chronological basis. Essentially, the dissertation examines the introduction of the Cape's first mineral leasing regulations, which were introduced in September 1853 to regulate the leasing of land believed to contain copper deposits in Namaqualand; the development of that copper resource and the introduction of the Colony's first mineral leasing act in 1865; the introduction of the Colony's second mineral leasing act, and the discovery of diamonds in the late 1860s and initial stages of industrial development; the early development of the diamond mining industry and the various mining regulations that were implemented to govern the industry; the

amalgamation and consolidation of the mining laws following the annexation of Griqualand West in 1880; the Knysna gold rush of the late 1870s and 1880s and the introduction of the Colony's first Gold Mining Law in 1888; and the consolidation of the Colony's mining legislation in the late 1890s.

This dissertation illustrates how the introduction of the legislation governing the Cape's mining industry corresponded with the major discoveries of copper, diamonds and gold, respectively, which was introduced in a piecemeal fashion as each mineral resource was developed. Moreover, this study demonstrates that the Cape's mining legislative framework progressed in complexity as commercial interest in mining flourished and as the contribution of the mining industry to the Colony's economy grew rapidly.

University of Cape Town

Introduction

South Africa is a country noted for its exceptional and diverse mineral wealth, which is a consequence of its long and complex geological history that can be traced back some 3 700 million years. Since the early Archaean times, this region of the Earth's crust has undergone numerous cycles of magmatic intrusion, sedimentation, metamorphism, and deformation, resulting in an extraordinarily diverse and extensive range of mineral deposits.¹ Indeed, South Africa, recognised throughout the world as a mineral treasure trove, owns and produces a significant proportion of the world's minerals, which includes approximately 90% of the platinum metals on Earth, 80% of the manganese, 73% of the chrome, 45% of the vanadium and 41% of the gold resources.

It is this exceptional mineral wealth on which the industrialisation process and the economic success of South Africa has been based. Whether this has been to the country's benefit or detriment is a contentious issue in terms of labour and the conduct of race relations. However, the fact remains that the discovery of mineral wealth has been a significantly influential factor in the shaping of the history of South Africa over the last 150 years. Owing to the importance of South Africa's mineral revolution as the primary driver for economic development, this subject has assumed a strong theme in South African historiography. Indeed, there is a plethora of literature available relating to the South African mineral revolution, as well as to the mining magnates and their respective companies that drove that revolution.² However, there are some factors that drove the country's mineral revolution that have been overlooked by historians and are, thus, absent from South Africa's historical

¹ Viljoen, M.J. *An Introduction to South Africa's Geological and Mining Heritage* (Mintek in association with the Geological Society of South Africa: Randburg, 1999), Chapter One.

² Examples of South African mining histories include: M. Meredith, *Diamonds, Gold and War: The Making of South Africa* (Jonathan Ball: Johannesburg 2007); C. Newbury, *The Diamond Ring: Business, Politics, and Precious Stones in South Africa, 1867-1947* (Clarendon Press: Oxford, 1989); G. Wheatcroft, *The Randlords: The Men who made South Africa* (Jonathan Ball: Johannesburg, 1985); A.C.M. Webb, 'Mining in South Africa' in F. Coleman (ed.) *Economic History of South Africa* (Haum: Pretoria, 1983), p.163-194; R. Rotberg, *The Founder: Cecil Rhodes and the Pursuit of Power* (Southern Book: Johannesburg, 1988).

record.

One such subject that has been overlooked is the development and evolution of early mineral law that sought to govern the burgeoning mineral revolution in the nineteenth century. Mineral law is traditionally defined as that part of property law that governs the nature, content, acquisition, transfer, and loss of mineral rights, prospecting rights and mining rights.³ Mineral policy and the role which Government plays in the development of mineral resources is a significant aspect of any historical record. This is because Government, through the enactment of legislation, determines such factors as the ownership of minerals, the right of access to mineral-bearing property, the method of exploiting natural commodities, and the benefits accrued by the State from mining activities.

As this element of South Africa's mineral revolution has been largely overlooked, it is the intention of this dissertation to elaborate upon the history of early mining legislation. In particular, this dissertation will examine and assess the development and evolution of mineral policy in the Cape of Good Hope between 1853 and 1910. The British colony of the Cape of Good Hope has been chosen as the focus area of this dissertation owing to the fact that minerals and precious stones were first discovered and exploited in this region by European explorers in the mid-nineteenth century. This region has also been chosen because the Cape Colonial Government had the most advanced legislative framework in Southern Africa during that period.

The dates that have been selected for this examination are indicative of watershed moments in the history of South Africa. Firstly, in 1853, the Cape Colony was granted representative government by Britain and implemented its first constitution. It was in that same year that the fledgling Cape legislature implemented South Africa's very first mineral leasing regulations to regulate the leasing of land believed to contain copper deposits in Namaqualand. Secondly, in 1910, the Cape Colony, Natal, the Transvaal and the Orange Free State joined to form the Union of South Africa. Thus, at this point authority over the mines within the Cape Colony was transferred from Cape Town to Pretoria, the new capital of the Union, and from 1910 the mining policy for all of South Africa was dictated from Pretoria.

³ Badenhorst, P.J. *Mineral and Petroleum Law of South Africa: Commentary and Statutes* (Juta: Landsdowne, 2004), p.1-1.

A study of the evolution of mining legislation cannot be undertaken without an examination of the history of mineral exploration, discovery and exploitation that occurred in the confines of the Cape Colony in the nineteenth century. Thus, this history is as much a history of mineral legislation as it is a history of mineral discovery and exploitation in the Cape of Good Hope. As well as addressing the legal aspect of the mineral revolution, the dissertation will also outline the historical context of the period and will address the significant economic and political factors that influenced the mineral revolution and, subsequently, the evolution of mineral policy in the Cape Colony.

As this dissertation will attempt to explain the transformation of mineral policy in the Cape Colony, it has been necessary to undertake a chronological examination of the implementation and development of mineral leasing and mining legislation. Chapter One will focus on the introduction of the Cape of Good Hope's first mineral leasing regulations, which were introduced in September 1853. As the Colony's first regulations sought to regulate the leasing of land believed to contain copper deposits in Namaqualand, the first chapter will examine the circumstances that led to the discovery and, subsequent, exploitation of copper in this region. Chapter Two will discuss the development of the copper resources in Namaqualand during the early 1860s and examine the introduction of the Colony's first mineral leasing act in 1865. Significant attention will be paid to the Colony's political and economic circumstances of the period and the chapter will elaborate on the Cape Government's recognition of the copper mining industry as a viable commercial sector from which much revenue could be generated. Chapter Three will examine the introduction of the Colony's second mineral leasing act, which was the first statute that addressed mineral exploration across the entire extent of the Cape of Good Hope. As this act was promulgated at a time when the Cape's economy was undergoing rapid transformation, the chapter will examine this transformation and highlight the major factors compelling such a change, namely, the discovery of diamonds and the initial stages of industrial development. Chapter Four will examine the history of the early development of the diamond mining industry and the various mining regulations that were implemented to govern that most profitable industry. This chapter will focus on the period prior to the integration of the diamond fields of Griqualand West into the Cape Colony. Chapter Five will examine the amalgamation and consolidation of the mining laws following the annexation of Griqualand West in 1880. The chapter will

also discuss the state of the diamond mining industry in the early 1880s as well as the political consequences of the incorporation of the diamond territory into the Colony. Chapter Six will discuss the introduction of the Cape Colony's first Gold Mining Law, introduced in 1888. This chapter will effectively explain how the Knysna gold rush of the late 1870s and 1880s influenced and effectively changed the Cape Colony's legislative framework governing the mining industry. Chapter Seven will discuss the consolidation of the Colony's mining legislation in the late 1890s.

Owing to the plethora of published literature available on the history of mining in South Africa and the various mining magnates who exercised control of the mining industry in the late nineteenth and early twentieth century, a significant number of secondary sources were consulted in order to gain sufficient contextual knowledge of the subject. However, as no significant works have been written or published examining the history of mineral policy in the Cape of Good Hope in the nineteenth century, the majority of this dissertation is based upon primary source material. This primary material includes parliamentary debates, select committee reports, Government-commissioned geological reports, Government-published statistics, official letters and petitions, official proclamations and ordinances, and contemporary newspapers.

These documents have been sourced, in large part, from the Cape Town repository of the National Archives, the Cape Town campus of the South African Library, the Government Publications unit at the University of Cape Town, and the Mendelssohn Collection at the Library of Parliament in Cape Town. Legislative sources relating to mining policy in Britain and that of its colonies have also been consulted in order to ascertain the extent that this influence had in the shaping the legislation of the Cape Colony.

Chapter One

Copper in Namaqualand and the introduction of the Cape Colony's first mineral leasing regulations, 1684-1856

Southern Africa has the longest history of mining in the world, dating back to as early as 41 250 BCE.¹ Since this prehistoric date, man has been working the country's generous deposits of iron, copper and gold, using these precious metals for cosmetic, weaponry and bartering purposes. It was not until the early 1850s, however, that legislation of any kind was imposed on the mining sector of South Africa, regulating access to and governing the method of mining these mineral deposits. The first legislation governing the country's mining sector, which was introduced in September 1853, concentrated on the ownership of the minerals and outlined the regulations under which individuals could gain access to and mine these deposits. This first piece of mining legislation was confined to the region of Namaqualand in the Northern Cape. In the 1850s, the European settlers' knowledge of the geology of the Cape Colony, as well as the rest of the Southern African interior, was extremely poor. However, based on reports made by earlier Dutch explorers², there was reason to believe that mineral deposits existed in Namaqualand.

This chapter aims to examine what compelled the introduction of this first piece of legislation and the impact it had on the local mining sector. As this first piece of legislation referred primarily to the copper deposits of Namaqualand, this chapter will focus solely on the events concerning this remote district of the Cape Colony. It will thus be necessary to provide a brief history of mining in Namaqualand as well as

¹ The oldest known mining operations in the world are found at Bomvu Ridge (Ngwenga) in Swaziland where, as early as 41 250 BCE, man was systematically working the haematite deposits as a source of red ochre for cosmetic and ritualistic purposes. By the early tenth century there were at least six gold mines in operation south of the Limpopo River. Tin was mined in large quantities in the Rooiberg area of the Transvaal prior to the arrival of the white man and the copper deposits at Messina and Phalaborwa were also worked by ancient miners. Webb, A.C.M. 'Mining in South Africa' in Coleman, F. (ed.) *Economic History of South Africa* (Haum: Pretoria, 1983), pp.163-194.

² It is beyond the confines of this chapter to discuss the exploration expeditions of the early Dutch settlers. See J.M. Smalberger, *A History of Copper Mining in Namaqualand* (C. Struik: Cape Town, 1975), Prologue.

European knowledge of the copper deposits prior to the introduction of the mineral leasing regulations in 1853. The chapter will then focus on the introduction of these regulations and the response of investors and local Namaqualand inhabitants to the new law regulating mineral leasing. The chapter will conclude with an examination of the withdrawal of these regulations in 1855 and the Cape Government's subsequent failure to reinstate them in 1856.

The introduction of the first mineral leasing regulations in 1853 was indeed the pioneering act that helped to pave the way for all future mining legislation in the Cape Colony and, arguably, the rest of Southern Africa. However, it is necessary to understand that the implementation of the first mining regulations did not coincide with the discovery of mineral deposits in the Cape Colony but was rather the consequence of a lengthy history of geological exploration of the region and of interaction between the European colonialists and the local inhabitants of Namaqualand. Thus, the significance of the introduction of these regulations cannot be fully understood, or appreciated, without an examination of the historical context of mining activities in Namaqualand, as well as the financial situation of the Cape Colony prior to 1853.

The history of copper mining in Namaqualand is one of fluctuating odds related to the demand and variable price of the metal, as well as the remote and hostile setting of the mineral deposits.³ While it is not possible to determine when copper mining first commenced in Namaqualand it is clear that the indigenous people of that region were involved in artisanal mining activities before the arrival of the first European explorers in the 15th century.⁴ However, the 'discovery' of the Namaqualand copper deposits has largely been attributed to the first of the Dutch settlers who arrived at the Cape in the mid 17th century.

Shortly after the arrival of the Dutch East India Company in the Cape small search parties were sent out from the Table Bay base to explore the hinterland. These expeditions were instructed to keep a sharp lookout for any possible sources of wealth that would add to the trading profits of the Company. Thus, in 1684 an expedition,

³ The Namaqualand copper occurs in two main deposits, Okiep and Nababeep. However, it is interesting to note that the origin of these copper deposits is still the subject of much interesting speculation.

⁴ Webb, 'Mining in South Africa', p.164.

under the leadership of Governor Simon van der Stel was dispatched to Namaqualand with the objective of undertaking a more extensive examination of the area. It was during this expedition that Van der Stel discovered the existence of copper-bearing rock in the Copper Mountains, or Koperberg, of Namaqualand. But these copper deposits attracted little interest from the Dutch settlers largely owing to the remote location and harsh environment of the area.

It was not until 1761 that interest in the copper deposits was roused again when the Dutch authorities directed a detailed examination to be made of the geology of Namaqualand.⁵ In that year the Dutch Government sent the geologist Dr Carel Rykvoet to Namaqualand to analyse the ores and the minerals of that district. During his expedition, Rykvoet rather underestimated the mineral wealth of the region and concluded that there was insufficient copper to support a commercial and profitable mining enterprise.

When I arrived at the first or large Copper Mountains...I found by analysis that the ore of this mountain yielded only a very small quantity of copper. After having examined the little Copper Mountain, situated very close to the large one I found it to produce more copper than the former...and other places also veins of copper are to be found, which led to the supposition that the same might yield the same quantity of copper as was proved by the former analysis; but it nevertheless appears that it would not be profitable to commence mining operations here.⁶

Rykvoet was led to this conclusion on the basis of two suppositions. Firstly, he believed that the rocks that were examined were of such a hard substance that the working out of the ore would prove to be a very tedious and difficult process and, secondly, because there was not enough wood in the vicinity of the mountains to smelt the ore.⁷ The negative outcome of Rykvoet's report again inhibited the development of a commercial mining industry in Namaqualand and, thus, the question of the copper deposits would be held in abeyance for another half a century.

While interests in the copper deposits of Namaqualand continued to fluctuate, the British gained control of the Cape Colony at the turn of the 19th century. From the

⁵ Smallberger, *A History of Copper Mining in Namaqualand*, p.13.

⁶ CCP 1/2/1/1 Annexures to the Votes and Proceedings of the House of Assembly, 1854. 'Memorandum as to Mineral Lands, the property of the Crown, within the Colony of the Cape of Good Hope' p.16.

⁷ Ibid.

British perspective the occupation of the Cape Peninsula was purely strategic in that it was a stepping-stone to Asia where a highly profitable trade was being conducted. Up until the middle of the 19th century when South Africa's vast mineral wealth began to be revealed the region produced relatively few products of significance to the British economy. As a consequence, by the 1830s, the Cape Colony was largely bankrupt and Britain was slowly becoming disenchanted with this outpost on the Indian sea route. It was in this context that interest was roused again in the Namaqualand copper deposits, which would prove to be the catalyst to the initial establishment of a commercial mining industry.

By the mid-1830s the mineral potential of the vast interior of South Africa was only a vaguely explored possibility. However, this potential was realised by James Alexander in 1836 when he undertook a geological expedition of Namaqualand. Alexander confirmed the existence of copper in the Koperberg and the Richtersveld and, based on the positive outcome of the analysis of these ores, he was able to establish the South African Mining Company in London to explore and mine this new source of wealth.⁸ Following the formation of this company mining operations commenced in 1840 close to the banks of the Orange River. It is necessary to note that at this time Namaqualand was not formally part of the Cape Colony and, thus, did not have an administrative system equipped to deal with the implementation of any laws or regulations governing mining in that area. It was only on December 17, 1847, that this district was formally incorporated into the Cape Colony. Although the South African Mining Company incurred great expenses digging and constructing a mine, after just a few years of operation the mine was abandoned, the two Welsh miners having apparently become disenchanted with the lonely life of Namaqualand.⁹

However, the fact that the South African Mining Company was able to commence mining activities and export a small amount of copper ore encouraged the prospect of the establishment of a commercially profitable mining industry in Namaqualand. Thus, in 1850 the Cape Town-based mercantile house of Phillips and King purchased, for the sum of £50, a section of a private farm in the copper mountains of Namaqualand that was believed to be rich in copper ore. Through this purchase, the company obtained the mineral rights to the entire farm and sufficient

⁸ Smalberger, *A History of Copper Mining in Namaqualand*, pp.14-15.

⁹ O'okiep Copper Company, *Namaqualand Copper 1852-1952, a booklet on the centenary written by the staff*, p.8.

land for the erection of any buildings and works that might be considered necessary for the working of any future mineral discoveries.¹⁰ It should be noted that the Cape of Good Hope Mining Company, which was established by Phillips and King in 1850, was the only company intending to commence mining activities in Namaqualand at this time and because the company's mine would be on privately-owned land, the Government was not compelled, at that early stage, to institute any regulations governing mineral leasing or mining activities.

Once this land had been purchased, the Cape of Good Hope Mining Company did not construct a mine using shafts, levels and stopes but rather quarried away the entire rock from which ore was separated by hand.¹¹ Despite the use of these more primitive mining methods the Cape of Good Hope Mining Company was able to mine enough copper to export to Wales by 1852. In fact, in the last half of 1852, the company was able to export 31 tons of copper ore and by the end of 1853, exports increased to 199 tons.¹²

The initially modest success of the Cape of Good Hope Mining Company would prove to be the spark that finally ignited commercial interest in the Namaqualand copper deposits. Prior to this interest in the copper fields had largely been confined to Government commissioned geologists but news of a successful mining operation in Namaqualand greatly inspired Cape Town-based investors resulting in South Africa's very first speculative boom in stocks and shares – the copper mining mania of the mid-1850s. As well as being greatly motivated by the initial successes of the Cape of Good Hope Mining Company, local investors were equally excited by reports of the fortunes being made in the Californian gold rush.

The Californian gold rush of 1848/49 was an enormously significant event in the mining world as well as the global economy. It was the first gold rush where freedom of mineral prospecting, whereby any individual could stake out a prospecting claim, and the creation of personal wealth was achieved. The news of the discovery of gold in 1848 inspired prospectors to such an extent that by the end of 1849 these reports had attracted 81 000 people to the goldfield from around the world. "In this first season there was ground enough and to spare for all, and the average yield

¹⁰ Smallberger, *A History of Copper Mining in Namaqualand*, p.34.

¹¹ O'okiep Copper Company, *Namaqualand Copper*, p.8.

¹² Letter written by Lieutenant Governor Darling to the Duke of Newcastle on July 2, 1854. In GH, General Despatches, 1854 Jan 21 – Dec 5, Vol. 23/25. Miscellaneous No. 27.

estimated...at an ounce a day per man, was far higher than was ever reached again."¹³ This Californian gold fever imbued citizens around the world, especially within the European colonies, with a craving for immediate and extraordinary wealth and it was within this context that Cape investors began to pay greater attention to the Namaqualand copper deposits.

Following the successes of the Cape of Good Hope Mining Company and news of the Californian gold rush, the Cape Colonial Government began to receive a flood of requests for prospecting permits. One such request, received from Cape Town-based mercantile house Thomson, Watson and Company stated that:

Having reason to suppose that Minerals exist in certain lands belonging to the Colonial Government in the District of Clanwilliam, and being disposed to search and work for the same, we shall feel obliged by your informing us whether, in such case, the Government would grant to us a lease of such lands, upon the basis of a Royalty, or otherwise.¹⁴

The overwhelming interest in and desire to exploit Namaqualand's mineral wealth clearly caught the Government by surprise as no mineral leasing or mining regulations had been promulgated into Cape law by that stage. This was despite the fact that the Government was well aware of the existence of these copper deposits and the commercial mining activities that had commenced in the area.¹⁵ However, the Cape Government was equally aware of the economic success of the gold rush in California and of the potential that a similar rush in the Cape could ease the Colony's dire financial situation and, thus, embraced the opportunity of establishing a similar mining enterprise within its own borders.

After having received a number of requests for prospecting permits in the first quarter of 1853, Cape Lieutenant-Governor, Charles Darling, realised the urgent necessity of implementing regulations governing the leasing of Crown land believed to contain mineral deposits. As a result, on April 12, 1853, Darling wrote a letter to the British Colonial Secretary, the Duke of Newcastle, requesting to be informed of

¹³ Morrell, W.P. *The Gold Rushes*, (A. & C. Black: London, 1940), p.79.

¹⁴ Letter from Thomson, Watson & Co. to Acting Government Secretary W.M. Hope, 6 April, 1853, p.8. In CCP 1/2/1/1.

¹⁵ Letter written by Lieutenant Governor Darling to the Duke of Newcastle on July 2, 1854. In GH, General Despatches, 1854 Jan 21 – Dec 5, Vol. 23/25. Commercial No. 27.

the “terms upon which such leases are affected in the Australian Colonies, and by an intimation of the views of Her Majesty’s Government as to the leasing of Lands for mining purposes in this Colony upon similar terms.”¹⁶

Darling’s request to be informed of the conditions upon which mineral lands were leased in South Australia was based on two significant facts. Firstly, the home government in England had never promulgated a codified mining law of its own despite the fact that the country was richly endowed with coal, copper and tin deposits. The main feature of English law relating to mines was that the owner of the land had a *prima facie* right to all minerals contained below the surface of that land, except gold and silver, which belonged to the Crown.¹⁷ However, no laws existed governing the leasing of Crown land or the process of mining.

Secondly, at the same time that interest in the Namaqualand copper-fields was gaining momentum extensive deposits of copper, lead and gold were discovered in South Australia. In particular, by 1841 lead was being mined and exported, in 1846 copper was discovered and by the early 1850s numerous discoveries of gold deposits were made across the southern area of the colony.¹⁸ Motivated – under similar circumstances experienced by the Cape Government – by the confirmed existence of mineral wealth and subsequent demands for prospecting permits, the South Australian administration promulgated a set of fairly straight-forward mineral leasing regulations in December 1851. These regulations stipulated that mineral lands, to a maximum extent of 80 acres, would be leased to any prospector for a period of 14 years at a rental of ten shillings per acre per annum.¹⁹ The lessee would have the right of search for any mineral, except gold²⁰, during the first year and the lease would date from the commencement of the second year. These regulations also stated that the lease would

¹⁶ Letter written by Lieutenant Governor Darling to the Duke of Newcastle on April 21, 1854. GH, General Despatches, 1854 Jan 21 – Dec 5, Vol. 23/25. Miscellaneous No. 48.

¹⁷ Walmesley, O. *Guide to the Mining Laws of the World*, (Eyre & Spottiswoode: London, 1894) p.19-20.

¹⁸ Clark, M. *History of Australia*, (Pimlico: London, 1995) p.223-233.

¹⁹ South Australian Mineral Leasing Regulations, December 17, 1851. Enclosure in despatch of Secretary of State, No. 81 of 22nd June 1853 in CCP 1/2/1/1, Correspondence upon the subject of the discovery of metals in Namaqualand and the leasing of lands in that part of the colony, p. 2.

²⁰ The South Australian mining regulations adhered to the fundamentals of English law, which stipulated that gold belonged to the crown and only royal mines had the right to mine auriferous deposits.

become void and forfeited if the rent was not paid in advance and the land was not applied to mining purposes.

Thus, owing to the similar political situation under which both the Cape and South Australian colonies were governed, as well as the similar circumstances regarding the discovery of mineral deposits, Lieutenant-Governor Darling believed that the most sensible course of action would be for the Cape Government to adopt mineral leasing regulations under similar terms.

In response to the request received by Darling, the Colonial Secretary agreed with the necessity of implementing mineral leasing regulations in the Cape and directed the formation of such on similar terms as South Australia.²¹ With the approval of the home government, Darling and his administration speedily set about formulating its own mineral leasing regulations in order to satisfy the rapidly mounting demand for such prospecting permits. By September this had been achieved and the Cape Colony's first regulations governing the circumstances under which crown lands would be leased for prospecting purposes were promulgated and printed in the *Government Gazette* on September 13, 1853.²²

The Cape's mineral leasing regulations overwhelmingly adhered to the general principles of South Australia's regulations. In particular, these leases were to be granted for a period of 15 years and to a maximum extent of 40 morgen²³, at a flat rate of £1 per morgen per annum. However, the Cape Government included two additional conditions that differentiated these regulations from those of its sister colony. These conditions referred to the sparse habitation and the environmental conditions that were unique to Namaqualand. Firstly, these regulations stipulated that a diagram of the ground was to be lodged with Government within 12 months from the date of issue of the prospecting licence. This clause was included because of the sparsely inhabited area of Namaqualand and a diagram with a clearly defined centre point would assist a Government appointed land Surveyor in assessing and monitoring these leases.²⁴ The second unusual condition referred to the rights of grazing and

²¹ Letter written by the Duke of Newcastle to Lieut.-Governor Darling. GH, General Despatches, 1853 June, 1853 July, Vol. 1/234, No. 81.

²² *Government Gazette*, September 15, 1853. Government Notice of September 13, 1853.

²³ One morgen was the equivalent to two acres.

²⁴ See section 3 and 5 of the regulations.

water.²⁵ Because of the harsh, arid climate of Namaqualand the rights of grazing and water were considered to be privileges and indispensable in any mining operation and, thus, had to be secured for the lessee.²⁶ As in South Australia, at the termination of the lease period, the land would be put up for public auction to the highest bidder, and the leases were to become void if rent was not paid in advance and if the land was not applied to specific mining purposes.

With the benefit of hindsight it is possible to reflect on the significance of the Cape's first mineral leasing legislation. These first mineral regulations were introduced rather hastily and were intended to serve the purpose of governing the way in which crown land was leased on a commercial basis. These regulations contained no element of longevity in that no references were made to the way in which mining was to be conducted, labour practices – a significant aspect in that mining was a very labour-intensive industry – or the possibility of exporting minerals and metals. Similarly, the fact that the leases were valid for a period of 15 years, which is a relatively short period of time in the life of a mine, was indicative of the lack of longevity in the Government's approach to the subject. In addition, the Government did not contemplate what financial benefit could be attained from a commercial mining industry beyond the income received from rent, as no references were made to the imposition of a royalty on metals that were mined and exported.

These regulations adhered to the principle that the owner of the land, in this case the British monarchy, had the *prima facie* right to all minerals below the surface of that Crown land and, thus, individuals had to rent the right from Government to exploit these minerals. Ultimately, these regulations recognised the mineral rights of Government and the lessee but did not acknowledge any rights of the local Khoikhoi and Nama people who had led a semi-nomadic existence in this area for centuries. Moreover, the introduction of these regulations denied the local tribes access to certain areas of their territory with good grazing and water where prospecting was being undertaken, without due compensation. It should be noted that the non-recognition of Khoikhoi rights was not a function of the South Australian rights, but was rather a unique stipulation imposed by the Cape Government.

²⁵ See section 4 and 10.

²⁶ Letter written by Lieutenant Governor Darling to the Duke of Newcastle on September 19, 1853. GH, General Despatches, 1852 Mar 31 – 1853 Dec 23, Vol. 23/23. Miscellaneous No.112.

Ultimately, the first regulations served the purpose of initiating an era of mineral exploration in the Cape that would eventually facilitate the establishment of a commercial mining sector in the colony.

* * *

The introduction of mineral leasing regulations in September 1853 had a tremendous impact on the commercial sector of the Cape. Excited by the success of the Californian gold rush and imbued with a belief in the enormous potential of mineral wealth in Namaqualand investors embraced the introduction of these regulations with overwhelming enthusiasm and began to flood the Cape Government with requests for mineral leases. The level of enthusiasm exhibited by investors can be evidenced from a report written by Surveyor General Charles Bell in February 1854, just six months after the introduction of the regulations. In describing the reaction to the introduction of the regulations, Bell explained that:

The applications for licences amount in number to 200, and continue to pour in faster than I can attend them. Of these, about 105 have been issued or are nearly ready for issue; the rent for one year, £1 498, having been paid into my hands, and this sum will soon be doubled and trebled, if favourable accounts continue to be received.²⁷

This enthusiastic response from the commercial sector clearly took the Surveyor General by surprise. In the same report, Bell mused that, from the failures of the mining speculations in the earlier part of the century, which were well-known to government and investors, it was not anticipated that these mineral leasing regulations would “apply to above half a dozen cases in as many months.”²⁸ As a consequence, the regulations were not calculated to meet such a rush of applicants in an unknown area, although they had “met the difficulties of the question wonderfully well, all things considered, - my principal embarrassment has arisen from clerical assistance, inadequate in point of number to their task, and through sickness caused by overwork.”²⁹

²⁷ ‘Memorandum as to Mineral Lands, the property of the Crown, within the Colony of the Cape of Good Hope’ in CCP 1/2/1/1, Correspondence upon the subject of the discovery of metals in Namaqualand and the leasing of lands in that part of the colony, pp. 17-18.

²⁸ Ibid.

²⁹ Ibid.

It was, thus, at the end of 1853 that the copper mining mania that was to engulf the interests of the Cape investment community for the next two years was initiated. Eager to exploit the mineral potential of Namaqualand as well as the coffers of unassuming investors, more than 20 companies were established in 1854 with the objective of working the copper deposits. In fact, at the height of the copper mania, exploration and mining companies had been formed in practically all the principal villages as far east as Grahamstown. Furthermore, company after company was floated³⁰ with avaricious investors caught up in a mad wave of speculation to the extent that it was estimated that some £70 100 was invested in the shares of these companies during the speculative boom period.³¹ Most of these companies raised their capital on the vaguest information and sent prospectors with no geological experience to Namaqualand. Similarly, men and women of varying backgrounds, with little geological or mining experience, set themselves up as mining experts.

From the perspective of the investors all caution and sanity was swept away and they allowed themselves to be carried on a great tidal wave of expectation. The Cape public was continually warned of the dangers of indiscriminate speculation but caution was thrown to the wind. However, at the same time, the Cape administration simply did not have the resources to control this over-speculation or the establishment of worthless companies.

It was at this time, in February 1855 that the Cape Government was compelled to withdraw the mineral leasing regulations. In a Government Notice printed in the *Government Gazette* on February 23, 1855, the Colonial Office stated that:

With reference to the Government Notice of the 13th September 1853, relative to Minerals on Government Lands, it is hereby notified that no further applications for the lease of such Mineral Lands, under the said notice, will be received after the 23rd April next.³²

Although no reasons for the withdrawal of these regulations accompanied this notice, it can be assumed that the mood of heightened speculation, which clearly pointed towards a looming financial disaster, and the continuous flood of mineral lease applications compelled the Government to withdraw the regulations. The Cape

³⁰ The prospectus' for all companies floated at this time can be found in the *Government Gazette*.

³¹ Webb, 'Mining in South Africa', p.165.

³² *Government Gazette*, Government Notice No.37, 1855, February, 23, 1855.

administration may have also been compelled to withdraw the regulations based on the fact that, by the end of 1854, hundreds of mineral leases had been issued but had been forfeited either due to the non-payment of rent or the failure to use the land for mining purposes. Apart from these factors the withdrawal of the regulations in early 1855 was due to the fact that they were largely ineffectual in governing the administration of mineral lands.

Towards the end of 1854, the Government sent Surveyor General to the copper fields of Little Namaqualand to assess the state of mineral leasing and mining operations in that area. The conclusions that were drawn by Charles Bell following this expedition would prove to be the most significant factor that compelled the withdrawal of these regulations. In his report submitted to Government following this expedition, Bell explained that the mineral lease regulations were no longer effective in controlling mineral prospecting:

In practice, the provision of that notice are open to much abuse, and they encourage clever evasions, so apparent, yet so difficult to check, that the simplicity of an honest applicant in the spirit of the regulations, leaves him at great disadvantage. I can point to numberless instances...The regulations of 13th September, 1853, also lead to another risk, namely that the miners will, during the last few years of lease, "*pick the eyes out of the mine*", as it is termed, thereby partially or wholly destroying its value. Provision against this has been omitted; but it is not too late to remedy the defect by special legislative enactment, if the present colonial law does not enable a lessee to repress practices so destructive to properly lease.³³

Bell believed that the mineral leasing regulations had served their purpose "long ago" in terms of establishing a commercial mining industry in Namaqualand. However, owing to the flaws contained in the regulations, which allowed for "much abuse", Bell believed that they should be withdrawn as soon as possible, or so far modified as to leave few doubts or room for evasion. In terms of modifications, Bell suggested that:

If encouragement is to be given to honest search and discovery, reckless applicants should be repressed by a heavy fee; and then, besides other advantages, there would be less trouble in recording and inquiring into haphazard applicants for unknown spots, and in finding the applicant when wanted. There should only be one extent of mine, say 40 morgen thereby

³³ 'Report of the Surveyor-General Charles D. Bell on the Copper fields of Little Namaqualand', 19 December 1854 in Cape of Good Hope Geological and Mineralogical Reports, 1854-1890, p.26-27.

cutting off the additional three years time and option of partial forfeiture of lease which is now gained by the applicant...and it is questionable whether the rent should not be raised, for the low rate only tempts numbers to speculate to the great embarrassment of those who really intend to mine.³⁴

Despite the fact that Bell had provided ideas of how to modify these regulations, the Cape Government opted to withdraw the regulations completely.

Following the withdrawal of the regulations the bubble that encapsulated the copper mining mania of the Cape burst in 1856. As soon as the difficulties in mining the irregular veins with erratic lodes, which prevented the effective mining of continuous mineral veins, were realised, coupled with a slump in the price of copper, the hopes of many Cape investors were dashed. This was followed by a feverish anxiety on the part of shareholders to dispose of their shares, leaving many investors financially ruined.

It was in this context that, in 1856, the various leaseholders of land in Namaqualand submitted a petition to the House of Assembly requesting a re-evaluation of the mineral leasing system in the Cape. In particular, the petitioners requested the Government to consider the extension of the period of the leases from 15 to 33 years (which was a more suitable life-of-mine estimate), a renewal of the right of search, and an alteration in the means of payment from one of rents to one of royalty or an export duty.³⁵ Following extensive interviews with various members of companies holding mineral leases in Namaqualand, the select committee concluded that the prayer of the petitioners was reasonable and deserving of the consideration of the Governor.³⁶

However, despite this favourable outcome, the Governor failed to act upon the recommendations of this select committee and allowed the question of the right to search for minerals to lapse into abeyance for the next decade. However, the failure to implement the recommendations of Bell or the select committee can hardly be considered surprising given the context of the recent burst in the copper mining mania bubble. Consequently, the lack of any mineral prospecting or mining regulations would once again be the characteristic feature of the Cape mining industry until 1865.

³⁴ Ibid.

³⁵ 'Report from the Select Committee of the House of Assembly on the Petition of Leaseholders of land in Namaqualand' in Select Committee Reports, 1856, p.iii.

³⁶ Ibid.

Chapter Two

Development of Namaqualand's copper resources and the introduction of the first mineral leasing statute, 1856-1865

The history of the Cape of Good Hope is one of strategic rather than economic imperative. While under the administration of the Dutch East India Company and Britain the value and importance of the colony on the southernmost tip of the African continent lay in its strategic positioning on the highly-profitable Euro-Asian trade route. Thus, for the first two and a half centuries of its colonial history, the Cape was merely a vital military outpost and victualling station servicing the needs of colonial traders. Under these circumstances, and owing to limited colonial administration capacity, the development of the Cape's economy beyond an agricultural basis was severely hampered until the advent of the mineral revolution in the latter nineteenth century. The lack of commercial activity in the Cape during this period and the inevitable expanding costs of colonial administration resulted in a situation whereby the colony had to increasingly rely on Britain to cover its growing financial deficits. It was in this context that the development of the Namaqualand copper fields commenced in the 1850s. It was also this precarious state of the colonial economy that would prove to be the catalyst of the development of mining legislation from mere leasing regulations to statute law.

This chapter aims to examine the development of mining legislation in the Cape Colony following the withdrawal of the first mineral leasing regulations in February 1855. As the introduction of the first mineral leasing act was held in abeyance for a decade, this chapter will examine the factors that hampered the development of such legislation. The chapter will also discuss the establishment and growth of the copper mining industry in Namaqualand during the period as well as the factors that necessitated the introduction of statute law legislating the conditions under which mineral lands could be leased. The chapter will conclude with an examination of the 1864 mineral leasing regulations and the subsequent Mineral Leasing Act promulgated in 1865.

The implementation of the Cape of Good Hope's first mineral leasing regulations in September 1853 provided a congenial regulatory framework for the development of a commercial copper-mining industry in Namaqualand in the mid-1850s. Although these regulations were open to much abuse¹ they essentially enabled prospectors to explore hundreds of square miles of land believed to be rich in minerals. In this regard, the Government-appointed geologist Andrew Wyley revealed that more than 17 companies were conducting exploration and mining activities in the region by 1856.² From the outset, the largest of the Namaqualand copper mines, which included Springbokfontein, Spektakel and Concordia, proved to be commercially viable prospects, exporting modest quantities of ore to England from 1853.³ By 1855 these mines had increased the modest copper exports to 1 864 tons generating an income of £54 337.⁴

It was at this stage of fledgling commercial development that the Cape colonial government withdrew the 1853 leasing regulations. As they had created the first regulatory framework for mining development it is a remarkable fact that the withdrawal of the regulations in 1855 initially inspired no written form of opposition from the Cape commercial sector.⁵ It is difficult to speculate on the reasoning for this lack of protest owing to the lack of records left by these early mining companies and investors in the Cape. It was only a year later, in 1856 that various leaseholders of mineral lands in Namaqualand submitted a petition to the House of Assembly requesting a re-evaluation of the mineral leasing system in the Cape.⁶ Governor George Grey, who had complete authority to approve or veto all legislation under the system of representative government, largely ignored the plea of the petitioners. Moreover, the question of mineral leasing rights was sidelined for the duration of his governorship.

¹ CCP 4/3/5/1 'Report of the Surveyor-General Charles D. Bell on the Copper fields of Little Namaqualand', pp. 26-27.

² Although more than 200 mineral leases had been issued by Government between 1853 and 1855, the majority of these leases had been forfeited by 1856 due to the non-compliance with the terms of the 1853 regulations.

³ See export statistics of the *Blue Book of the Cape of Good Hope*, 1853.

⁴ *Blue Book of the Cape of Good Hope*, 1855.

⁵ The withdrawal of the regulations was noted with mere passing references in the contemporary newspapers of the Cape Colony and was not followed by letters of editorial critiques.

⁶ S.C. 5 – '56 'Report from the Select Committee of the House of Assembly on the Petition of Leaseholders of land in Namaqualand'.

At first glance the withdrawal of the 1853 regulations and Governor Grey's reluctance to reintroduce new mineral leasing legislation is surprising in light of the fact that the Namaqualand mining industry and its associated revenue continued to grow year-on-year. Similarly, given the mineral wealth of the region it is remarkable that the question of mineral rights should have been allowed to languish for almost a decade. However, a close examination of this period of legislative inactivity reveals that there were a number of factors, both local and international, that inhibited the reintroduction of mineral leasing legislation until the mid-1860s.

Significantly this period of legislative inactivity coincided with the entire length of Governor George Grey's administration. Sir George was one of the most pioneering governors in the Cape's colonial history with a legacy that remains prevalent in the twenty-first century.⁷ However, he made no contribution to the advancement of what would become the region's most vital form of commercial enterprise. Sir George's administration of the Cape was primarily dominated by four aspects: the regulation of race relations between colonists and frontier tribes, the improvement of civil administration, the advancement of public infrastructure, and the ideal of uniting all the separate districts into a federal South Africa.⁸ These would prove to be quite time-consuming matters and, inevitably, limited Governor Grey's attention to those four issues during the period of his administration. Thus, the development of mining legislation following the withdrawal of the 1853 regulations was sidelined by Governor Grey for the duration of his administration. It was only when his successor, Sir Philip Wodehouse, was appointed Governor in 1862 that the question of mineral rights would be brought to the fore once again. Governor Wodehouse administration of the Cape Colony will be addressed later in the chapter.

The consequences of the burst of the copper bubble in 1855 on both the colonial government and the Cape commercial sector was another factor that considerably hampered the development of mining legislation in the late 1850s. As has already been outlined, the investing enthusiasm during the copper mania had largely been spent by 1855 and the rampant over-speculation had taken its toll on the coffers of Cape investors. "Some thousands of pounds changed hands during the share

⁷ During Governor George Grey's administration the South African Museum was founded, the foundations were laid for the Public Library in the Company Gardens, the plan to improve the harbour by building a break-water materialised, and the resolution to build a railway between Cape Town and Wellington was passed.

⁸ Picard, H.W.J. *Lords of Stalplein* (Citadel Press: Cape Town, 1974), pp.101-105.

fever"⁹ and once the copper bubble finally burst many were left bankrupt. Inevitably this would have had a negative impact on the consciousness of the Cape investing community and the memory of the financial losses incurred at that time would certainly have haunted investors. Consequently, the Namaqualand copper mines were discredited by investors and were regarded with much suspicion, which hampered the growth in investment until the early-1860s.¹⁰

Closely linked to the reluctance of investors to financially commit to the fledgling mining industry was the Governments' awareness of the dire outcome of the copper bubble and its aversion to creating another congenial environment in which another speculative boom could occur. As it was the introduction of the 1853 mineral leasing regulations that had essentially enabled the establishment of dozens of mining companies, it can be argued that the delay in the reintroduction of further mineral leasing regulations was a strategy adopted by Government to prevent the creation of more companies that could exploit the coffers of investors.

Given the negative investment mood that followed in the wake of the demise of the copper mania, the Cape administration received relatively few applications for mineral leases between 1855 and 1863. While the inventory of the Surveyor-General has no records of mineral lease applications between the end of 1855 and 1864, the inventory of the Colonial Office reveals that not more than 30 applications¹¹ were received by the Cape administration during this period.¹² It is obvious that the lack of applications can be attributed to the fact that aspiring prospectors were aware that no mineral leasing regulations existed. However, because of the relatively few mineral lease applications that were received during this period in comparison to the hundreds of applications that were accepted between 1853 and 1854, it can be argued that there was not enough of a demand from likely prospectors to compel the Cape administration to reintroduce the mineral leasing regulations after 1855.

As well as the lack of mineral leasing regulations, the cooling of interest in the copper deposits of Namaqualand can no doubt be attributed to the cooling of

⁹ *The Cape Monitor*, December 23, 1854, 'Mining – Summary of the Week', p.2.

¹⁰ *The Cape Argus*, June 17, 1865, Letter to the editor, p.3.

¹¹ These applications primarily requested leave to lease Crown land in Namaqualand that was believed to contain copper deposits.

¹² See SG Inventory, 'Mineral Leases', 1/1/14/1. The applications received by the Colonial Office (CO) are spread across many years and, thus, are located in different files under the heading of 'Letters received'.

international prospecting fever. By the end of the 1850s, the prospecting fever that had encouraged thousands to seek their fortunes in the gold rushes of California and Australia had largely abated. Inevitably, the claims of individual diggers had been amalgamated to form larger mining corporations and, so the earlier prospecting fever had been replaced by the methodical enterprise of extracting and processing gold ore.¹³ Consequently, by the end of the 1850s, the European colonies were no longer influenced by raging prospecting fever resulting in the dwindling of interest in the prospects of the mineral deposits within their territories.

The very nature of the geology of the Cape Colony and recommendations made by government-appointed geologists during this period is another factor that could have fuelled the Government's reluctance to introduce new mineral leasing regulations. The 'discovery' and initial exploitation of the copper deposits in Namaqualand in the early 1850s was rapidly followed by an atmosphere of great excitement regarding the mineral prospects of the Colony and accounts of metallic riches were soon pouring in from all quarters.¹⁴ Thus, in 1854 Cape Lieutenant-Governor Charles Darling and British Colonial Secretary, the Duke of Newcastle, agreed that a duly qualified English Geological Surveyor should be appointed for the purpose of investigating and ascertaining the extent of the mineral wealth of the Cape Colony.¹⁵ Subsequently, the English geologist Andrew Wyley was sent to the Cape and appointed as the Government Geological Surveyor in late 1854. Following his appointment, Wyley was assigned to conduct half a dozen geological surveys and inspect various claims of mineral discoveries across the Colony between 1855 and 1859. Wyley was evidently a prudent geologist and despite the fact that he found various indications of mineral deposits, including gold, throughout the Colony, he consistently affirmed his opinion that minerals would not be found in payable quantities sufficient enough to support the commencement of commercial mining operations.¹⁶ Thus, it can be argued that the unfavourable picture that was painted by Wyley with regard to the mineral prospects of the Colony must certainly have dashed

¹³ Morrell, W.P. *The Gold Rushes* (A. & C. Black: London, 1940), Chapter III and VIII.

¹⁴ G. 4-'56 'Geological Report upon the Gold District in the neighbourhood of Smithfield, by A. Wyley, Geological Surveyor to the Cape of Good Hope' p.1.

¹⁵ Letter from Newcastle to Cape Colonial Secretary Cathcart, May 17, 1854 in GH Vol. 1/240, No.215.

¹⁶ These early reports written by Wyley can be found in the 'Mines and Mining' file within the Cape of Good Hope Publication inventory, CCP 4/3/5/1.

the Governments' hopes of developing a mining industry in other regions of the territory and further dissuaded them from reintroducing mineral leasing regulations.

The Cape colonial government's procrastination in implementing new mineral leasing regulations after 1855 can be attributed to an amalgamation of these six factors. However, with the advent of the 1860s the Colony experienced a change of political and economic circumstances that would necessitate the re-examination of the question of mineral leasing rights.

Under the administration of Governor George Grey the Cape Colony incurred considerable debt largely owing to his extensive public works programme and military measures. In fact, during the final year of his governorship the Colonial Secretary told Parliament that the estimated revenue of £543 905 would not be sufficient for Government to continue its operations until the end of the year and would, consequently, have to borrow the substantial sum of £200 000.¹⁷ By the end of Sir George Grey's governorship, the Colony was starved of capital and, more significantly, there was little to attract investment.¹⁸ This was compounded by the consequences of the American Civil War, which resulted in a global economic recession. This recession had a significant impact on the Cape economy resulting in a slump in wine exports, a fall in the price of wool and a banking crisis.¹⁹

From 1862 to 1870 depression gripped the land. Unprecedented droughts and the ravages of insect pests made the crisis harder to bear. Sheep died for want of water in the summer, and of cold in the winter.²⁰

It was in the midst of this severe economic crisis that Sir Philip Wodehouse assumed control of the administration of the Cape of Good Hope. Sir Philip, one of the least revered governors of the Cape, was a pragmatic administrator with a financially astute mind and outlook. Urged on by a desire to place the whole administration on a more financially solid footing, he regarded every manifestation of opposition to his proposals as hostile obstruction.²¹ Ultimately, Governor Wodehouse's career was that of a man perpetually fighting against bankruptcy.

¹⁷ *The Cape Times* January 9, 1877, p.2.

¹⁸ De Kiewiet, C.W. *A History of South Africa: Social and Economic* (Oxford University Press: London 1957) p.67.

¹⁹ Meredith, M. *Diamonds, Gold and War* (Jonathan Ball: Johannesburg, 2007), p.8.

²⁰ De Kiewiet, *A History of South Africa*, p.68.

²¹ Picard, *Lords of Stalplein*, p.114.

When Sir Philip became Governor of the Cape in 1862 the governments' dominant source of revenue came from duties imposed on the local wool industry, which at that time was the largest commercial enterprise in the colony. However, he realised that wool was not enough to subsidise all the needs of an expanding colonial community; an economy of wool and hides could not pay for the immigration, the bridges, roads, railways, harbour facilities, and improved instruments of government.²² As a result, the first few years of Sir Philip's governorship was dominated by his attempt to secure additional sources of revenue that would bring the colony back from the verge of bankruptcy.

It was in this context that the question of mineral leasing rights and, more importantly, the possibility of imposing an export duty on copper ore was raised by Sir Philip soon after his arrival at Government House.

While the Cape colonial administration had to navigate political disunity between the Upper and Lower Houses, manage endless conflicts on its frontiers and grapple economic crises, Namaqualand's fledgling copper-mining industry began to flourish. The few prudent and persevering investors who had remained committed to the fledgling mining industry in the northern reaches of the Cape Colony after the demise of the copper mania proved that the mines could be worked to a fairly profitable degree. Production from the four working copper mines continued to grow at a steady pace year-on-year to the extent that in 1862 the exports of copper ore from these mines totalled 3 396 tons, generating a revenue of £93 565.²³ The following year the Cape Copper Mining Company commissioned the Nababeep mine, which was located on freehold property, increasing the overall value of exports to £103 214.²⁴

The increasing success of the Namaqualand copper-mining industry did not go unnoticed, especially by enterprising English investors. At the end of 1863, the London-based *Mining Journal* remarked that:

Mining at the Cape of Good Hope is now more than ordinary interest. Many of the monied and enterprising class in this country are turning their attention to the mineral resources of that dependency, and not without reason, for...the resources of the colony in copper alone are rich and extensive.²⁵

²² De Kiewiet, *A History of South Africa*, p.68.

²³ *Blue Book of the Cape of Good Hope*, 1862.

²⁴ *Blue Book of the Cape of Good Hope*, 1863.

²⁵ Quoted in *The Cape Argus*, January, 14, 1864, 'Mining at the Cape', p.3.

From 1863 English capital poured into Namaqualand. Copper mining began to receive a fresh impetus from this foreign capital and, as a consequence, the stock of the various mining companies increased by as much as 60% in value.²⁶ In addition to the inflow of investment into existing operations, new mineral discoveries were made in the early 1860s stimulating private enterprise – the commissioning of the Nababeep mine was the result of such private enterprise. It was now evident that the veil of suspicion and discredit that had masked the copper-mining industry since the mid-1850s had begun to lift.

This did not escape the notice of financially astute Governor Wodehouse and his Government. Indeed, in the context of the Cape Colony's economically disastrous state of affairs at this time, the steady growth of the mining industry, the inflows of foreign investment, and, most significantly, the increasing revenue generated by copper exports could not fail to be noticed by the Government. As the Colony was experiencing a severe economic crisis and was still heavily dependent on Britain to cover its financial deficits, Governor Wodehouse was desperate to find additional sources of revenue to avoid bankruptcy. The introduction of a tax on the rapidly expanding Namaqualand mining industry seemed to be the answer to the Colony's financial woes.

The possible imposition of a tax or royalty on copper ore mined in Namaqualand was first considered by the House of Assembly in 1854. Naturally, the contemplation of this measure generated considerable protest from the mining companies, which evidently prevented the Government from pursuing the subject further. It was argued that the imposition of a tax on copper ore would severely curtail the development of the mining industry, which was still in its infancy and which had to deal with many other challenges such as the lack of infrastructure needed for the transportation of copper ore.²⁷ However, a decade later the Government could no longer ignore the financial benefits that could be derived from a royalty on growing copper ore exports. The fact that the Cape Colony still did not have any mineral leasing regulations at that time acted as a pretext for the Government to address the issues of prospecting rights and taxation. Thus, in May 1864 the House of Assembly appointed a Select Committee to consider and report upon the present system of

²⁶ *The Cape Argus*, June 17, 1865, 'Namaqualand', p.3.

²⁷ *The Cape Monitor*, August 12, 1854, 'Taxation', p.3.

mineral leasing by the Government, the copper mines in Namaqualand, and the levy of a royalty upon the quantity of copper ore exported from the Colony.²⁸

Astonishingly, the committee, which met in June 1864, relied on the testimony of a single witness, Henry Steele, who was the manager of the Cape Copper Mining Company. Formed in London in 1862 with a capital of £150 000, the Cape Copper Mining Company was the largest and most influential company in Namaqualand.²⁹ In 1863, the company bought the rights to four of Namaqualand's richest copper mines including Springbok, O'okiep, Nababeep and Spectakel from Phillips and King.³⁰ All of these mines, except Spectakel, were located on freehold land and, as a result, were exempt from government mineral leasing regulations. This would prove to be a highly influencing factor in the subsequent promulgation of mineral leasing legislation.

What is more astounding is that Steele was also a member of the House of Assembly and was the personification of a conflict of interests. This fact was to have an enormous impact on the outcome of the committee meeting because, although Steele gave testimony from the vantage of his commercial interests, his evidence and recommendations were respected and largely adhered to owing to his status as a parliamentary official.

Although Steele had only limited success in influencing the terms upon which mineral leases should be granted – he argued that the term of the lease should be increased from 15 years to a minimum of 33 years and that the new mineral leasing regulations should include conditions relating to the working of the mines – he was successful in discouraging the Government from imposing a royalty on copper ore exports. From a commercial perspective Steele would have been very averse to the imposition of a royalty on copper ore raised at the mines, as this would have reduced the profits of his company. This fact highlights the extent of Steele's influence on the Select Committee as the discreet objective of the committee was to investigate means by which Government could impose a tax on the export of copper ore.

Evidently, the Government was desirous of receiving a revenue from the Namaqualand copper mines and the committee questioned Steele on the possibility of levying a royalty on ore raised from leased centres as well as the imposition of a tax

²⁸ S.C. 5-'64 'Report of the Select Committee on the Present System of Leasing the Copper Mines in Namaqualand', p.v.

²⁹ Smalberger, *A History of Copper Mining in Namaqualand*, p.67.

³⁰ Cornelissen, *A Namaqualand: A History*, (South African Library: Cape Town), p.36.

on copper ore exports. In the first instance, Steele argued that a royalty could not possibly be collected in Namaqualand, as the mines were scattered over an extent of 200 miles.³¹ In terms of the proposed duty on copper ore, Steele argued that, at the port of shipment it would be impossible to distinguish between ore raised from freehold land and leased centres. In addition, an export duty "would be unjust and unfair, copper ore deserving to be protected...mining being a very risky business, because for one good mine you hit upon you get ten bad ones."³²

However, setting his self-interested commercial cap aside, Steele acknowledged that the Government needed to derive a better return from the copper mines. Thus, he proposed his own plan whereby Government would get more revenue through an increasing scale of rental:

By the present arrangement persons desirous of leasing Government lands pay one pound per morgen up to 40 morgen during the whole term of the lease. Now I propose that the same rental should be imposed at the commencement of the lease, but that every year the same amount should be added. For instance, for the first year one pound per morgen, for the next two pounds, for the next three pounds, and so on until such a limit is reached as may be decided upon by the Committee. It might range at from five to ten years, so that the Government would derive a considerable rental, and it would not press heavily upon the lessee. It will have this advantage that it will cost nothing in collection, for the rental would have to be paid to the Surveyor-General's office.³³

The extent of Steele's influence on the outcome of the meeting was evident in the subsequent recommendations that the committee made to the House of Assembly. The committee recommended that mineral leases should be granted for a period of not less than 33 years; that the difficulties in levying a royalty and the expense of its collections rendered it inadvisable to adopt that mode of raising revenue from the mineral lands; that the lessees should pay the Government an annual rental fee of £1 per morgen, which should be increased annually by £1 per morgen until the tenth year when for the remainder of the term the annual rental should be £10 per morgen; and that existing leases should be renewed from the date of their expiration for 18 years at the same increasing rental as recommended for new leases.³⁴

³¹ S.C. 5-'64, p.4.

³² Ibid., p.2.

³³ Ibid., p.4.

³⁴ Ibid., p.vi.

This report was deliberated by the House of Assembly and was followed by the introduction of new mineral leasing regulations in October of that year.³⁵ Interestingly, these new mineral leasing regulations did not endorse all the recommendations made by the Select Committee but rather conformed to the terms of the 1853 regulations. In particular, the terms of the 1864 regulations, like those of 1853, limited the term of the lease to 15 years, limited the extent of land allowed to be leased to 40 morgen, excluded the right to lease land believed to be auriferous, stipulated that leases had to be clearly demarcated and represented by a diagram supplied to Government with twelve months from the date of lease, and allowed for the grazing of working cattle on unleased Government land.³⁶ Significantly, the 1864 regulations also did not include any conditions stipulating how mining activities were to be conducted. As there are no records from the discussions of the House of Assembly regarding this issue it is difficult to speculate on why the new regulations did not endorse the recommendations of the select committee or include any mining regulations.

The fact that the term of lease remained the same at 15 years was a significant feature of the new regulations. It had been demonstrated by Surveyor General Charles Bell in 1854 that the short tenure of the lease was a problem in that miners would be compelled to “pick the eyes out of the mine” during the last few years of the lease, thereby destroying its value.³⁷ The Lower House’s failure to adopt mining regulations in this context is indeed surprising but owing to a lack of records it is difficult to determine the rationale for this. Steele had substantiated this view in his testimony and had argued that 15 years was a very short time to develop a large mine.³⁸ Additionally, the fact that the new regulations excluded the right to lease land believed to be auriferous was another interesting feature as it had been proven that gold existed, albeit in small quantities, throughout the Colony: gold was first discovered in minute quantities in the copper deposits of Namaqualand in 1854 and then in the localities of Smithfield and Port Elizabeth in 1856.³⁹

³⁵ *Government Gazette*, Government Notice No.327, 1864. October 10, 1864.

³⁶ *Ibid.*

³⁷ CCP 4/3/5/1 ‘Report of the Surveyor-General Charles D. Bell on the Copper fields of Little Namaqualand’, p.27.

³⁸ S.C. 5-’64, p.2.

³⁹ G. 4-’56, ‘Geological Report upon the Gold District in the neighbourhood of Smithfield, by A. Wyley, Geological Surveyor to the Cape of Good Hope’; G. 5-’56,

Despite the similarities with the 1853 mineral leasing regulations, the distinguishing feature of the 1864 regulations was the adoption of Steele's suggestion of imposing an increasing scale of rental as the means to get more revenue from the mines. Clause four of the new regulations stated that:

The lessee shall pay to the Civil Commissioner of the Division in which the land is situated a rental of one pound sterling per morgen for the first year for any land so leased by him, and the rental shall increase every year one pound sterling per morgen until the tenth year, from which period until the end of the lease the yearly rent shall be ten pounds sterling per morgen.⁴⁰

The adoption of this clause is the first instance in the history of the Cape Colony's mining legislation where the commercial interests of the mining companies took precedence over the priority of Government. It is obvious that the Government would have derived a better return had it imposed a royalty on copper ore raised at the mines but was dissuaded against this initiative owing to the influence that the mining companies had in Parliament through Henry Steele. It seemed as though the mining companies had won a small victory in avoiding the imposition of a royalty on copper ore. However, the increasing scale of rental that was imposed on leaseholders would prove to be an inadequate system of generating revenue for the government. This is evidenced by the fact that the revenue generated from the rent of mineral leases during 1864 and 1865 amounted to only £170 and £190, respectively.⁴¹ This paltry amount fell far short of the hundreds of thousands of pounds that the government required for its annual expenditure and to cover its substantial deficits. For this reason, the Government would prove to be relentless in its objective of imposing a form of taxation on the mining industry. Just six months after the introduction of the 1864 regulations, the question of mineral rights and royalties was raised once again by the House of Assembly.

Mining companies and investors of the Cape Colony welcomed the introduction of the new mineral leasing regulations as it avoided the imposition of a dreaded tax on copper ore and allowed for further prospecting in the mineral-rich region. Following

'Report upon the Maitland Mines near Port Elizabeth by A. Wyley, Geological Surveyor'.

⁴⁰ *Government Gazette*, Government Notice No.327, 1864, October 10, 1864.

⁴¹ See Revenue and Expenditure, *Blue Book of the Cape of Good Hope*, 1864 and 1865, Section C2.

the publication of the new regulations, the Civil Commissioner of Namaqualand received and processed several applications for mineral leases within the region.⁴² In addition, he stated that a new copper mine, near that of Spectakel, was opened subsequent to the introduction of the regulations.⁴³

While the 1864 regulations were put to good use by miners and prospectors, Government support for the regulations would prove to be short-lived. Despite the fact that a hefty rental was included in the regulations, the actual amount that was generated during the first year of the regulations totalled a mere £170. Inevitably, the Government desired more than £170 in revenue and was evidently still fixated on the concept of imposing a form of taxation on the mining sector. Thus, six months after the publications of the regulations, it was proposed that a Bill should be introduced into the House of Assembly to fix the terms upon which mineral lands in Namaqualand should be leased and worked. Governor Phillip Wodehouse provided the rationale for the introduction of this Bill in his Opening of Parliament address in April 1865:

The Government proposes, in the course of the session, again to call your attention to a subject which requires more careful consideration than circumstances would admit of its receiving in the last session, - namely, the regulations for the management of mining operations in Namaqualand. From representations made of late by parties interested in these undertakings, it is to be expected that they will assume great importance; and I trust it may be practicable to lay down rules which will afford all due encouragement to private enterprise, and secure to the public that reasonable revenue to which it is fairly entitled.⁴⁴

It is evident from the speech that Sir Philip did not believe that the issue of mineral leasing had been given full consideration prior to the publication of the regulations. Similarly, the Government did not believe that the terms of the regulations allowed it to secure "reasonable revenue" from the mining industry. Thus, the "Bill for the fixing of the terms upon which Mineral Lands in Namaqualand, the property of the Crown, shall be leased and worked" was introduced later that year on the pretext of securing more revenue from the mines, which was needed for increased public

⁴² *Blue Book of the Cape of Good Hope*, 1864, 'Appendix - Extracts from Reports of Civil Commissioners: Namaqualand'.

⁴³ *Ibid.*

⁴⁴ Governor Phillip Wodehouse's Opening of Parliament address quoted in *The Cape Argus*, April 27, 1865.

expenditure, and of laying down rules that could further encourage private enterprise in the mining sector.

This Bill differed vastly in content from the mineral leasing regulations of 1853 and 1864. The most essential clauses of the Bill stated that all land could be leased for 31 years; that lessees had to pay an annual rent of five shillings per morgen as well as a royalty of five percent on the value of all ore raised; the royalty had to be paid at the port of shipment and a declaration had to be signed by the company stating the weight and value of ore that was to be exported; that no duty would be imposed on ore raised from private property or a joint-stock company; the lessee had the option to sublet the land, and, if exports of copper ore exceeded the value of £5 000 per annum, the lessee could claim a renewal of the lease for the next 31 years. The two most significant features of this Bill, which differed from the preceding regulations was that the term of lease had been increased from 15 years to 31 years (which largely conformed to the suggestion made by Henry Steele in 1864) and that the Bill imposed a form of double taxation on leaseholders in the form of an annual rent and a royalty on ore raised and exported.

Inevitably, the proposed double form of taxation contained in clause four of the Bill raised considerable protest from the lessees of mines in Namaqualand. Subsequent to the release of the first draft of the Bill, a petition of protest, signed by 75 mineral leaseholders, was submitted to the Legislative Council.⁴⁵ In the petition the leaseholders argued that, in the first instance, the annual rent of five shillings was too excessive as the price of land in Namaqualand even in the metalliferous parts did not average more than two shillings per morgen. Similarly, the petitioners protested against the imposition of a royalty of five percent on the value of the ore raised. As well as noting their surprise, and no doubt dismay, that mining operations on private property would be exempt from taxation, the petitioners expressed “their strong and unshaken conviction that such a two-fold tax would be the means of effectually crushing all mining enterprise.”⁴⁶ The petitioners also argued that a tax of five percent would necessitate the rejection of a considerable amount of low-grade ore, which would eventually lead to the closure of all mines that did not yield the richest quality of ore in large quantities. In place of a duty of five percent the petitioners suggested

⁴⁵ C 15-'65, ‘Petition of Lessees of Mines and others, on the Namaqualand Mineral Lands Leasing Bill’.

⁴⁶ *Ibid.*, p.1.

that a moderate royalty of one or two shillings per ton, at the most, should be imposed on all copper ore, including that from freehold land, at the port of shipment.⁴⁷ The prayer of the petitioners would prove successful, but only to a limited extent.

The Bill passed through the three stages of reading in the House of Assembly without objections and on October 10, 1865, it was promulgated by the Legislative Council. The Mining Leases Act of 1865 essentially legislated the terms upon which mineral lands would be leased in Namaqualand and, more importantly, legally advocated, for the first time, a form of taxation upon the rapidly expanding mining sector. The fact that the Bill was passed without raising debate in both the Upper and Lower Houses reveals its significance and the urgent necessity of securing additional revenue. This can be evidenced by the fact that, at that time, there was considerable disunity between the two houses and nearly half of all the bills that were sent to the Legislative Council by the House of Assembly were rejected.⁴⁸

Significantly, the jurisdiction of the Mining Leases Act was confined to the region of Namaqualand. As the geology of the rest of the colony was still largely unknown and no significant deposits of minerals, other than in Namaqualand, had been discovered, it was not considered necessary to extend the terms of the Act to the whole of the Cape Colony. In addition, it can be argued that the Act was confined to Namaqualand because, as the Cape was in the midst of a severe economic depression, the financial costs of implementing the terms of the Act across the Colony would have been exceptionally burdensome for the colonial authorities.

The terms of the Act legislated that all Crown lands in Namaqualand could be leased for a term of 31 years, that the extent of land could not exceed 40 morgen; that every lessee would be bound to pay an annual ground rent of five shillings per morgen of land and was also bound to pay the sum of ten shillings for every ton of ore raised from the land and shipped at any port or place in Namaqualand; that no charge or duty would be imposed on ore raised from mines on private property; that every lessee had the right, with the consent of the Governor, to sublet the land under lease; and that leases did not convey the right or title to any gold, silver or platinum which may have been found in the land comprised in the lease. The Government was determined not to impose a duty on private mines and, thus, the Act included the

⁴⁷ Ibid., p.2.

⁴⁸ Kilpin, R. *The Romance of a Colonial Parliament*, (Longmans, Green: London, 1930), p. 87.

stipulation that a declaration had to be signed at the place of shipment by representatives of private mines that the ore had been raised from private mines.⁴⁹ In addition, all leaseholders were required to submit a notice of intention to ship ore raised from Crown lands and failure to do so would result in the imposition of a penalty of twenty shillings per ton.⁵⁰ While there is no recorded evidence that could explain this, it can be speculated that Henry Steele had considerable influence during the process of legislating the Bill. As the majority of the Cape Copper Mining Company's mines were on private lands it can be assumed that this clause was included for the benefit of Steele.

The promulgation of this Act ushered in a new era for the mining industry of Namaqualand. Significantly, the Government had finally recognised the mining industry as an established commercial sector within the Cape Colony from which much revenue could be generated. Equally significant was the fact that the Act did not exclude the right to prospect for gold, silver and platinum. Although these precious metals were still considered the property of the Crown, leaseholders were allowed to prospect and mine such deposits. This clause would have significant implications as the Cape Colony, and, indeed, South Africa, was on the verge of entering a new and unparalleled age of mineral prospecting and discovery.

⁴⁹ Act No. 12 of 1865, Clause Seven.

⁵⁰ Ibid. Clause Ten and Eleven.

Chapter Three

Early Cape industrialisation and the introduction of the second mineral leasing statute, 1865-1877

The late 1860s and early 1870s marked the initiation of South Africa's great prospecting era and mineral revolution. During this decade, the diamond fields of Griqualand West were developed into a multi-million pound-a-year industry¹ and South Africa's first significant gold deposits were discovered in the Eastern Transvaal.² While it should be noted that deposits of various minerals had been discovered previously, the wealth of the diamond and gold deposits would considerably eclipse earlier finds. The discoveries of such wealthy deposits of gold and diamonds inevitably resulted in a flourishing of prospecting fever across South Africa as increasing numbers of individuals began to pursue the creation of personal wealth through mineral discoveries. It was within this context of prospecting and intensive mineral development that the Cape of Good Hope legislative environment regarding mineral leasing and mining was adjusted "in order to encourage the search for minerals in crown lands".³

This chapter aims to examine the factors that compelled the introduction of new mineral leasing legislation in 1877. As the introduction of the Cape Colony's second piece of legislation regulating the mineral leasing of Crown lands was only promulgated in 1877, almost a decade after the initial discovery of diamonds, it will be necessary to examine the factors that both inhibited and compelled the introduction of that Act. The chapter will then conclude with an examination of the terms of the Mineral Lands Leasing No.9 of 1877.

In 1865, the Cape Government promulgated the Mineral Leasing Act, which formally legislated the terms upon which crown lands in Namaqualand, believed to contain mineral deposits, could be leased. Significantly, this was the first and only law passed by

¹ See Chapter Four.

² See Fisher, W. *The Transvaal and the Boers* (Chapman & Hall, London, 1990), pp.146-148.

³ Act No. 9 of 1877.

the Cape's Legislative Council following the copper mining revolution that allowed for the leasing of mineral lands. For administrative purposes, this Act only applied to the region of Namaqualand, as this was the only area known to contain mineral deposits at that time.

However, a decade after the promulgation of this Act, the Government's outlook towards prospecting and the leasing of mineral lands in the entire extent of the Cape Colony began to change. This outlook was altered to such a degree that, by 1877, the Cape Colonial Government believed it necessary to introduce new legislation that encouraged prospecting across the Colony and allowed for the leasing of Crown lands believed to contain mineral deposits. The reasons for the changed outlook and introduction of new legislation shall be elaborated upon during the course of this chapter.

At first glance, it may seem curious that the Cape Government delayed the implementation of new mineral leasing legislation in the context of the diamond and gold discoveries in Grikwaland West and the Eastern Transvaal in the late 1860s and early 1870s, respectively. As there is no recorded primary evidence in terms of parliamentary debates and correspondence, as to why the introduction of such legislation was delayed for a decade, reasons for this can only be suggested.

It can be argued that the delay in extending mineral leasing legislation to the rest of the Cape Colony can be attributed, in part, to the Government's preoccupation with political tensions during this period between the Legislative Council and the House of Assembly, as well as between Eastern and Western Cape parliamentary members.⁴ By the mid-1860s:

It was perfectly plain to everyone that the system of "representative government"...was a failure. By that time, the state coffers having been drained by drought and disease the Cape had gotten into sore straits. The relations between the two Houses were so strained that a large section of the public openly advocated for the abolition of the Legislative Council...There was a marked tendency to interfere in executive matters by means of select committees, few constructive proposals were made by Parliament, and proposals made on behalf of the Government were scornfully rejected.⁵

⁴ McCracken, J.L. *The Cape Parliament, 1854-1910* (Clarendon Press: Oxford, 1967).

⁵ Kilpin, R. *The Romance of a Colonial Parliament* (Longmans, Green: London, 1930) pp.87-88.

It was during this state of affairs that various factions and individuals within the Cape political arena began to lobby for responsible government, a system under which the principal officers of the Crown would be replaced by elected Ministers of Parliament who would be responsible to Parliament for their own and the Governor's conduct⁶. Similarly, the British Government, in 1869, urged the extension of full responsible government to the Colony in an effort to extricate itself from the political tensions within the Cape that were a result of the resistance mounted by the colonial parliament to Governor Wodehouse's policies⁷. In addition, the British Government, under the leadership of William Gladstone, also presented the prospect of responsible government as the nucleus for a federated South Africa, incorporating at least Natal, Basutoland, Griqualand West and the Boer Republics. Thus, the issues of responsible government and federation would prove to be highly contentious and would consume a significant portion of Cape politicians' attention for a number of years. It was only once responsible government had been achieved in 1874 that the Cape Assembly began to turn its attention to issues of local consequence, such as the extension of mineral leasing legislation.

It can also be argued that the delay in extending the mineral leasing legislation can be attributed to the unfolding mining revolution in Griqualand West. While it is feasible to suggest that the mining revolution in Griqualand West paved the way for the introduction of new mineral prospecting legislation in the Cape Colony, the opposite can be stated. It can be argued that Cape politicians delayed the implementation of legislation in order to thoroughly assess the unfolding diamond-mining revolution and the mining rules and regulations, which were implemented by the Griqualand West administration in the mid-1870s, before implementing its own legislation. Thus, it is no coincidence that the Cape Parliament legislated the new mineral leasing act after extensive mining regulations had been introduced in Griqualand West.⁸

However, by 1877 the introduction of new mineral prospecting and leasing legislation could no longer be delayed in the context of the advancement of the South African mining industry and, thus, the Government believed it expedient at that time to

⁶ Ibid., p.88.

⁷ See Chapter Two.

⁸ See Chapter Four.

assist in the development of its own mining sector. Consequently, in April 1877, the Commissioner of Public Works introduced a new bill into the House of Assembly that aimed to authorise the leasing of Crown lands supposed to contain mineral deposits.⁹ According to the Commissioner, the justification for the introduction of such a bill was based on the fact that there existed no mechanism whereby those who discovered minerals on Crown lands were able to get any rights for working them.¹⁰ The Commissioner stated that, by the Mineral Leasing Act of 1865, such rights were conferred in regard to mineral deposits in Namaqualand, but there were undoubtedly other parts of the colony where minerals were to be found. He further argued that the lack of legislation permitting the leasing of mineral lands certainly interfered with private enterprise as prospectors were undisposed to search for minerals. However, the Commissioner believed that the time was now right to hold out every possible inducement to encourage the search for minerals across the Colony.¹¹

There were three primary factors that inspired the Government's belief that it was the 'right time' to encourage the search for minerals and which, subsequently, prompted the introduction of the mineral leasing bill. These factors included the industrialisation of the South African economy inspired by the discovery of diamonds; the adoption of the gold standard by many European states and the subsequent international demand for gold; and the advancement of the knowledge regarding the geology of the Cape and the establishment of various mines on privately-owned land across the Colony. The most significant of these factors was the impact that the process of industrialisation had on the broader South African economy.

The initial stage of South Africa's process of industrialisation was sparked by the mining revolution that occurred in Kimberley's four great diamond mines: the Kimberley, De Beer's, Du Toit's Pan and Bultfontein mines. The very nature of this mining revolution was shaped, initially, by the geology of the diamond deposits and the techniques employed to extract the precious stones, which was unique from any underground or alluvial mining processes that had been used previously. Essentially,

⁹ *Government Gazette* April 27, 1877, 'Bill to Authorise the leasing of Crown Lands supposed to contain certain Minerals'.

¹⁰ *The Cape Argus*, 'Cape Parliament – House of Assembly', p.3.

¹¹ *Ibid.*

diamond deposits occur in unique geological formations where the precious gems are contained in kimberlite pipes, or diamond-bearing rock, that are the remnants of extinct volcanoes. Owing to the nature of this geology the mining of diamonds requires the vertical extraction of near cylindrical pipes that descend to the mantle of the earth.¹² This is distinct from the mining of mineral and metal deposits, such as gold, copper and coal, which requires the extraction of horizontal or sloping reefs.

However, when dry digging commenced on the site of the Kimberley mine in 1870, the nature of diamond geology and the most effective methods of mining such deposits were still unknown to the prospecting diggers. This was due to the fact that the diamonds of India and Brazil, which were the two main sources of the precious gems up until the 1860s, were sourced from alluvial deposits where the gems had been washed out of the blue ground. Thus, the diggers believed that diamonds had an alluvial source and, consequently, thought that the precious gems had been deposited in the dry earth many miles south of the Orange and Vaal rivers by some freak of nature.¹³ The lack of knowledge of the true nature of diamond geology meant that the longevity and sustainability of the dry diamond diggings was not taken into account when the claim leasing regulations were devised.

Essentially, the four diamond-bearing pipes were pegged out in individual claims of thirty square feet. As will be outlined in Chapter Four, the initial regulations that governed the mineral leasing and mining of the dry diggings restricted the number of claims that could be held by an individual to two claims per digger.¹⁴ This meant that, once all four pipes had been discovered and claims had been pegged out, there were over 3 200 full claims, many of them subdivided, across the four great mines.¹⁵

The concept of private claim holding allowed each digger to remove the ground vertically downwards within the four boundaries of his claim in his own time, although not all diggers worked their claim at the same rate. The attempt to drive each claim

¹² Williams, A.F. *The Genesis of the Diamond* (Ernst Benn: London, 1932), Chp III-IV.

¹³ Wheatcroft, G. *The Randlords: The men who made South Africa* (Jonathan Ball: Johannesburg, 1985), p.13.

¹⁴ *Government Gazette of the Cape of Good Hope*, 28 October 1871, 'Proclamation No.71, 1871'.

¹⁵ De Kiewiet, C.W. *A History of South Africa: Social and Economic* (Oxford University Press: London, 1942), p.93.

hundreds of feet down, by individual methods of working, with every claim-holder trying to preserve the original integrity of his claim at the bottom of the excavation would only produce confusion and waste. Very early in the history of the dry diggings the attempt was made to preserve roadways across the mines to allow access to the inner claims. By 1872, however, the roadway system was doomed to failure as some energetic diggers on the periphery of the pipe were already working at depths of 30 metres and ground slides between adjoining claims became a dangerous and regular feature, especially in the rich Kimberley Mine.¹⁶ This resulted in a situation whereby the claims at the centre of the pipe were cut off and were unable to be worked. As a result, many diggers, especially those holding central claims, were forced to advance their mining techniques and technology from muscle to machinery. Consequently, the process of industrialisation was inevitably sparked by the need to modernise the equipment required to mine and haul-out 'blue ground from the chaotic mix of hundreds of claims at various stages of development.

Consequently, between 1874 and 1877, a novel system of horsepower haulage based on aerial tramways was developed, which allowed the centre of the mine to be worked.¹⁷ The haulage system, which replaced the roadways, added to the capital outlay necessary for the individual digger to survive. As a result, amalgamation was increasingly recognised as a solution to the rising working costs, which followed with increased depth of working.¹⁸ Amalgamation allowed for the more efficient working of certain claims allowing production and profits to rise. The increase in production and profits facilitated the investment into more advanced mining technology from the mid-1870s. Consequently, steam-powered machinery began to be adopted as the dominant form of mining technology in the Kimberley mine from the mid-1870s and from 1877 such equipment began to be installed at the other three mines.¹⁹

It was this advancement from manual labour and horse-powered haulage mechanisms to steam-powered machinery that would have a revolutionary impact on the economies of South Africa. The increased production that resulted from the introduction

¹⁶ Webb, 'Mining in South Africa', pp. 169-170.

¹⁷ Turrell, R.V. *Capital and Labour on the Kimberley Diamond Fields, 1871-1890* (Cambridge University Press: London, 1987), p.9.

¹⁸ Webb, 'Mining in South Africa', p.170.

¹⁹ Turrell, *Capital and Labour on the Kimberley Diamond Fields, 1871-1890*, p.9.

of steam-power sparked an unprecedented demand for raw materials, agricultural produce and machinery, amongst a host of other goods that were required to sustain the rapid development of the diamond mines.²⁰

Most significantly, the introduction of steam-power increased the amount of fuel required to run the mining industry. However, the scarce availability of fuel and its exorbitant cost was a great problem on the diamond fields. As no workable deposits of coal had been discovered in the region, wood was the major fuel in use for the newly-installed steam-powered machinery. The escalating demand for fuel created a huge strain on the availability of wood in the area surrounding Kimberley and, consequently, the countryside was quickly denuded of trees.²¹

Thus, it was no coincidence that the introduction of the mineral leasing bill in the Cape Parliament in 1877 coincided with the inception of steam-powered machinery in all four of the Kimberley diamond mines. In fact, it can be argued that part of the Governments' rationale for introducing the bill was to encourage the search for and development of workable deposits of good-quality coal within the Colony that could be supplied to diggers and companies for the specific purpose of fuelling the newly-installed steam-powered machinery.

Another factor that encouraged the introduction of this bill, and which was closely linked to the industrialisation of the diamond mines, was the advancement of the Cape Colony's infrastructure. Prior to the discovery of diamonds, the dominant form of transport across the region of South Africa was the ox-wagon as there was little incentive or capital to develop railway infrastructure across the sparse and arid region of the interior. However, the development of the diamond mines in the early 1870s prompted a revolution in the region's transportation systems. Essentially, the development of the mines generated an unprecedented demand for primary and secondary goods and the enormous amount of capital that was being generated on the mines provided the financial incentive to modernise the transport system in order to enable faster access to the rapidly-

²⁰ Evidence of the initial economic growth that was inspired by the industrialisation of the diamond fields can be found in the various Civil Commissioner reports from the inland districts of the Cape Colony contained in the *Blue Book of the Cape of Good Hope*, 1871-1872.

²¹ Turrell, *Capital and Labour on the Kimberley Diamond Fields*, 1871-1890, p.15.

growing market of Griqualand West.²²

Owing to the unprecedented growth of Kimberley and the urgency to link the markets of the Cape Colony to that of the diamond fields in order to maximise the financial benefits of the economic boom, in 1873, the Cape Government embarked on an initiative to extend a railway line between Cape Town and Kimberley. At that time, the only railway that existed in the Colony was a privately-owned line between Cape Town and Worcester. However, in 1873, the Cape Government purchased that sixty miles of railway track and lost no time in extending it from the terminus at Worcester towards Beaufort West.²³ At the same time, the colonial authorities commenced construction of a second railway track that would eventually link Port Elizabeth with the diamond fields.²⁴

The most significant constraint that threatened the successful operation and sustainability of these two railway systems was the lack of good quality coal that could be burned in locomotive engines. The discovery of deposits of good quality coal had been an issue that had attracted the attention of colonial authorities for decades prior to the discovery of diamonds in the late 1860s. However, extensive exploration of the Cape Peninsula, which began in the 18th century, had proved that no workable deposits existed in the area. It was only in 1859 that the Colony's first workable deposit of coal was discovered at Cyfergat in the Eastern Cape.²⁵ However, this deposit, which formed part of the Stormberg geological series, was only marginally profitable and the coal was of poor quality in comparison to that of Wales and England.²⁶ This was a significant factor to consider as the locomotive engines, which were imported from Britain, were designed to

²² The growth in demand for primary and secondary goods as well as the demand for improved, modernized transportation can be evidenced from the Civil Commissioner reports published in the *Blue Book of the Cape of Good Hope* from 1871 onwards.

²³ Van der Poel, J. *Railway and Customs Policies in South Africa: 1885-1910* (Longmans, Green: London, 1933), p.7.

²⁴ Ibid.

²⁵ Lang, J. *Power Base: Coal Mining in the Life of South Africa* (Jonathan Ball: Johannesburg, 1995), p.13.

²⁶ Lang, *Power Base*, p.20. While Northern Hemisphere coals consist of the fossilized remains of dense tropical forests, South African coal in the main derives from plant sediments that accumulated in shallow, ice-scoured basin and associated river systems under cool, temperate conditions. In consequence of their contrasting origins, coals from the two hemispheres differ markedly in character as southern coal is generally less reactive and harder.

burn coal of good, British quality. Owing to this deficiency of quality deposits of coal in the Colony, the Government was compelled to import the coal from Wales, which made it an exceedingly expensive and a high-value commodity. The enormous financial burden this represented can be illustrated by the fact that in 1877 – the same year that the mineral leasing bill was introduced into the House of Assembly – the Government imported 38 242 tons of coal from Britain at a cost of £32 084.²⁷

However, the establishment of two railway systems would require a greater supply of coal to run the locomotives between the coastal termini and Kimberley. As it was not financially feasible to source more coal from Wales, owing to the already exorbitant price of importing the commodity, the Cape Government was compelled to renew its efforts of discovering workable deposits of coal within the confines of the Colony that could be used to fuel the railway locomotives. Thus, in 1873, the authorities commissioned a study of the Stormberg geological series to assess the quality of the coal deposits and the viability of mining such deposits. In this report, the geologist remarked that “the quality of coal hitherto found is by no means first-class, but considering the scarcity of fuel in these districts, its importance cannot well be over-estimated.”²⁸ The geologist further argued that the necessity of mineral fuel was a matter of such vital consequence that an extensive search for other seams than those already known, which included the deposits at Albert and Cyfergat, should be undertaken. As a result, he prompted the Colonial Government to encourage each farmer within the region to examine his own property for evidence of a good seam of coal. Based on this suggestion, in August 1873, the Government offered a reward of £500 for the discovery of a thick seam of coal of good quality on private property.²⁹ At that time, the offer of a reward was arguably an easier alternative of discovering new deposits of coal than introducing new legislation that allowed mineral prospecting on Crown land as the annual cost of administering a mineral leasing system would be more expensive than a reward.

Unfortunately, the proposition of such a reward failed to be an effective means of stimulating exploration for coal in the Colony. Despite the offer of a substantial sum of

²⁷ *Blue Book of the Cape of Good Hope*, Exports and Imports, 1877, p.N49.

²⁸ G.31-73, “Report on the Stormberg Coal-Field”, p.2.

²⁹ *Government Gazette*, 27 August, 1873, ‘Government Notice’.

£500, there is evidence that only one farmer within the Colony discovered a seam of coal on his farm. In early 1877, a farmer by the name of Ferguson discovered the Indwe coal seam in the eastern region of the Cape Colony and, subsequently, claimed the reward from Government. However, the Commissioner of Crown Lands and Public Works argued that the Indwe coal seam did not satisfy the requirements of a good quality seam and refused to pay the reward.³⁰ Therefore, the failure to discover a seam of good, workable coal on privately-owned land that met the Governments' specific requirements compelled it to introduce the mineral leasing bill, which would, it was hoped, stimulate the search for much-needed coal deposits on Crown land.

The second factor that compelled the introduction of the mineral leasing bill in 1877 was the adoption of the gold standard by many European states and the subsequent growth in demand for gold. The gold standard evolved out of the variety of commodity-money standards that emerged before the introduction of paper and owed much of its development to Britain's adoption of a de facto gold standard in 1717.³¹ Following Britain's industrial revolution and its emergence in the 19th century as the world's leading financial and commercial power, Britain's monetary practices became an increasingly logical and attractive alternative to silver-based money for countries seeking to trade with, and borrow, from the British Isles. Consequently, following the peace treaty that was signed after the Franco-Prussian War in 1871, Germany used the indemnity of five billion Francs to accumulate gold and convert to a gold-backed currency.³² This act by Europe's second-leading industrial power encouraged many other countries to follow Britain and Germany's adoption of the gold standard. Thus, the 1870s saw the United States, Denmark, Holland, Norway, Sweden, and the countries of the Latin Monetary Union join the gold standard.³³ The adoption of the gold standard by so many large economies created a sudden demand for vast amounts of gold at a time when the Californian and Australian gold deposits were all but exhausted. Thus, the drain of the

³⁰ A.37-'78. 'Correspondence between Mr. Ferguson and the Commissioner of Crown Lands and Public Works, respecting the premium offered by Government for the discovery of coal at the Indwe'.

³¹ Eichengreen, B. *Globalizing Capital: A History of the International Monetary System* (Princeton University Press: Princeton, 1996), p.7.

³² *Ibid.*, p.17.

³³ *Ibid.*, p.18.

world's gold supply unsettled prices and made the call for gold more urgent.³⁴

While this gold-backed monetary system gained increasing popularity in Europe and the United States, government-appointed geologists discovered geological features suggesting the existence of gold in the Cape Colony. In 1871, the Government-commissioned geologist E.J. Dunn undertook a geological survey of the Colony and concluded that, "a belt of country extending along the East coast from Natal past the Cape and on the West coast from the Cape to the Orange River consists of... Lower Silurian rocks."³⁵ This observation led Dunn to postulate that "abundant" quartz, or gold-bearing, reefs existed within this belt. Although the government did not take any further measures to validate Dunn's claims, it was certainly aware of the potential existence of gold-bearing quartz reefs within the confines of the Colony as international demand for gold began to escalate. Ultimately, the rising demand for gold on an international scale following the adoption of the gold standard by many large economies would have been a strong incentive for Government to encourage gold prospecting across the Colony.

The final factor that compelled the introduction of the mineral leasing bill in 1877 was the advancement of the knowledge of the geology of the Cape and the discovery of various deposits of metals and minerals. Following the promulgation of the Mineral Leasing Act in 1865 the knowledge of the Cape was effectively enhanced with the discovery of various mineral deposits and the development of a number of privately-owned mines. In this regard, in the early 1870s, a manganese mine was opened in Paarl, coal mines were opened in Albert, Wodehouse and Queen's Town, and copper was discovered in the vicinity of Clanwilliam.³⁶ In addition, specks of gold were discovered near Prince Albert and in the vicinity of Bredasdoorp, Malagas and Swellendam between 1871 and 1872.³⁷ The discovery of such mineral deposits and, more importantly, the establishment of commercial mines within the colony was a clear indication that there was potential for the creation of a viable mining industry within the colony. However,

³⁴ De Kiewiet, C.W. *The Imperial Factor in South Africa* (Cambridge University Press: London, 1937), p.96.

³⁵ CO Memorials 4167 – D26, 'Memorials from E.J. Dunn regarding prospecting of land', 30 August 1871, p.2.

³⁶ *Blue Book of the Cape of Good Hope*, 1872, 'Reports of Civil Commissioners'.

³⁷ *Ibid.*

this factor alone was not enough to encourage government to introduce new mineral leasing legislation in the early 1870s. It was only when this potential development of a mining industry was amalgamated with the other two factors that the government was compelled to introduce a legislative mechanism that facilitated the further discovery of mineral deposits on Crown lands.

The mineral leasing Bill that was introduced into the House of Assembly in 1877 followed the 1865 Mineral Leasing Act very closely. It can be argued that the Commissioner of Crown Lands and Public Works based the Bill largely on the 1865 Act because that particular piece of legislation had worked well as a mechanism for regulating mineral leasing in Namaqualand. Following the promulgation of this Act in 1865, Government received no complaints regarding the terms and effectiveness of the Act and, consequently, no alterations to the Act were necessitated over the next twelve years, which could be viewed as an indication of the effectiveness of that legislation. As that Mineral Leasing Act had been so effective in regulating mineral leasing, the Commissioner, essentially, wanted to make the terms of the Act applicable to the rest of the Cape.

The Bill that was introduced into the House of Assembly did, indeed, correspond almost directly with the 1865 Act. In fact, during the second reading of the Bill, it was argued by MPs that the bill followed the Act too closely in several instances.³⁸ In particular, members raised concerns that the Bill used the same system of rent and duty on ore raised from mines that was contained in Clause IV of the Mineral Leasing Act of 1865: "Every lessee shall be bound to pay an annual ground rent of five shillings per morgen of land comprised in his lease, and shall also be bound to pay the sum of ten shillings upon or for every ton of ore raised."³⁹ Members argued that this system of imposing a royalty of ten shillings on ore raised was unfair. It was argued that a sliding scale should rather be imposed so that mines that raised ores of small value could be made to pay less than those of more value.⁴⁰ Despite this valid objection, the suggestion

³⁸ *The Cape Argus*, 31 May, 1877, 'Cape Parliament – House of Assembly', p.3.

³⁹ Clause IV, Act No. 12, 1865.

⁴⁰ *The Cape Argus*, 31 May, 1877, 'Cape Parliament – House of Assembly', p.3.

was ignored during the third reading of the bill. As no detailed records exist of parliamentary discussions concerning the mineral leasing bill and the issue of ore royalties, it is difficult to surmise why the suggestion was not adopted into the new Act.

Four months after the Bill's initial introduction, the Mineral Lands Leasing Act was promulgated by the Legislative Council on August 9, 1877. The terms of the Act, like those of its predecessor, legislated that all Crown lands in the Cape Colony could be leased for a term of 31 years; that the extent of land could not exceed 40 morgen; that every lessee had the right, with the consent of the Governor, to sublet the land under lease; and that lessee did not convey the right or title to any gold, silver or platinum, which may have been found in the land comprised in the lease. Despite the objections raised during the reading of the Bill, the Act included the same rental system and imposition of royalty in that every lessee would be bound to pay an annual ground rent of five shillings per morgen of land and was also bound to pay the sum of ten shillings for every ton of ore raised from the land. It can be argued that these stipulations remained unchanged as they had been effective in generating good revenue for the Government.

However, there were two marked differences between the two Acts. Firstly, the Mineral Lands Leasing Act did not make any reference to privately-owned mines as the 1865 Act had done, which stipulated that no charge or duty would be imposed on ore raised from mines on private property. The newly-promulgated Act did not make reference to mines on private land, nor did it confine the imposition of a royalty to ore raised from mines on Crown lands. It can be argued that a royalty was not confined to mines on Crown lands because there were already a number of operational mines on private lands by 1877. By imposing a royalty on such mines, the Government would substantially increase the revenue raised from such a tax. The second marked difference between the two pieces of legislation was a stipulation included in the newly-promulgated Act that forced lessees to keep stringent records of mining activities and ore raised from the mines. Clause IV of Act No. 9 stated that every lessee was bound to keep books in which the true quantity of ore raised from the land leased under the Act was entered and that books should be open to inspection by the Civil Commissioner of the

division.⁴¹ The inclusion of this clause highlights the importance placed on the revenue gained from the tax on ore raised from all mines in the Colony.

The promulgation of this Act ushered in a new era for the mining industry as this Act finally allowed for the exploitation of mineral deposits on Crown land across the Cape Colony. Private enterprise, especially with regard to the establishment of a mining industry, had long been hampered by the lack of legislation that allowed mineral rights to be secured on Crown land across the Colony. However, the promulgation of the Mineral Lands Leasing Act provided the mechanism that would allow the development of private enterprise, especially with regard to mining, at a most auspicious time in the history of South Africa's economic development.

⁴¹ Act No.9 of 1877, Clause VII.

Chapter Four

Diamonds in Griqualand West and the introduction of mining regulations for alluvial and dry diggings, 1867-1880

For the first three-quarters of the nineteenth century South Africa was an economic backwater with severely limited economic growth prospects. As the South African historian, Cornelius de Kiewiet, noted, "South Africa seemed the least endowed of colonial regions...It was not simply that the country was starved for capital. There was too little to attract capital."¹ The economy of the region was essentially agriculturally-based with sheep and sugar farming representing the two strongest sectors of the regional economy. Consequently, the Cape of Good Hope and Natal Governments were heavily dependent on the revenue that was raised from the export duties imposed on all wool and sugar exports. Such dependency on an industry, which was itself highly susceptible to foreign developments such as wars and economic recessions, could only spell looming financial disaster. In fact, it was this heavy reliance on revenue from the wool industry that was to prove to be the catalyst to the Cape Colony's and, indeed, South Africa's first major economic recession.

The primary cause of South Africa's first economic recession was the effect of war and peace in the United States of America. Prior to the outbreak of the American Civil War in 1861, international demand for Cape wool had been growing exponentially: between 1851 and 1862 exports of wool increased from 5,5-million lb to 25-million lb.² However, the forces of war and depression coming from the United States between 1862 and 1865 ultimately forced the looms of Lancashire, which was the primary market for Cape wool, to cease their shuttling.³ The significant fall in demand for wool brought an economic slump to South Africa. "The country was ill-equipped for economic recession, with primitive financial institutions, rickety local

¹ De Kiewiet, C.W. *A History of South Africa: Social and Economic* (Oxford University Press: London, 1942), p.67. For a more recent economic history see Feinstein, C. *An Economic History of South Africa: Conquest Discrimination and Development* (Cambridge University Press: Cambridge, 2005).

² Wheatcroft, G. *The Randlords: The Men who made South Africa* (Jonathan Ball: Johannesburg, 1985), p.22.

³ De Kiewiet, *A History of South Africa*, p.68.

banks liable to collapse in a storm or even in a stray financial ill wind.”⁴ In addition, unprecedented droughts and the ravages of insect pests made the crisis harder to bear. As South Africa had no other large and flourishing industries from which it could generate revenue and extrapolate itself from its dire financial position, the economic recession endured for the better part of a decade.

In the midst of this economic depression the first diamonds were discovered in the vicinity of the Orange River, 600 miles north-east of Cape Town. The discovery of diamonds in 1867 is an enormously significant milestone in the history of South Africa as it was this discovery, and subsequent development of a diamond mining industry, that not only ended the region’s first economic recession but also enabled industrialisation and economic growth to commence on an unprecedented scale.

This chapter aims to examine the history of the early development of the diamond mining industry. In particular, the chapter will focus on the various pieces of legislation that were introduced over a ten-year period to govern the constantly changing requirements of diamond mining. The chapter will start with an examination of the initial alluvial diggings on the Vaal River and the regulations that were introduced to govern diggings and ensure the philosophy of ‘diggers’ democracy’. The chapter will then analyse the shift from alluvial to dry digging and the regulations that were introduced by the Orange Free State, and then by the British Government, to govern mining on the new diamond fields. An examination of the development of the mining industry and how this development necessitated a change in mining legislation will then be undertaken. The chapter will conclude with a description of the amalgamation of the diamond mines in the latter part of the 1870s as well as an examination of the final piece of legislation that was introduced by the Government prior to the incorporation of Griqualand West into the Cape Colony in October 1880.

The year 1867 marked a phenomenal turning point in the history of South Africa for it was in that year that the first diamonds were discovered in the vicinity of the Orange River. The initial discovery of these gems was met with much scepticism from both geologists and colonialists who firmly refuted the idea that the South African interior could be richly endowed with diamonds.⁵ However, such scepticism was dismissed in

⁴ Wheatcroft, *The Randlords*, p.22.

⁵ Kanfer, S. *The Last Empire: De Beers, Diamonds and the World* (Hodder and Stoughton: London, 1994), pp.26-27.

1869 after the discovery and sale of the 83½ carat Star of Africa diamond, which was sold in London for £30 000.⁶ At the same time, a number of alluvial diamonds were discovered on the banks of the Vaal River. The news of the sale of the Star of Africa and the discovery of more diamonds dispelled all doubts of the region's potential mineral wealth and brought in a wave of British, Dutch and American diggers and diamond dealers. "The success of the first systematic prospection by a party of Californians, Australians, and a Brazilian miner at Klipdrift on the north bank of the Vaal early in 1870 encouraged still more adventurers to invest time and savings while the strike lasted."⁷ By the end of 1870, there were more than five thousand diggers stretched along 80 miles of the Vaal River.

However, this area along the banks of the Vaal, which was frantically rushed by diamond prospectors, was disputed territory. The river diggings and the surrounding farms were located on land that had been contested by Griquas, Transvaalers, and Free State burghers since the 1850s. Thus, possession of such farms and river claims rested on a mixture of titles issued by Griqua chiefs and the Government of the Orange Free State and South African Republic. "For none of these titles was there a clear definition of the subsoil rights for owners, contending governments, or the diggers who occupied them by a mixture of negotiation and assault in strength."⁸

The first of these territories that attempted to assert authority at least over part of the burgeoning river diggings was the South African Republic. In 1870, the Republic's President, Marthinus Wessels Pretorius, assumed control of the north bank of the Vaal River as well as the mining village of Klipdrift. In an attempt to derive some financial benefit from the river diggings, Pretorius granted three men a monopoly of diamonds on the north bank of the Vaal River for twenty-one years.⁹ Such blatant monopolisation resulted in a mass revolt by the thousands of diggers that had been excluded from the deal. The riotous diggers subsequently declared the territory on the north bank of the Vaal an independent Diggers' Republic.¹⁰ The creation of the Republic, which was formally known as the Diamond Diggers'

⁶ Ibid., p.28.

⁷ Newbury, C. *The Diamond Ring: Business, Politics, and Precious Stones in South Africa, 1867-1947* (Clarendon Press: Oxford, 1989), p.11.

⁸ Ibid., p.12.

⁹ Wheatcroft, *The Randlords*, p.32.

¹⁰ Meredith, M *Diamonds, Gold and War: The Making of South Africa* (Jonathan Ball: Johannesburg, 2007), p.24.

Protection Association, would prove to be a significant milestone in the history of diamond mining legislation as it was within this brief era of diggers' republicanism that rules and regulations governing alluvial diamond prospecting were first introduced.

Following the establishment of the Diggers' Republic, President Stafford Parker lost no time in implementing rules and regulations to govern the alluvial diamond diggings. The presence of the old diggers from the alluvial gold fields of California and Australia was of considerable significance in the formation of the first regulations. "These men brought with them certain ideas and recollections of diggers' law prevailing in the earlier days of gold-seeking in America and Australia, and many of these practices and traditions were readily adopted by the community on the Vaal."¹¹ To these veteran diggers was owed the limit of the size of claim, the prejudice against monopoly of claims, the confiscation of non-working claims, and the promotion of the rights of the miner above those of the rest of the community.¹² Thus, the fundamental clauses, which controlled the initial diamond mining industry, were based upon established laws and practices that had governed the distant gold fields of California and Australia.

The main clauses of these rules drawn up in 1870 stipulated that no person was to have more than one claim so that the thousands of diggers could each own a claim: that the size of the claim was to be limited to twenty square feet; and that no person was to employ more than five black labourers.¹³ Most notably, these rules included a 'jumping' or confiscation clause for non-working of claims, a concept that had been practiced on the gold fields of California. Essentially, this clause stated that no person was to be absent from his claim for more than three working days without risk of forfeit of the claim.¹⁴

Generally speaking, however, the rules and regulations under which the diggers worked caused no injustice, and were well suited to their requirements. The men employed were essentially diggers who looked after their own concerns...and the capitalist was unknown, nor indeed was he

¹¹ G. 86-'82, 'Diamond Mining Commission, Draft Report', p.2.

¹² Ibid.

¹³ "Rules and Regulations for the Vaal River Diamond-Fields", 1870, South African Library.

¹⁴ Ibid., Clause IX.

required in working out the little patch of gravel, sometimes only a few inches in depth, which represented the one claim which each digger occupied.¹⁵

Although the Diggers' Republic was only able to retain its independence for a few months before capitulating to the authority of President Pretorius, the diggers were successful in establishing and retaining rules and regulations for the alluvial diamond mining industry, the effects of which would continue to resonate through the mining industry for the next decade.

Significantly, these first diggers that arrived to prospect for alluvial diamonds and who contributed to the formation of the first diamond mining rules and regulations had no understanding of the true nature of diamond geology. Prior to the discovery of South Africa's four great kimberlite pipes twenty miles south of the Orange River, it was a widely accepted hypothesis that diamonds had an alluvial source although the exact origin of the sparkling gems remained unsolved. This was due to the fact that the diamonds of India and Brazil, which were the two main sources of the precious stones, had been washed out of their original matrix.¹⁶ A similar phenomenon had occurred in South Africa whereby the tops of the kimberlite pipes had been weathered down and the diamonds had been washed into the Vaal and Orange rivers. Consequently, while there were diamonds to be discovered in the alluvial claims there were too many people competing for too few diamonds and the supply of such stones was soon exhausted.¹⁷ With the demise of the river diggings, prospectors turned their attention to farms twenty miles south of the Vaal River where diamonds had been discovered and sporadically mined since 1869.

In 1869, Boer prospectors discovered diamonds at the head of two of South Africa's greatest kimberlite pipes on the adjacent farms of Du Toit's Pan¹⁸ and Bultfontein, south of the Vaal River diggings. As the true geology of diamonds was yet unknown to diamond prospectors, these 'dry diggings', as they came to be known, were thought likely to offer only modest rewards and, thus, received little attention during the zenith of the river diggings. However, with the demise of the river diggings,

¹⁵ G. 86-'82, 'Diamond Mining Commission. Draft Report', p.3.

¹⁶ Wheatcroft. *The Randlords*, p.13.

¹⁷ Worger, W. *South Africa's City of Diamonds: Mine Workers and Monopoly Capitalism in Kimberley, 1867-1895* (Yale University Press: London, 1987), p.13.

¹⁸ This farm was legally known as Dorstfontein but had adopted the name Du Toit's Pan after a previous owner Abraham du Toit.

prospectors turned their attention to these dry diggings and initiated a more systematic and intensive search for diamonds in this area. As the finds of diamonds on these dry diggings increased, prospectors began to realise that the understanding that diamonds had an alluvial origin was in fact false. By the end of 1870, Du Toit's Pan and Bultfontein were at the centre of diggers' attention, as reports of considerable diamond finds on these farms in August and September attracted hundreds of men from the river.¹⁹

As had been the case with the river diggings, no constituted authority governed the area of the new diamond fields, nor was there established mining legislation in force to administer the burgeoning dry diggings. Thus, diggers asserted their right to prospect wherever they staked out claims.

At first, the diggers confined their attention to Du Toit's Pan. Adriaan van Wyk, owner of Du Toit's Pan who threw his farm open to diggers in 1870, took initiatives into his own hands and devised regulations to govern diamond prospecting on his property. At first, in return for the right to prospect the farm, Van Wyk charged a royalty of a quarter of the value of diamonds extracted from his property. This right was soon altered when Van Wyk introduced a system whereby a thirty square-foot claim, which was to become the standard size claim on the diamond fields, could be prospected for a royalty of 7s. 6d. a month.²⁰

However, prospecting arrangements were not amicable on the adjacent farm of Bultfontein where diamonds had also been discovered in significant quantities. At the commencement of the rush of diggers to these dry diggings, Bultfontein was purchased by the Hopetown Diamond Mining Company.²¹ Arguing for the sanctity of private property, the company attempted to close the farm to diggers and prevent further mass prospecting. However, in early 1871, Bultfontein was invaded by a large body of diggers from Du Toit's Pan who asserted their right to search for diamonds in defiance of the proprietor. After some weeks of tense standoff between owner and diggers, the proprietor of the farm was able to remove the diggers with the assistance of the Free State authorities but soon consented to allow the search for diamonds on a similar basis to the neighbouring Du Toit's Pan property.²² This was the first instance in the history of the diamond fields where the rights of diggers and landowners was

¹⁹ Worger, *South Africa's City of Diamonds*, p.14.

²⁰ Wheatcroft, *The Randlords*, p.33.

²¹ Newbury, *The Diamond Ring*, p.12.

²² G. 86-'82. 'Diamond Mining Commission, Draft Report', p.3.

called into question. Due to the sheer number of diggers on the new diamond diggings and the lack of a constituted authority, "diggers could assert their dominance over land owners and ensure that merchants did not get control of the diamond fields."²³

Whereas there had been at most five thousand prospectors at the river diggings, by the end of 1871 there were nearly fifty thousand people encamped on Du Toit's Pan and Bultfontein, as well as on the adjacent farm Vooruitzicht where two new diamondiferous areas had been located in April and July, respectively, of that year.²⁴ Such a massive influx of prospectors to these areas and the continuous discovery of thousands of carats of diamonds throughout 1871 attracted the attention of both the Orange Free State and the British Governments. However, it was the Government of the Orange Free State, which then exercised *de facto* rule over the territory, that took the initiative of assuming control of the diamond fields and implemented legislation to govern the process of mining these four extensive diamond deposits. In May 1871, the Government of the Free State passed Ordinance III the immediate objective of which was to define and consolidate into law the somewhat vague arrangements between the proprietors of farms already thrown open as public diamond fields and the mining communities congregated upon them. The Ordinance also aimed to bring such farms and others, which might afterwards be opened as diamond diggings, under the control of the Free State Executive in order to establish the new mining industry on a firm basis.²⁵

The Ordinance is worthy of attention as being the first attempt to legislate, by a constituted authority, on the rules and regulations of diamond mining as well as an attempt to decide between claims of the digging community and private rights of proprietors. Two fundamental principles, which were to remain in force for the first decade of mining on the diamond fields, were first established in this particular Ordinance: the limitation of the size of the claim to 30 square feet and the system of registration of miners, which was the origin of miner's certificates. The Ordinance also stipulated that a payment of a licence of not less than ten shillings per month had to be paid by each digger for his claim, one half of which was to go to the proprietor of the farm. Moreover, the Ordinance stated that no licence to dig should be granted

²³ Worger, *South Africa's City of Diamonds*, p.15.

²⁴ Two kimberlite deposits were discovered on Vooruitzicht in 1871: De Beers' was discovered in April and Kimberley, which was the richest of the four kimberlite pipes, was discovered in July.

²⁵ Newbury, *The Diamond Ring*, p.14.

to a native; that no person should hold more than two claims at the same time; and that any claims abandoned for more than eight days should be liable to be taken possession of by any person taking out a licence for them.²⁶

However this Ordinance and its corresponding mining regulations were not to remain in force for longer than a few months. At the same time that this Ordinance was promulgated, the British began to extend their influence over the area and in October 1871, after a diplomatic correspondence, which is beyond the necessity of this chapter to explain²⁷, the territory known as Griqualand West was formally annexed to the British Empire. While some of the diggers had been well disposed towards the Orange Free State sovereignty because of the Boer Governments' unsentimental treatment of blacks, most of the diggers welcomed the annexation of the territory by the British.²⁸

The British immediately recognised the importance of the diamond fields and the necessity of governing the diggings in such a manner that would bring benefit to their Empire. Thus, at the same time that the annexation of Griqualand West was announced, rules and regulations were promulgated to govern the working of the diamond fields under the new British administration. Such rules and regulations were contained within the lengthy Proclamation No.71 of 1871, which was printed in the *Government Gazette* on 28 October.

Significantly, Proclamation No.71 did not deviate from the essential clauses that had been promulgated by Ordinance III. In this respect, the size of claim, the restriction of occupation, and the power of confiscation for non-working of claims were not altered with the introduction of the new legislation. The Proclamation stated that each digger was entitled to work two thirty square foot claims for a monthly licence fee of ten shillings. There was no limitation placed on the number of black workers who could be employed. Significantly, unlike the unsentimental Boer Government, the British refused to sanction the prohibition of black licence holders

²⁶ G. 86-'82, 'Diamond Mining Commission, Draft Report', p.4.

²⁷ The annexation of Griqualand West is a subject that has been extensively covered by many historians most notably, C.W. De Kiewiet, *The Imperial Factor in South Africa* (Cambridge University Press: London, 1937); C.F. Goodfellow, *Great Britain and South African Confederation, 1970-1881* (Oxford University Press: Cape Town, 1966); W. Worger, *South Africa's City of Diamonds: Mine Workers and Monopoly Capitalism in Kimberley, 1867-1895* (Yale University Press: London, 1987).

²⁸ Wheatcroft, *The Randlords*, p.38.

and, thus, some claims continued to be worked by black proprietors.²⁹ The British realised the racist ambitions of the diggers and deplored it. "They wanted to exclude all persons of colour from the exercise of franchise as well as the right to own claims 'and to grant the privilege to white persons purely because they are white'."³⁰

Thus, the essential differences between the two pieces of mining legislation were more in spirit than in detail. However, one essential difference was the role of the Government in mining affairs. The ruling principle of the Free State law was the management of the diggings by the diggers themselves, but under the new law the power of the Mining Inspector, who was appointed by Government, was significantly increased. The effect of the new law and of the new administration was the virtual abolition of the diggers' committee and the assumption by the Government of the responsibility of more administrative detail, which was perceived to greatly interfere with the interests of the mining community.³¹

Despite this, the diggers were content with the newly promulgated legislation as the inherent nature of the rules and regulations subscribed to the philosophy of a diggers democracy. Proclamation No.71 essentially enabled every prospector to own at least one claim on the four great diamond mines and, simultaneously, prevented any monopolisation of the industry by capitalists. This was certainly evident by the end of 1871 as the four great mines of De Beers', Kimberley, Bultfontein and Du Toit's Pan had been divided into 3 200 full claims, many of them further subdivided.³² However, as the thousands of diggers commenced their frenetic search for diamonds across the four mines and dug ever deeper into the earth, it would soon become evident that the process of mining kimberlite pipes militated against the individual digger. As technological and operational problems began to increase, individual diggers could not afford the mounting costs of mining. Therefore, it became evident within a few years that this legislation was incapable and, indeed, obstructive, to the further development of the diamond mining industry.

The promulgation of legislation under the new British administration enabled thousands of individual diggers to undertake a frenetic search for untold fortune in the depths of their claims. Indeed, the diggers commenced this search with so much zeal

²⁹ Worger, *South Africa's City of Diamonds*, p.17.

³⁰ Wheatcroft, *The Randlords*, p.55.

³¹ G. 86-'82, 'Diamond Mining Commission, Draft Report', p.5.

³² De Kiewiet, *A History of South Africa*, pp.92-93.

that production and output of diamonds increased exponentially over the next few years. This can be evidenced by the fact that, in 1871, the total value of diamonds that were exported from the diamond fields amounted to £403,349, but, by 1873, this figure had more than tripled to £1,649,450.³³ However, this massive increase in production belied the many and mounting problems that were experienced by the diggers on the diamond fields.

Of these problems, the organisation of claims and use of technology posed the greatest threat to the productivity of the individual diggers. The concept of private claim holding allowed each digger to remove the ground within his thirty square foot, or often smaller sized, claim vertically downwards in his own time. However, not all men worked their claims at the same rate and by 1872 some energetic diggers, especially on the periphery of the diamond mines had reached a working depth of 30 metres.³⁴ Consequently, ground slides between adjoining claims became a dangerous and regular feature and by 1872, the roadway system that had been introduced at the commencement of mining the various kimberlite pipes to allow access to the centre claims, was doomed to failure.³⁵ Thus, new haulage technology, which proved to be expensive in the pre-industrial conditions of South Africa, had to be introduced in order to allow access to the inner claims. As the working depth of the four mines descended ever deeper it became evident that the mining of thirty square foot claims on an individual basis was unrealistic and thus, amalgamation was increasingly recognised as a solution to the rising costs that followed with increased depth of working.

Another problem that was faced by the diggers was the availability of African labour. The diamond diggers regarded the cost of wages for black labour as an essential part of their investment and had to be kept low in order to compete profitably.³⁶ However, the price and duration of such labour in an industry that was harshly and inefficiently managed, as well as dangerous to diggers and their employees, was a significant problem. Owing to the shortage of labour on the diamond fields, black labourers could pick and choose their employers depending on

³³ S.W. Silver & Co., *Handbook to South Africa* (Cape Town, 4th ed. 1891), p.108.

³⁴ Webb, 'Mining in South Africa', pp.169-170.

³⁵ *Ibid.*, p.170.

³⁶ Mining labourers were paid about £26 a year including food, while white overseers received £120 a year and a percentage of the diamond sales. Newbury, *The Diamond Ring*, p.19.

the level of danger of the claim and the rate of wages. This inevitably drove up the cost of labour and operational costs during the first years of mining on the diamond fields.³⁷

Then in 1873, financial disaster struck the diggers. In that year, owing to the sheer volume of diamond output from the Kimberley mines and the economic recession that gripped Europe, the price of diamonds in London fell by one third. Whereas the diggers had been able to get 30 shillings a carat before 1873, the crisis resulted in a drop in price per carat of 10 shillings. The solution engineered by the diggers was to increase production, but the more diamonds that were produced and flooded the European market, the lower the price went and at 20 shillings a carat, many diggers could not survive.³⁸

These combined factors – inefficient methods of working, costly labour, falling diamond prices, and limited finds for the majority of diggers – cumulatively produced widespread hardship and often poverty.³⁹ In addition to these challenges faced by the diggers, the management of the mines was in a state of anarchy. The diggers' committees, which had been established on each of the four mines as a representative body of the individual claim holders, was in constant conflict with Government over the management of the mines. "The diggers' committee, without any real powers, seemed to exist for the purpose of thwarting and impeding the Government Inspector, who exercised a kind of despotism tempered by mass meetings and votes of indignation."⁴⁰

It was within this troubled context that newly appointed Lieutenant-Governor Richard Southey appointed a Commission in February 1873 to consider the working of the mines, the effectiveness of the regulations under which the mines were worked, and to report upon the measures they recommended to be adopted for the future management of the mines.⁴¹ The members of this Commission included representatives of the Griqualand West administration as well as representatives from the diggers' committees of the four mines.⁴²

³⁷ Worger, *South Africa's City of Diamonds*, Chapter Two.

³⁸ Meredith, *Diamonds, Gold and War*, p.37.

³⁹ Worger, *South Africa's City of Diamonds*, p.21.

⁴⁰ G. 86-'82, 'Diamond Mining Commission, Draft Report', p.7.

⁴¹ *Government Gazette*, Proclamation No.80.

⁴² These members included John Blades Currey, Secretary to Government; Sydney Shippard, Acting Attorney-General; Charles Parsons, late Chairman of the Kimberley Mine Diggers' Committee; Stanley Lowe, Chairman of the De Beers' Diggers'

The Committee presented their report to Southey in June of that year. The principal recommendations of this Commission were the formation of mining boards for each of the mines to replace the diggers' committees and the introduction of miners' licences to better monitor the working and ownership of claims.⁴³ The commission also concluded that the practice of 'jumping' did not ensure uniform working of the mines and recommended some modification. "It suggested that claims should be forfeited and auctioned after a warning notice had been served, as it believed some security should be given to 'miners in the possession of their claims for which they have given valuable consideration in work and money'."⁴⁴ It should be noted that the 'jumping' system, which had been first adopted by the Californian diggers on the Vaal River alluvial claims, safeguarded the central plank of diggers' democracy and, thus, prevented the emergence of large claim owners. Although the commission presented its report to Southey in June 1873, it was some months before the recommendations were implemented. This was due to the fact that, at the same time, a debate was raging amongst the various stakeholders in the Kimberley diamond mining industry as to the role that Government should adopt with regard to the administration of the mines.

While Southey and his administration deliberated on this report, the various players within the diamond mining industry began to realise the necessity for state intervention to rationalise the working of the mines. "Yet share workers, claim holders, speculators, landed proprietors, and merchants did not necessarily share the same vision of the future or of what the role of the state should be."⁴⁵ The majority of claim holders looked to the state to protect the ideal of a diggers' democracy and called for continued restrictions on the maximum size of claim holdings in order to keep out speculators and retain the mines in the hands of small diggers. On the other hand, the more successful claim holders contended that there should be no state-enforced limitation on claim holding. From their perspective, the future of mining lay with large capitalists, financed by European investors, working the mines in large blocks of claims. The proprietors of the farms saw economic advantage in both small

Committee; and William Stamper, late Chairman of the Du Toit's Pan Diggers' Committee.

⁴³ G. 86-'82, 'Diamond Mining Commission, Draft Report', p.7.

⁴⁴ Quoted in Turrell, R.V. *Capital and Labour on the Kimberley Diamond Fields, 1871-1890* (Cambridge University Press: London, 1987), p.34.

⁴⁵ Worger, *South Africa's City of Diamonds*, p.26.

holding and company production: the former scale of organisation offered considerable income from the great number of people required to pay licence fees, the latter from the equally large rates that could be levied on companies. Finally, merchants looked to the state to continue claim holding restrictions as small holding offered the greatest benefits, since the extent of their income was more a product of population size than of efficiency of production.⁴⁶

As this debate raged through Kimberley's mining community, Southey's administration was deliberating its own role within the future mining industry. Despite these conflicting demands on the role of the State, the fundamental factor that was driving the Griqualand West administrations' interest and interference in the mining industry – as had been the case in the Cape Colony – was the generation of revenue. In 1874, "two-thirds of government revenue came from sources outside the mining industry, largely from licence fees levied on merchants, while the bulk of the third derived from the mining industry came from licence fees collected from claim holders."⁴⁷ Thus, a reduction in either the number of claim holders or merchants would significantly reduce the state's revenue. However, as it was projected that the State would have a deficit exceeding its income by 50% in the financial year of 1874, Southey's administration could not afford to heed the will of proprietors and capitalists to reduce the number of claim holdings. Thus, it was the necessity to generate more revenue from the claim holders that ultimately induced Southey to intervene in the working of the mines and to alter the rules and regulations which then governed the mining industry.

In May 1874, the Lieutenant-Governor promulgated extensive new rules and regulations to govern the management and working of the mines, which were also designed to replace those outdated regulations contained within Proclamation No.71. The basis for the new mining regulations was the recommendations made by the Commission in 1873 as well as the Government's need to generate more revenue from the mining community.

The most notable provision of these new regulations was the alteration in the number of claims that could be owned by an individual digger or company. Whereas Proclamation No.71 had stipulated that each digger could own a maximum of two claims, the new Ordinance allowed each person or company to own a maximum of

⁴⁶ Ibid., pp.26-27.

⁴⁷ Ibid., p.28.

ten claims.⁴⁸ This clause was inserted into the new regulations as Southey recognised the fact that the effective management of the diamond mines required amalgamation of claims in some capacity. Thus, this clause aimed to provide for limited amalgamation while, at the same time, protecting the small diggers from complete monopolisation of the industry. In this particular clause, Southey let it be known that:

The immense wealth yet to be obtained from our diamond mines should be carefully guarded, in order that the people of South Africa may derive the profits accruing from them, rather than that such profits should go out of the country to foreign companies.⁴⁹

Another important provision of the new Ordinance was for the election of Mining Boards, which were rendered necessary by the altered conditions of the mines and by the requirements of taxation to meet the difficulties occasioned by falling reef and the rising water table.⁵⁰ Essentially, the Mining Boards were introduced to replace the Diggers' Committees and its powers were more limited than its predecessor. The Mining Board had the power to frame rules for its own guidance and for the management of the mine, subject to the approval of the Government. "The Boards were strictly confined to mining affairs and an Inspector was appointed with responsibility for the safety of life and limb."⁵¹

The regulations also clearly defined the duties of Government Inspectors, which had greatly increased powers; provided for the registration of mines by means of certificates, a provision intended to check the illicit diamond trade; and allowed for the issue of licences to search for new diggings and to search for diamonds in abandoned soil or debris. Interestingly, the new regulations did not prevent black or coloured diggers from owning claims despite growing demand from the white diggers for the imposition of a colour-bar on claim holding.⁵²

These newly promulgated regulations inevitably satisfied none of the various diamond mining industry stakeholders. The main complaint voiced by the majority of claimowners was that the Mining Ordinance placed significant areas of the working and management of the mines in the hands of a Surveyor, who was responsible to Government and not to the Mining Boards. "Claimowners wanted to adjudicate claim

⁴⁸ Ordinance No.10, 1874, Section I, Clauses 17-18.

⁴⁹ Southey quoted in De Kiewiet, *The Imperial Factor in South Africa*, p.52.

⁵⁰ G. 86-'82, 'Diamond Mining Commission, Draft Report', p.8.

⁵¹ Turrell, *Capital and Labour on the Kimberley Diamond Fields*, p.36.

⁵² Kanfer, *The Last Empire*, p.46.

disputes, to decide where machinery should be placed, what rates to be levied, and...what was particularly irksome to owners was the power of the Surveyor to prohibit the working of a claim if he thought danger existed to life and limb."⁵³ The burgeoning capitalists were also dissatisfied with the ten-claim limitation as this hindered the mass amalgamation of the mines and the influx of large European investments, which was needed to upgrade mining technology. Significantly, the main complaint voiced by the majority of claimowners, both entrepreneurs and capitalists, was that black and coloureds were still allowed to own claims under the new Ordinance.

Thus, on the basis of these grievances the majority of claimowners called for the abolition of the Mining Ordinance. However, Southey refused to recognise their objections and made no alteration to the new regulations. Consequently, by the middle of 1875, a crisis loomed with the mines barely working and the disaffected claimowners and share workers parading under arms through the streets of Kimberley and raising the black flag of anarchy.⁵⁴ Ultimately, the Black Flag Revolt called into question the role of Government in the working and management of the mines. More significantly, the diminished authority of the Government on the diamond mines unintentionally led to a significant shift in the ownership and organisation of the mines and, therefore, precipitated a new era of mining on Kimberley's four great diamond fields.

Throughout the years of his liberal administration of Griqualand West (1873-1875), Richard Southey acted as a bulwark against amalgamation and monopolisation of the diamond mines by foreign capital. He fought for the rights of individual diggers and believed that local South Africans, rather than foreign capitalists, should benefit from the profit derived from the mines. However, despite his determination in this regard, Southey's administration was inherently weak and, thus, he could not stem the inevitable tide of amalgamation and monopolisation that is characteristic of all profitable industries. As De Kiewiet noted, "an inexperienced and incompetent Government that was harassed by emphatic orders from Downing Street to practise

⁵³ Turrell, *Capital and Labour on the Kimberley Diamond Fields*, p.58.

⁵⁴ The subject of the Black Flag Revolt has been extensively discussed by Turrell in *Capital and Labour on the Kimberley Diamond Fields*.

economy and yet more economy, that was baulked in its attempts to legislate, could not hope successfully to embark upon a radical industrial experiment."⁵⁵

The final blow to Southey's already weak administration came in the guise of the Black Flag Revolt in 1875. The discontent and anarchy displayed by the majority of share workers and claim owners against the Government during the Revolt was too great a force to be suppressed by Southey's administration alone. Intervention by the imperial state was needed to resolve the crisis and in June, British troops were despatched from Cape Town to disarm the rebels and reinforce Southey's authority. In an analysis of the Black Flag Revolt the imperial authorities decided that Southey had misconstrued his role as administrator and had supported the wrong form of diamond mining. As a result, British Colonial Secretary, Lord Carnarvon, dismissed the lieutenant-governor on the grounds of financial mismanagement.⁵⁶ However, Southey's dismissal did not immediately lead to a review of the 1874 Mining Ordinance that had been the cause of such much discontent on the diamond fields. Such a delay was attributed to the appointment of a new government and subsequent intensive review of the grievances that had led to the Rebellion.⁵⁷

In November 1875 a new government under Major Owen Lanyon as Administrator was introduced. At the same time, Colonel Crossman was appointed to enquire into both colonial finances and the grievances that had led to the rebellion.⁵⁸ Crossman's report, which was to form the basis of the alterations to the 1874 Mining Ordinance, was only completed in May 1876. In his report, Crossman concluded that the "mines should be looked on partly as a municipality and partly as a trading corporation, and government should interfere with them as little as possible."⁵⁹ On this basis, Crossman enacted a measure that would lead to a complete transformation of the mining industry. The principal recommendation emanating from Crossman's report was the abolition of the ten-claim ownership limit. Thus, the abolition of this restriction and the determination of Crossman to cut down the responsibility of Government in the industry made company mining inevitable. "In the field of free competition organised capital alone could hope to work the mines economically and

⁵⁵ De Kiewiet, *The Imperial Factor in South Africa*, p.56.

⁵⁶ Worger, *South Africa's City of Diamonds*, p.29.

⁵⁷ Turrell, *Capital and Labour on the Kimberley Diamond Fields*, p.73.

⁵⁸ Ibid.

⁵⁹ Quoted in Newbury, *The Diamond Ring*, p.42.

profitably, check illicit diamond buying, and regulate the supply of diamonds according to the demands of the world market.”⁶⁰

Following the release of this report, the government opted not to repeal the 1874 Mining Ordinance entirely but rather to alter the regulations according to Crossman’s recommendations. In May 1876, Government repealed Clause 17 of Ordinance 10 and effectively paved the way for the complete amalgamation and monopolisation of the diamond mining industry. The great industrial experiment in diggers democracy was now over and the dawn of the age of the great mining magnates had arrived.

However, the repeal of the ten claim limitation, which was stipulated within Ordinance 12 of 1876, did not immediately precipitate transformation from small- to large-scale production, for a number of factors hindered mining throughout much of 1876. These factors included a 30 percent fall in the carat price of diamonds; access to capital, especially from established financial institutions, was in very short supply; and the costs of African labour rose while the supply of such was declining.⁶¹ Ultimately, these factors combined to cause a depression in the mining industry and brought about a local commercial crisis.

It was only a handful of men on the diamond fields who had sufficient capital to commence the process of amalgamating claims on the four mines. These men, who were destined to become South Africa’s greatest mining magnates, included Cecil John Rhodes, Barney Barnato, Joseph B. Robinson, Alfred Beit, and Jules Porges.⁶² By 1877, this process of amalgamation was well-underway with these men substantially increasing their claim-holding on a monthly basis. This can be evidenced by the fact that, whereas there had been 1,600 claim holders in the rich Kimberley mine in 1872, there were just 300 claim holders in 1877, and of that reduced number fewer than 20 owned more than half the mine.⁶³ Similarly, the 1,441 mining claims in the Du Toit’s Pan mine were held by 214 claimholders and the 1,026 claims in the Bultfontein mine were in the hands of 153 claimholders.⁶⁴ It would take another 12 years before this process of amalgamation had been fully completed and one

⁶⁰ De Kiewiet, *The Imperial Factor in South Africa*, p.58.

⁶¹ Worger, *South Africa’s City of Diamonds*, pp.30-35.

⁶² The story of the rise of these exceptional characters has been well documented by Geoffrey Wheatcroft in *The Randlords: The Men who made South Africa*.

⁶³ Worger, *South Africa’s City of Diamonds*, p.38.

⁶⁴ Wheatcroft, *The Randlords*, p.63.

company. De Beers Consolidated Mines, under the leadership of Cecil Rhodes, then controlled all four mines.

The years that followed, 1878-1879, were not favourable to the consideration of any legislative projects as troubles within and beyond the Province of Griqualand West, including African issues, financial, and political, engaged the attention of the Administration to the exclusion of the management of the mining industry. However, the year 1880 was one of great activity in mining legislation. To this extent, on September 30, 1880, the day before the incorporation of Griqualand West into the Cape Colony, a Proclamation was issued, which repealed Ordinance 10 of 1874 and substituted an amended code of regulations to constitute a new mining law for the province.

These regulations marked a great advance in legislation from the perspective of the burgeoning capitalists and magnates as Ordinance 6 of 1880 embodied most of the principles that had been lobbied for for many years. To this extent, the main purpose of the Ordinance was to reduce the powers of the Government Inspector so that companies had the right to control their own affairs and management of the claims in a manner they deemed fit.⁶⁵

Crucially, the integration of Griqualand West into the Cape Colony and the incorporation of the multi-million pound diamond mining industry into the Cape economy in October 1880 necessitated the re-evaluation of the situation. As the Cape had existing legislation governing mineral leasing and mining regulations it was necessary to embark on a process whereby the established and extensive mining regulations, which governed the mines of Griqualand West, could be incorporated into the legislation of the Colony. The process of re-evaluating the various mining laws commenced a few months after the incorporation of Griqualand West and would prove to be highly influenced by the interests of the emerging diamond magnates.

⁶⁵ G. 86-'82, 'Diamond Mining Commission, Draft Report', p.10.

Chapter Five

Diamond fields incorporation into the Cape Colony and the introduction of the Precious Stones and Minerals Mining Act, 1880-1886

In the mid-nineteenth century, Britain, the colonial powerhouse of Southern Africa, appeared to withdraw from direct political control over the South African interior. However, from the 1870s, the colonial authority adopted an aggressive thrust into the whole of southern Africa under the policy of confederation in an attempt to unite all the separate territories under British sovereignty. Historians have extensively explored Britain's confederation policy¹ but it is necessary to note that one of the primary factors that compelled the adoption of this policy was the discovery and exploitation of valuable mineral deposits in southern Africa in the late 1860s and 1870s and the need to secure labour supplies to mine them. The discovery of diamonds ultimately prompted the annexation of Griqualand West in 1871, and the need to ensure labour supplies for the diamond mines resulted in the annexation of the Transvaal and the Zulu kingdom in 1877 and 1879, respectively.²

The most successful initiative of Britain's confederation policy was the incorporation of the diamond-rich territory of Griqualand West into the governing folds of the Cape Colony in 1880. The incorporation of Griqualand West had a number of political and economic implications for the Cape. The most noteworthy, in the context of this dissertation, was the necessary re-examination of legislation governing the mining industry. At the time of the incorporation, both the Cape Colony and Griqualand West had existing legislation to regulate the prospecting of Crown land and to regulate the mining and management of the diamond mines, respectively. However, the annexation of Griqualand West necessitated the re-examination and amalgamation of the separate mining regulations into a single legislative framework.

¹ See D.M. Schreuder, *The Scramble for Southern Africa, 1877-1895: The Politics of Partition Reappraised* (Cambridge University Press: Cambridge, 1980); C.W. De Kiewiet, *The Imperial Factor in South Africa* (Cambridge University Press: London, 1937); C.F. Goodfellow, *Great Britain and South African Confederation, 1970-1881* (Oxford University Press: Cape Town, 1966).

² See C. Feinstein, *An Economic History of South Africa: Conquest Discrimination and Development* (Cambridge University Press: Cambridge, 2005); L. Thompson, *A History of South Africa* (Jonathan Ball: Johannesburg, 2000).

This chapter aims to examine this amalgamation and consolidation of the mining laws following the annexation of Griqualand West in 1880. The chapter will highlight the state of the diamond mining industry in the early 1880s as well as the political consequences of the incorporation of the diamond territory into the Cape Colony. The bulk of the chapter will focus on the introduction of the Precious Stones and Minerals Mining Act of 1883 as well as an analysis of this Act. This will be followed by an examination of the economic depression in Kimberley between 1882 and 1884 and how this necessitated an amendment to the Act in 1885 and 1886.

With the repeal of the ten claim limitation law in 1876 the era of small holding in Kimberley's four great diamond mines ended and that of capital began. The withdrawal of this limitation on claim ownership was followed by a flurry of claim transactions and the consolidation of individual claims into larger, more operationally-sustainable blocks. The enthusiasm with which the mining community embraced the abolition of the ownership limitation can be illustrated through the amalgamation process of the Kimberley mine: in 1872, 1,600 claimholders owned a claim in the Kimberley Mine but by 1877 the number of claimholders was reduced to 300.³ By the beginning of 1880, three quarters of Kimberley mine was controlled by 12 companies with an aggregate capital of £2.5 million.⁴ Consolidation of claim ownership was no less pronounced in the other three mines.⁵

The consolidation of claims into larger working blocks required the investment of significantly larger amounts of capital. Essentially, in order to circumvent the challenge of reef falls, which was the biggest challenge faced by the mines and which disrupted production for months at a time, it was realised that open quarrying would have to be abandoned in favour of underground mining.⁶ However, vast amounts of capital were required to achieve this transition and, thus, claimholders addressed this financial problem by going public in 1880. Essentially, claimholders sought to attract investment capital to the industry through the

³ Worger, W. *South Africa's City of Diamonds* (AD. Donker: Johannesburg, 1987), p.38.

⁴ Turrell, R. *Capital and Labour on the Kimberley Diamond Fields, 1871-1890* (Cambridge University Press: London, 1987), p.81.

⁵ Worger, *South Africa's City of Diamonds*, p.42.

⁶ Frankel, S.H. *Capital Investment in Africa: Its course and effects* (Oxford University Press: London, 1938), p.60.

establishment of joint stock companies. The formation of publicly-listed joint-stock companies was embraced with much enthusiasm by both claimholders and investors: by 1881, 71 joint stock companies, with an accumulated share capital of £8 million, had been floated in Kimberley, the shares having been issued, in the main, to vendors and promoters of the various companies.⁷ Of these companies, the De Beers, Kimberley Central and French Diamond Mining Companies were to play the most important role in the further amalgamation of the diamond mining industry.

The amalgamation of the diamond mines and the drive to raise investment capital was dominated by a new class of mine owners, which were drawn mainly from diggers, merchants and diamond traders. Of all the mine owners during the early years of amalgamation it was the diamond merchants, men like Jules Porges, Barney Barnato, Joseph Robinson, and Alfred Beit, who bought up most of the claims in the mines. However, it is imperative to include Cecil Rhodes in this class of emerging mine owners despite the fact that he was never in the league of the diamond merchants.⁸

While the emerging mine owners were ardently pursuing the amalgamation and the floatation of joint stock companies, Griqualand West was undergoing significant political changes. The annexation of that British Crown Colony by the Cape of Good Hope had been on the cards since the promulgation of the Cape Act in 1877 but was delayed for a number of years because of the Cape Colony's concerns over Griqualand West's incremental debt.⁹ In 1880, that debt stood at over £500,000 of which £200,000 was war expenditure.¹⁰ In order to overcome the Cape's reluctance to annex the diamond province, Britain agreed to waive the war expenditure debt, and Griqualand West was subsequently annexed to the Cape Colony in October 1880.

Significantly, the annexation of Griqualand West allowed for the political representation of the territory within the Cape Colony's House of Assembly. The Cape Act of 1877 provided for the representation by one member in the Legislative

⁷ Wheatcroft, G. *The Randlords: The Men who made South Africa* (Jonathan Ball: Johannesburg, 1985), p.93.

⁸ The biographies of these are comprehensively contained within B. Roberts, *The Diamond Magnates* (Hamish Hamilton: London, 1972) and G. Wheatcroft, *The Randlords: The Men who made South Africa* (Jonathan Ball: Johannesburg, 1985).

⁹ De Kiewiet, C.W. *The Imperial Factor in South Africa* (Cambridge University Press: London, 1937), pp.91-92.

¹⁰ Turrell, *Capital and Labour on the Kimberley Diamond Fields*, p.105.

Council and four members in the House of Assembly.¹¹ The four members in the House were to be drawn from the electoral division of Kimberley and the rural constituency of Barkly West. The first parliamentary election, in which Griqualand West participated, was held in March 1881. Two of the diamond fields' most prominent figures, J.B. Robinson and Cecil Rhodes, participated in the elections and were elected as two of the four members for Kimberley and Barkly West, respectively.¹²

Robinson entered the Cape Parliament to promote and safeguard the interests of the emerging mineowners. Although Robinson initially declined the nomination, he was persuaded by several influential men to stand for the elections because of his reputation and his significant influence in the diamond mining industry.¹³ During his membership in Parliament, Robinson confined himself to the interests of the mining industry and supported Government on the issues of the day, including the disarmament of the Basuto and the provision of a regular supply of black labour for the mines.¹⁴ While Rhodes entered the Cape Parliament to similarly safeguard and promote his interests in the mining sector, he already showed ambition beyond the interests of diamond mining.¹⁵ In 1881, he had no hesitation in accepting the nomination for Barkly West, as he believed the Cape Assembly to be a good sounding chamber for grandiose ideas.¹⁶

With the election of Rhodes and Robinson as two of the four members for Barkly West and Kimberley, a small but effective political lobby in favour of the interests of the mining capitalists was firmly established in the Cape Assembly. Before the arrival of the mining magnates, the members of the Cape Parliament

¹¹ Laurence, P. *The Life of John Xavier Merriman* (Constable: London, 1930), p.56.

¹² The biographies of these two most famous diamond magnates has been extensively covered by various biographers over the last century and, thus, it is beyond the necessity of this thesis to elaborate upon. See R. Rotberg, *The Founder: Cecil Rhodes and the Pursuit of Power* (Southern Book: Johannesburg, 1988); J. Leasor, *Rhodes & Barnato: The Premier and the Prancer* (Leo Cooper: London, 1997); L. Wienthal, *Memories, Mines and Millions: Being the Life of Sir Joseph B. Robinson* (Simpkin Marshall: London, 1929); J. Lawrence, *Buccaneer: A biography of Sir Joseph Benjamin Robinson, first Baronet* (The Gryphon Press: Cape Town, 2001).

¹³ Roberts, *The Diamond Magnates*, p.111.

¹⁴ Wheatcroft, *The Randlords*, p.94.

¹⁵ Rotberg, *The Founder*, Chapter Six.

¹⁶ Roberts, *The Diamond Magnates*, p.109.

consisted, predominantly, of wealthy white farmers, businessmen and merchants.¹⁷ The effectiveness of the new mining capitalists lay not in numbers, but in the support the members could muster through John Xavier Merriman in his long tenure of office as Commissioner of Crown Lands and Public Works.¹⁸ Merriman had first become acquainted with Rhodes and Robinson in Kimberley when he tried his luck at digging and diamond dealing in the early 1870s.¹⁹ In particular, Merriman and Rhodes shared a close friendship and were closely associated in Parliament.²⁰

Both Rhodes and Robinson, through their association with Merriman, sought to advance the interests of the diamond mining industry. Essentially, the mining capitalists lobbied Government to establish the necessary infrastructure for the expanded reproduction of mining capital:

First and foremost, they wanted a railway from the Cape...Secondly, they wanted to ensure a constant labour supply through control, directly or indirectly, of the labour catchment areas and migration routes. Thirdly they sought a fortress of protective legislation for the diamond industry...Lastly, they asked for legislative sanction for the increased coercion of African labour in Kimberley.²¹

Rhodes and Robinson lost no time in promoting these interests, as well as ensuring the success of their own investments and diamond interests. Soon after their arrival in Cape Town and debut in the House of Assembly, Prime Minister Thomas Scanlen established a Diamond Mining Commission in September 1881 to investigate the state of the diamond industry and to make recommendations for its improvement.²² In effect, this meant formulating legislation to improve the working and the management of the mines. The members of this Commission included Merriman as Chairman, Crown Prosecutor Leigh Hoskyns, Cecil Rhodes, and J.B. Robinson. The Commission also included George Kilgour and Anthony Goldschmidt who were managers of prominent diamond mining companies involved in the battle to amalgamate the diamond mining claims and who, like Rhodes and Robinson, sought to promote further investment in the mines to facilitate increased operational

¹⁷ McCracken, J.L. *The Cape Parliament, 1854-1910* (Clarendon Press: Oxford, 1967), p.55.

¹⁸ Newbury, *The Diamond Ring*, p.57.

¹⁹ Laurence, *The Life of John Xavier Merriman*, pp.14-15.

²⁰ *Ibid.*, p.16.

²¹ Turrell, *Capital and Labour on the Kimberley Diamond Fields*, p.107.

²² *Government Gazette*, Government Notice No. 1069, 1881.

performance. Thus, it can be argued that the Commission, and its subsequent report, was biased in favour of the needs of the mining capitalists.

The commission took evidence from six leading mining companies (which included De Beers, Kimberley Central, the Standard Company, the Barnato Company, the French Diamond Mining Company, and the Rose Innes Company) the mining boards and some of the river diggers. By examining the mining companies, boards and the diggers, the Commission was able get a comprehensive view of the effectiveness of mining regulations then in force. From that evidence, the Commission was able to make recommendations to improve the working and management of the mines. Those recommendations were contained in the report that was presented to the House of Assembly in early 1882. Essentially, the report argued that the ordinances and proclamations, which had been promulgated in the 1870s, and were still in force at the time of the publication of the report, were outdated and inhibited the effective management of the mines:

The anomalies arising from this development meet us at every turn. The wealthy capitalist who has a quarter of a million invested in the mine, is still called a "digger"; while the property from which he draws his wealth is still supposed to be marked out into arbitrary divisions called "claims", each of which, though it may be worth ten thousand pounds, is of the same size, goes by the same name, and pays the same licence as the little patch of gravel on the river side, which was possibly not worth ten shillings.²³

The recommendations that were contained within the report touched on all of the essential areas of the diamond mining industry, including prospecting on Crown and private property, alluvial diggings, mining boards, abandoned claims, mining certificates, and salting ground or depositing diamonds for the purpose of discovering them afterwards.²⁴ The recommendations made by the Commission were extensive and stretched across nine pages, referring to the most influential factors encouraging prospecting and streamlining mining operations. The most significant of these recommendations included: the abolition of mining certificates or licences, which was believed to be an antiquated measure, originally introduced to curb illicit diamond dealing and stealing²⁵; the reward for the discovery of new deposits; the right to prospect on private property with due compensation paid to the proprietor; the

²³ G. 86-'82, 'Diamond Mining Commission, Draft Report', p.2.

²⁴ Ibid., pp.11-19.

²⁵ Ibid., p.11.

punishment of individuals for salting ground with diamonds, which had become a regular occurrence as individuals sought to increase the value of land; the distribution of two claims for each individual in newly discovered mines; the allocation of a depositing area for all claims; the reduction of alluvial digging licence fees to one half of the present rate; the transfer of abandoned claims into the ownership of the Mining Boards; and the abolition of the Mining Boards should the amalgamation of all claims into one mine under the control of one company occur.

The outcome of this report was the introduction of the Bill for the Establishment, Working and Management of Alluvial Digging and Mines of Precious Stones and Minerals in August 1883.²⁶ It is interesting to note that this Bill was only introduced after the promulgation of the Diamond Trade Act in 1882. This Act legislated the terms upon which diamonds could be traded in the Cape Colony and aimed to curb the rife trade in stolen diamonds. Curbing this illicit trade was a fundamental priority for the mining capitalists, as it was believed that £3 million worth of diamonds a year were stolen and traded.²⁷ However, once this Bill had been promulgated and the threat of illicit diamond buying had been somewhat alleviated, the mining magnates were able to turn their attention towards the management of the mines.

The Bill for the Establishment, Working and Management of Alluvial Digging and Mines of Precious Stones and Minerals effectively proposed to repeal nearly all previous regulations and legislation affecting precious stones and minerals and enacted new provisions for the establishment, working and management of mines. When the Bill was introduced into the Cape Parliament, Merriman explained that the principle of that piece of legislation was to:

Embodify, amplify and define the existing regulations with regard to the rights possessed over private properties on which minerals had been found; also to provide for the management of diggings and mines when discovered; and to place the constitution of the Mining Boards more in accordance with the principles of justice and equity, and to give them certain powers.²⁸

²⁶ *Government Gazette*, 'Bill for the Establishment, Working and Management of Alluvial Digging and Mines of Precious Stones and Minerals' August 10, 1883, p.307.

²⁷ Wheatcroft, *The Randlords*, p.95.

²⁸ *Cape Times*, 'House of Assembly – Mining Bill', August. 13. 1883.

The Bill was an extensive piece of legislation, which aimed to regulate all areas of the mining industry from prospecting to the management of mines. The majority of the 82 clauses contained within the Bill were of a technical or operational nature referring to the working and management of mines and diggings. Significantly, the clauses within the Bill primarily provided for the unique needs of the diamond mining sector at the expense of other established mining sectors such as coal and copper, which had different mining techniques and practices.²⁹ This is evidenced by the fact that a significant portion of the Bill referred to the Mining Boards, which were a management body unique to the diamond mines.³⁰ As the other mining sectors had different mining techniques that were not so capital intensive nor, arguably, hazardous, it cannot be argued that the Precious Stones Bill disadvantaged the effective operation of the other mining sectors.

It can be argued that the Bill gave more weight to the needs of the diamond industry because Merriman, Rhodes and Robinson, were primarily responsible for the creation of this legislation through their participation in the Diamond Mining Commission. Moreover, these three men essentially led and dominated the debates in order to ensure that the clauses that would promote good operational performance and allow for maximum profits would not be compromised during the reading and promulgation of the Bill in the House of Assembly.³¹ This was certainly the case with regard to the purpose of the Mining Boards as both Rhodes and Robinson ensured that the Boards were given financial borrowing power to carry on the work of the mines after major reef falls and flooding.³² This clause reduced their companies' financial burden of clearing away fallen reef and pumping out water from the mines. Similarly, Rhodes, who was contemplating the amalgamation of the mines ensured that the Mining Boards be abolished should the mines come under one owner.³³

It can also be argued that the terms of the act were framed for the diamond mines because the production and value of these mines far outstripped that of the other mining sectors within the Cape Colony. This can be evidenced from the fact that in 1883, more than two-million carats were mined from the four Kimberley mines at a value of £2 742 470, whereas the Namaqualand copper mines yielded 15 000 tons at a

²⁹ *The George and Knysna Herald*, September 1, 1886. 'Gold Law', p.2.

³⁰ Clause 39 to 74 of the Bill refer to the responsibilities of the Mining Boards.

³¹ See *Cape Times*, August 13, August 31, September 4, September 17, 1883.

³² *Cape Times*, 'Mining Bill', August 13, 1883.

³³ Newbury, *The Diamond Ring*, p.58.

value of £300 000.³⁴ Thus, the effective management of the diamond mines, as the main revenue generator in the Cape Colony, was given the highest priority.

The Precious Stones and Minerals Mining Act was promulgated on September 18, 1883, approximately one month after its first introduction into the House of Assembly. The general tendency of the Act was to throw greater power into the hands of the Mining Boards and the executives of companies. The Act was divided into five parts, which referred to both exploration for diamonds and the operation of diamond mines. The five divisions of the Act consisted of prospecting, mines and diggings, mining boards, discovery of precious stones on private property, and miscellaneous necessities. In terms of prospecting, the Act embodied provisions for: the entrance on a private farm for prospecting purposes without the owner's consent, which was a significant clause recognising the rights of prospectors over those of landowners; for the repair of survey damage caused during the prospecting stage; for the report of the discovery of new deposits to the inspector; for powers enabling the Government to test such discovery; to impose penalties for salting; and to determine the size of claims. Clauses were also inserted for affording compensation to the landowner on the proclamation of a mine or digging on his farm; the definition and survey of mining areas around the mine; and the appointment of nominee mining boards. The Act gave the Governor the power to grant leases of Crown lands in which minerals existed; to grant leases of abandoned claims; to make rules for Diggers' Committees; to direct the mode of election of such committees; and to proclaim the regulations for the working of claims and mining machinery. Increased provision was made for the election of Mining Boards and the assessment of claims for voting parties, and the powers and duties of the boards were specified more amply.

The most significant implication of this piece of legislation was the reconstitution of the Mining Boards, which were fundamental in the effective operation of the mines. The Mining Boards were a semi-public body, which served to protect companies against the full costs of keeping the mines operational.³⁵ Essentially, the new Mining Act eliminated the restriction that each company could only have one representative on a Mining Board. As a result of the removal of this restriction, Robinson and Rhodes' dominant companies, the Central and De Beers, effectively took control of the Kimberley and De Beers Mining Boards.

³⁴ *Blue Book of the Cape of Good Hope, 1883*, 'Mines', pp. 617-618.

³⁵ Turrell, *Capital and Labour on the Kimberley Diamond Fields*, p.62.

respectively.³⁶ The other significant implication of the Act, which Rhodes advocated, was the abolition of the Mining Boards when nine-tenths of the mine became the property of a single company. Rhodes' reputation as a monopoly-minded capitalist was clearly evidenced in this particular lobby as it was his intention to eventually amalgamate all diamond mining claims into his own company, De Beers.

The promulgation of the Precious Stones and Minerals Mining Act in 1883 heralded a new legislative era for the mining industry in the Cape Colony. Significantly, this was the first Act legislated by the Cape Parliament that regulated the technical and operational aspects of mining. Every ordinance or law that had been promulgated by the Cape's Legislative Council before 1883 primarily regulated the mineral leasing of Crown lands and did not include stipulations for the conduct of mining operations. Arguably, this can be attributed to the fact that, before the annexation of Griqualand West, there were relatively few mines in operation in the Cape Colony and the limited extent of these operations did not necessitate the promulgation of legislation for their effective operation and management. However, the annexation of Griqualand West and its four great diamond mines, which had an assessed value of £9.5 million in 1881³⁷, into the governing folds of the Cape Colony required the introduction of a new legislative framework that regulated the technical and operational performance of the Colony's largest and most successful industry.

The promulgation of the Act was also significant as it placed the rights of prospectors above the rights of landowners. As this Act gave the prospector the right to explore private land without the consent of the landowner, explorers had a greater right to gain access to both Crown and private land than landowners themselves. This highlights the Government's perception of the importance of mineral discovery.

Significantly, the detailed Precious Stones and Minerals Mining Act became the foundation of subsequent Cape mining legislation. However, the Act was introduced at a time when the diamond mining industry was undergoing a rapid transformation in terms of ownership and operation. As this Act was largely aimed at the regulation of the diamond mining industry in Griqualand West, the changing circumstances of the industry would soon necessitate changes in the original

³⁶ Worger, *South Africa's City of Diamonds*, p.56. The companies were able to achieve this takeover as the new voting system for Mining Boards contained in the Precious Stones and Minerals Mining Act was based on a property qualification.

³⁷ *Blue Book of the Cape of Good Hope*, 1881, p. S7.

legislation. The first alteration to this Mining Law came just two years after the promulgation of the Act and was necessitated by a financial crisis sparked by increased operational difficulties in the Kimberley Mine.

Diamond mining in Griqualand West underwent a rapid transformation in the 1880s as the inevitable economics of heavy industrial capitalism took hold of the industry. This transformation was certainly evident with regard to operational performance as the mines descended ever-deeper into the bowels of the earth and company mining began to dominate production. Essentially, the process of amalgamation which commenced in the mid-1870s, created a situation whereby various companies were able to own enough claims to commence stand-alone underground operations. This resulted in the establishment of dozens of individual, underground mining operations on the same kimberlite pipe. Inevitably, this created significant challenges to the operational performance of each mine. "There were a considerable number of companies in each mine and all of these carried out independent operations, often undercutting the claims of adjoining properties that were not so extensively excavated or, alternatively, allowing their ground to slip and cover competitor's operations."³⁸ Moreover, each company, driven by the need to acquire considerable profit, adapted inefficient and often dangerous methods of working to produce as many diamonds as possible as quickly as possible. The increased scale of mining activities in the various kimberlite pipes inevitably reduced the stability of the surrounding reef and as the great opencast pits descended ever-deeper, reef falls became a regular occurrence, which would often take months to clear. In addition to this, a rising water table was also a significant challenge and large sums had to be invested into pumping out water from the mines.

These challenges were most prominent in the Kimberley Mine, which was the richest and most technically-advanced of all the diamond mines. Essentially, the diamond yield per load of blue ground was higher than that of De Beers, Bultfontein and Du Toit's Pan, and, as a result, mining was pursued more aggressively at the Kimberley Mine as the profits were more lucrative. However, the more aggressive pursuit of diamonds within the Kimberley pit meant that the mine was more subject to reef falls than the other mines. This is evidenced by that fact that, by 1882, the

³⁸ Worger, *South Africa's City of Diamonds*, p.50.

Kimberley Mining Board, which was ultimately responsible for keeping the mines operational by removing fallen reef and pumping out water, had been compelled to spend £1,5 million on reef removal.³⁹ As the mines continued to deepen, reef conditions deteriorated further to the extent that in 1884 alone, the Kimberley Mining Board paid out £1,9 million to remove fallen reef, which had covered a quarter of all the claims.⁴⁰

The Mining Boards relied on annual membership fees from the various claimholders and companies to finance the maintenance of the mines. However, the requirement of such large amounts of capital to keep the mines operational compelled the Kimberley Mining Board to take out loans from the various banks operational in Griqualand West. Thus, as conditions deteriorated in the mine so the debt of the Kimberley Mining Board grew: by 1884, the Kimberley Mining Board owed £245,885 to creditors.⁴¹ The debts were in excess of the rates levied from claimholders and the Kimberley Mining Board found itself in a position whereby it could not repay its debts.⁴² It was at this point that one of the Board's major creditors, the Bank of Africa, tried to sequester properties in the mine. However, the Griqualand West High Court held that normal insolvency laws did not apply to the Mining Boards. The debt incurred by the Kimberley Mining Board was a significant public scandal and was considered a disgrace by many politicians and businessmen, and brought the credit of Kimberley into contempt.⁴³ Ultimately, it was this situation and the increasing debt of the Kimberley Mining Board that was the catalyst to the first alterations of the Precious Stones and Minerals Mining Act.

When the Precious Stones and Minerals Mining Bill was introduced into the Cape Parliament in 1883, one of the main priorities for the introduction of this Bill, argued Merriman, was to give the Mining Boards "certain borrowing powers".⁴⁴ While the Act of 1883 amply stipulated the terms upon which the Mining Boards could borrow money, that piece of legislation did not make provision for the repayment of loans that were incurred before the promulgation of the Precious Stones

³⁹ Newbury, *The Diamond Ring*, p.47.

⁴⁰ *Ibid.*, p.62.

⁴¹ *Ibid.*, p.63.

⁴² *Cape Hansard, Debates in the House of Assembly*, July 16. "Precious Stones Mining Act Amendment Bill", p.420.

⁴³ *Ibid.*

⁴⁴ *Cape Times*, 'House of Assembly – Mining Bill', August, 13, 1883.

and Minerals Mining Act. Thus, in July 1885, the Cape Attorney-General introduced a Bill into the House of Assembly, which had the simple object of placing creditors of the Mining Boards "before the passing of the Act on the same footing as those after the Act."⁴⁵ Attorney-General Upington argued that the Bill would have the effect of "causing the Mining Board to meet its liabilities, and remove the stigma that no doubt at present rested upon it with respect to such heavy liabilities."⁴⁶

This Bill was debated in the House of Assembly during two sittings of the Lower House as some of the Parliament members, including Rhodes and his partner Charles Rudd, had a vested interest in the Mining Boards and the way in which the debts were to be repaid.⁴⁷ The debate centred on the actual amount of debt that was owed by the Mining Boards and focused upon the appropriate method of managing and clearing that debt. After an extensive debate, the Bill was promulgated into law in July 1886. The Precious Stones and Minerals Mining Amendment Act stipulated that all creditors of the Mining Boards be placed on the same footing and, significantly, stipulated the terms under which the debts should be repaid.⁴⁸ Essentially, the Act stipulated that the debt of the Kimberley Mining Board should be repaid by levying a limited rate on licence fees of ninepence per year in the pound and on that basis, the debt of £245,885 would be liquidated in the course of four or five years.⁴⁹

However, just nine months after the promulgation of this Act, the new Commissioner of Public Works, Col. Schermbrucker again raised the contentious issue of the Kimberley Mining Board's debt again as it was believed that it had been inadequately addressed in the Precious Stones and Minerals Mining Amendment Act. This was owing to the fact that the repayment period of 'four or five' years was not long enough to clear such debt. As some politicians and, especially, debtors were averse to the terms of Act No.22 of 1885 and its debt repayment system, a new Bill was introduced in May 1886 to again amend the terms upon which the Mining Boards' debts should be repaid. The objective of the Bill was "to amend Act 22 of

⁴⁵ *Cape Hansard, Debates in the House of Assembly*, July 16, 1885, "Precious Stones Mining Act Amendment Bill", p.420.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*, p.420, 470-471.

⁴⁸ Act No.22 of 1885.

⁴⁹ *Cape Hansard, Debates in the House of Assembly*, May 19, 1886, "Precious Stones Mine Act Amendment Bill", p.247.

1885 so as to remove the limit at present imposed on the power of the court to levy rates for the legislation of the debts of the Mining Boards."⁵⁰ In other words, the fundamental aim of the Bill was to provide the High Court of Kimberley with the power to levy from time to time such rate as they thought proper: a high rate in prosperous times and a lower rate when things were not so prosperous.⁵¹

This mechanism facilitating the repayment of the Mining Board debts was more agreeable to the Cape politicians as debtors had a longer period in which to repay the loans and, thus, in July 1886 the Precious Stones and Minerals Further Amendment Act was promulgated. As well as legislating the new terms of debt repayment, the Act contained other clauses, which primarily sought to adjust some of the ineffective clauses of the 1883 Act. The majority of these clauses related to alluvial diamond prospecting and were included as a result of lobbying undertaken by Rhodes, who represented the interests of the alluvial diamond diggers in his Barkly West constituency.⁵² Essentially, Rhodes ensured that the holder of every alluvial digging should have the right to use and occupy, without extra payment, a piece of ground within the proclaimed area of such digging for the purpose of a residence.⁵³ The Act also stipulated that if any alluvial claim holder intended to sink a shaft to a depth of more than fifteen feet, he would be entitled to mark out ten claims adjoining the original claim in order to search for diamonds underground more efficiently.⁵⁴ In addition, the Act stated that if diamonds were discovered in these claims below a depth of fifteen feet, it would be the miners' duty to report the find to the Mining Inspector within a period of three days.⁵⁵ The inclusion of these two clauses were intended to advance the alluvial diamond mining sector, which was far behind the dry diggings in terms of operational performance and amalgamation. It can be argued that Rhodes lobbied for the inclusion of these aspects in the Act as most of the alluvial diamond diggings were located within Barkly West, the division he represented in the House of Assembly.

⁵⁰ *Cape Hansard. Debates in the House of Assembly*, May 6, 1886, "Mining Boards Debts", p.150.

⁵¹ *Cape Hansard. Debates in the House of Assembly*, May 19, 1886, "Precious Stones Mine Act Amendment Bill", p.247.

⁵² *Cape Hansard. Debates in the House of Assembly*, May 26, 1886, "Precious Stones Mine Act Amendment Bill", pp. 293-295.

⁵³ Clause 1 of Act No. 18, 1886.

⁵⁴ Clause 2 of Act No. 18, 1886.

⁵⁵ Clause 3 of Act No. 18, 1886.

However, this would not be the last amendment made to the Precious Stones and Minerals Mining Act of 1883. The discovery of gold, in the vicinity of Knysna in the 1880s would necessitate further amendments to the 1883 Act and an eventual introduction of new legislation to facilitate the development of a gold mining industry in the Cape Colony.

University of Cape Town

Chapter Six

Gold in Knysna and the introduction of the Gold Mining Law, 1876-1888

For over a century, South Africa has held the position as the greatest gold-producing country in the world. The significant percentage of South Africa's gold production has come from the Witwatersrand gold-field, the single largest gold resource in the world. The sheer immensity of the Witwatersrand gold basin has, inevitably, consumed the gold mining narrative of South Africa. The significant majority of South African mining histories have focused on the discovery and exploitation of the Witwatersrand gold-fields at the expense of other, albeit smaller-scale, mining histories. However, the country has a rich narrative of small-scale gold-mining, including that of the Eastern Transvaal, Namaqualand in the Northern Cape, Knysna on the country's south-eastern coast, and Prince Albert in the Karoo. Despite the smaller-scale of gold mining in these areas the political, social and economic consequences of these mining activities should not be overlooked. This is particularly the case with the Knysna gold rush of the 1870s and 1880s. Although a mere 3 000 ounces of gold was mined from the Knysna gold-fields, the Knysna gold rush was a significant event in the history of the Cape of Good Hope's mineral history, proving to be the catalyst for the change in mining legislation in the mid-1880s.

This chapter aims to examine how the Knysna gold rush of the late 1870s and 1880s influenced and effectively changed the Cape Colony's legislative framework governing the burgeoning mining industry. The chapter will begin with the discovery of gold in Knysna and will provide an analysis of the initial leasing regulations that were imposed by the Government. An examination of the second gold discovery and its impact will then be undertaken. The chapter will then seek to analyse the act introduced in 1887 to facilitate further prospecting in the area. The chapter will conclude with an analysis of the Gold Mining Law introduced in 1888.

Until the mid-1870s gold mining was notably absent from the Cape Colony's steadily expanding mining industry, which predominantly focused on the exploitation of copper, diamond and coal deposits. Nonetheless, it should be noted that this absence

of gold mining was not from a lack of exploration or a want of auriferous deposits in the Colony. Indeed, the Cape was endowed with numerous deposits of gold, as well as a variety of other minerals, including platinum, manganese, tin, asbestos, and iron-ore. However, the nature of the majority of these mineral deposits proved to be so meagre that they would not have been payable should they have been mined on a commercial basis.¹ In fact, gold had been discovered in numerous localities across the Cape of Good Hope during the mid-nineteenth century but the auriferous metal had been dispersed in such small quantities that the exploitation of the gold could not be profitable.² It was only in the mid-1870s, however, that the gold mining fortunes of the Cape Colony began to be altered.

In 1876, a local farmer, James Hooper, discovered a gold nugget near the Karatara River in the Knysna district. Hoping to confirm the value of his find, Hooper showed his discovery to Charles Osborne, the Government-appointed civil and mining engineer who was in the vicinity overseeing the construction of a new road from George to Knysna.³ Osborne had knowledge of the Cape's mineral geology and had undertaken geological surveys on behalf of the Cape Government in previous years. Thus, Osborne was well-placed to determine the significance of Hooper's find. The mining engineer did not underestimate that discovery and, consequently, exhibited the nugget to the House of Assembly later that year.

Parliamentary members were greatly intrigued by the discovery of this nugget and granted the sum of £100 to investigate the area where it had been discovered. The decision to indulge this investigation can partly be attributed to the discovery of gold and the development of a mining industry in the Eastern Transvaal during the early 1870s.⁴ Although the initial finds of gold in the Transvaal were small, they sparked a significant gold rush, with hundreds of prospectors flooding into the area. Such developments could not escape the notice of parliamentarians in Cape Town eager to promote the growth of the local economy and to exploit the development of a gold

¹ The numerous government-commissioned geological surveys conducted during the mid-nineteenth century attest to this fact. See reports in Cape of Good Hope Publications: G. 4-'56, A.29-'71, G.21-72.

² Gold had been discovered in Namaqualand, the Orange River Territory, Port Elizabeth and Smithfield. *The Cape Monitor*, 1854.

³ Parkes, M. *Exploring Knysna's Historical Countryside* (Emu Publishers: Knysna, 1989), p.20.

⁴ See Fisher, W. *The Transvaal and the Boers* (Chapman & Hall: London, 1900), pp.146-148.

mining industry. In addition, the Government was no doubt swayed by the prospecting fever in Griqualand West and the phenomenal numbers of diamonds that were being discovered on a daily basis.⁵

On receiving the grant of £100, Osborne and Hooper sank a shaft and extensively searched the area where the nugget had been discovered. These efforts proved unsuccessful as no further nuggets of a similar size were discovered.⁶ However, the Cape Government was not immediately disillusioned by the lack of further gold discoveries and subsequently commissioned a geologist, Thomas Kitto, to make a survey of the area and report on his findings. Kitto undertook his investigation of the area surrounding the Karatara River in 1877, a year after the initial discovery, and presented his survey to the House of Assembly at the end of that year. In his report, Kitto concluded that, although much of the locality was not gold-bearing there were, indeed, tracts of country that were auriferous:

On making a careful examination of the rocks, I find that a very large portion of the auriferous looking country is non-auriferous, and the rocks of entirely different character, and many other places although slightly auriferous are not sufficiently so to pay for working. But I am pleased to say there are large tracts of country well worth the attention of capitalists, and although Gold is not likely to be found in this locality in large quantities like Australia, California, and Brazil, there is sufficient evidence to lead me to believe that the precious metal will be found in paying quantities.⁷

Kitto's favourable report of the existence of gold included a warning for gold-seeking prospectors. Kitto argued that, because the gold could not be found in concentrated, payable deposits, the Karatara River could not be a poor man's diggings. The locality was "in no way adapted to a rush of people" and Kitto strongly advised "persons with no capital to refrain from going there for the present."⁸

By the time that this report was published in the *Government Gazette*, Hooper's and Osborne's activities had caused a certain amount of interest and excitement in the Knysna and George districts and beyond. Despite the warning note contained in Kitto's report, the lure of gold proved to be too strong. During 1878, a

⁵ See Chapter Four.

⁶ Parkes, *Exploring Knysna's Historical Countryside*, p.21.

⁷ *Government Gazette*, January 3, 1879. Government Notice No.1119, 1878.

⁸ *Ibid.*

number of local and foreign – Californian and Australian – prospectors descended upon the Karatara river valley in search of gold.⁹

However, at this time, no piece of legislation existed to regulate gold prospecting or mining in the Cape Colony. The only legislation that existed at this time was the Mineral Lands Leasing Act of 1877. However, clause thirteen of this act stated that, “no lease granted under this Act shall convey to the lessee any right or title to any gold, silver, or platinum, or to any precious stones, which may be found in or on the land comprised in his lease”.¹⁰ Thus, Cape law dictated that it was unlawful to prospect for and keep gold contained within Crown land. Thus, in order to encourage the exploration of that gold-bearing district and facilitate the development of a gold mining industry, it was necessary for the House of Assembly to promulgate gold exploration regulations.

Influenced by Kitto’s report and the need to accommodate the steadily growing number of prospectors in the district of the Karatara River, the Cape Government introduced the Cape Colony’s first gold-prospecting regulations in January 1879. The regulations, issued under Proclamation No.4 of 1879, were notably simple and limited to five basic clauses stating the rules for the search and digging of gold. These regulations stipulated that each prospector, who could prove that he was not improperly absent from hired service, had to obtain a prospecting licence from the Inspector of Gold Fields; that the licence fee was fixed at £1 10s. per month; that the prospecting licence was subject to a monthly renewal; and that the Inspector of Gold Fields could determine the extent and the position of the land conveyed by each licence. The regulations also stipulated that, where gold had been discovered on private property, the Inspector could only issue licences to the proprietors of the land or to persons authorised by the proprietors to prospect for gold.¹¹ These regulations, however, were only lawful within the area that had been proclaimed a public gold digging, which included the area above and below the Main road near the Karatara River.¹²

These regulations were significant in that, for the first time in the Cape Colony’s history, regulations stipulating the rules for gold prospecting were

⁹ Parkes, *Exploring Knysna’s Historical Countryside*, p.20.

¹⁰ Act No. 9 of 1877.

¹¹ *Government Gazette*, January 14, 1879, Proclamation No.4, 1879.

¹² *Ibid.*

implemented. The fact that the regulations were limited to five clauses is an indication that the Government intended to make gold exploration an accessible activity, legislating few stipulations that would discourage individuals from partaking in prospecting activities.

A mini gold rush followed the proclamation of the gold prospecting regulations in 1879. During that year a number of licences to work claims on the Karatara River were taken out, and a company, the Mossel Bay Prospecting and Gold Mining Company, with a capital of £40 000 in £10 shares, was floated during 1879.¹³ However, the gold rush would prove to be short-lived as, apart from the slender successes of two experienced Australian miners who worked two tributaries of the Karatara River, there was no evidence of gold present in payable quantities.¹⁴ Thus, by the end of 1879, it was reported in the Cape Colony's statistical register that the prospectors had found only small amounts of gold. Such small quantities were insufficient to interest the diggers and thus, the diggings were abandoned towards the end of 1879.¹⁵

Following the abandonment of the river diggings, the House of Assembly did not immediately lose hope of establishing a gold-mining industry in the Knysna district. Consequently, in early 1880, the Government commissioned the Crown geologist, E.J. Dunn, to undertake another geological survey of the area to confirm Kitto's earlier findings that gold did indeed exist in payable quantities.¹⁶ Dunn conducted his geological survey and prospecting expedition within the Knysna district lying at the foot of the Outeniqua Mountains and between the Diep and Homtini rivers. He inspected the claims that had been abandoned and their poor results and it emerged from these investigations that, although traces of gold were found to be present over a large area there was nothing at that time to encourage further prospecting:¹⁷

The result of the prospecting carried on goes to prove that traces of gold exist over a considerable area, but despite the numerous holes sunk in the most favourable situations, nothing more than mere traces have been found, except

¹³ Parkes, *Exploring Knysna's Historical Countryside*, p.20.

¹⁴ Ibid.

¹⁵ *Blue Book of the Colony of the Cape of Good Hope*, 1879, p.55.

¹⁶ G.42-'80: 'Report by Mr. E.J. Dunn on the occurrence of Gold in the Knysna District'.

¹⁷ Parkes, *Exploring Knysna's Historical Countryside*, p.21.

at Van der Walt's River, and at the head of Pot Hole Gully. Even at these localities the rounded, worn character of the gold points to a non-local origin...The work recently done renders it extremely unlikely that payable gold will be found over a large tract.¹⁸

Thus, with the publication of such a pessimistic geological report and the abandonment of the river diggings by experienced diggers, public interest in the Knysna gold diggings waned for a number of years. It would only be in the mid-1880s that gold-fever would, again, grip the Knysna district.

Although the proclaimed Knysna public gold-diggings were abandoned at the end of 1879, prospecting continued on a very limited scale throughout the early 1880s. Local inhabitants and prospectors believed that the existence of gold, which had been detached from auriferous veins in the rocks of the Outeniqua Mountains, was a "fact beyond dispute".¹⁹ The most significant question, however, was whether or not it could be found in paying quantities. A number of gold exploration companies were established in the early 1880s to ascertain the answer to that pertinent question, however, all attempts to find gold in payable quantities continued to be unsuccessful and the Knysna gold fields were abandoned time and again.²⁰ It would only be in 1886 when the first payable gold was discovered in the Knysna district.

Towards the end of 1885, Charles Osborne, having resigned his government appointment as district civil engineer in Natal, returned to the Karatara river – the area where the first gold nugget had been discovered – to continue prospecting for gold on a full-time basis.²¹ Osborne explored and followed the traces of gold he had discovered in 1876 up into the Outeniqua Mountains – an area that would become known as Millwood Gully. This prospecting expedition proved to be more successful than the initial attempts made with James Hooper, as Osborne announced the discovery of gold in paying quantities in one of the tributaries of the Homtini River in

¹⁸ G.42-'80 'Report by Mr. E.J. Dunn on the occurrence of Gold in the Knysna District', p.4.

¹⁹ *The George and Knysna Herald*, April 30, 1884, p.2.

²⁰ Descriptions of these companies can be found in the news columns of *The George and Knysna Herald*.

²¹ Parkes, *Exploring Knysna's Historical Countryside*, p.21.

May 1886.²² Interestingly, this announcement coincided with the discovery of the gold reef in the Witwatersrand.²³

Osborne promptly reported his discovery of payable alluvial gold to the House of Assembly. Intrigued by this alleged discovery, the Commissioner of Crown Lands and Public Works, Colonel Schermbrucker, commissioned Thomas Bain, district inspector of the Public Works Department to “verify or otherwise the alleged discovery of gold in payable quantities made by Mr. Osborne.”²⁴ Bain immediately undertook the geological survey and prospected the site where Osborne had discovered the large quantities of gold. It was reported that, within five hours of sluicing the river gravel, Bain was able to wash out half an ounce of gold.²⁵ Based on the successful outcome of the panning, Bain presented a significantly favourable report to the House of Assembly concluding that, “I cannot but state that Mr. Osborne’s finds are not alone authentic, but that gold exists there in fairly payable quantities.”²⁶

In his report, Bain stated that, based on his gold discoveries, as well as Osborne and Kitto’s conclusions that the region was auriferous, the natural inference was that the tract of country situated between the Knysna and Diep Rivers, the Outeniqua Range and the sea-board was gold-bearing.²⁷ However, like Thomas Kitto, Bain included a warning against a gold rush to that area:

I would strongly deprecate anything like a rush being made, but I am of opinion that if good steady workmen were to combine in small parties, of say three to four, and work by the simple and inexpensive system of sluicing, their labours would be attended with remunerative results.²⁸

Bain’s report included the recommendation that, in order to develop the mineral resources of that district, the Government should throw open the area to the general public and let them practice sluicing until they could show results.

²² *The George and Knysna Herald*, May 12, 1886. ‘Precautions’, p.2.

²³ Wheatcroft, *The Randlords, The Men who made South Africa* (Jonathan Ball: Johannesburg, 1985), Chapter 5.

²⁴ G.46-’86: ‘Report of the recent Gold Discoveries in the Knysna Division, by Thomas Bain, Esq., District Inspector P.W.D.’.

²⁵ *The George and Knysna Herald*, My 19, 1886. ‘Aureola’, p.2.

²⁶ G.46-’86: ‘Report of the recent Gold Discoveries in the Knysna Division, by Thomas Bain, Esq., District Inspector P.W.D.’ p.2.

²⁷ *Ibid.*

²⁸ *Ibid.*, p.3.

In order to thoroughly develop the mineral resources of the country, I would submit that the Government should, without any restriction, throw it open to the general public till the results are manifested, when, if they see fit, the provisions of the Minerals Act might be put into force.²⁹

It is necessary to note, at this point, that during the early 1880s, the legislation governing the Cape Colony's mining industry underwent a significant transformation with the introduction of the Precious Stones and Minerals Mining Act in 1883. Although the Act has been discussed in detail in Chapter Five, it is essential to note that this Act was purposefully framed for Griqualand West and was not operative in any other districts except those that were proclaimed "mining districts" under the said Act.³⁰ In other words, under the Act mineral exploration and mining were not permitted in areas other than those declared mining districts by the Commissioner of Crown Lands and Public Works. Thus, it was necessary that Bain included the suggestion that the Knysna gold field be thrown open to the general public in order to facilitate the exploration and development of that gold resource.

The Government was greatly encouraged by Bain's conclusion that gold existed in the Knysna division in fairly payable quantities. On the back of that report, Col Schermbrucker told the House of Assembly that, "what the Government desired was that such assistance should be rendered as to establish the fact whether there was substantial foundation for proclaiming the Precious Stones and Minerals Act in that district or not."³¹ In other words, while the Government was encouraged by the reports of paying quantities of gold, the fact that Bain, as well as Kitto, had pointed out that the Knysna gold-field could never support a poor-man's diggings, it was averse to encouraging a gold rush to that area. "What the Government wished to guard itself against was...not to hold out to the public at large hopes which might cause a great rush of people to the place and end in great disappointment."³²

On the other hand, the Government did not wish to put a damper upon certain exploration efforts, which had been made up to that point. Thus, while the Government stopped short of declaring the Knysna gold field a public digging under the Precious Stones and Minerals Mining Act, it did implement some measures to

²⁹ Ibid.

³⁰ See Chapter Five.

³¹ *Cape Hansard, Debates in the House of Assembly, 1886*, May 14, 1886, 'Knysna Gold Fields', p. 217.

³² Ibid.

encourage the further exploration of the area. Thus, on May 12, 1886, the House of Assembly passed a resolution, which stated that, in order to encourage the search for gold, concessions would be granted to prospectors who were able to finance and work there themselves. The resolution stated that:

Whereas it has been ascertained that gold exists in the division of Knysna, in this Colony; and whereas there is as yet no certainty that the mineral exists in quantities payable by the ordinary process of working alluvial diggings...it is therefore inexpedient that the division of Knysna shall be proclaimed a mining district under the provisions of the "Precious Stones and Minerals Mining Act, No. 19 of 1883," and whereas it is necessary for a thorough testing of the value of the discovery that certain rights or concessions should be granted to persons willing to employ capital and machinery in working gold-bearing areas, it is in the opinion of this House desirable that the Government be authorised to negotiate with such persons, and to grant them such rights and concessions as in the particular circumstances of each case may be just and equitable provided that no rights or concessions shall be granted which shall be in conflict with the provisions of the "Precious Stones and Minerals Mining Act".³³

Essentially, the resolution allowed diggers to prospect all Crown land within the Knysna division without licence or taxation of any kind, on the understanding that the prospectors would acquire no legal rights to the land.³⁴ Significantly, however, the resolution stipulated that, in the event that it was deemed necessary to officially proclaim the diggings under the Act, all rights and concessions granted under the resolution would no longer be valid.³⁵ Prospectors would thus be compelled to undergo the mineral licence application process again, should the gold field be publically proclaimed. Thus, while the resolution allowed diggers to continue prospecting for gold in the Knysna district, it did not provide the diggers with any protection in terms of mineral and claim rights, as would have been the case under the Precious Stones and Minerals Mining Act.

Many of the diggers strongly disagreed with the arrangement imposed upon them by Government, finding themselves working without the protection of the law. Consequently, sixty claimholders held a meeting at the Millwood gold fields on May

³³ *Cape Hansard, Debates in the House of Assembly, 1886*, May 13, 1886, 'The Knysna Gold Fields', p. 206.

³⁴ G.48-'88, 'Reports of the Knysna Gold Fields and on Gold Mining in the Colony for the Year 1887', p.9.

³⁵ *Cape Hansard, Debates in the House of Assembly, 1886*, May 13, 1886, 'The Knysna Gold Fields', p. 207.

27, to lay down the law for themselves.³⁶ The outcome of the meeting was the establishment of a Diggers' Committee and the adoption of a set of rules for the diggers guidance and mutual protection. The rules stipulated that each claimholder was required to pay a registration fee of one shilling to secure the protection of the Committee; the Committee was to consist of five claimholders; that the size of the claims along the creek be 150 feet and 75 feet from the centre of the stream on each side of the creek; that the size of terrace claims be 150 square feet; that claims were to be marked distinctly by pegs two feet above ground; that all claims had to be represented by one white man; and that claims not worked for six consecutive working days to be 'jumpable'. In addition, the rules discouraged the amalgamation of the claims by stating that no more than three claims could be amalgamated.³⁷

The fact that the rules included a jumping clause³⁸ and prevented the amalgamation of more than three claims indicates that the rules drawn up by the Committee were designed to support a 'poor man's diggings'. Indeed, the fact that 130 claims had been pegged out by the middle of June verified the fact that the Millwood gold field had become a poor man's diggings. Moreover, by the middle of June it was reported that some 200 diggers were "working in comparative secrecy within the mountains", who certainly outnumbered the 12 companies that were working alongside the diggers.³⁹ It is interesting to note that this poor-man's diggings had flourished rapidly in spite of the numerous warnings of Kitto, Bain and Osborne that the Knysna gold field could not support a full-scale gold rush of individual prospectors.

Three months after the proclamation of Governments' resolution and the establishment of rules by the Diggers' Committee, a prospector struck a gold-bearing reef in the Millwood area. Up until this point, the diggers had concentrated on alluvial claims, sieving out specks of gold from the various tributaries of the Knysna and Homtini rivers. However, in August 1886, it was reported by the *George and Knysna Herald*:

³⁶ *The George and Knysna Herald*, June, 2, 1886, 'Legislation at the Gold Fields', p.2.

³⁷ *The George and Knysna Herald*, June, 2, 1886, 'Knysna Gold Fields (communicated)', p.2.

³⁸ See Chapter Four.

³⁹ *The George and Knysna Herald*, June, 16, 1886, 'The Gold Fields', p.2.

There has been a good deal of excitement here for the last day or two owing to a gold-bearing reef having been struck. Diggers were seen frantically rushing about the hills pegging out claims where they supposed or fancied the reef in question was.⁴⁰

In an attempt to verify this rumour, the Government sent P.D. Hahn, Professor of Chemistry at the South African College, to analyse large samples of quartz contained within the reef. Hahn undertook this commission with haste and reported his finds to Government in September. His report was ultimately unfavourable, stating that, although the reef was auriferous, gold did not exist in payable quantities.⁴¹ Based on this negative outcome, the Government concluded that it was not expedient that the Millwood gold field be declared an Alluvial Digging or Mine under the terms of the Precious Stones and Minerals Mining Act.⁴² However, in a Government Proclamation issued at the end of September, the Commissioner of Crown Lands and Public Works declared:

It is nevertheless very desirable that every possible encouragement should be given to further prospecting in the Districts of Knysna and George, and with that object in view the Governor has been moved to proclaim those Districts, with the exception of the small portion of the former comprising the Millwood area, a Mining District under the provisions of the Precious Stones and Minerals Mining Act No. 19 of 1883.⁴³

Although the districts of Knysna and George were proclaimed Mining Districts in this proclamation, only the first division of the 1883 Act, which related to prospecting, was applicable to the area. Essentially, the effect of the proclamation was limited to placing the Government in a position to grant Licences to prospect, and to afford protection to the holders of such Licences in respect to any discovery that they made.⁴⁴ Meanwhile, the Millwood gold field was exempted from the operation of the Act, as the Government believed that complications would arise if prospecting licences were granted for a locality, which was already pegged out into claims.⁴⁵

⁴⁰ *The George and Knysna Herald*, August 18, 1886, 'Latest gold News', p.3.

⁴¹ *Government Gazette*, 'Government Notice – No. 851, 1886', October 1, 1886.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *The George and Knysna Herald*, October 6, 1886, 'The Mining Proclamation', p.2.

Despite Hahn's unfavourable report, prospecting continued unabated in the Knysna district.⁴⁶ However, the Governments' failure to proclaim the Millwood gold field and, moreover, failure to proclaim the gold field under all the Divisions of the Precious Stones and Minerals Mining Act, irked the diggers. As a result, they held a meeting at the Millwood village on December 13, 1886, to discuss the mineral leasing, prospecting, and mining situation in the Knysna district. The outcome of this meeting was the formation of a petition, which was brought to the attention of the Civil Commissioner, as well as the Commissioner of Crown Lands and Public Works. This petition expressed the diggers' belief that gold existed in payable quantities in the Millwood area and that it would prove to be a payable diggings. The petition concluded that it was the unanimous wish of all interested at Millwood that Act 19 of 1883 be proclaimed and that, simultaneously, the Millwood area be proclaimed a Digging and Mining District, in order to give protection to those diggers now in the Fields against prospectors.⁴⁷

The plea of the petitioners did not go unheeded. On receipt of this petition, the Government recognised the necessity of providing protection to the diggers by means of the Precious Stones and Minerals Mining Act and, as a result, Col. Schermbrucker officially proclaimed the Millwood Reserve – an area of 50 square miles – a public digging and mining area under Act 19 of 1883 on 6 January 1887.⁴⁸ At Millwood itself, the gold fields were publicly proclaimed on 21 January by the Chairman of the newly-formed Gold Commission, which replaced the Diggers' Committee. This Gold Commission, which consisted of Thomas Bain, Shepstone Giddy and Patrick Fletcher, was responsible for all registration of claims and the resolution of claim disputes.⁴⁹

The proclamation necessitated the re-registration of all reef and alluvial claims as well as the payment of a licence fee of five shillings per month for each claim. Ultimately, the proclamation was "hailed with general satisfaction" by diggers in the Knysna district.⁵⁰ However, as the 1883 Act had, in fact, been framed for the specific requirements of the diamond fields in Griqualand West, it soon became evident that

⁴⁶ *The George and Knysna Herald*, October 13, 1886, 'Knysna Gold Fields', p. 2.

⁴⁷ *The George and Knysna Herald*, December 15, 1886, 'Latest Telegram', p.3.

⁴⁸ G.48-'88, 'Reports of the Knysna Gold Fields and on Gold Mining in the Colony for the Year 1887', p.9.

⁴⁹ Parkes, *Exploring Knysna's Historical Countryside*, p.22.

⁵⁰ *The George and Knysna District*, January 12, 1887, 'Millwood: A Proclaimed Gold Field', p.2.

that piece of legislation was not entirely suited to the effective management of the small-scale gold diggings in the Knysna district. Thus, just six months after the proclamation of the Millwood Reserve under the terms of Act 19 of 1883, the Government was compelled to introduce new legislation to amend the existing Act in favour of the needs of the burgeoning gold-mining industry in the Eastern Cape.

By 1887, it was estimated that 600 diggers were working the alluvial claims and the gold reefs within the Millwood Reserve. This mining community consisted of seasoned diggers from California and Australia, as well as local prospectors from Oudtshoorn, Mossel Bay, Bredasdorp and Riversdale.⁵¹ Such a large community of enthusiastic diggers inevitably led to more reef discoveries: by the middle of that year a total of fourteen individual reefs running across the Millwood area had been registered by the Gold Commission. In fact, gold had been found in reefs in the lowest depths of the Millwood valley and also in a reef crossing the highest peak of the Millwood Range, 1,800 feet above the valley.⁵²

Meanwhile, the development of the Witwatersrand gold field was progressing at a more rapid rate. Although the geology of the gold deposits was significantly different from that of the Millwood gold field and required significant capital investment for mining and processing machinery, gold production in 1886 alone stood at £34,710.⁵³ This should be viewed in comparison with the mere total of 655 ounces that were mined in Millwood during the same period. The Cape parliamentarians and digging community watched the rapid development of the Witwatersrand gold mining industry, in comparison to that of the Millwood gold field, with awe and, arguably, envy. In fact, it was remarked in the House of Assembly that:

Anyone who had seen the energy shown in the Transvaal in prospecting must have been struck with the great apathy shown in this colony. The reason for this was, no doubt, to be found in the unsatisfactory law in this colony, as compared with the law in the Free State and the Transvaal.⁵⁴

Essentially, the Gold Law of the Transvaal stipulated that all rights of mining for and disposing of all precious metals and precious stones belonged to the State, which

⁵¹ Parkes, *Exploring Knysna's Historical Countryside*, p.22.

⁵² *Ibid.*, p.23.

⁵³ Meredith, *Diamonds, Gold and War*, (Jonathan Ball: Johannesburg, 2007), p.180.

⁵⁴ *Cape Hansard, Debates in the House of Assembly, 1887*, June, 16, 'Prospecting on Private Property', p.76.

meant that privately-owned land could be proclaimed and thrown open to prospectors. However, the Government did not have the right to throw open land without the permission of its owner, and should privately-owned land be proclaimed, the proprietor was entitled to receive half of the revenue from licences paid by claimholders. In addition, the landowner was entitled to one-tenth of the ground under a mining lease on the farm being declared a public digging. Significantly, the landowner was entitled to half the claim licence money and all the fees obtained from stand licences.⁵⁵ This Act also did not limit the number of claims an individual prospector could rent. This was deemed to be a very liberal law, which “hit a happy compromise between the rights of the Government, the rights of the landowner, and the interest of the general public”.⁵⁶

Viewed against this liberal law with its “happy compromise” the Precious Stones and Minerals Mining Act was deemed by some MPs to be an impediment to the development of a gold-mining industry in the Cape Colony. In fact it was believed that “the effect of the present Act had been to throw a wet blanket on the development of the mineral resources of the country.”⁵⁷ This was primarily due to the fact that the terms relating to prospecting were not as generous towards the prospector as the Transvaal Gold Law, nor did the Act provide any inducements to landowners to encourage prospecting on private property.

This dissatisfaction with the 1883 Act, in terms of its ability to effectively govern the burgeoning gold-mining industry on the southern Cape coast, resulted in the appointment of a Select Committee in June 1887 to “inquire into and report upon the existing law with regard to mining and prospecting for precious stones and minerals”.⁵⁸ The Committee was given the power to take evidence from individuals most likely to elucidate the matter of the existing mining law and to call for papers. This nine-man committee primarily consisted of members belonging to the increasingly powerful mining bloc in the House of Assembly. Chief amongst these committee members was Arthur Douglass as Chairman, who was an MP and representative of the Eastern Cape, the Commissioner of Crown Lands and Public

⁵⁵ Wheatcroft, *The Randlords*, p.87.

⁵⁶ G.47-87, ‘Report of Millwood (Knysna) Gold Commission’, Clause 8.

⁵⁷ *Cape Hansard, Debates in the House of Assembly, 1887*, June, 16, ‘Prospecting on Private Property’, p.77.

⁵⁸ *Ibid.*, p.1.

Works, Col. Schermbrucker, Cecil Rhodes, John X. Merriman, and former Prime Minister, Sir Thomas Scanlen.

The committee undertook its investigations during the month of June and presented its report to the House of Assembly in July. Essentially, this report stated, the fact that there was no law proclaimed in the Colony, except in Griqualand West and a small area at George and Knysna, which defined the rights of anyone discovering precious minerals or precious stones on Crown lands or on private lands where precious stones or minerals are reserved to the Crown. This lack of legislation was detrimental to the discovery and development of the mineral resources of the Colony. In addition, the report revealed that the first division of Act 19 of 1883, which defined the rights of prospectors on Crown lands, was not adapted to the circumstances of the country, and would not encourage prospecting.⁵⁹

The findings of the committee were that, in order to encourage prospecting on private property, as was the case in the Transvaal, it would be necessary to provide inducements to proprietors. The report stated that the discovery of precious stones and minerals was best secured by giving the owner of the soil some considerable advantage by any such discovery upon his land. "Under the present law such owner, where precious minerals and stones are reserved to the Crown, the proprietor does not receive sufficient advantages from any discovery to induce him to encourage prospecting." As a result of this, the report continued some of the witnesses who had been interviewed during the investigations, stated that "landowners knowing of promising indications of gold on their farms have kept the matter secret for fear of being disturbed on their farms without sufficient compensation." Consequently, the committee believed that in order to overcome this challenge it was necessary to introduce similar inducements to those which were contained within the Transvaal Gold Law. In addition, it was recommended that the "landowner should be allowed the most perfect freedom in prospecting his own land, and should on no account be required to take out a licence to secure the advantage of any discovery he may make."⁶⁰

The report continued that, in order to encourage the discovery of precious stones and minerals, the Government should not attempt to make any profit by such discovery. Thus, the fee for prospecting and diggers' licences should be reduced. It

⁵⁹ G.47-'87, 'Report of Millwood (Knysna) Gold Commission', p.2.

⁶⁰ Ibid.

was also recommended that the proprietors should receive a portion of the licence fee. The report was concluded with the argument that, the landowner should be compensated in some capacity should minerals or precious stones be discovered on his property and that three months' notice should be given to the owner before his land could be declared a public mining area.⁶¹ Ultimately, the recommendations of the report were liberal to the prospector and miner and, more importantly, were especially favourable to the landowners.

The presentation of this report in July sufficiently influenced members of the House of Assembly to introduce a bill to amend the Precious Stones and Minerals Law in order to encourage mineral prospecting on both crown and private land. Owing to the favourable description of the Transvaal Gold Law and the recommendation that an alteration of the Cape Colony's mineral prospecting legislation should be made along the lines of this law, the Bill was "drafted on the basis of the Transvaal Act".⁶² The Bill, which was introduced into the House of Assembly on July 20, passed through the various readings rapidly and without any material modifications.⁶³

The Precious Stones and Minerals Mining Law Amendment Act was a liberal piece of legislation, referring primarily to the discipline of mineral prospecting. Significantly, this was not a stand-alone law, but was designed to be read and administered in conjunction with Act No.19 of 1883. Essentially, the provisions of the Act stipulated that the licence fee to be paid for each prospecting claim was two shillings and sixpence per month; that the size of a precious stones claim was to be 30 square feet; that the size of a reef claim was to be 150 feet along the reef and 400 feet across the reef; and that the size of an alluvial claim was to be not more than 100 feet. Notably, the significant portion of this Act related to the rights of landowners in terms of mineral prospecting on private land. The Act stipulated that any landowner who discovered precious stones or minerals on the land was obliged to declare such findings to the Civil Commissioner within three months; every landowner was entitled to prospect his own property without taking out a licence; and that no landowner was bound to permit licensed prospectors to prospect upon such land

⁶¹ Ibid., p.3.

⁶² *Cape Hansard, Debates in the House of Assembly, 1887*, July 20, 'Mining and Precious Stones', p.263.

⁶³ *The Cape Times*, August 3, 1887, 'The New Mining Act', p.2.

without his consent. Following the proclamation of private land as a public digging, the Act stated that the landowner was entitled to select and beacon off a number of claims, the number of which would be determined in relation to the extent of such land.⁶⁴

However, although Government considered this Act to be a liberal and effective piece of legislation accommodating the needs of prospectors and the desires of landowners, the diggers soon expressed discontent with the terms of the Act.⁶⁵ The diggers' dissatisfaction mainly stemmed from the fact that the Act did not meet all the requirements of the mining community at Millwood. Thus, in November, just four months after its promulgation, the diggers drew up a list of propositions for the consideration of Government. These propositions were presented to a deputation, who included the Commissioner of Crown Lands and Public Works, which visited the Millwood gold field on November 23.⁶⁶ The demands of the diggers included the reduction of reef and alluvial claim licences to 20 shillings per annum; the increase of the size of alluvial and reef claims; that a survey of the proclaimed area and all registered claims be undertaken by Government; that a local Board of Management be established, which would assist in making mining and local bye-laws for gold-diggers; and that the diggers receive protection against illicit gold-buying. On receipt of these propositions, Col. Schermbrucker promised the diggers that he would "do all in his power to meet the views of the deputation as far as practicable."⁶⁷

The Commissioner of Crown Lands and Public Works kept his word and soon after the opening of Parliament in 1888, introduced a Bill to amend the existing law with regard to gold mining.⁶⁸ Addressing the House of Assembly in June, Col. Schermbrucker stated that the Bill formed an amendment to the Precious Stones and Minerals Act No.19 of 1883. Recognising the need for improvement regarding the Colony's mining legislative framework, he stated that the Bill had been framed on representations made to the Government by holders of property and claims in the Millwood area, as well as information gathered relating to the gold laws of America

⁶⁴ Act No.44, 1887.

⁶⁵ *The George and Knysna Herald*, November 30, 1887, 'The Development of the Knysna Gold-Fields', p.2.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Cape Hansard, Debates in the House of Assembly, 1888*. June 14, 'Gold Mining Bill', p.107.

and Australia. Col. Schermbrucker concluded the introduction of the Bill by stating that:

The Government in drawing up this Bill has done the best it can to meet wishes represented to them, and many things which had been felt to be hardships in the past being proposed to be removed by this Bill, [I hope] the House will endorse it, trusting it will work for the benefit of mining enterprise in this Colony.⁶⁹

The House of Assembly did indeed endorse Col. Schermbrucker's views and agreed with the need to meet the demands of the Millwood gold mining community. Thus, the Bill passed through the various stages of reading and consultation rapidly without any material modifications and was promulgated in July 1888.

This Gold Mining Act was the first piece of legislation introduced into the Cape Colony's legislative framework that concentrated solely on the regulation of the gold prospecting and mining. The Act largely acquiesced the Millwood diggers' needs and demands by reducing the claim licence fees to two shillings and sixpence per month, and allowing for the protection of claims against confiscation on the basis of sickness or unavoidable absence. The Act also stipulated the means by which each claim should be marked out; stipulated the terms under which claims could be considered abandoned by the claim holder; the conditions under which claim areas could be extended; and stipulated that all gold extracted from reef and alluvial claims had to be registered at the office of the Inspector of Mines by the second day of each month. Interestingly, the Act also included a clause stating that, "the claimholder who shall first have registered three thousand ounces of gold extracted from his claim or claims in a proclaimed digging or mine shall receive a certificate from the Inspector of Mines entitling him to a reward of Five Hundred Pounds."⁷⁰ Unfortunately this stipulation was never fulfilled as only 3 000 ounces of gold were ever extracted from the Knysna gold fields between 1876 and 1924, when the diggings were officially de-proclaimed. The relatively small amount of gold extracted from the Knysna diggings can be attributed to the fact that the geology of the gold reefs was not suitable for easy extraction and, thus, did not make gold mining a profitable enterprise. In addition, the

⁶⁹ *Cape Hansard, Debates in the House of Assembly, 1888*. June 22, 'Gold Mining Bill', p.166.

⁷⁰ Act No.10, 1888.

discovery of the Witwatersrand gold-basin lured most of the prospectors away from Knysna from the late 1880s onwards.

The promulgation of the Gold Mining Act was the fifth piece of mining legislation that amended the Precious Stones and Minerals Mining Act, introduced five years earlier. Thus, the legislation governing the Cape Colony's still burgeoning mining industry had become convoluted with many amendments made to the original act. Consequently, it soon became necessary for the Cape's legislators to re-examine, improve and amalgamate all the various acts governing the Cape's mining industry into one, cohesive Act.

University of Cape Town

Chapter Seven

Consolidation of the mining legislation of the Cape Colony, 1888-1899

By the late 1880s, the mineral wealth of South Africa, and more specifically, the Cape of Good Hope, had largely been ascertained by explorers, geologists and prospectors. After two centuries of mineral exploration in the Cape, beginning with Simon van der Stel's pioneering expedition to Namaqualand in 1684¹, it had been established that the region was endowed with a variety of metals, minerals and precious stones with varying degrees of payability. Through these endeavours it had been established that copper, diamonds, and low-grade coal existed in abundance, and that deposits of gold manganese, lead, asbestos, crocidolite² and various sulphide minerals also existed in fairly payable quantities. The significant majority of these mineral deposits were only discovered in the latter part of the nineteenth century following the establishment of a viable copper mining industry in Namaqualand in the early 1850s. Indeed, it was the exploitation of the rich Namaqualand copper deposits that essentially acted as the catalyst for mineral exploration and development in the Cape Colony.

As the mineral resources of the Cape were steadily discovered and developed so too was the legislative framework regulating mineral exploration and mining activities. Essentially, the introduction of the legislation governing the Cape's mining industry corresponded with the major discoveries of copper, diamonds and gold, respectively, and was introduced in a piecemeal fashion as each mineral resource was developed. However, the introduction of legislation in such a piecemeal fashion resulted in a situation whereby the law of the Cape Colony governing the mining sector was disconnected, convoluted and unworkable due to its fragmented nature. Moreover, the convoluted characteristic of the mining laws became incomprehensible to the ordinary prospectors and miners, and it can certainly be argued that such a situation was a hindrance to the further development of the mineral resources of the

¹ Webb, A.C.M. 'Mining in South Africa' in Coleman, F. (ed.) *Economic History of South Africa* (Haum: Pretoria, 1983), p.165.

² Crocidolite is known colloquially as blue asbestos and is the most lethal of all asbestos types. It was primarily used in yarn and rope lagging from the 1880s until the mid-1960s.

Cape Colony. Therefore, by the late 1880s it became necessary for the Cape Government to implement new legislation that consolidated all existing mining laws into a unified, coherent and accessible Act. This chapter will examine the final consolidation of the Cape Colony's mining legislation, which occurred towards the end of the nineteenth century.

The exploitation of mineral resources did much to develop the economy of the Cape of Good Hope during the latter half of the nineteenth century. Before the discovery of copper, and more significantly, diamonds, the Cape had a largely agrarian economy and was heavily indebted, verging on the point of bankruptcy.³ However, the discovery and exploitation of immensely rich deposits of diamonds helped to stimulate the Cape's economy, not only through the production of precious stones but by the establishment of secondary and tertiary industries needed to support the burgeoning mining sector.⁴ Furthermore, the development of a mining industry did much to stimulate export-orientated trade, which can be evidenced by the fact that, by 1890, the total value of exported minerals, metals and precious stones amounted to £6 304 743. This represented more than 60% of the total value of colonial produce exports for 1890.⁵

As the mining industry grew in economic importance during the latter half of the nineteenth century, the Cape Government implemented an array of legislation to govern and regulate that most lucrative sector. As has been highlighted in the preceding chapters, the first mining legislation was introduced in the 1860s and 1870s to regulate the prospecting of base metals in Namaqualand and, subsequently, the rest of the Colony. This was followed by the introduction of the Precious Stones and Minerals Mining Act in 1883 to govern the burgeoning diamond mining industry in Griqualand West. This was followed by the Gold Mining Law of 1888, which was introduced to facilitate the development of a gold mining industry in the district of Knysna. Each of these acts, although all concerned with the regulation of mineral prospecting and mining, sought to govern and facilitate the development of each commodity mining sector independently of one another. As a result, by the late 1880s

³ See De Kiewiet, C.W. *A History of South Africa: Social and Economic* (Oxford University Press: London, 1942), p.68.

⁴ Webb, 'Mining in South Africa', p.171.

⁵ *Blue Book of the Cape of Good Hope*, 'Exports: Colonial Produce', pp.182-183.

the legislative framework of the Cape Colony governing the mining sector had become a melange of various laws, most of which contained numerous amendments and repeals, which were introduced at various times as the needs of prospectors and miners evolved over the years.

The patchwork nature of mining legislation was certainly not conducive to the development of a unified and efficient mining sector in the Cape Colony as the law governing the mining industry had become convoluted, largely ineffective and somewhat incomprehensible to the average prospector and digger. In fact, it was stated by one member of the Cape's Legislative Council, William Ross, that the complications that existed in the mining laws of the Colony had become tortuous to the lay mind.⁶ It was also argued that the complicated nature of the mining legislation was retarding the further development of a mining industry in the Cape as the average prospector and miner could not fathom the fundamental principles behind the mining laws and their various amendments. The fact that the wave of mineral prospecting, which had been a characteristic feature of the Cape Colony in the 1870s, and that no new mineral deposits had been discovered since the late 1870s, gives weight to the argument that the complicated nature of the Colony's mining legislation was retarding mineral development. Thus, by the turn of the decade, it had become essential to consolidate the various mining laws of the Cape into one effective mining law that would govern the industry as a collective and would be accessible to the average prospector and miner.

Although the consolidation of the mining laws was evidently necessary as early as 1889, to facilitate the further development of the Colony's mineral resources, such legislative amalgamation would be delayed for a number of years. It would only be in 1897 that the process of consolidating the mining laws of the Cape Colony would get under way. While such a delay is no doubt surprising, the reason for the tardiness in implementing new, consolidated legislation is not easy to explain. The *Cape Hansard* debates from the Legislative Council and House of Assembly do not assist in explaining the delay, as they contain no debates between 1890 and 1895 referring to the state of the mining industry in the Cape Colony or the need to consolidate the mining laws. Similarly, there are no official government letters or correspondence from that period that betray the reason for the delay in consolidating

⁶ *Cape Hansard, Debates in the Legislative Council, 1895*, July 18, 'The Mining Laws', p.227.

the mining laws. However, it is necessary to postulate the rationale for this anomaly and it will be argued that the delay in implementing consolidated mining legislation was largely attributed to the premiership of Cecil John Rhodes.

Cecil Rhodes was, without doubt, the most ambitious politician and businessman in South Africa's history. Within just nine years of entering the political arena Rhodes rose to the pinnacle of political power when, in July 1890, he was appointed Prime Minister of the Cape of Good Hope. As numerous authors have noted, Rhodes used his premiership to promote his grandiose business interests and, more significantly, to advance his schemes of northern colonial expansion under the British flag.⁷ As Premier of the Cape, Rhodes focused upon matters that would primarily aid his business interests and colonial expansion. He, similarly, displayed "remarkable powers of persuasion" where individual politicians, journalists and businessmen were concerned and was able to harness the support of the most powerful people to his cause.⁸

Significantly, during his premiership of the Cape, Rhodes steered the Cape Assembly into focusing and supporting matters of personal commercial importance. Thus, between 1890 and 1895, the Cape Parliament focused primarily on refining the Cape's labour policy in order to ensure a constant supply of labour to the diamond and gold mines; it promoted the expansion of the Colony's railway lines to connect the Cape and the gold fields of the Witwatersrand; it sought to arrange tariff agreements with the Boer Republics and Natal; it reformed the Colony's banking system; and it concentrated its efforts on restricting the right of the Cape's black population by refining the property qualifications that enabled male residents to vote.⁹ As well as concentrating on these issues, the Cape Parliament, under the direction of Rhodes, sought to promote the interests of the Afrikaner community in the Cape Colony.

⁷ See R. Rotberg, *The Founder: Cecil Rhodes and the Pursuit of Power* (Southern Book: Johannesburg, 1988); B. Roberts, *Cecil Rhodes: Flawed Colossus* (Hamish Hamilton: London, 1987); M. Tamarkin, *Cecil Rhodes and the Cape Afrikaners: The Imperial Colossus and the Colonial Parish Pump* (Frank Cass: London, 1996).

⁸ Meredith, M. *Diamonds, Gold and War: The Making of South Africa* (Jonathan Ball: Johannesburg, 2007), p. 248.

⁹ Roberts, B. *Cecil Rhodes*, pp. 157-162.

When Cecil Rhodes entered politics in 1881, his primary concern was to safeguard the interests of the diamond mining industry in Griqualand West.¹⁰ He also sought to promote the interests of Afrikaans farmers, as it was these Boers who represented the majority of Rhodes' constituency. Consequently, Rhodes soon became known as a rather pro-Boer MP and formed a political friendship and alliance with J.H. Hofmeyr who led the Afrikaner Bond, which was the most united and resolute political party in the Cape.¹¹ (In fact, it was this political alliance with Hofmeyr that enabled Rhodes to become Prime Minister of the Cape Colony.) The original intention of the Afrikaner Bond was to safeguard and promote the interests of the Afrikaans community. Essentially it sought to protect and promote the Afrikaans language and culture and, more significantly, aimed to promote agricultural interests as the majority of Afrikaners were farmers. Therefore, as Rhodes had gained his political power as a result of the support of the Afrikaner Bond, he had to support the interests of that community at a political level. As Meredith points out, "as [Rhodes] became ever more determined to pursue northern expansion, he began a concerted campaign to court Cape Afrikaners as political allies, adopting positions he had once opposed to suit their interests."¹² While the Afrikaner Bond was not opposed to the interests of mining, it sought rather to promote the agricultural sector over the interests of the mining industry. Thus, as premier of the Cape Colony, "Rhodes diligently promoted the cause of farming" in order to appease the Afrikaner Bond and his Boer supporters.¹³

Thus, it can be argued that the interests of the mining industry, in terms of consolidating the existing mining legislation were sidelined in the first half of the 1890s in favour of matters that were of strategic and commercial importance to Rhodes. It should also be noted that, as the parliamentary sessions were only held for three months of every year, there was not sufficient time to debate the issue of consolidating mining legislation as well as all the issues on Rhodes' political agenda. It was only in the mid-1890s, once Rhodes had promoted most of the items on his political agenda, that the subject of consolidating mining legislation was broached in the Cape Assembly.

¹⁰ Rotberg, *The Founder*, Chapter 6.

¹¹ Wheatcroft, G. *The Randlords: The Men who made South Africa* (Jonathan Ball: Johannesburg, 1985), p.145.

¹² Meredith, *Diamonds, Gold and War*, p.198.

¹³ Rotberg, *The Founder*, p. 354.

It was only in 1895 that the subject of amending the mining legislation of the Cape Colony was raised by Parliament. In that year, a mining law amendment bill was partially drawn-up by the Cape's Attorney General, which aimed to give greater facilities to prospectors and to do away with many of the anomalies that existed in the present laws.¹⁴ However, this Bill was not introduced into that session of Parliament. Towards the end of that parliamentary session, in mid-July, a member of the Legislative Council, who was aware of the existence of that partially complete Bill, enquired as to whether the Government intended to introduce an Act to amend the present mining law that session. However, he was rebuffed by the Attorney-General who elaborated that, "the Government had considered this question, but owing to the amount of work in another place, they found it impossible to deal with the question at the present time, so they had no intention whatever of introducing such a measure."¹⁵ Paging through the parliamentary debates for 1895, it appears that the extension of the Cape's railways and public works, as well as the annexation of British Bechuanaland, were the dominant issues that consumed most of the politicians' attention during that year. Thus, the Bill was subsequently shelved until the next session of Parliament. However, such a Bill was not referred to in the parliamentary debates of the House of Assembly nor the Legislative Council during the 1896 session and one can only assume that the "pressure of work" facing the Cape legislators that year similarly prevented the introduction of a mining law amendment bill.

It was only in May 1897 that the subject of amending, but not consolidating, the Colony's mining legislation was raised again. In that month the Mining Laws Amendment Bill was introduced into the House of Assembly, with the objective of amending existing legislation in order to afford prospectors and landowners more benefits than were contained in existing legislation. It was believed that the existing mining laws of the Colony did not contain sufficient inducements for both prospectors and landowners to encourage mineral exploration or the development of such resources. Thus, the Bill sought to provide prospectors with further benefits by increasing the number of claims to which they were entitled from 20 to 30 and

¹⁴ *Cape Hansard, Debates in the Legislative Council, 1895*, July 18, 'The Mining Laws', p.227.

¹⁵ *Cape Hansard, Debates in the Legislative Council, 1895*, July 11, 'The Mining Laws', p.201.

increasing the size of the prospecting area to 100 morgen.¹⁶ With regard to landowners, the Bill sought to entitle landowners to take out a mineral lease for his farm, and also sought to entitle landowners to one-sixth of the mining area on his property should it be proclaimed a public mine or digging. It was hoped that this stipulation would encourage landowners to allow prospecting on their property because, should minerals be discovered, the landowner would benefit financially from the exploitation of such precious stones or minerals. The Bill also proposed to assimilate the Gold Law of British Bechuanaland to that of the Cape Colony.¹⁷ This was primarily due to the fact that that particular law enabled a prospector to start mining immediately after his declaration that minerals had been discovered in appreciable quantities, whereas the mining legislation of the Cape stipulated that mining could only commence three months after the initial declaration of the mineral discovery and once the Governor had proclaimed the area a public digging or mine.

Significantly, the bill was not a stand-alone piece of legislation but was intended to be read together with the Precious Stones and Minerals Mining Act of 1883 and the Precious Stones and Minerals Mining Law Amendment Act of 1887. As a result, half of the clauses contained in the bill sought to amend or repeal sections contained in the existing acts. Ultimately, the promulgation of such a Bill, with so many amendments and repeals, would further complicate the existing mining legislation, which was already intricate and in dire need of reconfiguration and consolidation. William Hammond Tooke, the Cape Colonial Secretary for Agriculture, who was largely responsible for the framing of the Mining Laws Amendment Bill, was well aware of the fact that another amendment bill was not desired and that it was preferable to consolidate and amend all the mining laws. He even admitted that it was somewhat of a patchwork bill.¹⁸ However, he argued that an amendment bill had been introduced as opposed to a consolidation bill owing to the fact that it was necessary to provide inducements to prospectors and landowners to stimulate mineral exploration and because "it was considered very difficult to take a long Bill through this session".¹⁹ Similarly, the Attorney-General told the House of

¹⁶ *Cape Hansard, Debates in the House of Assembly, 1897*, May 25, 'Mineral Laws Amendment Bill', p. 331.

¹⁷ The Mining Laws Amendment Bill, 1897.

¹⁸ A.13-'97, 'Report of the Select Committee on the Mining Law Amendment Bill', p.5.

¹⁹ *Ibid.*

Assembly in May that he had not had time to introduce a Bill to consolidate the existing mining laws, “but he had brought forward the present Bill to give effect to the wishes expressed by members of that House and the other branch of the Legislative that something be done to develop the mineral resources of the Colony.”²⁰

However, such a patchwork bill was not the measure that the Cape politicians had in mind for developing the mineral resources. In fact, they were united in opposing the Bill because “what they wanted was a consolidation of the laws” rather than an alteration of existing legislation.²¹ Following the second reading of the Bill on May 31, MP Arthur Douglass reflected that the “Bill was to repeal so many sections in different Acts and proclamations, and leave so many fresh sections that it seemed to him to be somewhat of a Chinese puzzle.”²² Similarly, MP William Schreiner argued that the Bill was a patchwork measure added on to the present law. He further stated that his constituency of Barkly West was up in arms against the Bill and he thought that time should be given for those interested to thoroughly understand what was proposed. Moreover, the Legislative Council heard evidence that MPs had been “inundated by letters and telegrams from Griqualand West, stating that though the present law was very bad, it was very much better than the proposals of the Government, which would only make confusion more confounded.”²³

As a result of these objections, the Bill could not be promulgated and it was, therefore, deemed necessary to appoint a Select Committee to analyse the Mining Law Amendment Bill and to consider the advisability of consolidating and amending the existing laws regulating mining. This Select Committee was appointed on May 31 and consisted solely of members of the House of Assembly. It should be noted that some of the members of the Committee, including the Chairman Arthur Douglass and William Schreiner, had a biased view favouring that of consolidating the mining laws of the Colony as apposed to introducing a new act, which further amended existing mining legislation.

The Committee sat for only one day, examined just two witnesses, and delivered its concluding report eleven days after its appointment. The speed with

²⁰ *Cape Hansard, Debates in the Legislative Council, 1897*, May 31, ‘Mining Law Amendment Bill’, p. 367.

²¹ *Ibid.*

²² *Ibid.*, p.368.

²³ *Cape Hansard, Debates in the Legislative Council, 1897*, June 3, ‘Amendment of the Mining Laws’, p.218.

which the report was completed can be attributed to the fact that the committee had been appointed fairly late in the parliamentary session and it was necessary to submit the report before parliament closed for the winter. It should also be noted that only two witnesses were examined because the Committee did not have sufficient time to question more individuals.

The Committee examined two witnesses, namely William Hammond Tooke, the original framer of the Mining Law Amendment Bill, and Francis Oats, a prominent mining capitalist and director of De Beers. The Committee took a hard-line approach and interrogated Tooke on the necessity of such a Bill, on the present state of the mineral laws of the Cape Colony, and on the gold law of British Bechuanaland. Essentially, Tooke gave an analytical interpretation of the Bill and defended the necessity of its introduction the Bill, which aimed to provide further benefits to prospectors and landowners.²⁴ He also gave evidence suggesting that the gold mining law of British Bechuanaland, which was more accommodating towards prospectors, should be assimilated into Cape law.²⁵ When questioning Oats, the Committee focused on the perspective of the diamond miners towards the proposed Bill and of the necessity of consolidating the mining laws. Not surprisingly, Oats did not endorse Tooke's opinion that the promulgation of the Mining Laws Amendment Bill was necessary. In fact, Oats did not believe that the existing Precious Stones and Minerals Mining Act of 1883 should be tampered with or consolidated. Instead, Oats told Committee members that, "my own feeling is that the interests at stake are so great that the present legislation should not be tampered with without very grave consideration and reason."²⁶ It is obvious that Oats was arguing from the perspective of the mining capitalist, as he was concerned that the introduction of any new legislation could affect the mining process in Kimberley, which could, subsequently, affect the profits made by De Beers.

The report, which was delivered to the House of Assembly on June 11, was based primarily upon the evidence provided by Tooke and Oats. The report did not advocate the promulgation of the Mining Law Amendment Bill but rather made two recommendations, namely that the mining law of Bechuanaland should be assimilated to that in force in the rest of the Colony, and that a consolidating law was required to

²⁴ A.13-'97, pp.1-10.

²⁵ Ibid., p.2.

²⁶ Ibid., p.14.

amend the present law in certain respects.²⁷ Significantly, the Committee avoided the subject of how the mining laws should be consolidated and ultimately sought to pass the buck on that pertinent question. In this regard, the report concluded that:

Owing to the late period of the Session, your Committee are unable to go as thoroughly into the question as would be necessary, and they, therefore, recommend that the Government should during the recess make full inquiry by means of a Commission or otherwise, and introduce a comprehensive measure next session.²⁸

Subsequent to the presentation of that report in Parliament, the Mining Laws Amendment Bill was abandoned and the recommendation to appoint a Commission was endorsed by the Government.

On December 9, 1897, the High Commissioner of the Cape, Alfred Milner, appointed a Commission to continue the investigation into the consolidation of the mining laws that had begun earlier that year. Essentially, the objective of that Committee was to enquire into the working of the laws and regulations then in force in the Cape Colony with regard to the mining of precious stones and minerals. More importantly, the Committee was directed to report what alterations and amendments were required to further develop the mineral resources of the Colony, with the aim of affording greater facilities and encouragement to prospectors and landowners than existed at that time. Moreover, the Committee had to investigate the viability of the assimilation of the mining laws in force in the former Crown Colony of British Bechuanaland with that of the Cape Colony, which had been suggested by Tooke in the Mining Law Amendment Bill. Most importantly, the Committee was commanded to draft a measure for submission to Parliament embodying the necessary provisions to those ends, which would consolidate and codify the existing statutes.²⁹

The Committee that was entrusted to fulfill this mandate consisted of just three individuals, including one member of Parliament and two civil servants: the Cape Colony's Attorney-General Richard Solomon, was appointed Committee Chairman, and John Shute Barrington and William Franklin were appointed as the other two commissioners. Both were civil servants, employed as Justice of the Peace

²⁷ Ibid., p.iii.

²⁸ A.13-'97, p.iii.

²⁹ G.6-'98, 'Commission appointed to enquire into the Working of the Laws and Regulations in force for the Mining of Precious Stones and Minerals in the Colony', p.v.

in Knysna and Inspector of Claims in Barkly West, respectively. The inclusion of Barrington and Franklin arguably facilitated a more objective approach to the subject of consolidating the mining laws of the Cape Colony as these individuals had practical knowledge of the needs and requirements of the prospectors and diggers as well as the requirements of effective mineral development and mining.

The Commissioners' fulfilled their mandate meticulously and with unsurpassed thoroughness. Indeed, it can be argued that that Committee was the most effective mining commission ever to be appointed to advance the mining legislation of the Cape Colony. This can be suggested from both the time-scale of the Commission and method of the investigations. The Commissioners spent more than four months in early 1898 investigating that enquiry, the majority of which time was spent travelling around the Cape and the Transvaal. Between January 5 and April 2, the Commissioners traveled to and conducted interviews in all the towns and villages that had a connection with mineral prospecting and mining activities, including Kimberley, Klipdam, Barkly West, Mafeking, Vryburg, Prince Albert, Knysna, and Johannesburg.³⁰

In an effort to get a comprehensive view of the attitude towards the existing mining laws, as well as any recommendations for the improvement of such legislation, the Commissioners examined an impressive total of 67 witnesses in four months ranging from government officials to prospectors, diggers, landowners, and mining capitalists. The majority of the witnesses who were examined were prospectors and diggers involved in the search and exploitation of both diamonds and precious minerals. A number of landowners and farmers were also interviewed in the areas where precious stones and minerals had already been discovered. Civil Commissioners of districts where mineral exploration and mining had been undertaken, including Kimberley, Barkly West, Prince Albert, and Knysna, were also examined. Interestingly, the Commissioners also examined some of the most prominent individuals in the South African mining industry, including Francis Oats, Gardner Williams, General Manager of De Beers, and John Hays Hammond, mining engineer for Rhodes' Gold Fields of South Africa.³¹ With the examination of such a wide-spectrum of stakeholders, the tone of the proceedings and the outcome of the Commission was certainly more objective than any previous mining Commission.

³⁰ G.6-'98, 'Minutes of Proceedings'.

³¹ Ibid., pp. 1-2.

The line of questioning focused upon the witnesses' knowledge, experience and opinion regarding the most significant factors influencing the development of mineral resources. These included the rights of landowners and prospectors, the rights of a discoverer of precious stones and minerals, the responsibility of Government in testing the alleged mineral discoveries, the forfeitures and abandonment of claims or mines, and the interest of the public in the development of such mineral resources.³² More specifically, the Commissioners' line of questioning focused predominantly on prospecting for precious minerals, and concentrated on the rights of the discoverer and of the owner on whose property precious minerals had been discovered. This focus can be attributed to the fact that, while there was considerable public and official understanding of the law regulating the prospecting and working of precious stones, there was little comprehension of the efficacy of the gold-mining law in the Cape "owing to the fact that there has been no really successful prospecting thereof, and the present laws have only been applied to the mining of precious stones."³³ It should also be noted that the enquiry was confined to precious stones and minerals and made no investigation into the laws dealing with base metals. The Commissioners reasoned that the timeframe given to them was not sufficient enough to make enquiries into the working of the law with regard to base metals in addition to the original mandate, which was already quite extensive.³⁴

The in-depth investigation of 67 witnesses over a four-month period resulted in a mass of evidence extending over 278 pages. It is not possible to analyse the total mass of evidence or to comment upon all the issues raised by the witnesses. However, the most significant issues raised and conclusions made by the witnesses, despite their varied occupations and interests, included: the overwhelming need to alter and consolidate the existing mining laws of the Colony based on the fact that there was "uncertainty of the present law and of the inapplicability of many of its provisions to the mining of both precious stones and minerals"³⁵; the fact that the needs and requirements of the exploration and mining of precious stones differed significantly from those of precious minerals, which was primarily due to geological factors that determined the method of working these commodities; that the regulations for the

³² Ibid., pp.vi-xxiv.

³³ Ibid., p.v.

³⁴ Ibid., p.xxiv.

³⁵ Ibid., p.vi.

prospecting and mining of precious stones and precious minerals should be addressed in separate laws; and that more inducements were essential to encourage individuals to prospect and to encourage landowners to allow mineral exploration on their private land.

Based on the testimony and recommendations of the witnesses, the Commissioners' drafted a 24-page report outlining the measures required to consolidate the mining laws of the Cape Colony, which included inducements for prospectors and landowners that were necessary to facilitate further mineral development. Adhering to the recommendations of the witnesses, the Commissioners' drafted the report according to the individual and, often differing, needs of precious stones and precious minerals. Thus, the report was divided into sub-sections referring specifically to the rights of landowners, discoverers and prospectors of precious stones and precious minerals, respectively. These sub-sections primarily included measures that would, it was believed, further encourage prospecting and mineral development by providing more benefits to prospectors and landowners than existed in the present laws.

The recommendations that were included in the report were both intricate and extensive. The most significant recommendations referred to the rights of a discoverer of precious stones and minerals. In this regard, the report stated that the discoverer of both precious stones and minerals in paying quantities should be entitled to select a number of claims in the proclaimed area first: the discoverer of precious stones could select 50 mining claims and the discoverer of precious minerals could select 25 mining claims. Significantly, the report included the recommendation that "the first discoverer of a gold reef or digging, which in the space of five years in the former case yields £100 000 worth of gold, should be paid the sum of £5 000 as a reward for such discovery."³⁶ These recommendations were designed to encourage individuals to prospect on the basis that, should they discover precious stones or minerals in paying quantities, they would be entitled to larger mining areas and a handsome remuneration should the prospect be successful. It was also recommended that a prospecting licence, at a fee of two shillings and sixpence per month, should give the holder the general right to prospect throughout the Colony on Crown land as well as private property. This stipulation would make mineral exploration easier as prospectors

³⁶ Ibid., p.xii.

would not have to apply for a prospecting licence at every Civil Commissioners' office.

Equally significant were the recommendations made with regard to the rights of a property owner on which precious stones or minerals had been discovered. The report suggested that, should precious stones or minerals be discovered on the property, the landowner would be entitled to select a number of claims after the discoverer. In the case of precious minerals, the owner could select 50 claims, and in the case of precious stones, the owner could select 25 claims. In both instances, no licence fees would be necessary. In addition, it was recommended that, "the owner of private property should receive half the licence moneys, rents or royalties collected by the Government in respect of alluvial diggings or mines". Such compensation, it was believed, would certainly encourage landowners to allow explorers to prospect on private land.

With regard to governing bodies of mines and diggings, the report recommended that, in terms of precious minerals, there was no necessity to introduce legislation to provide for Mining Boards. It was argued that:

Such boards may be desirable in the case of a diamond mine where in a comparatively small area a number of individuals or companies are working. The mining for precious minerals is however, entirely different from mining for precious stones...Regulations which are required for the working of a quartz reef digging or alluvial digging of precious minerals should be made by the Governor on the recommendation of the Inspector of Claims.³⁷

Interestingly, this was the first mining Commission that addressed the issue of the rights of indigenous inhabitants who may be affected by the discovery of precious stones or minerals on their land. In this regard, the report stated that any new mining legislation introduced should adopt a provision contained in the mining law of British Bechuanaland, which stated that when a mining area has been declared on any such Native Reserve, one-half of all the licence fees, rents or royalties collected by Government should be paid to the Trustees of that reserve as compensation for surface damage caused by mining. "This provision should be taken over in any new legislation, which should also give every protection possible to the occupants of such

³⁷ Ibid., p.xxi.

reserves from unnecessary interference with them in the occupation of their houses, kraals, and cultivated lands."³⁸

These recommendations made by the Commissioners were included in a comprehensive submission, drafted specifically for Parliament, which sought to consolidate and improve the mining laws of the Cape Colony. Significantly, the submission recommended that two separate bills should be drafted during the next parliamentary session to consolidate and amend the existing law, "one dealing exclusively with precious minerals and the other with precious stones."

On its presentation to the House of Assembly later that year, the report was hailed as "one of the most valuable and comprehensive reports ever submitted to Parliament."³⁹ The recommendations contained in the submission were fully endorsed by members of the Lower House and they concurred that, "it was impossible to deal properly with precious stones and precious minerals in one Act."⁴⁰ Thus, legislators drafted two bills in the second half of 1898 based almost entirely on the recommendations contained in the report, one dealing exclusively with precious stones and the other with precious minerals.

The first Bill to be promulgated was that relating to precious minerals. Significantly, the Precious Minerals Bill was based wholly on the recommendations made in the report. On its introduction into the House of Assembly, the Bill was described as a liberal piece of legislation that "very fairly met the requirements of this country".⁴¹ Politicians overwhelmingly agreed with this description as the Bill passed through the various readings without alteration or amendment and was promulgated on December 23, 1898.

The Precious Minerals Act was the most comprehensive piece of legislation to be introduced into the Cape Colony legislating the prospecting and mining of gold, silver and platinum. It effectively consolidated all the existing legislation relating to precious minerals into one cohesive act. Indeed, the law was the longest piece of mining legislation ever to be drafted, comprising ten divisions and 114 clauses. Each division simply and effectively stipulated the rules for the prospecting and discovery

³⁸ Ibid., p.xxiii.

³⁹ *Cape Hansard, Debates in the House of Assembly, 1898*. June 3, 'Precious Stones Bill', p. 62.

⁴⁰ Ibid., p.63.

⁴¹ *Cape Hansard, Debates in the House of Assembly, 1898*. December 13, 'Precious Minerals', p.452.

of precious minerals, the proclamation of reef diggings and mining areas, the method of distributing claims in a reef digging, the rights of a claimholder in a reef digging, the abandonment of diggings and claims, and the rights of a landowner on whose property a digging was proclaimed. The Act also provided for discoverer's rights, distribution of claims and the regulation of alluvial diggings of precious minerals.⁴²

Significantly, the Act achieved the Government's original objective of affording more benefits to prospectors and landowners in order to stimulate mineral development in the Colony. This is evidenced by the fact that the Act stipulated that the discoverer of precious minerals was entitled to a reward of 25 claims at the site of the discovery and was entitled to receive £5 000 if within five years after the discovery of at least 25 000 ounces of gold was extracted. In addition, the claim sizes were also increased and the licence fees for each claim reduced to 20 shillings a month.⁴³ The Act also afforded more benefits to landowners as it stipulated that the owner had the right to claim three-fourths of the licence money collected by Government from each claim on his property and that the owner was entitled to claim a mining lease of one-tenth of the entire proportion of the property.⁴⁴ The division of the Act into various sub-sections made the law comprehensive and far more accessible to the layman. In addition, the Act clearly defined the rights and obligations of all stakeholders, including Government, prospectors and landowners, in all the stages of mineral development from exploration through to exploitation. Interestingly, the Act did not introduce any new features into the mining legislative framework. In other words, the Act just consolidated all the rules and regulations that had been in force since the first discovery and exploitation of precious minerals.

The smooth and successful promulgation of the Precious Minerals Act was not, however, replicated in the passing of its sister law, the Precious Stones Act. The Precious Stones Bill was originally introduced into the House of Assembly six months before the Bill relating to precious minerals, but was only enacted a year later on October 6, 1899. While it was evident that the existing laws regulating the prospecting and mining of precious stones were in need of refinement and consolidation, if only to make the law more comprehensible to the average digger, it was obvious that the alteration of such law would certainly impact the already well-

⁴² Act No.31, 1898.

⁴³ Division II, Act No.31, 1898.

⁴⁴ Division VII, Act No.31, 1898.

established, multi-million pound industry. Thus, the delay in promulgating the Precious Stones Bill can be attributed to the fact that the diamond-mining industry was a well-established and highly valuable industry in the Cape Colony and the effect and implications of any new legislation affecting the industry had to be carefully scrutinised by both politicians and mining capitalists. Another factor that could explain the delay in promulgating the Precious Stones Bill was that MPs spent much time debating the clauses of the Bill to the extent that, by the time the first parliamentary session ended in June, the Bill was still in the process of being debated. During the second parliamentary session for that year, the Precious Minerals Bill was introduced and promulgated and it can be presumed that there was not sufficient time to deal with both bills comprehensively.

The Precious Stones Bill was reintroduced into the House of Assembly in mid-July 1899. The principal focus of the Bill was to remove existing difficulties that discouraged prospecting for precious stones or discouraged landowners from allowing the exploration of their land. In other words, the terms of the Bill were more favourable to prospectors and landowners, which, it was believed, would encourage a new wave of mineral exploration. On its second reading in the Cape Assembly, the Attorney General stated that the Bill was intended to repeal all the existing acts dealing with precious stones.⁴⁵ It made little alteration to the principles of the existing law but rather sought to amalgamate all the features of the law into one Act of voluminous dimensions. The Bill was well-received by the other politicians and was regarded as a "useful measure".⁴⁶ Although the Bill was thoroughly debated in the House of Assembly, it passed through the various stages of reading with little amendment made to the original clauses. Moreover, the Attorney General told the Legislative Council in September of that year that,

Although the Bill had been before the public for many months and had been carefully perused, he had heard very few objections to these clauses; on the other hand, many persons had commended him for the Bill, which they thought was the only satisfactory way of dealing with the question.⁴⁷

⁴⁵ *Cape Hansard, Debates in the House of Assembly, 1899, July 20, 'Precious Stones Bill', p. 38.*

⁴⁶ *Ibid., p.39.*

⁴⁷ *Cape Hansard, Debates in the Legislative Council, 1899, September 11, 'The Precious Stones Bill', p.172.*

The Precious Stones Act of 1899, which was promulgated on October 6, 1899, was very similar in composition to its sister statute, the Precious Minerals Act. The Act, which consisted of 125 clauses, was divided into nine divisions, including: prospecting, discovery of precious stones, distribution of claims, registration and transfers of claims, mining areas and abandoned mines, rights of owners of property on which a mine had been abandoned, mining boards, alluvial diggings, and general provisions.

As has been mentioned, the purpose of the Act was to consolidate the existing legislation relating to the prospecting and mining of precious stones. Its intention was not to change the law. However, some amendments were introduced in an attempt to stimulate precious stone exploration in the Colony. The principal amendments in the law introduced by this Bill related chiefly to the prospector and the owner of the property on which a mine was discovered and with the general public. With regard to the prospector, under the existing law, a person who prospected for precious stones had to take out a prospector's licence at the office of the Civil Commissioner, which gave him authority to prospect in the same division. The new Act amended this by providing that individuals could take out a special prospector's licence, which gave authority to prospect anywhere in the Colony, freely on Crown land, and on private property with the consent of the owner. The Act also amended the number of claims a prospector was entitled to as a reward for the discovery of precious stones from 20 to 50 claims.⁴⁸ The Act also entitled a discoverer of precious stones to mine without paying a monthly licence fee. With regard to landowners, the Act entitled the owner of the property on which precious stones had been discovered to fifty claims in the mine when it was proclaimed. In addition, the Act stipulated that the property owner was entitled to receive three-fourths of the licence money collected by Government in respect of each claim.⁴⁹ Significantly, both the Precious Stones Act and Precious Minerals Act achieved the Government's original objective of affording more benefits to prospectors and landowners in order to stimulate mineral development in the Cape Colony.

In conclusion, the Precious Stones Act and the Precious Minerals Act were excellent pieces of legislation, which effectively consolidated the mining law of the Cape Colony in a manner that was understandable to the average prospector and

⁴⁸ Division I-III, Act No.11 of 1899.

⁴⁹ Division V, Act No.11 of 1899.

miner. Both Acts had been framed after the most careful and laborious investigations and polishing and were indeed a credit to the legislative framework of the Colony. The meticulous manner with which the subject of mining legislation was dealt with in the late 1890s enabled the subject of mining law amendment and consolidation to be settled for the remainder of the period in which the Cape of Good Hope was an independent territory in southern Africa.

University of Cape Town

Conclusion

Following the discovery and commercial interest in payable copper deposits in Namaqualand in the mid-nineteenth century, the Cape of Good Hope legislature played an active part in the development of mining and mineral law. This dissertation has discussed how the introduction of the legislation governing the Cape's mining industry corresponded with the major discoveries of copper, diamonds and gold, respectively, and was introduced in a piecemeal fashion as each mineral resource was developed. Moreover, this study has shown that the Cape's mining legislative framework progressed in complexity as commercial interest in mining flourished and as the contribution of the mining industry to the Colony's economy rapidly grew.

It was the commercial interest in exploitable copper resources in the far reaches of the Cape Colony that proved to be the catalyst to the formation of South Africa's first mining legislation: the first mineral leasing regulations, introduced in September 1853, were implemented in order to regulate the way in which Crown land was leased on a commercial basis. However, the understanding of the financial benefits derived from mining activities by the State, was a notably absent feature of the first mineral leasing regulations. An examination of the 1853 mineral leasing regulations reveals that the Government did not contemplate what financial benefit could be gained from a commercial mining industry beyond the income received from rent, as no references were made to the imposition of a royalty on all metals that were mined and exported. In addition, the first regulations contained no element of longevity in that no references were made to the way in which mining was to be conducted, labour practices – a significant aspect in that mining was a very labour-intensive industry – or the possibility of exporting minerals and metals.

However, as the copper mines in Namaqualand established themselves as viable commercial operations over the next decade and increased both revenue and exportable quantities of copper ore, the Cape Government began to realise the financial benefits that could be gained from that industry. In fact, it was the financial acumen of then Governor Sir Phillip Wodehouse that ascertained the revenue-generating potential of the copper mining industry. Thus, the first mining-related Act that was promulgated was more complex in nature than the original mineral leasing

regulations in that the Mineral Leasing Act of 1865 contained a number of additional clauses stipulating the way in which a royalty on copper ore had to be paid to Government.

However, it was the discovery of diamonds that proved to be the catalyst to the introduction of the Cape Colony's most complex mining legislation. Diamond mining, by nature, is excessively capital intensive and requires great skill and engineering to access the vertical deposits of diamonds that descend to the bowels of the earth. Thus, stringent regulations and legislation are required to ensure the effective operation and management of mines, where thousands of lives and great profits are at stake. Following the incorporation of the diamond fields of Griqualand West into the governing folds of the Cape Colony, it was necessary for the Cape Legislature to enact new, more complex legislation to govern the largest revenue generating industry in the region.

The introduction of the Precious Stones and Minerals Mining Act in 1883 was necessitated by the need to consolidate the mining laws of the Colony and to introduce clauses regulating the technical operation and management of mines, which was a notably absent feature of previous Cape mining legislation. The promulgation of that Act was led by and dominated by commercial interests, represented by Cecil Rhodes and Joseph Robinson. Indeed, after the incorporation of the diamond mines into the governing folds of the Cape Colony, the mining magnates played a significant role in determining the nature of mining legislation for the remainder of the nineteenth century.

It was during the time that the Precious Stones and Minerals Mining Act of 1883 was promulgated that commercial interest and the effective operation and management of mines began to assume a greater role in the formation of mining legislation in the Colony. Whereas, prior to 1880, the Cape Legislature had been concerned with the way in which land believed to contain mineral deposits was leased and the royalty that Government derived from mining activities, the incorporation of the diamond fields into the governing folds of the Colony and the participation of mining magnates in the Cape Parliament compelled the Government to shift its focus from mineral leasing and royalties, to the technical operation and management of mines.

With any major, profitable industry, the commercial interests and the technical and operational requirements of an industry seldom stay fixed. Indeed, as the diamond

mining industry expanded and mine ownership was consolidated under one company, De Beers. the legislative framework governing the industry was amended on numerous occasions. Owing to the numerous amendments made during the 1880s, the mining legislation of the Cape Colony became a patchwork of original acts and their respective amendments, which prospectors and miners found hard to comprehend.

Thus, the final consolidation of mining legislation into two distinct acts, dealing with precious minerals and precious stones individually, occurred in the late 1890s. It should be noted that the final consolidation of mining legislation did not occur as a result of commercial interest or further economic benefit that could be derived from the industry. Rather, the final consolidation of mining legislation was based on the necessity to consolidate all existing laws into two accessible Acts that would promote, rather than impede, mineral development in the Colony.

Interestingly, after the incorporation of Griqualand West into the Cape Colony, diamond and gold mining was the central focus of all mining legislation for the remainder of the nineteenth century. The subject of base metal exploration and mining was dealt with in the Mineral Lands Leasing Act of 1877 and was not addressed in any further legislation promulgated thereafter. This fact reveals the dominant and important position that the diamond and gold mining industries assumed in the Cape's economy. This fact also reveals the power the diamond mining magnates wielded in the Cape Assembly in securing their own interests during the formation of mining legislation.

Bibliography

Primary Sources

Cape Archives (Inventories and Files)

- Cape of Good Hope Government Publications (CCP)
 - House of Assembly
 - Votes and Proceedings
 - Annexures
 - Select Committee Reports
 - Legislative Council
 - Votes and Proceedings
 - Minutes
 - Select Committee Reports
 - Mines and Mining
 - Geological and Mineralogical Papers
 - Papers Relating to Minerals and Mining, vol.1
 - Diamonds
 - Cape of Good Hope: Diamonds
 - Surveyor General
 - Reports
 - Statutes, Acts, Ordinances
- Surveyor General (SG)
 - Letters Received: Applications for mineral leases
 - Letters Received re mineral leases
- Government House (GH)
 - Papers Received from Secretary of State, London
 - General Despatches, 1806-1910
 - Papers Received from British Colonies and Foreign Governments
 - Griqualand West and British Bechuanaland, 1871-1880
 - Papers Despatched to Secretary of State, London
 - General Despatches, 1806-1910
- Griqualand West, Administrator (GLW)
 - Printed Papers
 - Ordinances
 - Griqualand West Government Gazette
 - Statute Law
- Colonial Office
 - Letters Received
 - Government Proclamations, Notices, Ordinances, Circulars and Statistical Registers
- Attorney General

- Administrative
 - Papers re Bills and Acts
 - Reports

Library of Parliament

- Mining-related documents in Mendelssohn Collection

Primary Reports referred to:

- CCP 1/2/1/1 'Memorandum as to Mineral Lands, the property of the Crown, within the Colony of the Cape of Good Hope' in Correspondence upon the subject of the discovery of metals in Namaqualand and the leasing of lands in that part of the colony in Annexures to the Votes and Proceedings of the House of Assembly, 1854, CCP
- G. 4-'56 'Geological Report upon the Gold District in the neighbourhood of Smithfield, by A. Wyley, Geological Surveyor to the Cape of Good Hope'
- S.C. 5-'64 'Report of the Select Committee on the Present System of Leasing the Copper Mines in Namaqualand'
- C.15-'65 'Petition of Lessees of Mines and others, on the Namaqualand Mineral Lands Leasing Bill'
- A.29-'71 'Report by E.J. Dunn, Esquire, Geologist, and indication of the existence of gold in certain of the Western Divisions of the Colony' (Cape of Good Hope Annexures to the Votes and Proceedings of the House of Assembly, A 1-46, 1871)
- A.30-'71 'Report of a tour made by Dr. W.G. Atherstone and Thomas Bain, Esq., in connection with reported gold discoveries in the Gouph, Division of Prince Albert' (Cape of Good Hope Parliament Legislature Council Papers: C.1-6, G.1-45, 1872)
- G.21-72 'Report by E.J. Dunn, Esq., on the Country traversed by the "Gold Prospecting Expedition" in Namaqualand' (Cape of Good Hope Parliament Legislature Council Papers, G.1-45, 1872)
- G.31-'73 'Report on the Stormberg Coal-Field' (Cape of Good Hope Parliament Legislature Council Papers, G.1-42, 1873)
- A.37-'78 'Correspondence between Mr. Ferguson and the Commissioner of Crown Lands and Public Works, respecting the premium offered by Government for the discovery of coal at the Indwe' (Annexures to Votes and Proceedings of the House of Assembly, 1878)
- G.4-'78 'Geological Report of the Stormberg Coal Field, by E.J. Dunn' (Appendix I to the Votes and Proceedings of Parliament, Vol. I, 1878)
- G.47-'78 'Colonial Mining Engineer's Report on the Coalfield of the Stormbergen (Annexures of Votes and Proceedings of the House of Assembly, Vol. II, 1878)'
- G.37-'79 'Report of E.J. Dunn, Esq., on Camdeboo and Nieuweldt Coal' (Cape of Good Hope Parliament Legislature Council Papers, Vol. I, 1879)

- G.42-'80 'Report by Mr. E.J. Dunn on the occurrence of Gold in the Knysna District' (Annexures to the Votes and Proceedings of the House of Assembly, Vol. II, 1880)
- G.71-'81 'Report on the Geology of the Karoo and Stormberg, Cape Colony' (Annexures of the Votes and Proceedings of the House of Assembly, Vol. II, 1881)
- G.8-'86 'Report of a Supposed Extensive Deposit of Coal by E.J. Dunn' (Annexures to the Votes and Proceedings of the House of Assembly, C 15-'65 'Petition of Lessees of Mines and others, on the Namaqualand Mineral Lands Leasing Bill' Vol. I, 1886)
- G.46-'86 'Report of the recent Gold Discoveries in the Knysna Division, by Thomas Bain, Esq., District Inspector' (Annexures to the Votes and Proceedings of the House of Assembly, Vol. II, 1886)
- G.47-'87 'Report of Millwood (Knysna) Gold Commission' (Annexures to the Votes and Proceedings of the House of Assembly, Vol. II, 1887)
- G.48-'88 'Reports of the Knysna Gold Fields and on Gold Mining in the Colony for the Year 1887' (Annexures to the Votes and Proceedings of the House of Assembly, Vol. II, 1888)
- A.13-'97 'Report of the Select Committee on the Mining Law Amendment Bill' (Annexures to the House of Assembly: Reports of Select Committees, 1897)
- G.6-'98 'Commission appointed to enquire into the Working of the Laws and Regulations in force for the Mining of Precious Stones and Minerals in the Colony' (Annexures to the Votes and Proceedings of the House of Assembly, Vol. I, 1898)

Official Publications

Cape of Good Hope, *Government Gazette*
Blue Book of the Cape of Good Hope
Cape Hansard

Newspapers

Diamond Fields
Diamond Fields Herald
The Diamond Fields Mining News
Diamond News
Kimberley Free Press
Cape Times
Cape Argus
Cape Monitor
George and Knysna Herald

Secondary Sources

- Badenhorst, P.J. *Mineral and Petroleum Law of South Africa: Commentary and Statutes* (Juta: Landsdowne, 2004)
- Botha, C. *Early History of Mining in South Africa* (The Government Printing and Stationery Office: Pretoria, 1934)
- Clark, M. *A History of Australia* (Pimlico: London, 1995)
- De Kiewiet, C.W. *A History of South Africa: Social and Economic* (Oxford University Press: London, 1942)
- De Kiewiet, C.W. *The Imperial Factor in South Africa* (Cambridge University Press: London, 1937)
- Dickason, G.B. *Cornish Immigrants to South Africa: The Cousin Jacks' Contribution to the Development of Mining and Commerce, 1820-1920* (A.A. Balkema: Cape Town, 1978)
- Eichengreen, B. *Globalizing Capital: A History of the International Monetary System* (Princeton University Press: Princeton, 1996)
- Feinstein, C. *An Economic History of South Africa: Conquest Discrimination and Development* (Cambridge University Press: Cambridge, 2005)
- Fisher, W.E.G. *The Transvaal and the Boers* (Chapman & Hall: London, 1900)
- Frankel, S.H. *Capital Investment in Africa: Its Course and Effects* (Oxford University Press: London, 1938)
- Goodfellow, C.F. *Great Britain and South African confederation, 1870-1881* (Oxford University Press: Cape Town, 1966)
- Handley, J.R.F. *World Gold Resources: A Review based on Historical Production and New Discoveries* (University of the Witwatersrand, Economic Geology Research Unit, Information Circular No.217, 1990)
- Hart, M. *Diamond: The History of a Cold-Blooded Love Affair* (Fourth Estate: London, 2002)
- Herbert, I. *The Diamond Diggers* (Tom Stacey: London, 1972)
- Henry, J. *A Century of Service, 1862-1962: The Standard Bank's Earliest Years* (The Standard Bank of South Africa Limited: Cape Town, 1962)
- Immelman, R.F.M. *Men of Good hope: The Romantic Story of the Cape Town Chamber of Commerce* (The Cape Town Chamber of Commerce: Cape Town, 1955)
- Imperial Mineral Resources Bureau, *The Mining Laws of the British Empire and of Foreign Countries, Vol. III* (H.M. Stationery Office: London, 1922)
- Kanfer, S. *The Last Empire: De Beers, Diamonds and the World* (Hodder and Stoughton: London, 1994)
- Kennedy, B. *A Tale of Two Mining Cities: Johannesburg and Broken Hill, 1885-1925* (Ad. Donker: Johannesburg, 1984)
- Kilpin, R. *The Romance of a Colonial Parliament: Being a Narrative of the Parliament and Councils of the Cape of Good Hope from the Founding of the Colony by Van Riebeeck in 1652 to the Union of South Africa in 1910* (Longmans, Green: London, 1930)

- Lang, J. *Power Base: Coal Mining in the Life of South Africa* (Jonathan Ball: Johannesburg, 1995)
- Laurence, P. *The Life of John Xavier Merriman* (Constable: London, 1930)
- Lawrence, J. *Buccaneer: A Biography of Sir Joseph Benjamin Robinson, First Baronet* (The Gryphon Press: Cape Town, 2001)
- Leasor, J. *Rhodes & Barnato: The Premier and the Prancer* (Leo Cooper: London, 1997)
- Lewinsohn, R. *Barney Barnato: From Whitechapel Clown to Diamond King* (George Routledge: London, 1937)
- Marks, S. *Industrialisation and Social Change in South Africa: African Class Formation, Culture, and Consciousness, 1870-1930* (Longman: New York, 1982)
- McCracken, J.L. *The Cape Parliament, 1854-1910* (Clarendon Press: Oxford, 1967)
- Meredith, M. *Diamonds, Gold and War: The Making of South Africa* (Jonathan Ball: Johannesburg, 2007)
- Morrell, W.P. *The Gold Rushes*, (A. & C. Black: London, 1940)
- Nathan, M. *The Diamond Laws of South Africa: Being the Statute Laws Relating to Mining and Trade in Precious Stones* (The Central News Agency, Limited: Johannesburg, 1920)
- Newbury, C. *The Diamond Ring: Business, Politics, and Precious Stones in South Africa, 1867-1947* (Clarendon Press: Oxford, 1989)
- Nimmo, A. *The Knysna Story* (Juta: Cape Town, 1976)
- Parkes, M. *Exploring Knysna's Historical Countryside* (Emu Publishers: Emu, 1989)
- Picard, H.W.J. *Lords of Stalplein: Biographical Miniatures of the British Governors of the Cape of Good Hope* (Citadel Press: Cape Town, 1974)
- Roberts, B. *Civic Century: The First One Hundred Years of the Kimberley Municipality* (Northern Cape Printers: Kimberley, 1978)
- Roberts, B. *The Diamond Magnates* (Hamish Hamilton: London, 1972)
- Roberts, B. *Cecil Rhodes: Flawed Colossus* (Hamish Hamilton: London, 1987)
- Rotberg, R. *The Founder: Cecil Rhodes and the Pursuit of Power* (Southern Book: Johannesburg, 1988)
- Schreuder, D.M. *The Scramble for Southern Africa, 1877-1895: The Politics of Partition Reappraised* (Cambridge University Press: Cambridge, 1980)
- Smalberger, J.M. *A History of Copper Mining in Namaqualand* (C. Struik: Cape Town, 1975)
- Smalberger, J.M. 'The role of the Diamond-mining industry in the development of the pass-law system in South Africa' in the *International Journal of African Historical Studies* IX, 3 (1976)
- Stephens, J. *Fuelling the Empire: South Africa's Gold and the Road to War* (Wiley, Chichester, 2003)
- Tamarkin, M. *Cecil Rhodes and the Cape Afrikaners: The Imperial Colossus and the Colonial Parish Pump* (Frank Cass: London, 1996)
- Thompson, L. *A History of South Africa* (Jonathan Ball: Johannesburg, 2000)
- Turrell, R.V. *Capital and Labour on the Kimberley Diamond Fields, 1871-1890* (Cambridge University Press: London, 1987)
- Van der Poel, J. *Railway and Customs Policies in South Africa: 1885-1910*

- (Longmans, Green: London, 1933)
- Viljoen, M.J. *An Introduction to South Africa's Geological and Mining Heritage* (Mintek in association with the Geological Society of South Africa: Randburg, 1999)
 - Webb, A.C.M. 'Mining in South Africa' in Coleman, F. (ed.) *Economic History of South Africa* (Haum: Pretoria, 1983), p.163-194
 - Walmesley, O. *Guide to the Mining Laws of the World* (Eyre & Spottiswoode: London, 1894)
 - Wheatcroft, G. *The Randlords: The Men who made South Africa* (Jonathan Ball: Johannesburg, 1985)
 - Wienthal, L. *Memories, Mines and Millions: Being the Life of Sir Joseph B. Robinson* (Simpkin Marshall: London, 1929)
 - Williams, A.F. *The Genesis of the Diamond* (Ernst Benn Limited: London, 1932)
 - Williams, G. *The Diamond Mines of South Africa* (Macmillan: New York, 1902)
 - Worger, W. *South Africa's City of Diamonds: Mine Workers and Monopoly Capitalism in Kimberley, 1867-1895* (Yale University Press: London, 1987)

Pamphlets (South African Library, Cape Town Campus)

- Cornelissen, A. *Namaqualand: Copper History* (South African Library: Cape Town Campus)
- Gold, Silver and Platinum: Selections from the Precious Minerals Act relating to Prospecting, Discoverer's Duties, Discoverer's Rights, Owner's Rights (W.A. Richards & Sons: Cape Town, 1901)
- O'okeip Copper Company, *Namaqualand Copper 1852-1952: A booklet on the centenary written by the staff* (R. Beerman Publishers, 1952)
- Osborne, C.F. *The Knysna-Millwood Gold-Fields* (1890)
- Pritchard, D.G. *The Karoo Gold Fields*
- Rules and Regulations for the Vaal River Diamond-Fields (1870)

Theses

- Dale, M.O. *An historical and comparative study of the concept and acquisition of mineral rights* (University of South Africa, LL.D. 1979)
- Grundlingh, M.A.S. *The Parliament of the Cape of Good Hope, with Special Reference to Party Politics, 1872-1910* (Stellenbosch University, Ph.D.1945)
- Turrell, R. *Capital, Class and Monopoly: The Kimberley Diamond Fields, 1871-1889*
- Worger, W. *The Making of a Monopoly: Kimberley and the South African Diamond Industry* (Yale University, Ph.D, 1982)