

A STUDY OF THE MINING LAW OF CHILE

Desire for the precious metals was one of the most powerful stimulants to the Spanish conquest of the New World. The early *Conquistadores* sought only to obtain the treasure amassed by the Indians, but in their wake mines were soon discovered and worked, and thus it fell to the lot of Spain to make and promulgate the original mining laws of Latin-America.

After the dismemberment of the Roman Empire it appears that there remained in Spain relating to mines a system of law derived from the classic Roman system. Until the middle of the fourteenth century, when special legislation was enacted, the minerals followed the feudal condition of the land in which they were found: if the land was free the mining rights belonged to the owner of the soil; if the land was subject to some fief they were the property^s of the feudal lord. The special legislation wrought radical changes.

Various isolated legal provisions were issued in the earliest colonial days emanating from the Spanish crown as the private owner of the colonies. Of the later laws or compilations the most important were the "*Ordenanzas del Peru*" promulgated by order of the viceroy Melchar de Navarro in 1683. In Book III of this compilation are found the provisions relating to mines. These ordinances were received as law in Chile, Colombia and Peru and were of very liberal character considering the epoch in which they were enacted.¹

The "*Ordenanzas del Peru*" continued in force until succeeded by the "*Ordenanzas de Nueva Espana*" in Mexico in 1783 and in the colonies of Colombia, Chile and Peru in 1785. These celebrated ordinances of "New Spain" comprise the most important mining legislations bequeathed by the mother country to her colonies as it is the definite source for most of the present-day Spanish-American legislation

¹ For a collection of the early mining ordinances see: "Comentarios a las ordenanzas de minas" by Francisco J. Gamboa. Madrid, J. Ibarra, 1761. p. 14,534.

and jurisprudence on mines. In fact it was the actual law until after the independence of the various colonies was gained, when each republic issued its own special code. Naturally many of the provisions and principles were incorporated in all these codes, especially in those of the West Coast countries.²

In Chile the "*Ordenzas de Nueva España*" were promulgated with local modifications by the Viceroy of Peru, and, after its recognition as an independent republic, they were adopted officially by the decree of June 11th, 1833. The confusion prevailing in the mining laws stimulated the movement for codification. Although a code commission was appointed in 1846, it was not until November 18th, 1874, that a code was adopted by Congress. This first effort proved defective in many ways and was superseded by a new code of December 20th, 1888, which has continued in force from January 1st, 1889.³ A few special laws and reglementary decrees have been issued since 1889 which complete or clarify provisions of the mining code or otherwise are of a police and administrative nature. The code itself is criticized at times and proposals have been made for its reformation, but on the whole it is clear, and due to the numerous and extensive mining enterprises in Chile much litigation has taken place, with the result that most of the code has had judicial interpretation.

To the student of comparative law it can be stated that the Chilean code bears a striking similarity to the mining laws of other South American countries, especially those of

² See "Reales ordenanzas para la dirección, régimen y gobierno del importante cuerpo de la minería de Nueva España, etc. De orden de Su Magestad" impresa en Madrid, 1783, p. 214. Reprinted in Santiago, Imprenta de "La Opinión," 1833, p. 108.

³ Numerous annotated editions of this code have been published by various legal writers in Chile. A leading authority frequently quoted is Robustiano Vera ("*Código de minería . . . comentado y anotado.*" 2nd ed. Santiago, Impr. de "El Correo," 1897, p. 466). The handbook currently used and copiously annotated is the "*Código de minería. Orígenes, concordancias, jurisprudencia*" by Santiago Lazo. Santiago, Poblete Cruzar Hnos., 1907, p. 180. A recent collection of the code and related laws is the "*Legislación de minas de Chile*" by Fabio Castro Garín. Santiago, Impr. Universaria, 1918, p. 201. An English translation was made in 1914 by Charles E. M. Michels, a mining engineer. Santiago, La Imprenta Diener, 1914, p. 94.

the West Coast.⁴ The Nation proclaims its ownership of all mines of gold, silver, mercury, tin, precious stones and other fossil substances, notwithstanding title to the surface of the soil in which these minerals are contained lies in individuals or corporations. But to individuals is conceded the right to prospect and dig in lands of any ownership in search of these mines, and to work and treat the ores, and to dispose of the mines as owners, subject to the requirements and rules of the mining code. Mines of gold, silver, copper, platinum, mercury, lead, zinc, bismuth, cobalt, nickel, antimony, arsenic, iron, manganese, chromium, molybdenum, vanadium, rhodium, iridium, tungsten, and precious stones, whatever may be their origin, and form of deposit, are open to free acquisition by individuals. The exploitation of coal and other fossils not listed above is the prerogative of the owner of the land, but if he works them he is required to comply with the formalities of the code in order to constitute his title thereto.

Notwithstanding the foregoing paragraph the Nation reserves to itself the exploitation of guano deposits in lands of any ownership, and also the exploitation of deposits of nitrates and analogous ammoniacal salts found on state and municipal lands. As is well known nitrate is the most important natural resource of Chile. Its deposits cover most of the northern portion of the country including the territory ceded or acquired from Peru and Bolivia. There has been much legislation and litigation over titles to nitrate properties.⁵ A special administrative body, called the "*Delegacion Fiscal de Salitreras and Guaneros*," is appointed to look after the interests of the government in these valuable properties.

⁴See: "Guide to the mining laws of the world" by Walmesley (London, 1894). "Legislation des mines francaise et etrangere," by Agullion (Paris, 1891). "Economia minera (legislacion de minas)" by Carbonell (Madrid, 1907-8). Bulletin No. 40, Bureau of American Republics, 1892. Translations of various laws. "Guide to the law of Argentina, Brazil and Chile." (Library of Congress, Washington, 1917) at pp. 427-431.

⁵For a complete collection of laws and statutes including those of Bolivia and Peru relating to territory ceded to Chile by these countries see "Leyes, decretos, i documentos relativos a salitreras, recopilados" by Carlos Aldenate Solar, Santiago, Imprenta Cervantes, 1907. pp. 178, 220, 215. Also see "Minas i salitreras" by Carlos E. Ibañez, Santiago, Impr. "La Lira", 1906. p. 439.

Until 1884 salitre or nitrate claims were acquired similar in manner to other mines when a special decree was promulgated suspending all denouncements. Later in 1888, it was decreed definitely that these properties could not be gotten by denouncements as with other mines in general. The procedure is rather unique: the applicant files a petition through the Delegacion Fiscal de Salitreras to the government asking for an *estaca* (claim) which as regards other mining properties is called a *pertenencia*. If approved by the proper department a bill is introduced in Congress for a law authorizing the sale of this claim by public auction. Usually these petitions are held until a considerable number are collected in order that one congressional enactment may serve for all. At the present time (January, 1920), the Delegacion at the request of the Treasury Department (Ministerio de Hacienda) is arranging to present such a bill covering various pending petitions which makes it an opportune time to present a petition in order to obtain prompt action. Several famous auction sales have been held especially those in 1893, 1894, and 1897, when hundreds of *estacas* and *estacamentos* (groups of *estacas*), were sold, most of which were acquired from Peru. Private titles obtained from Bolivia and Peru have been respected, and since the litigation resulting from the law of February 7, 1906, relating to the right to measure (*mensurar*) claims, the situation of titles is more or less settled. The form or shape of a nitrate claim may be different from that of other mines and its area is considerably larger due to the nature of the mineral and form of the deposits. One should bear in mind in reading text books and laws relating to nitrate mining that in Chile a nitrate mine is called an *oficina*.

Auriferous and tiniferous sands and gravels and any other mineral products of rivers and placers are open to free utilization when found on unimproved land of any ownership. When the exploitation is carried on in fixed plants mining titles have to be constituted in conformance with the special decree of July 5, 1895.

The law concedes the perpetual ownership of mines to individuals on condition of the latter paying annually a patent for each hectare of the surface area which the mines cover. Once the existence of a mine is recognized, the surface properties are subject to the easement of occupation to the whole extent necessary for the easy working of such mine. In fact the law is generous in providing for means for working, including valuable water rights, supplies of wood, rights of ingress and egress, easements of pasture, etc. However, as in other instances of condemning private property compensation must be made for that taken and for the damage caused. Mines are not capable of division in a physical way but the interests of two or more partners or joint owners may be divided into shares or *barras*, usually twenty-four. The concessionary of a metalliferous mine is the sole owner, within the limits of his claim, and to its utmost depth, of all the mineral substances which may exist or be found in the same. In the case of other kinds of mines he only has the right to the mineral substances he originally denounced.

Foreigners have the same rights as natives to locate and own mines. In fact the code simply states in Article 21, that all persons qualified to possess real estate in Chile may acquire mines, except certain government officials within the jurisdiction of their offices, married women not divorced and minor children under certain conditions. Persons not qualified to own real estate are limited practically to persons civilly dead, as for example those who by solemn vows have become members of a monastical institution in the manner prescribed by law and recognized by the Roman Catholic Church. It is permitted to one individual in the character of a discoverer, registrar or concessionary to denounce or manifest but three mining claims on the same mineral deposit. However, they can acquire by purchase or other legal means as many as they wish without limitation, and in fact there are mining corporations who possess hundreds of claims in Chile.

While it is not within the compass of this brief article to go into actual details of the procedure to acquire mines it is interesting to note a few points. Any one can go upon lands which are not enclosed or dedicated to agriculture and prospect and dig for mines. Special permission must be obtained in the excepted cases, and if refused by the owner the right can be obtained by application to the judge of the first instance in that district. There are also certain prohibitions regarding prospecting near houses, roads, water sources, military fortifications, and similar places. The discoverer of a mine where no other mine has been registered within a radius of five kilometers is called a discoverer of a virgin hill, otherwise he is called a discoverer of a known hill. The discoverer in a virgin hill has the exclusive privilege to petition for claims within the five kilometers during the fifty days following the registration. To secure title to a mine it is necessary to file with the judge of the first instance, a "*manifestacion*", that is a written petition, and the court advertises or publishes the petition in the manner prescribed. Within the next succeeding ninety days, the discoverer must dig a shaft or *pozo* of a certain depth, which is used as a starting point for fixing the location of the claim and for proving the existence of the ore claimed for exploitation. He must also stake off the claim with visible monuments placed at each corner, a claim being by law rectangular in shape with a maximum superficial area of five hectares and a minimum of one.⁶ Before the expiration of the ninety days mentioned above the registrar must "ratify" his registration by means of a second petition (*ratificacion*) which in turn is recorded. This constitutes a provisional title and any time thereafter the definite title may be acquired by requesting an official measurement or *mensura*. This *mensura* takes place by court order and is accomplished by a titled engineer in the presence of witnesses after all owners of contiguous mines have been legally notified. Many detailed provisions govern the *mensura* and these

⁶Certain classes of minerals are allowed a *pertenencia* or superficial area of fifty hectares.

must be followed out to the letter in order to constitute legal title to the mine. Thereafter the miner must maintain and keep standing the monuments (*hitos*) subject to severe penalties of a criminal nature. If they are overthrown or destroyed their replacement must be effected by order of the proper court official.

Mining property enjoys the same privileges of transfer as does other real estate, such as sale, descent on death, etc., and is subject to acquisition by adverse possession. A mining register similar to that of ordinary real estate is kept where every transfer of a mine is recorded officially. Sales are not considered perfected until they are covered by the formal written document known in all Spanish-American countries as an *escritura publica*. A transfer in writing not executed before a Notary is called an *escritura privada* and is only valid as a promise to sell.

When two or more persons own shares or interests in the same registered mines or when they form a partnership to operate mines there are special provisions in the mining code governing these relations. This has nothing to do whatever with the corporation or *sociedad anonima* which is treated as an entity just as in the United States. It is interesting to note that a mining partnership is not dissolved by the death of one of the partners. In view of the disastrous results suffered by many wellknown persons in the Old World, when they received, as presents, shares in certain companies which were supposed to be in a flourishing condition, but were really bankrupt, the inheritance may turn out to be a white elephant. It is the consensus of opinion that heirs are responsible, however, as far as the mining company is concerned only to the extent of their interest in the same; but they are subject, of course, to the conditions of the partnership agreement.

The laws are strict regarding the payment of the annual tax or patent which is levied per each hectare of the superficial area. Ownership is permanently subject to this payment and the tax collectors are zealous in their collections.

If not paid at the time decreed by the law the mine is advertised for sale, and if not paid before the time limit it is then put up at public auction. Each year in Chile scores of claims are sold as a result of the negligence of the owners and much confusion has resulted in titles.

In closing this study of the laws a special mining contract is pointed out as of interest. In actual practice frequently a person will lend money to a miner to work his mine and the lender is paid out of the yield only. This contract is called an *avio* and must be covered by an *excritura publica* to be binding on creditors and third parties. It would be interesting to study the detailed provisions governing *avios* but that is beyond the scope of this article.

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