Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Croudace v. Zobel, from the Supreme Court of New South Wales; delivered 13th December 1898.

Present:

LORD HOBHOUSE.
LORD MACNAGHTEN.
LORD MORRIS.
SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

On the 20th March 1897 the Supreme Court granted an interlocutory injunction to restrain Croudace, the Defendant, now Appellant, from trespassing or mining upon the land covered by the private gold lease application of the Plaintiff Zobel, who is now Respondent but has not put in any appearance. The injunction runs till further order. The Defendant without waiting for the hearing seeks to dissolve it at once.

The plot of land in question is 20 acres in extent, and forms part of an estate belonging to a Mining Company, whose manager is the Defendant, under a grant from the Crown which did not reserve any mineral except gold. In 1896 the Plaintiff obtained a miner's right and an authority under Section 8 of the Mining on Private Lands Act of 1894; and on the 3rd August 1894 he made application for a 20 years' lease under Section 13 of the same Act. He has defined the boundaries of the plot and has done the other things necessary to obtain a lease, but

5503. 100.—12/98. [79]

his application had not been granted at the date of the injunction. The Defendant's Company for some time got copper from the land, but they found the working unprofitable and discontinued it for several years. Some weeks after the Plaintiff's application for a lease they resumed working, and consequently the Plaintiff applied for an injunction to restrain them.

The Defendant's first objection is that the Plaintiff has no interest to protect. It is true that the authority which he obtained under Section 2 has done its work, and that he has not acquired the interest of a lessee. But he has a definite statutory right to apply for a lease, which he has exercised, and his possibility of getting that lease gives him an interest to oppose operations which may have the effect of injuring or even of destroying the subject-matter of his application while it is yet pending. On this point therefore their Lordships have no hesitation in agreeing with the Court below.

That being so, it seems to their Lordships that, applying the ordinary test of greater or less convenience, this case is one in which the gold-miner's interest should be protected either until his application for lease is disposed of or until the Court sees other reason to discharge the injunction; and Mr. Crackanthorpe has not persuaded them that the injunction ought not to be maintained on that ground alone.

As there is sufficient ground for refusing to disturb the order, their Lordships will not go out of their way to decide anything on the very difficult questions arising under the 10th section of the Act. As Darley C. J. points out, the New South Wales Legislature have created rights of a novel description, and also of a complicated kind; and it is not surprising to find that the framers of the Act have either failed to foresee the questions that

would arise, or to put their views on them into clear language. If and when necessary the problem must be solved. This however is not an appeal from a final order but from an interlocutory one of an essentially temporary kind for interim protection, and their Lordships are not at all disposed to encourage such appeals. Probably the certificate was given in the Court below because their decision was rested on a certain view of Section 10 of the Act of 1894. But if it is right on any view of that section to grant the injunction there is no obligation to decide whether the view actually taken is correct or not, and their Lordships prefer to express no opinion on it.

It is also to be borne in mind that this appeal is undefended; and that their Lordships are very cautious in examining decisions of Colonial Judges upon matters which are of peculiarly local import, and familiarity with which gives peculiar facilities for drawing right conclusions. Neither of these considerations is the fault of the Defendant; but they serve to increase their Lordships' reluctance to construe a doubtful statute when no obligation lies on them to do so.

Mr. Crackanthorpe also relies on Section 9 of the Act of 1896 which allows owners of land to work minerals not reserved to the Crown notwithstanding the presence of reserved minerals—in this case gold—if the value of the gold does not exceed 50 per cent. of the value of the minerals not reserved. Here it is said the value of the gold is less than 50 per cent.

The Defendant distinctly raised this question in his pleas and in his affidavits, and it is not met by the Plaintiff. It may be that at the hearing it will constitute a good defence. But the judgments are wholly silent about it; and in the report published in the colony there is no

trace of the point having been made. Seeing how often points raised in the pleadings are dropped in Court for some sufficient reason, it is safer in an undefended appeal from an interlocutory order not to decide anything on this ground. Perhaps indeed there would still be no answer to a claim for interim protection. And their Lordships think it better to say nothing on this head except this: that for aught that appears in this Record it is open to the Defendant to insist on the point at the hearing.

They will humbly advise Her Majesty to dismiss the appeal.