[HIGH COURT OF AUSTRALIA.]

LIDDELL . . . . . APPELLANT;
DEFENDANT,

AND

LANSELL AND ANOTHER . . . . RESPONDENTS.
COMPLAINANTS,

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

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MELBOURNE, *May* 23, 24.

Griffith C.J., Barton and Isaacs JJ.

Mines and mining—Mining lease—Consolidated lease of Crown lands and private lands—Authority to grant—Right of holder of lease to take other private lands—Mines Act 1897 (*Vict.*) (*No.* 1514), *secs.* 29, 67, 91.

Part I. of the *Mines Act* 1897 deals with mining on Crown lands, and Part II. deals with mining on private property.

Sec. 29, which is in Part I., provides (so far as is material) that:—"Notwithstanding anything contained in any Act it shall be lawful to make application in accordance with the regulations for leases, and leases may be granted comprising Crown lands reserved lands and private lands or any of them, and the holder of any mining leases of Crown lands reserved lands and private lands or any of them shall be entitled at any time . . . to surrender the same, and it shall be lawful for the Governor in Council to grant to such holder a consolidated lease for any term not exceeding fifteen years of the whole or any portion of the lands comprised in such surrendered leases."

Sec. 67, which is in Part II., defines "lease" as "a lease granted pursuant to this Part."

Sec. 91, which also is in Part II., provides that:—"(1) The holder of any claim or lease shall be entitled to take for mining purposes the whole of any private land belonging to one owner within the boundaries of or adjoining or abutting on such claim or lease," &c.

Held, that a consolidated lease comprising Crown land and private land granted under sec. 29 is a lease granted pursuant to Part I., so far as relates

to the Crown land comprised in it, and pursuant to Part II., so far as relates to the private land comprised in it, and, therefore, that the holder of such a consolidated lease is entitled, under sec. 91, to take for mining purposes private land within the boundaries of or adjoining or abutting on the private land comprised in the consolidated lease.

Decision of the Supreme Court of Victoria: *Lansell* v. *Liddell*, 33 A.L.T., 164, affirmed.

APPEAL from the Supreme Court of Victoria.

Edith Lansell and the Sandhurst and Northern District Trustees Executors and Agency Co. Ltd., the complainants, were the registered proprietors of a consolidated gold mining lease, granted under sec. 29 of the *Mines Act* 1897, comprising both Crown land and private land. They desired to take, pursuant to sec. 91 of that Act, certain private land alienated from the Crown before 1884 and belonging to Elizabeth Liddell, the defendant, and which was said to adjoin or abut upon the private land comprised in the consolidated lease of the complainants. On proceedings by the complainants before a Warden of the Gold Fields to determine the amount of purchase money to be paid for the defendant's land desired to be taken, the Warden stated a special case for the Court of Mines asking *inter alia* (1) whether the complainants' consolidated lease was a lease within the meaning of sec. 91, and (2) whether the defendant's land was within the boundaries of, or adjoined, or abutted upon such consolidated lease, within the meaning of sec. 91.

The Judge of the Court of Mines having answered the first of those questions in the affirmative and the second by saying that the defendant's land adjoined the complainants' consolidated lease within the meaning of sec. 91, his decision was on appeal to the Supreme Court affirmed: *Lansell* v. *Liddell* (1).

From this decision the defendant now appealed to the High Court.

Irvine K.C. (with him *Mann*), for the appellant. A consolidated lease granted under sec. 29 of the *Mines Act* 1897 is not a lease granted pursuant to Part II. of the Act The only authority to grant such a lease is contained in sec. 29, and a lease granted

(1) 33 A.L.T., 164.

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under that section is a different thing altogether from the leases which may have been surrendered in order to obtain it. The lease referred to in sec. 91 is a lease granted under Part II. according to the definition in sec. 67, and there is nothing inconsistent with the context or subject matter in so interpreting the word. The privilege of taking adjoining private land was first given by sec. 9 of the *Mines Act Amendment Act* 1890, and if it was doubtful then whether the privilege was intended to be given to the holder of a lease of Crown land, that doubt was removed by the Act of 1897 when the provision was put in Part II. of the Act. Sec. 91 cannot be read as applying to the private land which is comprised in a consolidated lease granted under sec. 29, for the boundary of a lease granted under sec. 29 is the boundary line of the whole lease, whereas the private land which may be taken under sec. 91 must be within the boundaries of, or adjoining or abutting upon the boundaries of the private land of which the lease is comprised. Otherwise a right would be given to a person by obtaining a consolidated lease comprising a small piece of private land to take private land which only adjoins Crown lands comprised in his lease.

McCay, for the respondents. A consolidated lease granted under sec. 29 as far as it comprises Crown lands is granted pursuant to Part I. and so far as it comprises private lands is granted pursuant to Part II. So far as the Crown lands are concerned the provisions of Part I. must be complied with and so far as the private lands are concerned the provisions of Part II. must be complied with. Sec. 29 must be read distributively. Sec. 91 then applies to the holder of a consolidated lease granted under sec 29, and since the private land which is desired to be taken in this case adjoins the private land comprised in the lease, it is unimportant whether the right given by sec. 91 extends to private land which adjoins Crown land comprised in the lease.

GRIFFITH C.J. The difficulty which has been raised in this case arises, as it appears to me, entirely from a misapprehension of the provisions of sec. 29 of the *Mines Act* 1897. Before adverting to those provisions I will say a few words as to the previous legisla-

tion. Early in history of mining legislation in Australia provision was made for mining on Crown lands. Various conditions were laid down from time to time, and at last a somewhat elaborate system was evolved. Two tenures of Crown land for mining purposes were created, known as claims and leases. But no provision was made in Victoria for mining upon private land until 1884. Then the legislature took the subject in hand and established another system different from that relating to mining on Crown lands, and containing elaborate provisions for the protection of private owners. These two systems went on side by side for many years. In 1890 the two sets of laws were consolidated in one Act, but the two systems were still kept apart, Part I. of the Act of 1890 relating to mining on Crown lands, and Part II. to mining on private property. In both forms of tenure claims and leases were allowed. I need not advert to the intermediate Act of 1891. Neither of the systems to which I have referred made formal provision for what is commonly called amalgamation or consolidation. I believe that provision was made by the regulations for consolidation. The term "consolidated claim," for instance, was a term well known, and I think the term "consolidated lease" was also used, but the only formal provision bearing on the matter was that a leaseholder in the case of Crown lands might surrender his lease and get a new lease. The effect was that the holder of several leases of adjoining Crown lands could surrender all of them and get a fresh lease of the whole of the land in respect of which the surrendered leases had been granted. There was no similar provision, as far as I know, in respect of private land. It is, however, immaterial whether there was or was not. But there was no provision under which a man could at the same time, *uno flatu*, obtain a lease of land part of which was Crown land, and part private land. If he wanted a lease of a block of land comprising both classes, he had to apply for one lease under one Part of the Act and one under the other Part. That was inconvenient. One of the inconveniences was that if a man had a lease of Crown land subject to conditions as to labour upon it, and a lease of private land also subject to conditions as to labour upon it, he could not combine the labour upon both, and so apply it to the best

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advantage upon some part of the combined property, but was bound to distribute the labour over the different areas. That difficulty could, in other cases, be got over by the granting of consolidated leases or claims.

In 1897 the legislature determined to amend the Act of 1890, and did so by the *Mines Act* of that year. That Act, also, was divided into Parts, Part I dealing with mining on Crown lands, and Part II. dealing with mining on private property. In Part I., under Subdivision 3, headed "Mining leases," which contained some slight amendments of the Act of 1890 on that subject, sec. 29 was introduced. The first enactment of that section is that "Notwithstanding anything contained in any Act it shall be lawful to make application in accordance with the regulations for leases, and leases may be granted comprising Crown lands reserved lands and private lands or any of them." Now it is quite clear that the reference there is to the laws in force for the time being relating to applications for, and the granting of, such leases, and that no new power is given to the Crown to grant leases of Crown land or private land otherwise than conditions elsewhere prescribed. But there is a new provision that a single lease may be granted comprising both classes of land instead of two leases. That is in substance a mere conveyancing provision. The power to grant the lease is to be found *aliunde*. This provision therefore allows the exercise of two distinct powers to be testified by the same instrument and that is all that there is in it. So far the section relates only to land not already leased, and it seems to me an appropriate place in which to insert such a provision. The legislature was dealing with leases of Crown lands and until then had provided that such leases should comprise Crown lands only. They then by sec. 29 made an alteration of that provision. So that in one sense the section did relate to the Part of the Act dealing with Crown lands, although in another sense it had a larger application.

Sec. 29 went on to deal with the analogous case of a person who already had leases of Crown lands, reserved lands and private lands, and provided that he might surrender such leases and obtain a consolidated lease of the lands comprised in the surrendered leases, and that the new lease might be renewed

from time to time as the old leases might have been. Then followed provisoes as to rent and conditions, which might be different from those contained in the surrendered leases. That again did not authorize the Crown to deal with Crown lands or private lands on different conditions from those under which the Crown was already authorized to deal with them, but, as a matter of administration, or, as I said just now, as a matter of conveyancing, it allowed the exercise of two powers to be testified in a single instrument. That seems to be the whole effect of sec. 29, and when it is regarded in that way the whole difficulty appears to me to disappear.

The respondents are the holders of a consolidated lease granted under sec. 29, which comprises both Crown lands and private lands, all of which were previously held by them under separate titles, and are now held under a single title. The exact question arises under sec. 91 which is in Part II. of the Act. That section provides that:—"The holder of any claim or lease shall be entitled to take for mining purposes the whole of any private land belonging to one owner within the boundaries of or adjoining or abutting on such claim or lease" &c., and by sec. 67, which is the interpretation clause applicable to Part II. of the Act, the term "lease" means "a lease granted pursuant to this Part," that is to say, a lease of private land.

The contention made by the appellant is that the holder of a consolidated lease is not the holder of a lease of private land granted pursuant to Part II. of the Act. I have already pointed out that if the lease is not granted pursuant to Part II. there is no power at all to grant it. The power to grant a lease of private land is contained in that Part, and the conditions of its grant are all prescribed by that Part, sec. 29 merely authorizing the Governor to exercise that power in another form. But the lease is granted just as much under Part II. as before, and depends for its validity entirely upon that Part. It is, therefore, *quoad* the private land contained in it, a lease granted pursuant to Part II., and it is also, as to the Crown land contained in it, a lease granted pursuant to Part I. of the Act. As an illustration, I may put the case of a trustee of a will who holds adjoining lands of the testator under different trusts and subject to distinct and dif-

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ferent powers. If, in the exercise of powers which cover all that he desires to do, he grants a single lease of the lands subject to the distinct powers, he is really exercising two distinct powers. It could not be said exclusively that the lease was granted under one power or the other. It would really be granted under both powers. Then, as I suggested in argument, if the legislature imposed taxation upon leases the amount of which varied with relation to the powers under which they were granted, the taxation would be at one rate as to one portion of the land and at another rate as to the other portion. It seems to me, therefore, that a consolidated lease granted under sec. 29 is a lease granted pursuant to Part II., so far as relates to the private property contained in it. That seems, indeed, to me the natural grammatical construction of the language used.

Mr. *Irvine* suggested that a further difficulty was raised by the use of the word "boundaries" in sec. 91. No doubt the word "boundaries" in one sense means the external line around the whole area. If it were a question of proving title to the land held under the lease, he could show title to the whole of the land within the external boundaries. But when the matter is regarded from a different point of view, namely as to the power under which the lease is granted, and the lease is regarded as being one granted, as to part of it, under Part I. of the Act and, as to the other part, under Part II., and when the rights of the lessee under it depends upon the provisions of each of those Parts, it seems to me that the word "boundaries" must be read in the same sense, *reddendo singula singulis*, which is not an unusual way of construing an Act of Parliament.

For these reasons I think that the decision of the Court of Mines was right, and the judgment of the majority of the Supreme Court is also right, and that the appeal therefore fails.

BARTON J. I am of the same opinion.

ISAACS J. I agree that the appeal should fail. I think that "pursuant to" Part II. means in conformity with the provisions of that Part, and that so far as the lease contains private lands it must be subject to the provisions of Part II. as modified by sec.

29. Sec. 29 gives power to combine two authorities under Part I. and Part II., and if that were not so there would be unrestricted power of granting leases of Crown lands and unrestricted power of granting leases of private land, and that cannot possibly be imagined. I have just observed sec. 26 which deserves notice. It provides that "Pursuant to the provisions of Part I. of the Principal Act" a mineral lease may be granted giving the holder thereof the right to enter and mine upon "any land being a pastoral allotment or grazing area demised either before or after 1st March 1892 . . . without making compensation to the lessee thereof for surface or other damage." That is exactly similar to what occurred in the present case.

Appeal dismissed with costs.

Solicitor, for the appellant, *A. Phillips.*
Solicitors for the respondent, *McCay & Thwaites.*

B. L.

[HIGH COURT OF AUSTRALIA.]

THE KING . . . . . APPELLANT;

AND

FINLAYSON . . . . . RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF WESTERN AUSTRALIA.

Criminal law—Stealing—Evidence of fraudulent intent—Evidence of similar acts—Criminal Code 1902 (*W.A.*) (1 & 2 *Ed. VII. No.* 14), *sec.* 369.

Fraudulent intent is an essential element of the offence of stealing under the *Criminal Code* 1902 (W.A.), sec. 369. On a prosecution for such offence evidence may be given tending to prove the commission by the prisoner of