[HIGH COURT OF AUSTRALIA.]

WILLIAMS . . . . . APPELLANT;
DEFENDANT,

AND

THE SILVER PEAK MINES LIMITED AND ANOTHER . . . . . RESPONDENTS.
PLAINTIFFS AND DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1915.

SYDNEY, Dec. 7, 8, 16.

Griffith C.J., Isaacs and Gavan Duffy JJ.

Mines—Mining lease—Determination by Crown—Conditions upon which power to determine arises—Evidence—Notice published in Government Gazette—Requisites of notice—"Purporting to be signed by the Secretary for Mines"—Description of person signing notice—Declaration of forfeiture by Governor—Proclamation—Regulation—Validity—Ultra vires—Mining Act 1874 (*N.S.W.*) (37 *Vict. No.* 13), *secs.* 56, 59—*Mining on Private Lands Act* 1894 (*N.S.W.*) (57 *Vict. No.* 32), *sec.* 34—*Mining Act* 1906 (*N.S.W.*) (*No.* 49 *of* 1906), *sec.* 124—*Regulations under the Mining Act* 1874 *of 27th February* 1885, *regs.* 31, 43.

Sec. 56 of the *Mining Act* 1874 (N.S.W.) provides that "The Governor may grant leases of any Crown land for the purposes of mining for any metal or mineral other than gold subject to the following conditions . . . (11) On the breach by the lessee of any condition of a lease the Governor may direct the cancellation of such lease." Sec. 59 provides that "The Governor may make and proclaim regulations for carrying this Division of the Act into full effect so as to provide for all proceedings forms of leases and other instruments for the working of mineral lots . . . and all other matters and things arising under and consistent with the provisions of this Act and not herein expressly provided for And all such regulations shall upon publication in the *Gazette* be valid in law Provided that copies of every such regulation shall be laid before both Houses of Parliament within" a limited time.

By reg. 31 of the Regulations under the above Act published in the *Gazette* on 27th February 1885, the form of a mineral lease was prescribed, and it was provided that the lease should contain the covenants, reservations and exceptions set forth in a form in the Schedule and such others as the Governor might direct. Reg. 43 provided that if the Governor with the advice of the Executive Council should direct that any lease be cancelled the Secretary for Mines (the Minister administering the Department) should forthwith publish a notice in the *Gazette* to that effect, describing accurately the lease referred to, and continued :—" Such notice shall be conclusive evidence in all Courts of law, or other judicatures, of such declaration having been made and that such . . . lease was . . . cancelled as from the date of such *Gazette*."

Semble, per Griffith C.J. and *Gavan Duffy* J., that reg. 43, in so far as it provides that " such notice shall be conclusive evidence in all Courts of law " &c., is *ultra vires* the power conferred by sec. 59; *per Isaacs J.*, that its validity is doubtful.

Sec. 34 of the *Mining on Private Lands Act of* 1894 (N.S.W.) provides that " Every lease granted under the authority of this Act shall contain a provision that if the lessee, his executors, administrators, or assigns fail at any time during the term of such lease to fulfil the conditions and covenants therein contained, . . . such lease shall for any such failure be liable to forfeiture and may be forfeited on the authority of the Governor."

Sec. 124 of the *Mining Act* 1906 (N.S.W.) provides that " If the holder of a lease under this Act, his executors, administrators, or assigns, at any time during the term of such lease (*a*) fails to fulfil or contravenes the conditions and covenants contained therein, . . . the lease may be cancelled by the Governor, and the cancellation shall take effect on the date proclaimed in the *Gazette*."

Certain leases issued under the *Mining Act* 1874 contained the following provision :—" If and whenever there shall be a breach of or non-compliance with the covenants and provisoes herein contained by the lessee . . . the Governor, with the advice of the Executive Council, who alone and finally shall judge and determine the matter upon the evidence or reports submitted by the Secretary for Mines for the time being may declare these presents void : and upon publication in the *Government Gazette* of notice of such declaration all the right, title, and interest of the lessee . . . under these presents shall cease and determine both at law and in equity. And the production of a copy of the *Government Gazette* containing a notice purporting to be signed by the Secretary for Mines declaring the lease void shall be conclusive evidence in all Courts whatsoever in the Colony of New South Wales of a breach of or non-compliance with the covenants and provisoes herein contained sufficient to authorize and sustain such declaration having been lawfully made, and that the interest created hereunder has been lawfully determined." Certain other leases issued under the *Mining on Private Lands Act of* 1894 contained a similar provision substituting the word " forfeited "

H. C. OF A. 1915.

WILLIAMS v. SILVER PEAK MINES LTD.

for the word "void." A lease issued under the *Mining Act* 1906 contained a stipulation following the words of sec. 124 and a further stipulation that "the production of the *Government Gazette* containing a notice purporting to be signed by the Secretary of Mines declaring the lease cancelled shall be conclusive evidence of the facts stated therein."

A notice was published in the *Government Gazette*, dated from the Department of Mines, and stating that the leases therein specified had been "cancelled for non-fulfilment of the labour conditions contained therein." At the end of the notice was printed the name of the person who in fact was the Secretary for Mines, but a description of him as such was not added.

In the case of the lease under the *Mining Act* 1906 the cancellation had not been proclaimed.

In a suit by the lessees against the Crown claiming (*inter alia*) a declaration that the notice was ineffectual to avoid the leases and that the leases still subsisted,

Held, by *Griffith* C.J., that the notice purported to be signed by the Secretary for Mines and sufficiently indicated that the lease had been declared void by the Governor in Council; by *Isaacs* J., that the notice did not so indicate, and further that it did not purport to be signed by the Secretary for Mines; by *Gavan Duffy* J., that the lease was not lawfully determined.

Held, therefore (*Griffith* C.J. dissenting), that the lessees of the leases under the *Mining Act* 1874 and under the *Mining on Private Lands Act of* 1894 were not precluded from disputing the validity of the cancellation of those leases.

Held, also, *per totam curiam*, that in the absence of a Proclamation of cancellation the lessees of the lease under the *Mining Act* 1906 were not precluded from disputing such validity.

Decision of the Supreme Court of New South Wales (*Simpson* C.J. in Eq.), affirmed.

APPEAL from the Supreme Court of New South Wales.

A suit was instituted in the Supreme Court by the Silver Peak Mines Ltd. against James Leslie Williams, a nominal defendant for the Government of New South Wales, and Charles Hodges Davis. By the statement of claim it was alleged (*inter alia*) that the plaintiffs were the holders of nine mineral leases from the Crown, four issued under the *Mining Act* 1874, four under the *Mining on Private Lands Act of* 1894 and one under the *Mining Act* 1906. The material provisions of the leases are set out in the judgment of *Griffith* C.J. hereunder. It was then alleged that in the *Government Gazette* of 7th June 1915 there was published a notice which was as follows :—

"Department of Mines, Sydney, 7th June, 1915.—The undermentioned leases have been cancelled for non-fulfilment of the labour conditions contained therein, and the land comprised in the several leases hereunder mentioned will, unless held under some other title, after publication of this notice (namely, at 11.30 o'clock a.m., Sydney time, to-day), be available for occupation, in terms of the Mining Act of 1906. John Estell."

The leases in question were then described.

Mr. John Estell was then Secretary for Mines.

The plaintiffs claimed (*inter alia*) a declaration that the notice in the *Government Gazette* was informal, and ineffectual to avoid their leases, and that such leases still subsisted.

By consent of the parties the question of law "whether the plaintiffs are precluded by their contract and the *Gazette* notice in the pleadings mentioned from disputing that the leases in the said *Gazette* notice have been lawfully determined" was set down for argument. The question was argued before *Simpson* C.J. in Eq., who answered it in the negative.

From that decision the defendant Williams now, by special leave, appealed to the High Court.

Blacket K.C. (with him *Bethune*), for the appellant.—Under sec. 59 of the *Mining Act* 1874 the Governor has power to make a regulation prescribing what shall be evidence of the cancellation of a lease. Reg. 43 is within that power, and is not inconsistent with the 11th condition in sec. 56. The notice of 7th June is sufficient in its terms to comply with reg. 43 and the leases. If the notice clearly and unequivocally shows that the lease is determined, that is a sufficient compliance with the regulation and the covenants. Cancellation includes avoidance; it implies the destruction of the lease so that the other party to it has no rights under it: *Bamberger* v. *Commercial Credit Mutual Assurance Co.* (1). The notice "purports" to be signed by the Secretary for Mines. It appears from the heading to come from the Department of Mines, and it bears the name of the person who in fact was the Secretary for Mines. It must therefore be taken that he signed it

(1) 24 L.J.C.P., 115, at p. 120.

H. C. OF A. 1915.

WILLIAMS v. SILVER PEAK MINES LTD.

in his official capacity: *Ex parte Major* (1); *Clough* v. *Bath* (2). [Reference was also made to *Ashcroft* v. *Walker* (3).]

Loxton K.C. (with him *Davidson*), for the respondent company. —The respondent company is entitled to a strict performance of the provisoes. The notice must contain a declaration that the leases are void, it must state that the Governor has declared them to be void, and it must purport to be signed by the Secretary for Mines. If instead of "purporting to be signed" the word "signed" had been used, then the printing of the name of the Secretary for Mines under the notice would be sufficient. But in order that the notice should "purport" to be signed by the Secretary for Mines, there must be added to his name his designation. Reg. 43 is *ultra vires*. It is not authorized by sec. 59, and it purports to oust the jurisdiction of the Courts. Under the 11th condition of sec. 56 a lease may be cancelled on the happening of a certain event, and the Regulations cannot make it liable to be cancelled on the happening of some other event. The covenants in the same terms as reg. 43 are also void as being contrary to public policy, for they also purport to oust the jurisdiction of the Courts. If there are provisions in clear terms as to events upon the happening of which other things are to happen, the final determination of whether those things have happened cannot, by agreement, be taken away from the Courts: *In re Raven*; *Spencer* v. *National Association for the Prevention of Consumption &c.* (4).

[ISAACS J. referred to *Lishman* v. *Christie & Co.* (5).]

As to the lease under the Act of 1906 there is no allegation of a Proclamation nor does the notice state that there has been a Proclamation.

Armstrong, for the respondent Davis.

Blacket K.C., in reply.

Cur. adv. vult.

(1) 8 S.R. (N.S.W.), 68.
(2) 22 W.N. (N.S.W.), 152.
(3) 2 S.R. (N.S.W.) (Eq.), 131.
(4) (1915) 1 Ch., 673.
(5) 19 Q.B.D., 333.

The following judgments were read :—

GRIFFITH C.J. The plaintiffs in this suit were the holders of nine mineral leases issued by the Governor under the provisions of the Mining Laws. Four of them were issued under the provisions of the *Mining Act* of 1874, four others under the provisions of the *Mining on Private Lands Act* of 1894, and the remaining one under the *Mining Act* of 1906. All the leases were subject to labour conditions. On 7th June 1915 a notice was published in the *Government Gazette* stating that all the leases had been cancelled for non-fulfilment of the labour conditions. The plaintiffs claimed a declaration that the *Gazette* notice was ineffectual to avoid the leases and that they still subsisted, with consequential relief.

I will deal first with the case made with respect to the leases under the Act of 1874. Division III. of that Act deals with mining leases and licences. Sec. 56 authorizes the Governor to grant leases of Crown land for the purpose of mining for any metal or mineral other than gold subject to certain conditions, one of which, No. 11, is that "On the breach by the lessee of any condition of a lease the Governor may direct the cancellation of such lease." Sec. 59 authorizes the Governor to make regulations for carrying that Division of the Act into effect "so as to provide for" *inter alia* "forms of leases," "the working of mineral lots," and "all other matters and things arising under and consistent with the provisions of this Act and not herein expressly provided for," and declares that the regulations "shall upon publication in the *Gazette* be valid in law," with a provision that copies shall be laid before both Houses of Parliament within a prescribed time.

Regulations were accordingly made and published in the *Gazette* on 27th February 1885. Reg. 31 prescribed the form of mineral lease, which was to contain the covenants, reservations and exceptions set forth in a form in the Schedule to the Regulations, and such others as the Governor might direct. Reg. 43 provided that if the Governor with the advice of the Executive Council should direct that any lease be cancelled the Secretary for Mines should forthwith publish a notice in the *Government Gazette* to that effect, describing accurately the lease referred to. The

H. C. OF A. 1915.

WILLIAMS v. SILVER PEAK MINES LTD.

Griffith C.J.

regulation went on to provide that "Such notice shall be conclusive evidence in all Courts of law, or other judicatures, of such declaration having been made and that such . . . lease was . . . cancelled as from the date of such *Gazette*."

I pause here to remark that this regulation was manifestly framed for the purpose of providing for a matter arising under a provision of the Act, namely, the provision of sec. 56 enabling the Governor to cancel leases for breach of conditions. The exercise of such a power involves inquiry into the facts, a conclusion that a breach has been committed, and an election to determine the lease, which election should, of course, be communicated to the lessee. The public are also interested in knowing the fact. The regulation, in effect, provides that the formal notice of election is to be given in that manner. So far no objection can be taken to it. But it is contended that the following provision, which has been spoken of as the evidentiary provision, is beyond the power conferred by sec. 59. As at present advised, I think this objection valid, and I will deal with the case as if that provision were non-existent.

The Regulations did not contain any provision as to the mode of determining the fact of alleged non-fulfilment of conditions, but an ingenious device was adopted, apparently to avoid any question that might have arisen as to the possible invalidity of such a regulation, if made, and also to supply the omission of any such provision from the Act. The device adopted was to embody in the lease itself a stipulation (which has been spoken of in argument as a covenant) that supplied the deficiency. Accordingly, the prescribed form of lease contained a stipulation in the following terms:— "If and whenever there shall be a breach of or non-compliance with the covenants and provisoes herein contained by the lessee . . . the Governor, with the advice of the Executive Council, who alone and finally shall judge and determine the matter upon the evidence or reports submitted by the Secretary for Mines for the time being may declare these presents void: and upon publication in the *Government Gazette* of notice of such declaration all the right, title, and interest of the lessee, his executors, administrators, and transferees under these presents shall cease and determine both at law and in equity. And the production of a copy of

the *Government Gazette* containing a notice purporting to be signed by the Secretary for Mines declaring the lease void shall be conclusive evidence in all Courts whatsoever in the Colony of New South Wales of a breach of or non-compliance with the covenants and provisoes herein contained sufficient to authorize and sustain such declaration having been lawfully made, and that the interest created hereunder has been lawfully determined."

It is plain—and indeed it is not contested—that this stipulation was framed with regard to the power of cancellation conferred on the Governor by the Act, and must be construed in that light, and as referring to the exercise of the power. It follows that the words "may declare these presents void" must be construed as "may cancel these presents," and similarly that the notice of the Secretary for Mines declaring the lease void must be construed as "a notice declaring that the lease has been cancelled."

On 7th June 1915 the notice already stated was published in the *Gazette*. It was dated from the Department of Mines, and bore as a signature the name "John Estell." Mr. John Estell was at that date Secretary for Mines.

It is objected by the plaintiffs (1) that the notice does not purport to be signed by the Secretary for Mines as required by the stipulation, and (2) that, if it does, it does not declare that the cancellation was by the Governor in Council.

As to the first objection, it is not contested (and there is ample authority for the position) that the Court must take judicial notice of the fact that Mr. John Estell was then Secretary for Mines. Does the notice then in fact purport to be signed by him? "Signature" in this case obviously does not mean the personal signature of the Minister. The facts are that the notice is dated from the Department of Mines, that it deals with a matter which by law is required to be officially notified, and of which the notification would properly come from that Department, and that it bears the printed signature of a person who at that date was the Secretary for Mines. It appears to me to follow that it conveyed to any person of ordinary intelligence that the signature which it purported to bear was that of Mr. John Estell who was the proper person to sign it. It is said, however, that he ought to have added to his signature his official addition

H. C. OF A. 1915.

WILLIAMS v. SILVER PEAK MINES LTD.

Griffith C.J.

as Secretary for Mines, and it is said that such addition is often printed after the Minister's name. It appears also that it is, in practice, just as often not added. It is impossible, in my opinion, for this Court to lay down that a Minister of State publishing an official notice is bound to append to it his addition of Minister.

Pages of reasons would add no more. To my mind the contention that this notice does not purport to be signed by the Secretary for Mines is not arguable. The learned Chief Judge in Equity was, however, of a different opinion. In my opinion he was wrong.

Does the notice then sufficiently convey to the ordinary reader that the cancellation was by the Governor in Council ?

It is contended that the stipulation requires two matters to be notified in the *Gazette* before the notice becomes conclusive evidence of cancellation : first, that the Governor has declared the lease void, and, second, that the lease is void. It is not contended, however, that two separate notices must be published. I have already dealt with the question of the construction of the stipulation, having regard to condition 11 of sec. 56 of the Act. The notice of 7th June, therefore, sufficiently complies with the stipulation as to the declaration of the fact of cancellation. The cancellation could in law only be made by the Governor in Council. His action was required both by the regulation and by the lease to be notified in the *Gazette* by the Secretary for Mines. It was so notified.

In my opinion the notice conveys with sufficient certainty to any intelligent reader that the cancellation was by the Governor. This objection, therefore, in my opinion, also fails.

A further objection was raised that the stipulation, expressed or implied, that the decision of the Governor in Council shall be final is void as against public policy, *i.e.*, as tending to exclude the jurisdiction of Courts of law to inquire into the existence of a valid cause of cancellation. The covenant is, in effect, though inartificially expressed, that if the Governor in Council is of opinion upon consideration of evidence and reports submitted to him that the cause of cancellation exists he may take the prescribed action. No authority was mentioned, and I am not aware of any, which lays down that, when parties make a contract under which their respective rights are to depend upon subsequent facts, they may

not stipulate that the existence or non-existence of such facts shall be finally determined by a designated person, or that one of the parties to the contract may not himself be the person so designated. In my opinion, the Crown when making a contract with a subject is entitled, unless forbidden by law, to take advantage of the ordinary rules governing the rights of private citizens. Then it is suggested that the nature of the case shows that such a stipulation is contrary to public policy. I should have supposed, on the contrary, that if there was any difference between this case and ordinary cases it would be wholly in favour of the Crown, for otherwise an intolerable burden would be cast upon Courts of Justice to determine matters which are really matters of routine administration. It was pointed out in the *Inter-State Commission Case* (1) that such powers of determination are not necessarily judicial powers, and it is notorious that in recent times it is a common stipulation in contracts, as, for instance, building contracts, that the certificate or opinion of some designated person shall be conclusive evidence of a particular fact. I doubt whether this point is taken in the statement of claim, which merely alleges (par. 40) that "the plaintiff further submits that the said *Gazette* notice is informal, and was ineffectual to avoid the plaintiffs' said leases, and that the same still subsist," but as it has been argued at length I have thought right to deal with it.

In my judgment, therefore, the appeal should be allowed as to these four leases.

I pass to the second set of leases.

The only distinctions between the case as to these and the case as to the first set are that instead of the words of sec. 56 of the *Mining Act* of 1874 the Act of 1894 provides (sec. 34): "Every lease granted under the authority of this Act shall contain a provision that if the lessee, his executors, administrators, or assigns fail at any time during the term of such lease to fulfil the conditions and covenants therein contained, or to use the land *bonâ fide* for the purposes for which it shall be demised, such lease shall for any such failure be liable to forfeiture and may be forfeited on the

(1) 20 C.L.R., 54.

H. C. OF A. 1915.

WILLIAMS v. SILVER PEAK MINES LTD.

Griffith C.J.

authority of the Governor" ; that there was no regulation applicable to the case ; and that the form of stipulation in the leases varies from that in the leases under the former Act by providing that in the event of a breach of conditions the Governor, with the advice of the Executive Council, "may declare the lease hereby granted forfeited, and upon publication in the *Government Gazette* of notice of such declaration all right, title and interest of the lessee under these presents shall cease and determine both at law and in equity and the production of the *Government Gazette* containing a notice purporting to be signed by the Minister for Mines for the time being declaring the lease hereby granted to be forfeited shall be conclusive evidence in all Courts whatsoever in the said State of the forfeiture of the lease hereby granted." The only real variation is that the word "forfeited," which is the word used in sec. 34 of the Act under which the leases were issued, is used instead of the word "void."

The same objections were taken to the effect of the notice of 7th June as in the case of the first set, and the reasons I have given for holding them invalid in that case are equally applicable. The appeal should, therefore, in my opinion, be allowed as to these leases also.

The *Mining Act* of 1906, under which the ninth lease was issued, provides by sec. 124 that if the holder of a lease under the Act fails to perform or contravenes the conditions and covenants contained therein the lease may be cancelled by the Governor, and the cancellation shall take effect on the date proclaimed by the Governor. The lease in question contains a stipulation following the words of sec. 124, and a further stipulation that "the production of the *Government Gazette* containing a notice purporting to be signed by the Secretary for Mines declaring the lease cancelled shall be conclusive evidence of the facts stated therein."

The same objections are urged to the notice, and it is further contended that in any event the only fact stated in it is the cancellation. If that means, as I think it does, cancellation by the Governor in Council, there is nothing in the objection. But it is pointed out that mere cancellation by the Governor, although it may in some cases determine the plaintiff's title, is incomplete

and ineffectual until it has been proclaimed. And this point seems to be a good one.

The only question directed by the learned Judge to be argued was whether the plaintiffs are not precluded by their contract[s] and the *Gazette* notice in the pleadings mentioned from disputing that the leases mentioned in the *Gazette* notice have been lawfully determined. The plaintiffs are, I think, entitled to a declaration that they are not precluded from disputing that this lease is not finally and completely determined until the date on which the cancellation is to take effect has been proclaimed in the *Gazette*. This is not the point which they came to litigate, and it ought not to affect the costs.

The appeal should, therefore, in my opinion, be allowed, and an order substituted to the effect that subject to the plaintiffs' right to contend that the ninth lease is not finally determined until the date of cancellation is proclaimed in the *Gazette* they are precluded by their contracts from disputing that the leases in the pleadings mentioned have been lawfully determined.

ISAACS J. In my opinion this appeal should be dismissed. I think the provisions contained in the leases and discussed in argument are perfectly lawful, and it becomes mainly a question of whether the Crown has complied with them so as to terminate the respective leases.

1. With respect to the first set of leases, I construe the relevant provision (sub-clause (*g*)) as requiring in the first place a declaration by the Governor in Council that the lease is void, and by "void" I think any word having the same effect, as "forfeited" or "cancelled," would suffice. The word "void" I do not regard as a term of art, or a fixed and rigid substitute for a term of art, but as a word conveying a clear idea of determination of the lease as from that time. Then the sub-clause requires publication in the *Government Gazette* of what the Governor has done. As the sub-clause says, there must be "publication in the *Government Gazette* of notice of such declaration," and *thereupon* all the lessee's rights cease at law and in equity. But so stringent a provision must be pursued so as to leave nothing to inference. The notice must itself *state* expressly,

H. C. OF A. 1915.

WILLIAMS v. SILVER PEAK MINES LTD.

Isaacs J.

or by necessary intendment, that it is the Governor in Council who has declared the lease void, and, further, I think that by a proper construction of the provision both the declaration itself and the notice must state the ground or grounds upon which the declaration was made, that is to say, a breach of or non-compliance with some covenant or proviso found to have occurred.

Then the third branch of the sub-clause, which is evidentiary, is that if the *Gazette* notice declaring the lease void purports to be signed by the Secretary for Mines it shall be conclusive evidence of the breach or non-compliance in fact, that it is sufficient to sustain the declaration, and that the lessee's interest is determined.

The *Gazette* notice dated 7th June 1915 relied on by the Crown does not contain the necessary statement. The mere statement that the leases have been cancelled, does not suffice. It does not *state* who cancelled them. It might or might not be inferred that the Governor cancelled them, and either on the advice of one Minister or of the Executive Council, but whatever the possible inference that might be drawn, it is not a necessary implication. It is not, in my opinion, a necessary implication that, because in law the Governor in Council ought to have cancelled it, therefore he was the person who, with the requisite authority, actually did the act. What the lease provides for is a distinct statement to the lessee and the whole world of the final fact of the Governor's action, with the necessary advice, leaving nothing to guess or chance. On reading the notice the lessee must be certain that his estate is gone, that he is to cease work, and abandon his undertaking, and he is not to be put to making inquiries, or left in uncertainty whether he is a trespasser or is rightfully entitled to take the minerals. There is no difficulty in being explicit, and the Crown can yet do it at any moment.

I am also of opinion, upon the whole, after reading the Regulations and the Schedules attached—the lease being required to be in its actual form by the Regulations—that the conclusive evidentiary notice must be signed by the Minister as Secretary for Mines. It must appear on the face of the notice to be the official act of the Minister as such.

Where the sub-clause speaks of a " notice purporting to be signed

by the Secretary for Mines" it must be remembered that it is a printed notice, and that the printed signature is what is referred to. That, of course, could not be the sign manual of the Minister himself, and, if his signature in fact, it must be because, as he might do, he authorized it to be there printed as his signature (*Schneider* v. *Norris* (1); *R.* v. *Justices of Kent* (2); *Evans* v. *Hoare* (3)).

"Purporting to be signed" in that connection means, in my opinion, simply "apparently signed" or "professing to be signed." The phrase as a whole means that there is appended to the notice a signature consisting of the printed name and description of the Minister and apparently or professedly authorized by him.

With respect to the 43rd regulation, it does not in terms require the notice to be signed, but it certainly does require the notice to contain a statement to the "effect" that the Governor with the advice of the Executive Council has directed the lease to be cancelled. This requirement is as fatal to the appellant as the corresponding requirement in the lease itself.

As to the evidentiary provision in the 43rd regulation, I would not be prepared without further consideration to hold it valid. It is at first sight difficult to see how it comes within sec. 59 of the Act of 1874. But as it is, or may be, adopted by the Act of 1906, I do not express any final opinion about its validity, as it is unnecessary, though I shall have to make an observation later about its applicability to the Act of 1906.

As to the first set of leases the appeal, in my opinion, fails.

2. As to the second set, the same observations apply—the only difference being that in sub-clause (*d*) the word "forfeited" stands instead of the word "void" which is used in sub-clause (*g*) of the first set of leases. The conclusion is the same.

3. The third set stands in a somewhat different position. In the lease the word "cancelled" in the sub-clause (*f*) appears, which makes no difference, but the date must be "proclaimed" on which the cancellation is to take effect.

This is a well known word, and requires a "Proclamation" by the Governor in the common law sense. As admittedly there has

(1) 2 M. & S., 286.
(2) L.R. 8 Q.B., 305, at p. 307.
(3) (1892) 1 Q.B., 593, at p. 596.

H. C. OF A. 1915.

WILLIAMS v. SILVER PEAK MINES LTD.

Isaacs J.

not been one, and at all events none is alleged, the cancellation could not yet take effect. But it is said that as there is a *Government Gazette* notice purporting to be signed by the Minister for Mines, declaring the lease cancelled, and that is conclusive evidence of the facts stated therein, we need not and may not inquire whether there was a Proclamation or not.

It is maintained that the notice is conclusive evidence that there was a Proclamation. But the truth is it does not state that there was a Proclamation, and the fact of a Proclamation is not one of the facts stated therein, and it is not provided that the notice shall be conclusive evidence that the lease has determined.

Consequently, whether the signature "John Estell" complies with the evidentiary requirement or not, the document contains no word—even by implication—that there has been a Proclamation, and as that is a necessary fact for determining this lease, the Crown must fail as to this in any event. In addition, unless the 43rd regulation helps the matter out, my earlier observations as to the signature apply to this set of leases also.

Now, does the 43rd regulation, even if valid, help out the Crown's position as to the third set? To answer this, I will assume for the purpose of argument that the pleadings admit the notice was given by authority of the Minister.

But we have to go first to the Act (No. 49 of 1906) and see what sec. 124 requires. It also provides that the Governor's cancellation shall take effect on the date "proclaimed" in the *Gazette*.

Now, reg. 43 was passed at a time when a Proclamation was not required; it has no reference to a Proclamation, and is in my opinion not applicable to a Proclamation under sec. 124 of the Act of 1906. It may, if applicable at all, prove at most the fact of cancellation, but as the Act of 1906 expressly provides that the cancellation is to take effect on the proclaimed date, the regulation cannot be taken to override that provision, and consequently, practically on demurrer, these leases cannot yet be taken to have been finally determined.

The Crown may or may not issue the Proclamation. No application for amendment was made to the Supreme Court, or asked for

in this Court. We can only make such order as the Supreme Court ought to have made.

In the result the appeal, in my opinion, entirely fails.

H. C. OF A. 1915.

WILLIAMS v. SILVER PEAK MINES LTD.

Gavan Duffy J.

GAVAN DUFFY J. In this case my mind is not free from doubt, but on the whole I am of opinion that the order appealed against is right. If it were necessary to determine the question I should be disposed to say that reg. 43, published in the *Government Gazette* of 27th February 1885, is *ultra vires* in so far as it provides that a *Gazette* notice shall be conclusive evidence in all Courts of law, &c.

Appeal dismissed with costs.

Solicitor for the appellant, *J. V. Tillett*, Crown Solicitor for New South Wales.

Solicitors for the respondents, *A. J. Taylor & Greenwell*; *A. C. Roberts*.

B. L.

[HIGH COURT OF AUSTRALIA.]

THE CITY FINANCE COMPANY LIMITED . APPELLANTS; PLAINTIFFS,

AND

MATTHEW HARVEY & COMPANY LIMITED RESPONDENTS. DEFENDANTS,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1915.

SYDNEY, *Nov.* 17, 19; *Dec.* 3.

Griffith C.J., Isaacs and Gavan Duffy JJ.

District Court of New South Wales—Jurisdiction—Defendant not within New South Wales—Contract made in New South Wales—Foreign corporation—Carrying on business—District Courts Act 1912 (*N.S.W.*) (*No.* 23 *of* 1912), *secs.* 5, 7, 41.

Sec. 5 of the *District Courts Act* 1912 (N.S.W.) provides that the Governor may divide New South Wales into districts for the purposes of the Act and may define the limits within which each of the District Courts appointed to