[HIGH COURT OF AUSTRALIA.]

SMITH AND OTHERS . . . . . APPELLANTS;
PLAINTIFFS,

AND

THE GREAT BOULDER PERSEVERANCE GOLD MINING COMPANY LIMITED (IN LIQUIDATION) AND ANOTHER . RESPONDENTS.
DEFENDANTS,

ON APPEAL FROM THE SUPREME COURT OF WESTERN AUSTRALIA.

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PERTH, *Sept.* 9, 15.

OX C.J., Isaacs, Gavan Duffy and Rich JJ.

Mining—Tribute agreement—Agreement to treat and dispose of ore—Method of payment—Variation of agreement—Claim for accounts—Sale of gold—Illegality—Effect—Mining Act 1904 (*W.A.*) (*No.* 15 *of* 1904), *secs.* 79, 205—*Mining Regulations* (*W.A.*), *reg.* 190.

Under a tribute agreement between a gold mining company and certain miners, it was agreed that the tributors (the miners) were to crush or treat ore won by them from the company's mine at such battery or treatment works as should be directed by the attorney of the company, and were to direct that all gold won and any moneys payable in respect of sands, slimes, concentrates and residues should be handed to such attorney; and that the proceeds of the gold and such moneys (less certain charges) were to be applied in payment of a royalty to the company and of the balance to the tributors. Ore raised by the tributors was, by direction of the attorney of the company, treated at the company's plant, and, in pursuance of a notification given with such direction by the company to the tributors that it would purchase the ore at the price of £4 per ounce of fine gold for 90 per cent. of the gold contents as determined by assay, the company paid the tributors at that rate. Neither the tributors nor the company were holders of a gold-dealer's licence under the *Mining Act* 1904 (W.A.), which, by sec. 205, prohibits the sale or purchase of gold by unlicensed persons. In an action by the tributors against the company for accounts of the gold obtained from the tributors' ore and disposed of by the company,

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Held, by *Knox* C.J. and *Gavan Duffy* J., that, the parties having by arrangement departed from the method of proceeding prescribed by the tribute agreement and the tributors having received all they were entitled to under the arrangement, the company was not bound to furnish accounts; and that, if the arrangement amounted to a sale and the sale was illegal, it could not be relied on as the foundation of any legal claim.

By *Isaacs* and *Rich* JJ.: (1) that, the company having directed the tributors to treat the ore at the company's works, the proceeding was within the method of the tribute agreement, and the proceeds must be accounted for as provided by that agreement unless it was lawfully varied; and (2) that the subsequent arrangement as to the terms of accounting, if regarded as a variation of the agreement, was not registered and verified as a tribute agreement, and, if regarded as an independent agreement, it amounted to a contract for the sale of the ore, which, being illegal under sec. 205 of the *Mining Act* 1904, could not be given effect to; and, consequently, (3) that the tributors were entitled to accounts under the tribute agreement.

Decision of the Supreme Court of Western Australia (*Northmore* J.) affirmed.

APPEAL from the Supreme Court of Western Australia.

In an action brought in the Supreme Court by Alfred William Smith, Frank Dominish, Vincent Roberts and John Peat against the Great Boulder Perseverance Gold Mining Co. (in Liquidation) and E. D. Cleland (as attorney and agent for the liquidator) the plaintiffs claimed an account of all gold received by the Company, its agent or attorney from ore and mineral received by it from the plaintiffs since 1st January 1919; an account of the disposal by the Company, its attorney or agent of the gold so received, and payment to the plaintiffs of all moneys found to be due to them on the taking of such accounts.

The plaintiffs were miners and the Company was the owner of certain gold mining leases known as the Great Boulder Perseverance Gold Mine. By an agreement in writing dated 27th May 1918 and registered under the *Mining Act* 1904 and Regulations thereunder, the Company let to the plaintiffs on tribute a portion of its mine for the purpose of winning, working, raising, crushing and treating the gold-bearing stone, earth and material and for the extraction of gold therefrom. By that agreement it was provided that the plaintiffs should crush or treat all stone, earth and material raised or won by them from the mine and treat or sell the sands, slimes, concentrates and residues, the product of the crushing or treatment,

at such battery or treatment works as the attorney of the Company might from time to time direct, and at no other battery or treatment plant, and that the plaintiffs should direct the manager of such battery or treatment plant to hand to the attorney of the Company all gold won from such stone and moneys payable for sands, slimes, concentrates and residues. The agreement also provided that the proceeds of such gold and any such moneys as aforesaid handed to the attorney of the Company (less battery, treatment, bank and mint charges) should be applied firstly in payment to the Company of a royalty particularly specified in the agreement, and then in payment to the agent of the plaintiffs of the balance (after payment of all moneys due to the Company by the plaintiffs) of the proceeds of such gold and other moneys. In their statement of claim the plaintiffs alleged that in pursuance of the agreement, by direction of the Company's attorney, they had delivered to the Company for treatment gold ore and material, and the Company and its attorney had received the proceeds of the crushings and treatment and had disposed of the gold so won, but the plaintiffs were unable to say to what amount; and that the Company had paid over to the plaintiffs their share on the basis of £4 for each ounce of fine gold, which sum, they alleged, was below the market value, and had refused to account for the moneys received by the Company for the gold. In their defence the defendants alleged that in December 1918 they directed the plaintiffs to crush and treat all stone, earth and material raised or won by them at the Company's plant, and at the same time notified the plaintiffs of the terms upon which such stone, &c., would be crushed and treated—one of which was that the Company would purchase the ore at the price of £4 per ounce of fine gold for 90 per cent. of the gold ascertained by assay to be contained in the ore; and that on and after 1st January 1919 the plaintiffs delivered and sold the ore to the defendant Company, and had been paid and had accepted the purchase price of the same under the said terms. In their reply the plaintiffs objected that the alleged agreement to sell gold at the rate of £4 per fine ounce (which they denied) was void and contrary to the *Mining Regulations*, reg. 190, and sec. 205 of the *Mining Act* 1904.

The action was tried by *Northmore* J., sitting without a jury.

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His Honor, after hearing evidence for the plaintiffs and the defendants, found in favour of the defendants, and gave judgment for them.

From that decision the plaintiffs now appealed to the High Court.

Other material facts appear in the judgments hereunder.

R. S. Haynes K.C., *Villeneuve Smith* K.C. and *H. Haynes*, for the appellants. If the subsequent arrangement was a contract of sale it was void under the *Mining Act*. Here there was no express contract, but a contract is said to be implied: but there can be no such implication where one party has no option, as here; it cannot be said that the plaintiffs agreed to the Company's terms, because they were bound to deliver under the tribute agreement. The plaintiffs are therefore entitled to accounts under the tribute agreement. [Counsel referred to *Browning* v. *Morris* (1); *Atkinson* v. *Denby* (2); *Docker* v. *Somes* (3).]

Keenan K.C. and *Stawell*, for the respondents. As to sec. 205 of the *Mining Act*, an act prohibited by statute is void, and cannot found any legal rights. The parties cannot be restored to their former position, and a transaction of which the plaintiffs have had benefit cannot be reopened unless restitution *in integrum* is possible. Sec. 205 deals with a "person," and does not apply to a company. [Counsel referred to *Scarfe* v. *Morgan* (4); *Lodge* v. *National Union Investment Co.* (5); *Leake on Contracts*, 6th ed., pp. 556, 568.]

Villeneuve Smith K.C., in reply.

Cur. adv. vult.

Sept. 15.

The following judgments were read:—

KNOX C.J. AND GAVAN DUFFY J. (read by KNOX C.J.). The plaintiffs by their statement of claim seek an account of certain gold extracted from ore delivered by the plaintiffs to the defendant Company. In par. 7 it is alleged that "since the first day of January

(1) 2 Cowp., 790.
(2) 6 H. & N., 778.
(3) 2 Myl. & K., 655.
(4) 4 M. & W., 270, at p. 281.
(5) (1907) 1 Ch., 300.

1919 up to the present time the plaintiffs have in pursuance of the agreement by direction of the defendant Company's attorney delivered to the said Company for treatment by them gold ore and material and the defendant Company and its attorney have received the proceeds of such crushings and treatment and disposed of the gold so won but the plaintiffs are unable to say for what amount"; and the claim for relief is as follows: "(*a*) that an account be had and taken of all gold received by the defendant Company its attorney or agent from ore and mineral received by them from the plaintiffs since the first day of January 1919." The agreement referred to in par. 7 is that of 27th May 1918, the relevant portions of which are as follows:—"(5) The tributors hereby jointly and severally agree with the Company . . . (*i*) to at least once a month or such other period as the attorney of the Company may from time to time approve of in writing crush or treat all stone earth and material raised or won by the tributors from the demised premises and treat or sell the sands slimes concentrates and residues the product of the crushing or treatment at such battery or treatment works as the attorney of the Company may from time to time direct and at no other battery or treatment plant and to clean up each such crushing or treatment at least once a month or such other period as aforesaid; (*j*) to direct the manager of such battery or treatment plant to hand all gold won from the stone sent for crushing and treatment and any moneys payable to the tributors for sands slimes concentrates and residues to the attorney of the Company." "(7) The proceeds of the gold from each crushing and any such moneys as aforesaid handed to the attorney of the Company (less battery treatment bank and mint charges) shall be applied as follows: firstly, in payment to the Company the royalty payable hereunder in respect of the crushing; secondly, in payment to the agent of the tributors hereinafter named the balance (after payment of all moneys due to the Company by the tributors) of the proceeds of such gold and other moneys."

It will be noted that the statement of claim specifically alleges that the delivery of "gold ore and material" to the defendant Company was in pursuance of the agreement, but does not allege that such delivery imposed any obligation on the defendant Company

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to account for the proceeds of the sale of the gold in accordance with the agreement or otherwise.

Before December 1918 the plaintiffs, at the direction of the defendant Company, had delivered the ore raised by them to the Kalgurli company's treatment works, the ore being treated on the basis of a treatment charge of 20s. per short ton of ore treated and a payment to the plaintiffs of £4 per ounce on 90 per cent. of the gold contents of the ore as determined by assay. The sum so agreed to be paid by the treatment company was in each case by direction of the plaintiffs forwarded to the defendant Company, which retained the amount payable to it as royalty and paid the balance to the plaintiffs. This method of procedure was treated by the parties to the agreement as a compliance with clauses 5 (*i*), 5 (*j*) and 7 of the agreement, though it was in fact a departure from the prescribed method of proceeding. In December 1918 the treatment works of the defendant Company were in operation, and the parties agreed that the ore should be sent to those works for treatment. The plaintiffs say that the arrangement then made was that the treatment charge should be 20s. per short ton of ore treated, and that no other terms were mentioned; and they contend that the defendant Company must account under the tribute agreement for the full market value of the gold extracted less the deductions specified in clause 7. If the facts were as plaintiffs allege, their contention might be well founded in law. The defendant Company, however, says that the arrangement was that the provisions of clauses 5 (*j*) and 7 of the tribute agreement should be abandoned, and that the ore should be treated by it on the terms on which ore had been treated by the Kalgurli company, viz., that the plaintiff should pay a treatment charge of 20s. per short ton of ore treated, and that the defendant Company should account for the gold on the basis of £4 per ounce on 90 per cent. of the gold contents as determined by agreed assay.

At the trial *Northmore* J. found on the evidence that the arrangement was as alleged by the defendant Company, and this finding is in strict conformity with the account rendered by the defendant Company to the plaintiffs on 16th December 1918. We agree with the finding of the learned Judge on this point. The plaintiffs

attempt to meet the effect of this finding by alleging that it discloses a sale of gold by the plaintiffs to the defendant Company, that such a sale is forbidden by sec. 205 of the *Mining Act* 1904, and that the transaction, being illegal, must be treated as absolutely invalid and non-existent in law. It seems to us unnecessary to determine whether or not the transaction amounted to a sale. If the plaintiffs' allegation in par. 7 of the statement of claim means that the delivery and treatment of the ore was subject to the provisions of clauses 5 (*j*) and 7 of the tribute agreement, the allegation is not supported by the facts as found. If, on the other hand, the allegation means that it was in pursuance of the new arrangement, the plaintiffs must rely on that arrangement. If it amounted to a sale, as asserted by them, and was illegal, it cannot be relied on as the foundation of any legal claim. If it was not illegal, there is no reason why the plaintiffs should not be bound by its terms, and they have obtained all they are entitled to under it.

In the result, this Court being equally divided, the decision appealed against must be affirmed. There will be no order as to costs.

ISAACS AND RICH JJ. (read by ISAACS J.). In this, and two similar cases, tributors sue the Company for an account of gold obtained from ore raised by the tributors and treated by the Company. The statement of claim recites an agreement in writing, dated 27th May 1918, whereby the Company let to the appellants on tribute a portion of its mine; it refers to various provisions in the agreement, including one whereby the Company was empowered to direct the appellants where to have their ore crushed and treated, and it alleges that in pursuance of the agreement, by the Company's direction, the appellants delivered to the Company their ore to be treated by the Company, which was done, and that the gold was won and disposed of by the Company. The statement of claim also alleges that by the terms of the agreement the gold won should (after battery, treatment, bank and mint charges) be applied first in payment of a specified royalty, and secondly in payment of the balance to the appellants. The fact is averred that the Company paid over to the appellants their share, on the basis of

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£4 per ounce of fine gold, which was below the market value, and has refused to account for the moneys it received for the gold. It is therefore clear that the appellants' claim is rested purely on the tribute agreement, with the added facts that the Company has received the appellants' gold, and disposed of it. The defence does not deny that the ore was *delivered to the Company in pursuance of the agreement, and by the Company's direction.* The ground of defence set up by the Company is that in December 1918 the Company *directed* the appellants to crush and treat all material at the Company's plant, and the Company at the same time *notified* them of the terms on which this would be done. Those terms are not mentioned in the defence, except that one was that the Company would *purchase the ore* at the price of £4 per ounce of fine gold for 90 per cent. of the assay contents, and that after 1st January 1919 all the appellants' ore was in fact purchased on those terms, and was paid for accordingly. In reply the appellants join issue except where allegations are admitted. And further, the appellants raised as objections in law the provisions of reg. 190 of the *Mining Regulations* and sec. 205 of the *Mining Act* 1904.

The defence, as we have seen, admits that the Company, under its powers contained in the registered tribute agreement, *directed* the tributors to deliver their ore to the Company for treatment. That direction, we apprehend, was given for the express purpose of evidencing that it was under the registered tribute agreement, and not otherwise, that the parties were acting, and in order to protect the Company under the tribute regulations. The Company not only admitted (by not denying) the plaintiffs' allegation of "direction" in the statement of claim, but was careful to repeat it expressly in the defence. And Cleland, its attorney, was equally distinct in his evidence. He said: "Towards the end of December 1918 I directed the plaintiffs to bring their ore for treatment to the defendant Company's mill." It would have been suicidal for the Company to have received the ore from their tributors and to have contracted for the division of the gold or its proceeds on any basis other than under the tribute agreement. Sec. 79 of the *Mining Act* 1904 makes it a *condition of forfeiture* of the lease if the lessee assigns, underlets or parts with possession of the land or any part

thereof without the previous consent in writing of the Minister, or of an officer by his authority. One escape from that, relevant to this case, is allowed by reg. 190, which permits the Company to assign, underlet or part with the possession of the land without such consent, *provided* it does so on the terms of a registered tribute agreement verified by statutory declaration. That regulation provides that a "lessee making default in so lodging a tribute agreement shall be deemed guilty of a breach of his covenant not to assign or underlet." Consequently, if the Company in this case had attempted to set up a defence that the ore was, as between it and the plaintiffs, *delivered* for treatment or for division of the resultant gold not under the registered agreement but under some outside bargain not verified and registered as a tribute agreement, it would have been an assertion that it had incurred a forfeiture of its lease. Even where the ore was delivered to the Kalgurli, Oroya and other companies, the delivery to those companies was, as between the Great Boulder company and the tributors, a delivery under the registered tribute agreement. And further, whatever arrangement was made between the Kalgurli company (for example) and the tributors as to the proceeds, it did not affect the Great Boulder company or constitute a breach by it of the covenant of its lease; nor did it constitute on the part of the Kalgurli company any contravention of sec. 79, whatever might be its effect as to sec. 205. The course of dealing while the Kalgurli company was treating the ore, therefore, has no relation whatever to the rights of the parties when the Great Boulder company insisted on treating the ore itself.

It is, therefore, common ground between the two litigants in this case that the ore was taken to be delivered under the tribute agreement, and it is also common ground that the ore was in fact treated by the Company, and that the Company obtained the gold and got the full price for it.

What the Company apparently was endeavouring to do when the terms were stated by Cleland was to try to bargain for treatment of the ore, so as to be within the following words of clause 7 of the agreement: "less battery, treatment, bank and mint charges." This is made perfectly evident by Ex. D, in Smith's case, which is a list of the Company's "Memoranda of charges," and the final

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clause is headed "Ore treatment charges," which include these passages: (*a*) "guaranteed extraction 90 per cent." and (*b*) "gold is paid for at £4 per fine ounce." Apparently it was thought that such an arrangement was quite consistent with proceeding under the tribute agreements of the Company, and required only the "direction of the Company" under the tribute agreement to bring the arrangement into operation. "The direction," therefore, is the central point of this case, because it identifies the delivery of the ore with the obligation contained in the tribute agreement. We are not able to concur with the view that the delivery of the ore or its treatment must be taken to have been under an agreement entirely foreign to the tribute agreement. Summarizing the reasons for our opinion on this point they are: (1) the admissions and pleadings; (2) the admission of Cleland in the evidence; (3) the attitude of both parties at the trial (see *Karunaratne* v. *Ferdinandus* (1)); (4) the attitude of both parties before us; (5) the danger to which the Company would be exposed if, contrary to its own position relative to delivery, it is held to have agreed for delivery or distribution of product under an unregistered agreement which utterly ignores the registered tribute agreement, and which is part of a "contract" within the definition of tribute in reg. 189; and (6) the unfairness to which tributors must be exposed if compulsory directions to bring their ore to the Company's works, coupled with stipulations as to terms as in the present case, are possible, with the result that such a clause as clause 7 cannot be insisted on. As to the last matter we have mentioned, it is true that no allegation was made that the terms stipulated for were in themselves inherently oppressive or unreasonable. Putting aside the tribute agreement and sec. 205, there is no allegation that the terms were extortionate. But, having regard to the fact that by the stipulations of the Company fine gold is to be taken at no more than £4 an ounce, whatever the market price may be, the arrangement is *primâ facie* something requiring explanation if fairness to the tributors is to be regarded; and protection of tributors against arbitrary stipulations of Crown lessees is of the very essence of the tribute regulations.

It is therefore of itself oppressive, and contrary to the scheme of

(1) (1902) A.C., 405, at p. 410.

the law, that a clause, like clause 7, providing for the proportionate division of the gold and assented to by the Warden and registered should, on the demand of the Company, be entirely abrogated and nullified. We think that cannot be done. If it is done in this case, it is necessarily done in every case whether a sale or not, and that for this reason:—If the arrangement for treating the ore is inconsistent with clause 7, it is held, by the contrary opinion, that clause 7 cannot be relied on. Either that is because clause 7 is abrogated and the new terms substituted, which is contrary to reg. 190 and involves a forfeiture, or simply because it is an independent bargain. But if it is on the latter ground, then the mere fact that the new arrangement is consistent with clause 7 makes no difference. If the accounting in the present case is to be limited to the treatment arrangement, it must always be so. In our opinion, what the Company intended to do was to leave clause 7 to operate as far as it could operate, but so to arrange that the words within the parenthesis, namely, "less battery, treatment, bank and mint charges," should be satisfied by the so-called "charges" they made, which amount to an arrangement by which 90 per cent. of the gold should be guaranteed and valued at £4 an ounce. If that which virtually was equivalent to a purchase left no balance, then, although it could be said the ore was delivered under the tribute agreement and the gold was to be nominally accounted for under the tribute agreement, no balance remained. The parties did not expressly say "The ore is hereby sold"; they, or at all events the tributors, perhaps did not, at the time, understand they were technically selling the ore. Whatever practical equivalence the transaction might have, that result has to be settled by considerations of law. In any event, whether the tributors did or did not regard the transaction as a sale, there was no abandonment of clause 7, though the practical effect on clause 7 would be to leave no balance to divide if the sale could be upheld. In the view we take, the result is one which, while maintaining and giving full effect to the provisions of the mining law (sec. 79 and the tribute regulations, and sec. 205), does not imperil the Company's lease, and at the same time preserves intact the protection and rights of the tributors as the Legislature intended they should be preserved.

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The appellants' case rests solely on the tribute agreement, clause 7 being the basis of the claim. The collateral agreement, whatever it was, has been performed, the gold was won, and held by the Company, and the appellants simply say to the Company: "You, as lessor, directed us to hand the ore to you as treatment plant owners preparatory to accounting under clause 7; we complied, and you—without the unnecessary formality of par. (*j*) of clause 5 (or, if necessary, with the admitted performance of that paragraph under Order XIX., rule 14, of the Rules of Court)—have our gold, which by our tribute agreement you are bound to account for to us on the terms of clause 7, and we ask for such account." Apart from the specific defence set up, the appellants have established a clear case, and it only remains to consider the defence in law.

Northmore J., who tried the case without a jury, after hearing the evidence, oral and documentary, and weighing the probabilities, came to the conclusion that the circumstances were consistent only with a sale of the ore by the tributors. There can be no doubt the transaction as detailed by Mr. Cleland, and as evidenced by the documents and as carried out, amounted to a sale in law, whatever the parties thought it was technically. In *South Australian Insurance Co.* v. *Randell* (1) the Privy Council, dealing with the case of farmers handing to millers for grinding wheat which becomes mixed with other wheat, say: "Wherever there is a delivery of property on a contract for an equivalent in money or some other valuable commodity, and not for the return of his" (the farmer's) "identical subject matter, in its original or an altered form, this is a transfer of property for value—it is a sale and not a bailment." That case entirely disposes of the contention as to trust—supposing the actual arrangement to stand,—and stamps it as one of sale. The judgment appealed from is unimpeachable so far as it holds that in law it must be regarded as a sale, and the learned Judge also held that sec. 205 of the *Mining Act* had no effect on the transaction, because that was closed. That consideration has no relevance to the present case, because the appellants' claim is founded on a specific bargain entirely independent of the transaction, a bargain which, unless lawfully varied or otherwise affected by the transaction, entitles the appellants to the relief

(1) L.R. 3 P.C., 101, at p. 108.

they seek. It is trite law that no man can succeed in obtaining the judgment of a Court in his favour by reason of a transaction which an Act of Parliament declares illegal. The King's Courts do not consciously violate the King's laws by enforcing illegal bargains, either by way of redress to plaintiffs or immunity to defendants. Where the illegality appears, it does not need the invocation of a party to call upon the Court to act. The Court must, even of its own motion—not for the sake of the party but to vindicate the law—refuse to give effect to it. In *Connolly* v. *Consumers' Cordage Co.* (1) the Privy Council say: "Their Lordships entertain no doubt that it is the right and duty of the Court at any stage of the cause to consider, and, if it is sufficiently proved, to act upon, an illegality which may turn out to be fatal to the claims of either of the parties to the litigation." If, therefore, a party who has made an illegal agreement comes to a Court relying on it either by way of claim or by way of defence, he must so far fail. The Company here is driven to rely on the sale as an answer to the claim for an account under the agreement. It says: "True, apart from the sale, we should have to account for a balance on the basis of clause 7, but, by reason of the transaction which in law is a sale of the ore itself, the gold, its produce, was parted with to us at £4 an ounce, and therefore we have no balance to account for under clause 7 of the tribute agreement." Such an agreement, if legal, is of course a clear and decisive answer to the claim for an account. It converts a bailment into a sale, and therefore leaves no balance.

Was the agreement legal? If treated as a mere variation of the tribute agreement it was bad because not registered and verified as a tribute agreement. If treated as an independent agreement it was bad because sec. 205 is in very distinct terms. It says: "Except as hereinafter provided, no person shall buy or sell gold unless either the buyer or the seller is the holder of a gold-dealer's licence, and the sale is effected at the registered place of business of the gold dealer, and under his personal supervision." The section continues:—"Any person acting contrary to the provisions of this section shall be guilty of an offence, and liable, on summary conviction, to a fine not exceeding one hundred pounds, or

(1) 89 L.T., 347, at p. 349.

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to imprisonment not exceeding six months: But nothing herein contained shall apply to the purchase of gold-bearing earth or tailings from any registered leaseholder or claimholder if it is proved by the buyer that the sale was effected by a contract in writing, signed by or on behalf of the seller and the buyer, setting forth that the earth or tailings were produced from and taken out of the ground comprised in the lease or claim of which the seller is the registered holder, and which lease or claim is sufficiently described in the contract." It was argued that the "gold dealer" must, within the meaning of the section, be a natural person. That may be so (*Pharmaceutical Society* v. *London and Provincial Supply Association* (1)), and sec. 211 may or may not assist that construction. It is not necessary to decide it, because even if the view presented is correct it only means that the Company not merely is not but could not be a gold dealer, and, therefore, except as provided in the last paragraph of sec. 205, the Company could not legally buy gold ores. The word "person," however, clearly includes a company. Partly by admission and partly by proof it is established that neither buyers nor sellers were holders of a gold-dealer's licence. The language of the Act is prohibitory, and the contract of sale was illegal and cannot be given effect to (*Cornelius* v. *Phillips* (2)).

The appeal should therefore be allowed, and an account ordered.

Appeal dismissed. Judgment of Supreme Court affirmed. No order as to costs of appeal.

Solicitors for the appellants, *Richard S. Haynes & Co.*

Solicitors for the respondents, *Keenan & Randall.*

(1) 5 App. Cas., 857.

(2) (1918) A.C., 199.