Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Falkners Gold Mining Company, Limited, v. McKinnery, from the Supreme Court of New South Wales ; delivered 27th July 1901.

Present at the Hearing :

LORD HOBHOUSE.
LORD DAVEY.
LORD ROBERTSON.
SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

Under the " Mining Act 1874 " of New South Wales (37 Vict., No. 13) all questions and disputes between miners in relation to mining on Crown lands are brought in the first instance before the Warden's Court from which an appeal lies to the District Court sitting as a Court of Appeal in its mining jurisdiction. By Section 115 of that Act it is enacted that if either the Appellant or Respondent in any appeal to the District Court sitting as a Mining Appeal Court under the provisions of the Act shall be dissatisfied with the determination or direction of the the District Court on any grounds if the amount claimed or involved by the decision shall not be less that 500*l.* he may appeal from it to the Supreme Court of New South Wales, which may either order a new trial before the Mining Appeal Court on such terms as it thinks fit or may order judgment to be entered for either party and such order shall be final and such appeal shall be in such manner

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and form and subject to such regulations in all respects as the Judges of the Supreme Court shall by general rules in that behalf prescribe. By general rules of the Supreme Court dated the 18th November 1875 the District Court Judge may sign a statement of the case with or without the assent of the parties and on such statement with a copy of the notice of appeal and affidavit of service being filed in the Supreme Court office the Appeal is to be entered for argument before the Supreme Court in the same way as other appeals under the "District "Courts Act of 1858."

On the 18th October 1899 the Judge of the Mining Appeal Court signed a statement of the case in a pending appeal before him in which the present Appellants were the Appellants and the present Respondent was the Respondent.

It is not necessary for the decision in this appeal to notice more of the statement in the case than that the Great Victory Gold Mining Company Limited whose right title and interest the Appellants had purchased and had had conveyed to them by the liquidators of the Company were in March 1895 the owners of two gold mining leases numbered 293 and 372, that on the 25th May 1895 Arthur James Chappell became the owner of a gold mining lease numbered 594 adjoining the lease numbered 293, that in April 1896 the Secretary for Mines authorised the amalgamation of the three leases and in September 1896 the Respondent bought the right title and interest of Chappell. On the 25th November 1898 the Respondent took a proceeding in the Warden's Court against the Appellants to have it declared that he was a shareholder in and entitled to a proportion of the gold won from the leases 293 and 372. On the 9th February 1899 the Warden decided that the Respondent was entitled to approximately

one-fourth share in the amalgamated leases. Notice of appeal to the District Judge sitting as a Mining Appeal Court was given and the appeal came on for hearing on the 11th March 1899. Evidence was taken but neither on that occasion nor in that taken before the Warden was there any evidence of the value of the one-fourth share.

Before noticing what was done subsequently it will be convenient to refer to two previous decisions of the Supreme Court upon the question which arose on other occasions when a case stated under the general rules came before it. The first is *Bourke* v. *Lucas* (1882), 3 N. S. W. Rep. 217, where in an appeal under the part of Section 115 of the "Mining Act 1874" which related to appeals where the value of the property involved exceeded 50*l.* the objection was taken that the appeal could not be heard because there was nothing in the proceeding before the District Court to show that the value of the property involved exceeded 50*l.* and the Court without calling on the Counsel for the Appellant held that the objection was not a good one (p. 219). No reason for this decision is given in the report and therefore their Lordships abstain from expressing any opinion upon it. In *Scully* v. *Murn* (1893), 14 N. S. W. Rep. 289, in an appeal from the Mining Appeal Court the Respondent's Counsel took the preliminary objection that as there was nothing before the Court to shew that the value of the property in dispute exceeded 50*l.* the appeal could not be heard. The Appellant's Counsel thereupon said the Appellant had filed an affidavit that the land was worth more than 50*l.* and the Respondent's Counsel said the Respondent had filed three affidavits in which the deponents swore the land was not worth 50*l.* Upon this the Chief Justice said, "Should not

" the value of the land appear in the special " case?" And upon the Appellant's Counsel submitting that there was nothing in Section 115 that requires the value to be stated in the special case and that the Court might decide it upon affidavit the Chief Justice said, " How can " we determine the value of this land on " affidavits? In one affidavit it is said that " the land is worth more than 50*l.* and in the " others it is said that the land is worth less than " 50*l.*" Finally the Chief Justice with the concurrence of the two other Judges said, " We will " refer this question of the value of the land to his " Honour Judge Docker, if he sees fit to deter- " mine it. . . If his Honour does not report " that the value of the property in dispute exceeds " 50*l.* the case will be struck out with costs. " This case must not be taken as a precedent; " when an Appeal comes on for hearing it must " appear in the special case that the land in " dispute is of sufficient value to give this Court " jurisdiction under S. 115." Upon the case going back to Judge Docker he refused to report as to the value of the land, as no evidence upon the point had been given at the hearing before him, and he was of opinion that he had no power under that Statute to re-open the matter upon this point. The Supreme Court then, without any further argument, dismissed the Appeal.

The proceedings of the Supreme Court in the present case are reported in 20 N.S.W. Rep. 262. For the Respondent the preliminary objection was taken that as there was nothing in the case to show the amount in dispute between the parties, the Appeal could not be heard. It was also noticed by the Court that the case did not shew what the point of law involved was. The Court ordered the case to be sent back to the

Judge and the Appellant to pay the costs, the Chief Justice saying, "His Honour's attention "should also be drawn to the case of *Scully* v. "*Murn*. It may be the Judge will say that he "cannot tell what the amount in dispute was. "I notice in that case that Docker, D.C.J., "held that he could not re-open the case "on this point and I think he was right." When the parties went before the Judge to settle the case the Appellants tendered evidence to show that the value of the property in dispute was between 2,000*l*. and 2,500*l*. The Judge as might be expected after what the Chief Justice had said refused to re-open the case and receive the evidence. Thereupon the Appellants moved the Supreme Court for a rule nisi for a writ of mandamus to the Judge, which was refused. This is reported in 20 N.S.W. Rep. 428, where the Chief Justice is reported to have said, "I "decline to express any opinion on the cases of "*Scully* v. *Murn* and *Lucas* v. *Bourke*, though "I may state that the matter was more fully "considered in the former case. But I decline "to say which decision is right. It will be open to "the parties when the Appeal comes before this "Court to question one or other of those "decisions." On the 23rd February 1900, the Appeal came on for hearing before the Chief Justice and two other Judges, when the Appellants tendered with other evidence an affidavit of George Anderson duly filed proving the value of the property involved in the decision of the Judge of the Mining Appeal Court to be over 2,500*l*. The Court refused to hear the affidavit read, and dismissed the Appeal with costs.

The reasons for this decision have been stated by the Chief Justice and concurred in by the two other Judges. They appear to their Lordships to be that so far as convenience and

accuracy are concerned the District Court is the proper Court to determine the matter, that in *Scully* v. *Murn* the Court had laid down a general rule of practice so far as a decision of the Full Court could do so, and also the difficulty the Court in that case found itself in of having to decide a question of its own juirsdiction upon conflicting affidavits. Now as regards the last reason it cannot be disputed that there are many occasions when a Court has to decide a question of its own jurisdiction and does it upon evidence which may be conflicting and difficult to decide upon, but their Lordships cannot assent to this being a valid reason for the Court not exercising its jurisdiction in declining to decide the question and requiring the fact in dispute to be inquired into and stated by the Court from which the Appeal is brought. As to convenience and accuracy it may be doubted whether the rule laid down in *Scully* v. *Murn* is more convenient than the Supreme Court making the inquiry when the value is disputed. This rule would make it necessary for the claimant in every case to be prepared with evidence of the value of his claim and for the Warden or Mining Appeal Court to take the evidence of it and be careful to state the value. If they omit to do this both parties will according to *Scully* v. *Murn* lose the right of appeal. Nor is it clear to their Lordships that this course is more likely to produce accuracy than an inquiry by the Supreme Court. As to the difficulty of deciding the question upon conflicting affidavits there are many judicial proceedings in which questions have to be decided upon affidavits but that is no reason for not deciding a question if the matter is within the jurisdiction of the Court. In this case the Supreme Court granted leave to Appeal to Her late Majesty in Council upon affidavits, one

being of George Anderson, who deposed as to the value of the property, the Petition for leave stating that the judgment involved directly a claim, demand, and question of the value of 500*l.*, which was necessary. The Supreme Court does not appear to have had any difficulty then about the amount involved. Their Lordships are unable to approve of the decision in *Scully* v. *Murn*, and are of opinion that the Order of the 23rd February 1900 dismissing the Appeal is erroneous. They will humbly advise His Majesty to reverse it with costs of the Appeal to the Supreme Court and the value having been proved to be above 500*l.* to remit the case to the Supreme Court to be heard according to Section 115 of the Mining Act, 1874.

The costs of this Appeal will abide the result of that hearing and be paid by the unsuccessful party.