

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Dundee Coal Company, Limited v. The Minister of Agriculture of the Colony of Natal, and, as such, representing the Colonial Government, from the Supreme Court of the Colony of Natal; delivered the 24th July, 1906.

Present at the Hearing :

THE EARL OF HALSBURY.

LORD DAVEY.

SIR ARTHUR WILSON.

SIR ALFRED WILLS.

[*Delivered by Sir Arthur Wilson.*]

The question raised upon this Appeal is whether the Respondent, as representing the Colonial Government, is entitled to recover from the Appellant Company under the Natal Mines Act, 1899, royalty in respect of coal raised after the passing of that Act, from collieries which were owned by and worked by the Appellants before the passing of the Act.

The Natal Mines Act, 1899, under which the royalties are claimed, is No. 43 of 1899. It repealed certain earlier Laws and Proclamations, but enacted (Section 2) that such repeal should not affect (1) "any right, title, interest or privilege acquired (not being inconsistent with this "Act) under any of the said Laws "and Proclamations." The general scheme of the Act embodied a system of claims, licences, and royalties.

The more important enactments of the Act are the following:—

PART I.

* * * * *

“ 8. Parcels of land to be called claims may be granted under and subject to the provisions of this Act as follows:—

“ Alluvial claims of a size not exceeding 100 feet by 100 feet (0·229 acre) granted for the purpose of prospecting or mining for precious stones and alluvial minerals, and all other minerals.

“ Metal claims of a size not exceeding 300 yards by 300 yards (18·595 acres), granted for the purpose of prospecting or mining for gold and other minerals, including coal, but excepting precious stones and alluvial minerals.

“ Mineral claims of a size not exceeding 700 yards by 700 yards (101·239 acres) granted for the purpose of prospecting or mining for coal, limestone, stratified ironstone, slate, soapstone, and such other minerals as may from time to time be included by Government Notice by order of the Governor in Council.

“ The foregoing claims may be granted as prospecting or mining claims for the purposes respectively prescribed by this Act, and shall be described as follows:—

“ Alluvial prospecting claims.

“ Alluvial mining claims.

“ Metal prospecting claims.

“ Metal mining claims.

“ Mineral prospecting claims.

“ Mineral mining claims.

“ PART II.—RIGHTS OF THE CROWN.

“ 9. The right of mining for and disposing of all minerals on lands situated in the Colony of Natal is vested in the Crown, subject to the provisions of this Act, and nothing in this Act regarding the prospecting, mining, or disposing of minerals shall abridge or control the rights and powers of Her Majesty in respect of such minerals otherwise than is expressly provided in this Act.”

Part III., under the heading “ Crown Lands. “ Prospecting ” provides for prospecting and prospecting licences, leading up in ordinary course to mining licences. In the same part, under the heading “ Mining,” there is the following Section:—

“ 25. The mining, extraction, and disposal of any mineral for the purposes of profit on or from any Crown lands is prohibited, except on and from ground duly registered as

“ a mining claim in accordance with this Act, or otherwise
 “ lawfully held for such purposes under the provisions of any
 “ previous laws or proclamations.”

Section 41, under the same heading, is as follows :—

“ There shall be payable on all minerals extracted from the
 “ Crown Lands under licences granted under this Act a
 “ royalty at the rate of One and one half ($1\frac{1}{2}$) per centum
 “ calculated on the value of such minerals at the mine.

“ The payment of such royalty shall be made at such times
 “ as may be provided in the regulations.”

Under the heading “ Part IV. Private Lands,” occurs Section 42, which is as follows :—

“ 42. The provisions of this Act and of the Regulations framed thereunder in respect of Crown lands, shall apply to all private lands, save as in this Act otherwise provided.”

The sections which, if any, establish the liability contended for are Section 41, imposing a royalty upon minerals extracted from Crown lands, and Section 42, which is said to extend that liability to private lands. The royalty imposed by Section 41 is upon minerals extracted “ under “ licences granted under this Act.” This throws us back upon Section 25, to see in what cases a licence under the Act was legally necessary. That section in effect requires a licence to be obtained in all cases, except where mining is from ground “ otherwise lawfully held for such “ purposes under the provisions of any previous “ laws or proclamations.” This again makes it necessary to inquire whether at the time when the Act of 1899 was passed the ground in question was “ otherwise lawfully held for such “ purposes under the provisions of any previous “ laws or proclamations.” And to that question there seems to be only one answer. Prior to 1899 the Appellants were the owners of the coal mines in question, and were working them as such, and their title to do so was expressly affirmed by Section 31 of the Law No. 34 of 1888. This aspect of the case does not seem to

have been presented for the consideration of the learned Judges who heard the case in Natal. But to their Lordships it has been presented, and it appears to them to be conclusive of the case.

Their Lordships will humbly advise His Majesty that the Judgment appealed against should be discharged and the suit dismissed with costs.

The Respondent will pay the costs of this Appeal.
