

ment must as far as possible be enforced. It is true a party cannot be compelled by judgment of the Court to carry out a general agreement with regard to submitting disputes to arbitration, but, where the procedure admits of it, the carrying out of such agreements will be enforced. It is argued that the defendant company maintains that the agreement has come to an end, and that the disputes consequently do not fall within the arbitration clause. There can, however, be no doubt that the disputes do fall within the words of the arbitration clause: "disputes arising from the contract or the interpretation thereof."

The exception will therefore be allowed with costs.

AMESHOFF, J., and GREGOROWSKI, J., concurred.

Excipient's attorney: *H. L. Scholtz.*

Plaintiff's attorney: *S. K. H. Lingbeek.*

1896, 1897
N. S. A.
RAIL. Co.
v.
NEW PRIM-
ROSE G. M. Co.
Morice, J.

VAN RYN G. M. ESTATE, LIMITED, AND THE
MINING COMMISSIONER OF BOKSBURG

v.

COOPER.

Coram:
KOTZÉ, C.J.
MORICE, J.
GREGO-
ROWSKI, J.

GOLD LAW No. 18 OF 1892, SECTS. 61 (b) AND 66—LAPSED
CLAIMS—SALE OF BEWAARPLAATSEN.

1896
7 November.
1897
16 March.

The Commissioner of Mines is not obliged, under sect. 61 (b) of Law 18 of 1892, to sell lapsed claims, but may deal with them at discretion. Where the Mining Commissioner on 12th May, 1894, issued bewaarplaatsen licences on lapsed claims to the Van Ryn G. M. Estate, Limited, and on 4th July, 1894, sold these lapsed claims to the predecessor in title of Cooper: Held, that the Van Ryn Company had a better title than Cooper.

THIS was an appeal from the judgment of Ameshoff, J., given at Johannesburg. Certain claims had been pegged off by one Wienand on the farm Vlakfontein, but reverted to the Govern-

1896, 1897
 VAN RYN
 G. M. ESTATE,
 LTD.
 v.
 COOPER.

ment through non-payment of the licence-moneys. On 12th May, 1894, the Mining Commissioner of Boksburg had granted to the Van Ryn G. M. Estate, Limited, *bewaarplaats* licences on these lapsed claims. On 4th July, 1894, these claims were sold by public auction in two blocks of ten and twenty claims respectively to one Graumann. They were subsequently, on 19th October, 1894, sold to Cooper, and he had them surveyed, and discovered that there were 32·85 claims instead of 30, and that the Van Ryn Company had erected cyanide works on 2·85 of these claims. The company refused to remove its cyanide appliances, and the Mining Commissioner refused to issue licences for the surplus 2·85 claims. Cooper thereupon instituted an action in the Circuit Court at Johannesburg to compel the Mining Commissioner to issue licences to him, and to eject the said company from the ground. Ameshoff, J., held that, inasmuch as Graumann bought the lapsed claims *en bloc*, he was entitled to all the claims contained in the two blocks. His Lordship consequently ordered the company to remove its cyanide appliances within six months, and directed the Mining Commissioner to issue licences to Cooper for the remaining claims. From this decision the Company and the Mining Commissioner appealed.

Esselen (with him *Cloete* and *Dickson*), for the appellants: Sect. 61 (b) of Law No. 18 of 1892 says that the Commissioner of Mines (a) shall have power to sell lapsed claims after the expiration of thirty days. It is therefore not peremptory. In the present instance the Mining Commissioner has issued *bewaarplaats* (b) licences to the company, and consequently the subsequent purchase by the predecessor of Cooper can give him no rights. The purchase cannot relate to the claims for which *bewaarplaats* licences had already been issued.

Essex (with him *Barber*), for the respondent: The Commissioner of Mines may not be obliged to sell lapsed claims, but in the present instance he has chosen to sell the two blocks of lapsed

(a) The Commissioner of Mines is the head of the Mining Department. The Mining Commissioners are his subordinates and local representatives at the various gold diggings.—TR.

(b) *Bewaarplaats*. By this term in the Gold Law is generally meant a storage or depositing site for tailings or other refuse from batteries, or for placing settling tanks or reservoirs, or storing ores and the like.—TR.

claims, and consequently Cooper is entitled to all the claims contained in the two blocks. When the *bewaarplaats* licences were issued, it was not known that they related to the lapsed claims, and therefore it cannot be said that the Mining Commissioner had any intention to dispose of these claims.

1896, 1897
 VAN RYN
 G. M. ESTATE,
 LTD.
 v.
 COOPER.

Cur. ad. vult.

Postea. 16th March, 1897.

MORICE, J.: In this case I agree with the conclusion of Gregorowski, J., so far as concerns the application of the Gold Law. I am of opinion that when claims revert to the Government on the ground of non-payment, there is nothing in the Gold Law No. 18, 1892, which prevents the Mining Commissioner from giving out the claims as *bewaarplaatsen*. Sect. 61 (b) of this Law says, that after the expiration of thirty days after the licence moneys are due, the Commissioner of Mines shall have the power to sell the claims by public auction, or, in case of inability to sell, to act in conformity with sect. 87 of this Law. In my view, the words "have the power" also relate to the phrase "act in conformity with sect. 87," and the direction given to the Commissioner of Mines is therefore not peremptory. Sect. 37 also leaves much to the discretion of the official. The Mining Commissioner or responsible clerk has "the right" to refuse to issue licences for abandoned claims whenever he has reason to think that the abandonment has not occurred *bonâ fide*. "He shall be entitled to refuse the giving out of such claims, and to cause them to be sold by auction for the benefit of the State."

There is nothing whatever in sect. 66 which prohibits the giving out of *bewaarplaatsen* on ground formerly held as claims. The section provides that, if possible, such sites shall be on non-metal or non-mineral-bearing ground. When we consider that the ground in dispute in this case was twice allowed to lapse, and, after the giving out of the *bewaarplaatsen*, was sold at 3*d.* per claim, we must take it that the ground is probably not metalliferous. The section does not require that there shall be sufficient proof that the ground is not gold bearing.

It would be very arbitrary to lay down that a claim cannot be converted into a *bewaarplaats*, or a *bewaarplaats* into a claim. Besides, it would be contrary to the practice on the goldfields. If I am not mistaken, many of the *bewaarplaatsen* on the goldfields were originally held as claims, and *bewaarplaatsen* have now

1896, 1897
 VAN RYN
 G. M. ESTATE,
 LTD.
 v.
 COOPER.
 Morice, J.

been converted into claims. Moreover, every piece of ground on a proclaimed goldfield is *prima facie* a potential claim. It may be converted into a *bevaarplaats* when it has not been shown to contain payable gold. I am therefore of opinion that the Van Ryn G. M. Company had a better title than the plaintiff to the ground on which its cyanide appliances stood, and that, on the understanding that, according to offer, the plaintiff shall get thirty claims, judgment in the case in the first instance must be in favour of the defendant, the Van Ryn G. M. Company, with costs. The judgment in appeal is accordingly in favour of the appellant by varying the judgment of the Judge *a quo* as above mentioned, and the appellant company is entitled to the costs. There will be no order as regards the costs of the first defendant, who has submitted himself to the judgment of the Court.

GREGOROWSKI, J. : The grounds of action set out in the summons are as follow :—On the 4th July, 1894, the Mining Commissioner of Boksburg sold by public auction two lapsed blocks of claims on the farm Vlakfontein, Boksburg gold diggings, in size respectively twenty claims, Nos. 89 to 108, and ten claims, Nos. 119 to 128. The situation of these claims is shown by a sketch diagram annexed to the summons, and according to this sketch diagram the claims alleged to have been sold have an area of 32·85998 claims. A certain Louis Graumann was the purchaser, and obtained transfer, according to the licence put in, of thirty claims, and he ceded his rights to the plaintiff by means of a verbal agreement on or about the 19th October, 1894. The Mining Commissioner, however, refuses to receive the licence moneys due, and to allow transfer to pass to the plaintiff. The Van Ryn Gold Mines Estates, Ltd., claims to be entitled to a portion of the said claims (as indicated on the sketch diagram A), and refuses to quit the same, thereby causing damage to the plaintiff to the amount of 30,000/. The plaintiff prays that he shall be declared entitled to the 32·85998 claims, that the Mining Commissioner shall be ordered to give him transfer thereof, and that the company shall be ordered to give up possession of the claims held by it, and to pay 30,000/. by way of damages.

The Mining Commissioner submits himself to the judgment of the Court.

The answer of the Van Ryn Gold Mines Estates, Ltd., to the claim is a general denial of everything, except that the Mining

Commissioner sold thirty claims on 4th July, 1894, and that the company claims the area marked under letter A by virtue of a licence for fifteen *bewaarplaatsen* issued in accordance with sect. 66 of Law No. 18 of 1892, and since then properly renewed.

To this there is a replication that the company obtained the ground marked A, knowing that the ground consisted of claims, and could therefore not be given out as *bewaarplaatsen*, and that it did not inform the Mining Commissioner of the fact, who issued the licences in ignorance of the circumstance that the ground in dispute consisted of claims. Further, that whether the company had or had not knowledge, the issue of licences for *bewaarplaatsen* on claims is contrary to law, and therefore illegal.

There is also a claim in reconvention instituted by the company that it is in *bonâ fide* possession of the area in dispute, and has erected thereon two houses, cyanide plant and other works, and that if it has to give up possession of the ground it is entitled to the value of these works so erected, amounting to 10,000*l*.

It appears that Graumann bought the claims at public auction for 3*d*. each, and the plaintiff bought them from him on 19th October, 1894, for 11*l*. 10*s*. The Judge of the Circuit Court gave judgment on 1st November, 1895, in favour of the plaintiff, declaring him entitled to the 32·85998 claims, and the defendant company was ordered to remove the cyanide plant and the buildings within six months. The claim for damages was dismissed. Against this decision the defendant company has now appealed. During the hearing of the case, as appears from the record of the Circuit Court, transfer of thirty claims was tendered to the plaintiff, and during the argument in this Court this was brought to our notice, and consequently we have now only to decide whether the plaintiff is entitled to the surplus ground over and above the thirty claims, and whether he is entitled to the ground, nearly three claims, upon which the buildings and cyanide plant of the defendant company are situate.

The contention of the plaintiff is, that he is entitled to all the ground pegged off by the original pegger Wienand, although the ground may appear to be more than thirty claims, and Wienand has proved that he pegged the ground as it is now claimed by the plaintiff. The plaintiff further says that his predecessor bought *en bloc*, and that the claims, as pegged and numbered, ought to be transferred to him *en bloc*. He rests his claim on the conditions

1896, 1897

VAN RYN

G. M. ESTATE,
LTD.

v.

COOPER.

Grego-
rowski, J.

1896, 1897
 VAN RYN
 G. M. ESTATE,
 LTD.
 v.
 COOPER.
 —
 Grego-
 rowski, J.
 —

of sale. It is clear that sect. 75 (a) of the Gold Law is not applicable here, for under this section the Government has full discretion, and can either assign the surplus ground, situate within the pegs or beacons of a claim, to the claimholder, or decline to do so and act with it as it may think fit. It seems to me that the plaintiff can only be declared entitled by this Court to not more than thirty claims, if such were sold to his predecessor (or subsequently awarded to him, which has not been alleged); in other words, he must derive his right from the conditions of sale. Now, what Graumann bought by public auction was thirty claims and no more. If Wienand pegged off more than thirty claims under thirty licences, he could only obtain the surplus ground from the Government under sect. 75 (a) if the Government were favourably disposed to give it to him, and his successor is in no better position. The Government never gave away the surplus ground. But the fact that the plaintiff can only obtain thirty claims does not solve the difficulty, for I should think that the purchaser could elect which portion he would give up as surplus ground, and he would be entitled to include the three claims on which the cyanide plant has been erected within his thirty claims. He has the choice, except, perhaps, where it can be shown at what point Wienand began his pegging and at what point he finished it, which has not been done in the present instance.

We are therefore obliged to decide the point whether the Government was entitled to give out lapsed claims as *bewaarplaatsen*. If the Government had this power, then I have no doubt that the defendant company has a good title, and a better title than the plaintiff. The point must be settled in accordance with the Gold Law, as it existed in May, 1894, when the *bewaarplaatsen* were given out, that is to say, in accordance with the Gold Law of 1892 (Law 18, § 61 b). Under the Gold Law (§§ 37 and 31 b) of 1887, there may be a doubt as to whether the Government was entitled to act arbitrarily with respect to lapsed claims, for the section in question provides that the Government “shall sell” lapsed claims. The contrary, however, was decided on this section in *Edwards v. Britannia Co.*, 1 Sept. 1890 (c). It is, perhaps, from the wording of this section that the saying “once claims, always claims” is derived. But under sect. 61 (b) of Law 18 of 1892 there can be no

question. This section reads, that the Government may sell the claims or may formally abandon them, due regard being had to sect. 87, in order to be peggable again as open ground, or may restore them to their former owner. But there is nothing to prevent the Government retaining these claims, or disposing of them according to pleasure. Accordingly the Government was fully entitled to give out the ground as *bewaarplaatsen*, and the defendant company has a good title to the fifteen *bewaarplaatsen*. Of course, the Mining Commissioner has acted wrongly and carelessly in subsequently again putting up the same ground to auction as claims, but that does not concern the company. We have, according to the arrangement between the parties, only to decide upon the three claims or thereabouts, on which the buildings and cyanide plant of the company are situate, and with respect to these I think the defendant company has a prior and better title than the plaintiff, and it must be declared entitled to these sites (*bewaarplaatsen*). The appeal must therefore be allowed, the respondent being condemned in the costs of appeal, and of the first instance.

1896, 1897
 VAN RYN
 G. M. ESTATE,
 LTD.
 v.
 COOPER.
 —
 Grego-
 rowski, J.
 —

KORZÉ, C. J.: In this appeal from the judgment of my brother Ameshoff—I have read his written judgment, as well as those of my brothers Morice and Gregorowski—the main question appears to me to be, Whether the Mining Commissioner has the power to give out, under a sites licence, ground once pegged off as claims, and which has become lapsed? Ameshoff, J., was of opinion that the Mining Commissioner does not possess the power to alter the once laid down and accepted destination of the ground as claims, and that consequently the general rule of the common law as laid down in *Voet* (18, 1. 7) must prevail. It may, perhaps, not without reason, be said that sects. 21 and 66 of the Gold Law do not relate to claims which have become lost through non-payment of the licence moneys, and that accordingly sect. 87 is likewise not applicable. But on the other hand, if claims have become lapsed and revert to the Government, and no one wishes afterwards to peg off the ground as claims, what must then be done with it by the Government or the Mining Commissioner? It cannot be expected that such ground shall simply remain and lie useless. The Mining Commissioner therefore appears, indeed, to have the power to give out lapsed ground, like that in question, under a

1896, 1897 sites licence. I therefore concur in the conclusion at which my
 brothers Morice and Gregorowski have arrived.
 VAN RYN
 G. M. ESTATE,
 LTD.
 v.
 COOPER.
 Attorneys for appellants: *Rooth and Wessels.*
 Kotzé, C.J. Attorney for respondent: *C. G. Rice.*

Coram :
 MORICE, J.
In camera.

HILDEBRANDT

v.

THE ATTORNEY-GENERAL.

1897
 3 April.

BAIL—DISCRETION OF ATTORNEY-GENERAL—LAW No. 7,
 1896, SECT. 2.

The Court will not interfere in the matter of fixing bail in criminal cases, where it does not clearly appear that the Attorney-General has not exercised a reasonable discretion in regard thereto.

THIS was an application for the reduction of the amount fixed by the Attorney-General as bail, on which the applicant, being in custody, would be released.

The applicant stood charged with a contravention of sects. 145 and 146 of the Gold Law of 1896 (*a*). After a preliminary examination had been held, the Attorney-General decided that the accused could be released on giving his personal bail for 10,000*l.* and that of two sureties at 5,000*l.* each, provided they possessed immovable property to that extent.

The petition set forth that these were the first contraventions with which the applicant had been charged, and that, in the event of his being convicted of both contraventions, the maximum punishment to which he could be subjected was a fine of 600*l.* or two and a half years' imprisonment; that he had approached the Attorney-General in writing with regard to this excessive amount of bail with a view to getting it reduced, but that this had been

a) Law No. 21 of 1896.—**TR.**