

1897
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 HOFMEYER  
 v.  
 THE LUI-  
 PAARDSVLEI  
 ESTATE AND  
 G.M.Co., LTD.  
 ~~~~~  
 Kotzé, C.J.

There must therefore be judgment in favour of the defendant company with costs.

Attorneys for the plaintiffs: *Roux and Ballot.*

Attorneys for the defendants: *Webber and Kennerly.*

Coram
 KOTZÉ, C.J.
 AMES-
 HOFF, J.
 JORIS-
 SEN, J.

MINING COMMISSIONER OF KRUGERSDORP

v.

J. B. ROBINSON.

1897
 ~~~~~  
 1 November.

### GOLD LAW NO. 21 OF 1896, SECT. 93—STAND LICENCE.

*The Mining Commissioner is not entitled to refuse to grant a licence for a stand on a known precious mineral bearing area, unless it can be shown that the granting of such licence will hamper the diggings.*

THIS was an appeal from the judgment of Esser, J., given in Chambers on 25th September, 1897. J. B. Robinson applied to the Court for an order directing the Mining Commissioner to grant him a stand licence on Claim 2312, situate on Randfontein. He alleged that he was the owner of all the adjoining claims and that the rest of the ground was open ground, and further that the granting of the licence asked would be in the interests of the employees at the mines in the neighbourhood, in which he was the largest shareholder. Esser, J., granted the order as prayed, and against this the Mining Commissioner appealed. The judgment of Esser, J., was as follows:—

“This application was heard by me on 25th September, 1897, and decided in favour of the applicant. As an appeal has been noted I was asked to state the written reasons for my judgment, and I desire briefly to state them. I may premise that the mere reading of the record already induced me to form my opinion, seeing that all the assertions of the Mining Commissioner are clearly controverted by the facts sworn to by the applicant and others on the same side. Moreover the Mining Commissioner is mistaken on two points. First, the section (93) of the Law No. 21,

1896, referred to by him does not contain the word 'or' inserted by him therein, and provides therefore that the Mining Commissioner can grant stands 'on a locality approved by him . . . on a known precious metal or stones bearing area.'

"In all probability the Legislature intended to express itself more clearly than it has done, but it is not for the Court to alter the language of the law, and, as it now stands there, we might even go so far as to assert that all stands *must* be situate on gold bearing ground. But without proceeding that length, it is more acceptable to hold that a printer's error has crept into the Act, and that the comma after "diggings" ought to be eliminated. Taking that to be so, I read the section as follows. The Mining Commissioner can grant stands on a locality approved by him, but where such locality is situate on a known precious mineral bearing area, this may not take place where it interferes with the diggings. This gives a very good meaning to the section, while the interpretation of the Mining Commissioner, which would withdraw the surface of deep level claims, without any intelligible reason, from subjection to standright, would, besides being contrary to the wording of the section, be simply untenable as being void of all sense.

"Moreover, the applicant states and proves by facts that, as the owner of the claims, he is the only person who could possibly be prejudiced, and he denies that he will sustain any damage. Instead of being an interference with the diggings it is shown that the granting of this stand will decidedly be for the benefit of the surrounding companies, and consequently, just as in the case of *Homburger v. The Mining Commissioner of Johannesburg* (ante, p. 199), judgment should be in favour of the applicant.

"Secondly, the second error made by the Mining Commissioner is in regard to the licence to be granted for a shop. (Sect. 1, Law No. 18, 1896.) From this he seems to infer that no two rights may be granted over the same ground. The law, however, does not say that no shop licence may be issued on ground pegged or held under licence for mining purposes; but only that it cannot be issued on such ground, whenever the ground has been enclosed or fenced.

"It appears from the Record that the ground is open and not enclosed, and accessible to the public, consequently the ground is

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capable of having a shop licence granted for it. For these reasons I held that I ought to grant the application, with costs."

*Coster* (with him *Jacobs*), for the appellant: The Mining Commissioner is not bound to grant a stand licence, and where such a licence is applied for on a known precious mineral bearing area he is fully entitled to refuse to do so. Now here a licence is asked for a stand on a claim. Section 90 of Law 21, 1896, gives the right of disposal over the surface of a claim to the Government.

*Wessels* (with him *Esselen*), for the respondent: There is no proof that the granting of a stand licence in this instance will interfere with the diggings. On the contrary, it has been shown that Robinson is the owner of all the claims in the neighbourhood, and that it would be for the benefit of the digging to issue the licence applied for.

KOTZÉ, C. J. : It seems to me that the judgment of Esser, J., is correct. There is nothing which indicates that the issue of the stand licence will be prejudicial to the gold digging. The contrary has been established. The appeal must, therefore, be dismissed with costs.

AMESHOFF and JORISSEN, JJ., concurred.

Appellant's attorney: C. Teckermann, sen.

Respondent's attorneys: Tancred and Tunnion.