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acknowledged the receipt of this letter, and at the same time sent in his resignation, stating that, in his view, no other honourable course of action was open to him. This resignation was at once accepted.

While these proceedings had been going on, Kotzé, C.J., and Esselen, J., were absent on circuit. The Chief Justice returned to Pretoria on the 6th October, and, after having had an interview with Brand, J., and seen the documents and correspondence above referred to, decided upon the immediate re-arrest of Mr. Nellmapius, on the ground that, until the full Court had decided upon the points reserved, the President, with the advice of the Executive Council, could not exercise his prerogative of pardon, for there can be no pardon until the Court had first confirmed the conviction, and this was still an open question pending the decision on the points reserved. The intention of Art. 83 of the Grondwet is that a pardon shall only be granted where it can *legally* operate as such. A warrant for the re-arrest of Mr. Nellmapius was consequently issued by the Chief Justice and duly executed, a letter being also sent by the Chief Justice to the head of the State, explaining the circumstances under which he was compelled to act. A few days later Esselen, J., returned from circuit and expressed his concurrence in the steps taken by the Chief Justice. The conviction having subsequently been quashed, as stated in the above Report, Mr. Nellmapius was set at liberty by order of the full Court.

DONOVAN vs. DU PLOOY.

Title to Land—Ejectment.

Where the defendant was in possession of a farm and the plaintiff, in an action for ejectment, proved a primâ facie good title to it, while the defendant failed to prove any right: Held, that the plaintiff was entitled to possession of the farm as against the defendant.

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The plaintiff alleged that on January 16th, 1885, he bought the farm O'Donovan's Land, in the district of Bloemhof, and that about a year before the issue of summons, the defendant went and lived on the farm without his consent and against his wish. He asked that the defendant might be ejected.

The defendant pleaded that he became the owner of a portion of O'Donovan's Land called Goudplaats on October 11th, 1884; that the said portion had been granted to William Wright by G. J. Van Niekerk, the Administrator of Stellaland, on February 27th, 1883, in accordance with

the commission of the Chief, David Massouw, of January 18th, 1883; that he had lived there for sixteen months without any disturbance, and that it was only in June, 1885, that he received notice to quit. He pleaded further that by Resolution of the Volksraad of May 12, 1885, all grants made by the Administrator G. J. Van Niekerk, of land which in consequence of the London Convention fell within the Transvaal, were confirmed, and that the grant to W. Wright aforesaid was one of such grants. Further, that by Art. 20 of the Pretoria Convention all grants of land falling outside the limits of the Republic were worthless, and that the grant of O'Donovan's Land made to George Donovan by the Government of this Republic on November 24th, 1876, was one of the grants signified in Art. 20 of the Pretoria Convention.

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The plaintiff in reply said that the Resolution of the Volksraad of May 12th, 1885, could not affect his *dominium* in the farm, seeing that he was at that time the registered owner thereof, having obtained transfer after the farm had, in consequence of the London Convention, fallen within the Republic. Further, that the grant made by G. J. Van Niekerk could not affect his (the plaintiff's) right of property in the farm, seeing that the land had been granted to his predecessor on November 24th, 1876, by the Government of this Republic when the Chief, David Massouw, had given over his country to this Republic.

Hollard, with him *Keet*, for the plaintiff: Donovan is the only registered owner of the farm in this country. His predecessor obtained a grant of the farm in 1876 from the Government of this Republic. By the Pretoria Convention of 1881, it fell outside of the Republic, but this could not affect the title of the plaintiff's predecessor to it. In consequence of the London Convention of 1884, the farm fell within the Republic again, and the plaintiff obtained transfer in January, 1885, and the transfer was properly registered. The Volksraad Resolution of May 12th, 1885, could not affect his title. This Resolution could only refer to *lawful* grants made by Van Niekerk, and the grant to the defendant's predecessor was unlawful.

De Villiers, with him *Cooper*, for the defendant: The

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defendant is in possession and cannot be ejected. The grant to his predecessor was perfectly lawful and was confirmed by the Volksraad Resolution of May, 1885.

KOTZÉ, C.J.: This is an action brought by Gerald Donovan against one Du Plooy, to compel him to evacuate a certain portion of O'Donovan's Land (which portion the defendant calls Goudplaats), lying within the boundaries of the South African Republic, and Registered in his (Donovan's) name, and for damages for unlawful occupation. The plaintiff has made out a *primâ facie* case. He has shown that in 1876 O'Donovan's Land was registered in his father's name, the latter having originally obtained it from Massouw; that, though it fell outside the Republic by the Convention of 1881, it again fell inside the boundary by the Convention of 1884, and that in 1885 it was duly transferred from his father's name and registered in his (the plaintiff's) in the Registry Office of the Transvaal. He has also *primâ facie* proved that the defendant, Du Plooy, is trespassing on the farm. In opposition to this *primâ facie* case the defendant alleges the fact of his possession, and that he purchased the farm from one Wright, a volunteer in Stellaland, who had obtained a title to the land in 1882, from the Administration of Stellaland under Van Niekerk. The defendant further alleges that this title, issued by the Stellaland Administration, was recognised and confirmed by a Resolution of the Volksraad of July, 1885. But this Resolution of the Volksraad expressly refers to Stellaland titles granted by the Commission of January 18th, 1883, and confirmed by the cession of September, 1883, whereas the title produced by the defendant, as issued by the Stellaland Government, refers to a commission of July 26th, 1882, and a cession of September 19th, 1883. Until this discrepancy is cleared up the defendant cannot appeal to the Volksraad Resolution of May, 1885. Thus, while the plaintiff has *primâ facie* proved his right to the land under the Convention of 1884, the defendant has failed to prove a *primâ facie* right. The Court, therefore, must on the present evidence decide in favour of the plaintiff. It must recognise his right till someone else can show a better right, and in the present case the defendant must be ordered to evacuate the ground and

pay the costs of the case. As Mr. Hollard has not pressed the claim for damages it need not be taken into consideration. The defendant will have three months to evacuate the land, and after that time he may reap any mealies which he has already sown on the land.

ESSELEN, J., concurred.

TAYLOR AND CLARIDGE vs. VAN JAARVELD AND
NELLMAPIUS.

*Minerals—Law 7 of 1883, Art. 14—Specific Performance—
Written Contract—Interdict bonâ fide obtained.*

The plaintiffs sued for specific performance of a verbal contract by which the first defendant bound himself to give the plaintiffs the exclusive right of prospecting for silver for six months on a certain farm, with the right, if they found that metal in payable quantities, to take out a lease of the mining rights on the said farm, which lease was to be executed according to law. Held, that the contract was not a cession or a lease, but merely gave the option of taking a lease at a future time, and therefore did not require to be notorially drawn and registered, and that the plaintiffs were entitled to specific performance thereof by the first defendant.

Where, in the course of negotiations between plaintiff and defendant, the putting of an agreement into writing is spoken of, it will, in the absence of evidence to the contrary, be presumed that the writing was merely required for the sake of greater security and proof. No action for damages lies against a person who bonâ fide obtains an interdict in protection of his supposed rights.

On March 10th, 1886, the plaintiffs entered into a verbal contract with the first defendant, by which he gave them the exclusive right to prospect for silver on the farm Roodepoort for the period of six months. If they found silver in payable quantities, they had the right to enter into a formal

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