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June 12.
" 13.
" 26.
Aurora Gold
Mining Co. vs.
Hansau and
Others.

shareholders have, on the contrary, by resolution empowered the new directors to institute this action. (6) Judgment must therefore be given in favour of plaintiffs for £1,200, with costs.

DE KORTE and AMESHOFF, JJ., concurred.

BEREA SYNDICATE vs. LEYDS, N.O.

Proclaimed ground.—Closing of.—Compensation to claim-holders.—Measure of damages.

In 1889 the plaintiffs acquired certain claims on the farm Braamfontein. In 1890 a portion of Braamfontein was closed by the Government. In an action by the plaintiffs, who thereby lost their claims, it was held that they were entitled to claim as compensation the money spent in acquiring the claims and the licence moneys paid and the value of certain buildings erected on the ground, but that they were not entitled to claim the money spent in exploiting the ground to find out whether it contained gold in payable quantities or for the speculative value of the claims, as it was too vague and remote a claim, or the cost of erecting the beacons, because they were obliged by law to erect them.

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On May 3rd, 1888, the unproclaimed farm Braamfontein was thrown open for prospecting by a resolution of the Executive Council. The plaintiff syndicate pegged 184 claims under due and proper licences in January, 1889, upon the aforesaid farm. Work was done upon the claims sufficient to maintain title under the Gold Law, but in July, 1889, a proposal was made by the syndicate to a certain Eloff, the Mining Commissioner, to turn the claims into stands. Cuttings had been made and the reef discovered, but it was stated to be "patchy." On the 22nd June, 1889, the State Secretary sent instructions to the Mining Commissioner to issue no more licences on Braamfontein. The licences already existing were renewed up to January, 1890. The Mining Commissioner stated in evidence that as he knew there was

no gold in the claims he hoped by that time the claim-holders would have "got tired" and allowed the claims to lapse. In November, 1889, the pegs were taken out by the claim-holders and the ground surveyed into a township. In January, 1890, the Government refused to renew the licences. He denied in evidence that he had ever proposed to the Government to give out the ground in stands. Plaintiffs now claimed £30,000 compensation for damage caused by the action of the Government in refusing to renew the licences. Actual expenditure on the claims was as follows : £1,242 spent in acquiring the claims, £687 6s. paid to the Government in licence moneys, and £1,284 16s. in erecting certain buildings and developing the property. The balance of the claim represented the estimated gold-bearing value of the property. It appeared that some neighbouring claims had been floated for £13,400 during the time of a boom, but that at the time of the trial the syndicate shares had no market value.

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Hollard, with him *Curlewis*, for plaintiffs : 'The Government has granted us certain rights, and the Government cannot withdraw them to the prejudice of other parties. The Government cannot act in conflict with the terms of its own "vergunning" without giving compensation. There is nothing in the Gold Law inconsistent with this doctrine, and it is just (*cf. Gold Law*, 1890, § 30, 60, 61, 59).

[*Per* JORISSEN, J. : See § 8 of the Gold Law.]

[*Per* CHIEF JUSTICE : See § 61 B of the Gold Law.]

We have been deprived of our rights, and we are entitled to £30,000 compensation, viz., cash expenditure £3,214 2s. Other auriferous reefs have been found upon the claims, and the same reef runs through other claims situated next plaintiffs' claims, which have been floated for £13,400. Further, a witness says the claims are to-day worth from £50 to £100 a piece. £687 6s. has been paid to the Government in licence moneys. Moreover, we paid £1,242 to become owners of the claims (*cf. Barnett & Co. vs. Van der Merwe*, vol. iii. p. 106). It may be said that we have not proved what the gold-bearing value of the property is, but then we contend that the Government is a *tort-feasor*, and has by its own act prevented and hindered us from duly proceeding with the prospecting of our property in order to ascertain that.

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Curlewis, on the same side, cited *Gauf vs. Leyds, N.O.*, vol. iii. p. 205, June 25th, 1890, where damages were granted for lapse, through act of the Government, of certain prospecting claims. In that case the Court adopted an average value.

A. Krause (State Attorney), with him *Ueckermann* and *Kleijn*, for defendant: What is a prospecting licence? It is merely a permit to go and look for precious metals. It is only when such metals are found in payable quantities that the ground is then thrown open. No payable gold was found, and is it fair that the Government should have to pay £30,000 merely because the prospecting licences have been withdrawn? It was known there was no gold, and that was the reason there was such a desire to turn the claims into stands. Arts. 7 and 8 of the Gold Law show that plaintiffs have no right to compensation. Any damage suffered is the plaintiffs' own fault. Nothing definite was proved. Everything is vague and speculative, but a speculative loss cannot be considered as damages.

Hollard, in reply.

Posteà, June 30th, 1891.

KOTZÉ, C.J.: Taking into consideration sections 8, 11, and 61B of the Gold Law of 1889, together with the fact that the allegation in the summons that the whole of Braamfontein was thrown open as prospecting ground is admitted by the defendant, it appears to me that the Government was not entitled to refuse to issue any further licences on Braamfontein in the way in which it has done so, or to close the portion of the farm belonging to the Government. The rights of the plaintiffs under the Gold Law have thereby been infringed, and the question now is, have the plaintiffs suffered any damage thereby, and if so, to what extent? I am of opinion that the plaintiffs are entitled to reclaim (1) what they have spent or paid to acquire the claims—*i.e.*, £1,242; (2) the licence moneys paid to the Government—*i.e.*, £687, for otherwise the Government would derive a benefit through its wrongful action, and I think that under the circumstances the plaintiffs are entitled, as against the Government, to reclaim this amount. I am not prepared to award the further expenses incurred in prospecting, for this

was done in order to find out whether there was gold in payable quantities or not. The result we do not know, and from the nature of the case it is too vague and uncertain to award anything for it. I adhere to the principles laid down in *Brunskill vs. Preston*,* and for this reason I think that we cannot take the alleged value of the claims at that time into consideration, more especially as there is no evidence that the plaintiffs had a fair prospect of selling or would have sold the claims for that sum. The value of the adjoining claims cannot, on the authority of *Brunskill vs. Preston*, be taken into consideration. There is another item in the account, viz., £300 for the erection of buildings and beacons. The buildings are still there, and I should be disposed to award £200 for them. We cannot give anything for the beacons, for the plaintiffs were obliged by the Gold Law to erect them. I am therefore of opinion that there must be judgment in favour of the plaintiffs for £1,242, *plus* £687, *plus* £200—i.e., £2,129, with costs.

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DE KORTE and JORISSEN, JJ., concurred.

PRETORIUS vs. THE STATE.

Summons for slander.—Must state in whose presence slander was uttered.

Where, in a suit for slander the summons merely stated that the slander was uttered "openly," the Court held that the persons in whose presence the slander had been uttered should be specified, and if the persons were unknown that the summons should state "in the presence of persons unknown."

This was an appeal from a decision of the Landdrost at Krugersdorp. The summons was a criminal one for slander. The slanderous words were set forth, but it was only stated that they were uttered "openly," without alleging in whose presence.

1891.
July 2.
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Pretorius vs.
The State.

* See Kotzé's and Barber's Reports. p. 113.