

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The African Gold Recovery Company, Limited, v. Hay, from the Supreme Court of the Transvaal; delivered the 22nd June 1904.*

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Present at the Hearing:

LORD MACNAGHTEN.

LORD DAVEY.

LORD ROBERTSON.

LORD LINDLEY.

[*Delivered by Lord Lindley.*]

The Supreme Court of the Transvaal has decided that it has no jurisdiction to entertain an appeal from the decision of the High Court of the Transvaal Republic pronounced in November 1896.

The Appellants maintain that the Supreme Court has such jurisdiction and ought to exercise it and decide their appeal on the merits. This is the question which their Lordships have to determine.

It is common ground that by the law of the Transvaal before the war the decision of the High Court of the Republic was final. There was no appeal from its decision to any higher Court in South Africa nor to Her Majesty in Council. The Appellants, therefore, have to show some Statute or Ordinance passed since the annexation of the Transvaal and conferring a right of appeal from the decision of such Court

to some Court of the new Colony. The only authoritative document which bears upon the question is the Proclamation (Transvaal) No. 14 of 1902, under which the existing Supreme Court is constituted. The important Section is Section 16 which says: "The said Court shall have cognizance of all pleas and jurisdiction in all civil causes and proceedings arising or which shall have arisen within the said Colony or which shall have arisen in the Transvaal prior to the annexation thereof."

There is another Section (Sect. 43) relating to pending proceedings, but it has no application to this case. It appears to their Lordships, as it did to the Supreme Court of the Transvaal, that the language of Section 16 creates no right of appeal; it gives no right of appeal where none existed before; consequently the Appellants' contention cannot be sustained.

It is unnecessary to consider whether the Roman-Dutch law on *Restitutio in integrum* makes any exception, as it has no application to the facts of this case if they are gone into.

The Judgment of the High Court from which the Appellants desired to appeal was a judgment vacating a certain patent. Their Lordships expressed no opinion on the view taken by the High Court of the validity of the patent; but in the course of the argument their Lordships stated that they could not accept the view pressed upon them by Mr. Gordon that, even if the High Court had power to declare the patent invalid, it had no power to go on and order it to be cancelled in an action not brought by the Attorney-General and to which he was not a party. The Transvaal Patent Act, No. 6 of 1887 (Sects. 29-31), expressly authorised judgments which are really judgments *in rem* in proceedings specially brought for the invalidation of Letters Patent.

As this point was fully argued by the Appellants, their Lordships think it may be useful to repeat what they said and remove all doubt upon the subject.

Their Lordships will therefore humbly advise His Majesty to dismiss this Appeal and the Appellants must pay the costs.

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