[2011] JMCA Civ 17

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 143/2008

BEFORE: THE HON MR JUSTICE HARRISON JA
THE HON MR JUSTICE MORRISON JA
THE HON MRS JUSTICE McINTOSH JA (Ag)

BETWEEN	**THE COMMISSIONER OF MINES**	**1ST APPELLANT**
AND	**THE ATTORNEY GENERAL**	**2ND APPELLANT**
AND	**GLENCORE ALUMINA JAMAICA LIMITED**	**RESPONDENT**

Curtis Cochrane and Harrington McDermott, instructed by Director of State Proceedings for the appellants

Christopher Kelman instructed by Myers Fletcher & Gordon for the respondent

5, 6 July 2010 and 17 June 2011

HARRISON JA

[1] This appeal is from an order of prohibition made by Mrs Justice Sinclair-Haynes on 21 November 2008.

Background

[2] On 13 February 2006, Astley Salmon, while carrying out repairs to an elevator at the precipitation section of the Kirkvine Plant of WINDALCO's ore-processing facility,

sustained injuries to which he succumbed. Consequently, the Commissioner of Mines (the Commissioner) commenced an enquiry into Mr Salmon's death and purported to proceed pursuant to section 65 of the Mining Act (the Act) which states:

> "(1) Whenever an accident occurs **in connection with prospecting or mining operations** causing or resulting in loss of life or serious injury to any person, the person in charge of the operations shall report in writing with the least possible delay the facts of the matter so far as they are known to him to the Commissioner.
>
> (2) In the event of such accident the Commissioner shall hold an enquiry into the cause thereof and shall record a finding." (Emphasis supplied)

[3] At the hearing before the Commissioner, counsel for Glencore Alumina Jamaica (the respondent) objected to the enquiry taking place on the ground that the Commissioner had no jurisdiction to proceed under section 65 of the Act. The enquiry was adjourned for the matter to be determined by the Supreme Court and a claim was filed which sought the granting of an order of prohibition.

The Hearing Below

[4] It was argued below by the respondent that the Act circumscribes the power of the Commissioner to enquire into accidents since section 65 permits the Commissioner to enquire only into accidents which occur in connection with prospecting or mining operations. Counsel had argued that:

a. The precipitation section of the plant is not a mine as defined by section 2 of the Act;

b. The elevator on which Mr Salmon was working at the time of his injury did not have access to the mines nor was any work in connection with mining carried on.

[5] The respondent also contended that precipitation is one of the later stages of processing alumina from bauxite ore long after the mining process has been completed. Counsel referred to and relied on the English Court of Appeal case of **English Clays Lovering Pochin & Company Ltd v Plymouth Corporation** [1974] 2 ALL ER 239 and the dictionary meaning of the word 'mine' by the learned author in Stroud's Judicial Dictionary of Words and Phrases volume 3, 5th edition, page 1986:

> "The primary meaning of the word 'mine' standing alone, is an underground excavation made for the purpose of getting minerals."

[6] The appellant, on the other hand, contended that the Act conferred on the Commissioner, the necessary jurisdiction to conduct enquires in relation to non-mining, mining or non-prospecting acts such as processing. Counsel contended that the definition given of the words 'to prospect and to mine' by the Act, clearly includes operations necessary for the purposes of processing the ore. Counsel also contended that when one examines the scheme of the legislation, it is clear that the intent is to regard the processing of the minerals as an activity connected to the mining operations. He referred to and relied on the Australian case of **Federal Commissioner of Taxation v Broker Hill Smith Limited** 65 CLR 150.

[7] The learned judge rejected the submissions of the appellants and granted the order, as I have said, on 21 November 2008. She held inter alia:

(a) It had not been shown from the evidence that the legislators intended to extend the Commissioner's investigatory power under section 65 to the processing of alumina;

(b) If the legislature had so intended it would have so legislated; and

(c) An application of the literal interpretation of section 65 would confine the Commissioner's power to investigate accidents which occur in connection with mining and prospecting operations and therefore exclude accidents which occur outside of the prospecting mining operations.

The Grounds of Appeal

[8] The appellants were certainly not satisfied with the result and have now filed notice and grounds of appeal in the registry of this court. I now turn to the grounds which state:

A. "The learned Judge erred by prohibiting the 1st Appellant/1st Defendant from holding the required enquiry as provided under section 65 of the Mining Act";

B. "The learned Judge erred by failing to correctly interpret section 65 of the Mining Act in the context and spirit of the legislation"; and

C. "The learned judge erred by relying on irrelevant authorities to arrive at her decision."

Grounds A and B were argued together by Mr Cochrane for the appellants. It seems to me, however, that all three grounds could be conveniently dealt with together.

The Submissions

[9] Mr Cochrane, for the appellants, made submissions on their behalf. The thrust of his submissions is that the learned trial judge had, by adopting a literal interpretation of section 65 of the Act, failed to correctly interpret section 65 within the context and spirit of the Act. He referred to and relied on the authorities of **AG v H.R.H. Prince Ernest Augustus of Hanover** [1957] 1 All ER 49, **DPP v Schildkamp** [1969] 3 All ER 1640, and Maxwell on the Interpretation of Statutes and submitted that on a true construction of the Act and the regulations made pursuant to the Act, it becomes apparent that Parliament had intended the Commissioner to be clothed with the authority under section 65 of the Act to conduct an enquiry into Mr Salmon's death. He argued that when one examines the provisions of section 99(2) (n), for example, it is clear that Parliament had legislated with a view to the further encouragement, expansion and development of the bauxite processing and mining industries. The section provides inter alia:

> "... the furnishing of such other information as the Minister may from time to time require to enable him to make, review, or confirm any arrangements or agreements he considers necessary for the encouragement, expansion and development of mining and of the bauxite and alumina industry."

[10] Mr Cochrane also argued that the definition of 'minerals' in the Act shows a close connection between mining operations and processing operations and that this is consistent throughout the Act. Section 2 of the Act states that, except for the purposes

of Part VIII, the word 'minerals' has the same meaning as that contained in the Minerals (Vesting) Act. Section 2 of the Minerals (Vesting) Act defines minerals as including "metalliferous minerals containing aluminum". He submitted that in order to obtain aluminum, such metalliferous minerals are mined and then processed and that a direct connection can therefore be seen between mining such metalliferous minerals and the processing thereof.

[11] Mr Cochrane referred to section 84 of the Act which deals with certain restrictions on the exportation of minerals. Section 84 (3) (a) states that a person:-

> "... shall not export or deliver to any other person for export any alumina, bauxite or other mineral unless he does so pursuant to and in accordance with a permit granted in that behalf by the Minister in his discretion ..."

[12] Mr Cochrane therefore submitted that by creating restrictions on the exportation of alumina, Parliament clearly contemplated the process of the mining of bauxite and its processing into alumina.

[13] He also submitted that, further support regarding the close connection between the mining and processing of bauxite is to be found in regulation 40 of the Mining Regulations (1947) made pursuant to section 99 of the Act. Regulation 40 provides inter alia:

> "...
>
> (4) The Commissioner shall not issue to any holder of a mining lease a permit to export bauxite or

laterite or alumina during any quarterly period unless the royalty payable on the total amount of bauxite or laterite which such holder disposed of in the manner described in sub-paragraphs (b), (c) and (d) of paragraph (5) during the last preceding quarterly period but one has paid.

(5) A permit to export bauxite or laterite or alumina shall be in the form set out as Form 22 in the First Schedule with the words "on which royalty has been paid" omitted therefrom.

(6) Every holder of a mining lease for bauxite or laterite shall, in respect of each quarterly period, make to the Commissioner a return in writing showing-

(a) the amount of bauxite or laterite mined in Jamaica by him;

(b) the amount of bauxite or laterite exported by him;

(c) the amount of bauxite or laterite supplied by him to any other person for processing into alumina in Jamaica and the name of that person;

(d) if he is a producer of alumina in Jamaica, the amount of bauxite or laterite processed by him into alumina in Jamaica;

(e) the amount of bauxite or laterite which he has in hand."

[14] Mr Cochrane argued that, on a proper reading of these provisions, it is seen that Parliament had intended to consider the processing of bauxite ore into alumina and that the legislative scheme intended that there ought to be a direct connection between the mining and the processing of bauxite. He submitted that the courts have been careful

not to adopt a narrow view of the term "mining operations" so as to frustrate the legislative intent. Reference was made to **Kaiser Bauxite Company v Alice Wishart** (1972) 12 JLR 986. Further, he argued that Starke J in the case of **Federal Commissioner of Taxation v Broken Hill South Limited** opined at page 155 of that judgment that the meaning of the term "mining operations" is not a question of law but a question of fact. He therefore submitted that the question of whether the processing of bauxite is an activity in connection to mining operations is also a question of fact and unless restrained by statute, the phrase "in connection to mining operations" must be given its usual meaning as understood in the mining industry. This, he said, was the view expressed by the Australian Court in **Abbot Point Bulk Coal Pty Ltd v Collector of Customs** (1992) 35 FCR 371 at page 378.

[15] Mr Kelman for the respondent, on the other hand, submitted that the learned judge had correctly applied a literal interpretation to section 65 of the Act and had properly applied the words "... in connection with prospecting or mining operations..." in their ordinary and popular meaning. He argued that the learned judge had painstakingly evaluated the evidence before her and pointedly concluded:

> "...work done to an elevator in the processing plant cannot be considered as work in connection with prospecting and mining."

[16] Mr Kelman submitted that where the words of a statute are themselves precise and unambiguous, the task of interpretation does not arise. He relied on extracts from the learned authors of Maxwell on the Interpretation of Statutes 11th edition at pages

4-5, **Sussex Peerage** case [1843 – 1860] All ER Rep 55 and **Hope v Smith** (1963) 6 WIR 464. He also referred to the case of **Warburton v Loveland** [1824-1834] All ER Rep 589. He referred specifically to the dicta of Tindal CJ, in the **Sussex Peerage** case, at page 63 where he stated:

> "The only rule for the construction of Acts of Parliament is that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver. But if any doubt arises from the terms employed by the legislature, it has always been held a safe means of collecting the intention to call in aid the ground and cause of making the statute, and to have recourse to the preamble which...is "a key to open the minds of the makers of the Act, and the mischief's which they intended to redress."

[17] Mr Kelman submitted that there was ample evidential basis in the affidavit evidence of Miss Natalie Sparkes (at Tab 12 of the record) to justify the judge's conclusion. Natalie Sparkes, a process and chemical engineer and strategic development manager was a witness called on behalf of the respondent. She averred in an affidavit dated 26 September 2007, that the mining of bauxite ore and the processing of the bauxite ore into alumina are separate and distinct. She also averred that the mining and processing take place in entirely different locations and entirely different equipment is used. Bauxite ore, she said, is excavated from the earth while the processing of alumina occurs at the processing plant. This evidence was accepted by the learned judge.

[18] Mr Kelman also submitted that on the present facts, the following conclusions could be drawn: (a) the activity in which the deceased Mr Salmon was engaged at the time of his death was not connected to a mining operation at all; (b) the physical location of the elevator was not a "mine" as that term is ordinarily understood. Neither is it a "mine" within the technical meaning ascribed to the term in section 2 of the Act; (c) the evidence of Miss Sparks provided cogent evidence of the different physical locations of a mine and a processing plant, as well as the different working processes undertaken at both locations; and (d) specifically, by the time the bauxite is transported to the processing plant the "recovery" process is at an end**.**

[19] Further, Mr Kelman submitted that contrary to the appellants' submissions, the Act read as a whole is restricted entirely to an activity involving mining on land. He submitted that the repeated use of the word "land" in every reference to mine and mining activity bears this out. This, he said, should be contrasted with processing which does not involve any operation on land at all. Miss Sparks, he said, had convincingly explained that processing entails applying to the bauxite mined a series of applications of chemicals, temperatures and pressures in specialized vessels; not excavation or winning.

The Discussion and Analysis

[20] The crucial issue in this appeal concerns a matter of statutory interpretation. Was there sufficient material before the learned judge upon which she could clearly

ascertain the intention of Parliament and conclude that Mr Salmon's death had occurred in connection with mining operations?

[21] Now, it is universally accepted that where words are clear and unambiguous in any statute they must be given their ordinary meaning according to the rules of interpretation. Viscount Simmonds in **AG v H.R.H. Prince Ernest Augustus of Hanover** put it succinctly:-

> "... words, and particularly general words, cannot be read in isolation. Their colour and content are derived from their context. So it is that I conceive it to be my right and duty to examine every word of the statute in its context, and I use context in its widest sense which I have already indicated as including not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in pari materia, and the mischief which I can, by those and other legitimate means, discern that the statute was intended to remedy."

[22] In **DPP v Schildkamp** Lord Upjohn stated inter alia at page 1652 para E: -

> "... The task of the court is to ascertain the intention of Parliament; one cannot look at a section, still less a subsection, in isolation, to ascertain that intention; one must look at all the admissible surrounding circumstances before starting to construe the Act."

[23] The authors of Maxwell on the Interpretation of Statutes, 12th edition state at page 47:

> "... the good expositor of an Act of Parliament should 'make construction on all the parts together, and not of one part only by itself.' Every clause of the statute is to 'be construed with reference to the context and other clauses of the Act,

> so as, as far as possible, to make a consistent enactment of the whole statute' ..."

[24] In **Duport Steels Ltd and Ors v Sirs and Ors** [1980] 1 All ER 529, Lord Diplock stated:

> "Parliament makes the laws, the judiciary interprets them. When Parliament legislates to remedy what the majority of its members at the time perceive to be a defect or a lacuna in the existing law (whether it be the written law enacted by existing statutes or the unwritten common law as it has been expounded by the judges in decided cases), the role of the judiciary is confined to ascertaining from the words that Parliament has approved as expressing its intention what that intention was, and to giving effect to it. Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral. In controversial matters such as are involved in industrial relations there is room for differences of opinion as to what is expedient, what is just and what is morally justifiable. Under our Constitution it is Parliament's opinion on these matters that is paramount."

His Lordship continued:

> "If this be the case it is for Parliament, not for the judiciary, to decide whether any changes should be made to the law as stated in the Act."

[25] From a West Indian perspective, Wooding CJ put it this way at page 467 of **Hope v Smith**:

> "…where the language of an enactment is clear and unambiguous, it is not the function of the courts to relieve

against any harshness which it may or may not be thought to occasion. That is a matter for Parliament to consider."

[26] I turn now to examine the cases upon which counsel in this court and the learned judge below relied on.

[27] Reference was made to the common law position in **English Clays** case and the **Abbot Point** case. The head note of the former reads as follows:

"The plaintiff was a mineral undertaker engaged in the production of china clay. The china clay was extracted from the ground on land ('Lee Moor') owned by the plaintiff. That was done by a process of detaching, by high pressure water jets, the mechanical combination of china clay and associates and subsequently, by a system of refinement, driving off or abstracting from the slurry substantially all but the china clay. The slurry was passed from Lee Moor through a pipeline some three or four miles to another site ('Marsh Mills') owned by the plaintiff. Between the nearest points of the land belonging to the plaintiff at Lee Moor and Marsh Mills the distance was about two miles. At Marsh Mills the slurry was subjected to further treatment whereby the final water content was removed leaving a marketable cake or powder. The plaintiff wished to erect new buildings and plant at Marsh Mills. It sought a declaration that the proposed development was permitted by art 3(1)[a] of, and Sch 1, class XVIII to, the Town and Country Planning General Development Order 1963, contending that, by virtue of the definitions in art 2(1)[b] of the 1963 order, the Marsh Mills site was 'land in or adjacent to and belonging to a quarry or mine comprised in [the plaintiff's] undertaking' within para 2[c] of class XVIII.

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[a] Article 3(1) provides: 'Subject to the subsequent provisions of this order, development of any class specified in schedule 1 to this order is permitted by this order and may be undertaken upon land to which this order applies, without the permission of the local planning authority or the Minister: Provided that the permission granted by this Order in respect of any such class of development shall be subject

to any condition or limitation imposed in the said schedule 1 in relation to that class.'

b Article 2(1), so far as material, provides: 'In this order, unless the context otherwise requires - … 'mine' includes any site on which mining operations are carried on; … 'mining operations' means the winning and working of minerals in, on or under land, whether by surface or underground working; … '

c Paragraph 2 reads: 'The erection, alteration or extension by mineral undertakers on land in or adjacent to and belonging to a quarry or mine comprised in their undertaking of any building, plant or machinery, or structure or erection in the nature of plant or machinery, which is required in connection with the winning or working of minerals, including coal won or worked by virtue of section 36(1) of the Coal Industry Nationalisation Act 1946, but not any other coal, in pursuance of permission granted or deemed to be granted under Part III of the Act, or which is required in connection with the treatment or disposal of such minerals: Provided that permission shall be required for the erection, alteration or extension of a building, but the local planning authority shall not refuse permission and shall not impose conditions upon the grant thereof, unless they are satisfied that it is expedient so to do on the ground that: (*a*) the erection, alteration or extension of such building would injure the amenity of the neighbourhood and modifications can reasonably be made or conditions can reasonably be imposed in order to avoid or reduce the injury; or (*b*) the proposed building or extension ought to be, and can reasonably be, sited elsewhere."

[28] The main issues before the court in that case were: (i) whether Marsh Mills was a mine and/or site on which mining operations took place; and (ii) alternatively, if Marsh Mills was not a mine or part of a mine, whether it was land adjacent to and belonging to a mine.

[29] The court held:

"The plaintiff was not entitled to the declaration sought for the following reasons -

(i) Marsh Mills was not, within art 2(1), a site on which 'mining operations', ie the 'winning and working' of minerals, took place since the winning and working of the china clay, ie its extraction from the land, took place at Lee Moor and it was impossible to regard Lee Moor, the pipeline and Marsh Mills together as a single site. Accordingly the land at Marsh Mills on which it was proposed to erect the building was not 'land in … a mine' within class XVIII, para 2 (see p 242 *h* and *j* and p 243 *e* and *f*, post).

(ii) Neither was Marsh Mills land 'adjacent to' a mine. The word 'adjacent' meant close to or nearby or lying by, its significance or application in point of distance depending on the circumstances in which the word was used. The word as used in class XVIII, para 2, had to be understood in the planning context of permission to erect buildings and plant for purposes connected with operations at the site of a mine either on that site or very near to that site so that they would not appear to be other than a growth of that site. In that sense Marsh Mills could not be considered as 'adjacent to' the site at Lee Moor (see p 243 *a* to *c*, post)."

[30] In his written submissions Mr Cochrane submitted:

"49. It has never been the contention of the Appellants that the precipitation section of the Kirkvine plant is a mine or a site where mining operations take place. Neither has it ever been an issue whether the precipitation section is adjacent to a mine. The issues in the instant case are: whether the Respondent's bauxite processing operations occur in connection with its prospecting or mining operations, and whether the death of Astley Salmon can be said to have occurred in connection with prospecting or mining operations. An examination of English Clays

reveals that the case offers no guidance in deciding these issues."

50. The issue of whether the treatment of China Clay at Marsh Mills occurred in connection with the mining operations at Lee Moor was never raised before that Court. Had this issue been raised, it is our submission that there was sufficient basis for the Court to have found in the affirmative. Russell, LJ at pages 242H stated that:-

> '... No one, in our view, would describe the land at Marsh Mills as a mine. It is simply a place where China clay is separated out from the water that has carried it from (sic) there from Lee Moor down the pipe...'

51. Russell LJ therefore appreciated the connection between the operations at Marsh Mills and Lee Moor, but was of the view that Marsh Mills simply could not be seen as a mine within the definition of the Town & Country Planning General Development Order 1963 and that neither could the treatment of China Clay be considered as mining operations. In this regard, it is therefore submitted that the Learned Judge misapplied the case."

[31] I must say that I entirely agree with the submissions of both Mr Cochrane and Mr McDermott who also appeared for the appellant, that the issues in the **English Clay** case were different from the instant case. Mining operations had an expressed definition which is absent in the Jamaican Act.

[32] I further agree with the appellant's submissions that it was always its contention that the respondent's processing operation occurred in connection with the mining operations. Section 65 (1) of the Act referred to the words "whenever an accident

occurs in connection with prospecting or mining operations …" Further, Mr McDermott also correctly argued that based on the authority of **Kaiser**, the court was willing to find that construction of the railroad connecting a mine to a plant was necessary in connection with a company's mining operation.

[33] The trial judge's consideration of **Kaiser** and her finding that the circumstances in both cases are different must be carefully considered. The head note of that case reads:

> "The respondent owned some 23 acres of land. The appellant, a mining company, entered upon and bulldozed this land, and excavated a passageway thereon for the purpose of constructing a railway line in connection with its mining operations. In respect of these acts by the appellant the respondent brought an action in trespass for damages. In reply thereto the appellant asserted that it had a special mining lease under the Mining Law, Cap 253, that the respondent's land was included in the area covered by this lease, that under the Mining Law it was entitled to a right of passage over the respondent's land, and that the acts of which the respondent complained were done in exercise of that right. The lease, expressed to be subject to the provisions of the Mining Law, did not permit the lessee to mine any lands comprised in the area thereof in respect of which it did not hold the fee simple. The lessee did not, therefore, have the right to mine any part of the respondent's land. The magistrate found, however, that the lessee did not have the right to construct a railway line over the respondent's land because it was not the fee simple owner of that land, and, further, that the special condition (1)(a) of the lease effectively excluded the operation of s 35 of the Mining Law."
>
> On appeal,
>
> Held (Edun JA, dissenting): that the right given to the lessee by the Mining Law to construct and maintain a railway line

> over the land covered by its lease was not in any way affected by the qualifications in that lease, the real question being whether the railway line was necessary in connection with the lessee's mining operations; and as the evidence was clear that the railway line was so necessary, the lessee, in the particular circumstances of the case, had the right under s 35 (g) of the Mining Law to enter upon the respondent's land for the purpose of constructing that railway line.
>
> Appeal allowed. Judgment of resident magistrate set aside."

[34] The **Kaiser** case therefore decided that a railroad connecting a mine to a plant for the purpose of transporting bauxite between the two locations was "patently necessary in connection with Kaiser's mining operations**".** This finding makes it clear that the operation of the railroad was integrally connected to the mining operation. I do not think it could be argued that any accident that occurs in the transporting of the raw ore on trains under the management of the bauxite company ought not to be investigated by the Commissioner. The question therefore is how then with the advances in the bauxite operations could it be determined that the processing had no nexus to the mining operations?

[35] In the case of **Federal Commissioner of Taxation v Broken Hill South Limited** the High Court of Australia said mining operations covered activities in connection with a mine in addition to the mere extraction of ore. Starke J opined that the meaning of the term "mining operations" is not a question of law but one of fact. He stated inter alia page 156:

> "The commissioner contends that the mine was closed down, or, in other words, the company was not engaged in extracting ore from its mine and was consequently not engaged in mining operations. But the majority of the board took the view that **the common understanding of the expression "mining operations" covered activities in connection with a mine additional to the mere extraction of ore or metals such, for instance, as the provision and maintenance of plant both above and below the surface and work connected with the protection and safety of the mine and the mining rights.** In my opinion, this was a conclusion which the board might reasonably adopt in point of fact, and, if so, there was material before the board upon which it could reasonably find that the Willyama Mining Pty. Ltd. was during the years in question here carrying on mining operations. It is not for this court, as I have said, to determine whether the decision of the board was correct, but only whether there was material before it upon which it could reasonably reach its conclusion". (emphasis supplied)

[36] In the **Abbot Point** case "mining operations" was helpfully defined in the Customs Act and a rebate was available under that Act for fuel used in "mining operations". The coal mining company claimed the statutory rebate in respect of fuel used in transporting by rail, coal mined to its export facility port. The Commissioner's refusal of the rebate was upheld on the basis that recovery (of coal *per* mining) was complete "**...**when no further process is undertaken by the miner to separate the mineral from any material adhering to it or intermixed with it prior to sale", (per Ryan and Cooper, JJ at page 380). Ryan and Cooper JJ remarked that **"...**a point is reached where a mineral has been recovered and what is done with it thereafter is the use or processing of it for its better use as a mineral" (at page 378). Their Lordships also

remarked that in each case a commonsense and commercial approach must be taken (see page 378).

[37] It is a moot point whether the word 'operations' in section 65(1) includes work being done in processing as well as prospecting and mining. In my view, where in section 65(1) the phrase "*prospecting or mining operations"* is used, the interpretation must be that the different possible stages of bauxite mining operations was in the contemplation of the legislators.

[38] The learned judge had correctly identified, in my view, that both mining and processing are closely connected. She stated, "The alumina industry arises out of the production of bauxite. This is also quite evident from the Special Mining Lease. They are nevertheless separate enterprises and not inextricably bound up". I do agree with Mr Cochrane at para 42 of his written submissions which read:

> "42. It is respectfully submitted on behalf of the Appellants that the issue to be determined is not whether the alumina and bauxite industries are inextricably bound up, but whether alumina processing occurs in connection with bauxite mining operations."

[39] I do have the greatest of respect for the learned judge, but I do believe that she has missed the point entirely. The issue is not whether mining and processing are bound up, but rather, whether the accident had occurred in connection with a mining operation.

[40] It was also stated by the learned judge in her written judgment that:

> "The Claimant further argues that the Mining Act was passed in 1947 before either the processing or mining of bauxite commenced in Jamaica. Bauxite would have been an unknown substance as far as mining was concerned. Bauxite mining/processing could not have been in the contemplation of Parliament. In the circumstances it contends that mining operations could not have been understood in 1947 to include precipitation as that could not have been in the contemplation of the legislature …"

[41] The learned judge did not refer to any authority for this submission, but would no doubt have been influenced by the submission. This argument could have given her more reason for concluding as she did, regarding the jurisdiction of the Commissioner. However, it will be useful if I were to refer to the book, Jamaica in the World Aluminium Industry 1938 - 1973 written by Dr Carlton E Davis, a well-known author, researcher and expert in the bauxite industry in Jamaica. In his book, Dr Davis states inter alia at page 65 under the heading "The Discovery of Bauxite in Jamaica":

> "According to a Reynolds report the presence of aluminium compounds in Jamaican soil was a matter of comment from time to time, at least among engineers. A British Army Engineers General made passing reference to this fact in 1923….The next reported step was the most celebrated. According to G.A Jones, Director of Agriculture of Jamaica between 1938 and 1944 (and himself a Jamaican) because the "red soils" formed the largest soil group in Jamaica and were of considerable importance agriculturally, they were the subject of much scientific investigation from 1938 onwards ..."

And at page 72 he states:

> "Because of the potential of developing the Jamaican bauxite deposits the Governor on August 11 1942, advised the Secretary of State for the Colonies of his wish to introduce mining legislation and to vest all minerals in the Crown, but

> because of expected difficulties with landowners he would take the necessary powers to deal with bauxite immediately through Defence Regulations. These were issued on August 22, 1942 and enabled the Governor to authorize preliminary search for bauxite on any land. On August 28, 1942, the Governor issued an Order (Regulation 51A) for H.R Hose of Aluminium Laboratories to enter the lands in Jamaica for the purpose of ascertaining the presence of any minerals likely to be used for war purposes…"

At page 73 Dr Davis continues:

> "On November 23, 1942, Hose reported to the Governor that his investigation had persuaded him to consider it important for Aluminium Laboratories to fully explore and exploit the bauxite resources of Jamaica."

A footnote to this page reads:

> "Aluminum Ltd was to operate its bauxite exploration, mining and processing in Jamaica under many names: Alcan Laboratories in the early 1940s, Jamaica Bauxite Ltd (JAMBA) (1943-1952); Alumina Jamaica Ltd (ALJAM) (1952-1962); Alcan Jamaica Ltd (ALJAM) (1962 -1978) and Alcan Jamaica Company (1978)"

And at page 79:

> "Early in 1943 Aluminum Laboratories had shipped 2,500 tons of Jamaican bauxite to Alcoa's alumina plant in East St. Louis, Illinois for testing..."

[42] Eventually, the Mining Act was signed by the Governor on 7 September 1947 and proclaimed by him on 4 October to take effect on 13 October.

[43] The above extracts should therefore dispel any doubt about bauxite mining and processing in relation to the industry well in advance of 1947.

Conclusion

[44] The mining legislation is well over 63 years in existence, and it does not appear to me that there has been any amendment to section 65 since the law came into operation. It is my considered view, given the growth in the bauxite industry, that it would be too restrictive to regard the ancillary activities to bauxite processing as being separate from the mining operations. To do so would be to lose sight of current bauxite operational requirements and the operation of the bauxite industry. Under section 99(n) of the Act, the Commissioner is authorized to make regulations which provide for:

> "The furnishing of such other information as the Minister may from time to time require to time enable him to make, review, or confirm any arrangements or agreements he considers necessary for the encouragement, expansion and development of mining and of the bauxite and alumina Industry."

[45] If this provision were not in place, there would certainly be cause for concern because it would mean that the powers of the Commissioner could be fettered and leave victims, as in the instant appeal, without the benefit of an enquiry into either personal injury or fatal injury. It does appear to me, that it was the intention of the legislators to give the Minister and the Commissioner wide powers to intervene in a manner that protects and regulates the operations of the bauxite Industry in general including incidents related to prospecting, mining and processing.

[46] It is therefore my view, that the modern requirements of the bauxite mining operations are developed to encompass various degrees of processing. This processing cannot occur unless the ore is mined then transported to a processing plant in some instances. In other instances, the raw ore is shipped elsewhere for processing.

[47] It is with the greatest of respect to the learned trial judge that I cannot agree with her decision. It is my view that she erred in giving too restricted an interpretation to the meaning of mining operations in section 65 of the Act. I find support in the dicta taken from **Warburton v Loveland and Others** where it is stated:

> "If in any case a doubt arises on the words themselves, the court must endeavour to solve that doubt by discovering the object which the legislature intended to accomplish by passing the Act, and giving the statute the meaning which best leads to the suppression of the mischief and the advancement of the remedy which the legislature had in view."

[48] Accordingly, I agree with Mr Cochrane's closing submissions and conclude:

> 1. The context and spirit of the Mining Act demonstrates that Parliament contemplated the processing of bauxite into alumina.
>
> 2. The term 'in connection with prospecting and mining operations' in section 65 is to be widely construed.
>
> 3. The processing of bauxite occurs in connection with the respondent's prospecting and mining operations. Any repairs of machinery and equipment that are related to and essential for the processing of bauxite to take place would therefore also be connected with the bauxite mining operations.

4. Section 65 interpreted within this context and spirit leads to the conclusion that Parliament intended the Commissioner to be clothed with the jurisdiction to conduct an enquiry into an incident occurring during the repairing of machinery and equipment that are related to and essential for the processing of bauxite.

[49] I would allow the appeal with costs to the appellant to be taxed, if not agreed.

MORRISON JA

[50] I have read in draft the judgment of my brother Harrison, JA and agree with his reasoning and conclusion. There is nothing that I wish to add.

MCINTOSH JA

[51] I too have read the judgment of Harrison JA. I agree with his reasoning and conclusion and have nothing to add.

HARRISON JA

ORDER

Appeal allowed. Costs to the appellant to be taxed if not agreed.