IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2006HCV 3774

BETWEEN	GLENCORE ALUMINA JAMAICA LIMITED	CLAIMANT
AND	THE COMMISSIONER OF MINES	1ST DEFENDANT
AND	THE ATTORNEY GENERAL OF JAMAICA	2ND DEFENDANT

Ms. M. Wong instructed by Myers Fletcher & Gordon for the Claimant

Ms. Nicola Brown instructed by the Director of State Proceedings for the 1st and 2nd Defendants

Heard: February 4, 5 and November 21, 2008

Sinclair-Haynes J

On the 13th day of February 2006, Astley Salmon, whilst in the process of carrying out repairs to an elevator at the precipitation section of Kirkvine Plant of Glencore Alumina Jamaica Limited (the Claimant), sustained injuries to which he succumbed.

Consequently, the Commissioner of Mines commenced an enquiry into Mr. Salmon's death purporting to proceed pursuant to Section 65 of the Mining Act.

At the first sitting of the enquiry, the Claimant objected to the Commissioner hearing the matter on the ground that the Commissioner was acting *ultra vires* his jurisdiction. The matter was adjourned for the Commissioner to advise himself.

The Commissioner concluded that he indeed possessed the requisite jurisdiction and proceeded to an enquiry. His jurisdiction to enquire into the matter is vigorously resisted by the Claimant.

Claimant's Arguments

The Claimant contends that the Mining Act circumscribes the power of the Commissioner to enquire into accidents. It contends that Section 65 permits the Commissioner to enquire into accidents which occur in connection with prospecting or mining operations. It argues that:

a. The precipitation section of the Claimant's 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.

The Claimant contends that precipitation is one of the later stages of processing alumina from bauxite ore long after the mining process has been completed. It relies on the English Court of Appeal case of **English Clays Lovering Pochin & Company Ltd. v. Plymouth Corporation** (1974) 2 ALL ER. The Claimant also relies on the definition given for the word 'mine' by the learned author in **Stroud's Judicial Dictionary of Words and Phrases** volume 3, fifth edition, page 1986

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

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. It also relies on the case of **R v. Industrial Disputes Tribunal Ex parte Seprod Group of Companies** (1981) 18 JLR 456 at page 462 where Parnell J expressed the following:

> *"It is a good rule of construction that words and phrases in an Act of Parliament are to be understood with reference to the subject matter in the mind of the legislature at the time it was passed."*

Further, it submits that under Section 99 of the Mining Act, the Regulations regarding safety, welfare, health, and housing conditions are restricted to persons employed in mines and do not relate to the processing of alumina.

The Defendant's Arguments

The Defendant, however, contends strenuously that the Act confers on the Commissioner, the necessary jurisdiction to conduct enquires in relation to non-mining, mining or non-prospecting acts such as processing. It contends that the definition given by the Act of the words 'to prospect and to mine' clearly includes operations necessary for the purpose. Further, it contends that Section 65 deals with accidents which occur in connection with prospecting or mining operations and as a result, the Commissioner's jurisdiction is not limited to accidents which occur only in the mines or as a result of mining operations, but also to the processing of the bauxite minerals which occurs in connection with the bauxite mining operations. The Defendant contends that upon examination of the scheme of the legislation, the intent was to regard the processing of the minerals as an activity connected to the mining operations. It contends that whether

the processing of minerals is an activity in connection to mining operations is a question of fact. Reliance was placed on the Australian case of **Federal Commissioner of Taxation v. Broker Hill Smith Limited** 65 CLR 150.

It was also submits that the term 'mining operations' is a very large expression which may include operations pertaining to minerals. For support of its contention, it relies on Henriques,' P comments on Section 35 of the Act in **Kaiser Bauxite Company v Wishart** (1972) 12 JLR 986.

The Defendant cautioned the Court not to adopt a narrow view of the term 'mining operations,' thus frustrating the legislative intent. It argues that the term, "in connection with mining operations" is an expression which must be given the usual meaning as understood in the mining industry unless restrained by statute." It relies on the Australian case of **Abbott Point Bulk Coal Pty Ltd., v. Collector of Customs** (1992) 35 FCR 371 at page 378.

Further, the Defendant submits that an examination of the legislative scheme makes the connection between 'processing operations' and 'mining operations' evident. Section 2 of the Act defines a 'mining lease' as 'a lease granted under Section 33.' Section 45 provides for the granting of a special mining lease by the Minister. The Claimant, it submits, is the holder of a special mining lease. This lease is subject to the provisions of the Act and Regulations by virtue of Sections 46 (3) and 99 of the Act.

The lease confers upon the lessees certain rights which are defined in Section 2 as 'rights under a mining lease.' The Claimant has been granted various rights under its special mining lease. One such right is the right to mine the bauxite mineral. Section 2 defines the word 'mineral,' as 'including metalliferous minerals containing alumina.

Alumina is defined by Section 2 as a mineral. In order to obtain alumina, such minerals must be processed. That fact shows a direct connection between the mining of minerals and the processing of such minerals.

The Defendant also contends that an examination of the Claimant's mining lease and the nature of its operation further establish the close connection.

It submits that upon amalgamation of the Claimant with Jamaica Bauxite Mining Limited to form Windalco, the Commissioner was informed by way of letter which requested that the Commissioner direct its regulatory services over the joint mining and refining venture. This, it submits, was a clear acknowledgement by the Claimant that the Commissioner has jurisdiction to supervise its processing activities and further underscores the above relationship between mining and processing.

The Defendant further submits that by virtue of the Special Condition 2 of the lease, if the bauxite reserve exceeds the requirement of the lessee's aluminium refining enterprise, the lessee is obliged to surrender and the Commissioner is obliged to accept the surrender of the excess. Also, if the bauxite reserve falls below the required amount, the Commissioner has to grant a further lease to the extent of the additional requirement.

The Defendant argues that those clauses show that the processing of the ore is connected to the mining of the ore as part and parcel of the entire mining operation. The mining lease, it contends, is contingent upon the production of alumina. It therefore follows that if the alumina production were discontinued, the mining lease would come to an end. This is supported by the fact that there is no company presently operating which is not engaged in the production of alumina and any company engaged in the processing of alumina must have been granted a mining lease.

It further submits that the fact that the Act confers on the Commissioner, the duty to exercise general supervision over all prospecting and mining operations on the island makes it evident that his power extends to the alumina industry. It further submits that the terms of the Claimant's mining lease support this contention. In section 37 of the Act, it requires that a holder of a mining lease file annual returns and a record of its mining operations. Section 44 empowers the Commissioner to take certain action upon failure of the lessee to comply with the terms of the lease.

Section 2 of the Mining and Safety Health Regulations defines 'plant' as including all processing. The definition of 'plant,' it submits, illustrates the stages of mining operations which includes processing. Sections 62 and 63 of the Act provides for the Commissioner or his appointee to conduct general inspection and gives the Commissioner the right to ensure that breaches are remedied.

The Defendant contends that Sections 275 and 283 of the Mining and Safety Health Regulations relate both to mining and aluminium processing. The Commissioner, by virtue of those sections, has the duty to approve the persons responsible for examining and ensuring that boilers are properly maintained. This demonstrates that the Commissioner has supervisory responsibility for both mining and aluminium processing. It shows the close connection between mining and processing.

The Defendant also argues that the fact that a third party was contracted to carry out the Claimant's mining operations is of no effect because the mining is carried out by contractors who are the agents of the Claimant. Further, the Claimant is the lessee and is therefore accountable under the Act.

By virtue of Clause 6 of the Act, the Claimant has the right "to conduct and maintain passageways, roads and railways necessary or desirable … in connection with any mining or mining operations." The Claimant's mining operations utilizes various passageways in the form of conveyor belts. The conveyor belt transports bauxite ore to the processing area of the plant. The alumina is then taken from the plant to the ships.

Clause 7 provides that upon termination, the lessee is obliged to remove from the plant any machines, etcetera, which may have been used by the lessee in their operations under the lease. Its failure to comply gives the Commissioner the right to take certain actions pursuant to Section 44.

The Defendant asserts that the following is evidence which shows the above connection between alumina production and mining:

a. The Claimant's recognition of the fact that the Commissioner has jurisdiction over its refining and processing facilities.

b. The fact that the Commissioner conducts housekeeping inspections of the alumina plant.

c. The fact that the Claimant seeks the approval of the Commissioner of Mines for extension of the operation time for its boilers.

d. The fact that the Claimant seeks and obtains export permits issued by the Commissioner to export aluminium.

e. The fact that the Claimant files annual returns which include information on its bauxite and alumina production.

f. The fact that the Claimant files monthly accident reports.

Further, the production of alumina is generally regarded by those in the mining industry as an activity connected to the bauxite industry. The Commissioner is therefore bound to hold an enquiry when the accident occurs in the processing facilities of the Claimant's operations as it would be incongruous for him to exercise general supervision over the bauxite and alumina industry and not be able to hold enquiries into accidents that occur in the production of alumina.

The Defendant also submits that the Claimant is a recognised bauxite producer under the Bauxite and Alumina Industry (Encouragement Act) and as a result enjoys certain privileges. The Claimant has a difficulty in attempting to dispute the Commissioner's jurisdiction when it has by its actions demonstrated that the Commissioner has jurisdiction over its processing facilities.

The Defendant further submits that in addition to Section 65 of the Act, Regulation 11 of the Mining (Safety and Health) Regulations support their contention.

Regulation 11 provides:

> *(1) "Serious accidents which result in death or dismemberment of any person shall be immediately reported to the Commissioner by the fastest possible means of communication, and in respect of each injured person, a written report shall be made out in the Form 1 of the Sixth Schedule and forwarded to the Commissioner with the least possible delay.*
>
> *(2) All accidents which result in injury to any employee so as to occasion at least one day's disability shall be reported, in respect of each person injured, in the Form 1 of the sixth Schedule, to the Commissioner with the least possible delay."*

It argues that the Regulation shows the legislative intention that the Commissioner should be advised of all accidents connected to prospecting or mining

operations. It submits that Form 2 records the precipitation unit as a location of possible accidents (as part of the Mine Accident Ledger for Bauxite and Alumina). Several accidents have been reported in keeping with the provision of the regulations. Windalco submits monthly accident reports. The report for the month of February 2006 included the death of Astley Salmon. The Defendant therefore submits that the Claimant cannot comply with the obligation to report Mr. Salmon's death and object to the Commissioner's jurisdiction. Further, the Commissioner has conducted enquiries into accidents which occurred in the processing plant, for example, the fatal accident of Patrick Rowe which occurred at Alcan Kirkvine Plant, the plant in issue.

The Defendant submits that Wright's, J words in the **Administrator General (Administrator's Estate Moses Maragh, deceased) v Alcoa Minerals Inc. Ja. and PAHK Engineering Ltd.** (1989) 26 JLR pg. 47 … are unclear and equivocal. Further, the statement was *obiter dicta*.

If the processing of bauxite is connected to the mining of bauxite, it follows that any repairs that Mr. Salmon tried to effect to the lift in the processing facility would also be work in connection with mining operations as the lift forms part of the machinery and equipment that are related to and essential for the processing of bauxite to take place.

Section 296 to 319 of the Act imposes an obligation on the lessor to keep hoists and lifts, sound and free from patent defects. The processing unit is an activity connected to mining operations so the elevator is part of the equipment used to assist the mining operations.

Section 65 gives the Commissioner a broad duty to enquire into fatal accidents which occur in connection to prospecting or mining operations. The Defendant contends

that in 1947 when the Act was passed the legislators must have contemplated processing as mining and processing began in 1952. In any event, it argues that Section 84 of the Act dealt with the exportation of alumina. Section 65 of the Act is to allow for some amount of regulatory control in relation to health and safety of workers. The Factories Act which regulates the safety and health of workers in factories excludes 'mines' as defined by the Mining Act.

Section 2 sub-section 5 provides:

> *(1) There is hereby established a Factories Appeal Board (hereinafter referred to as "the Board") for the purpose of hearing and determining appeals from the decision of the Chief Factory Inspector in accordance with the provisions of this Act.*
>
> *(2) The Minister shall appoint five persons to be members of the Board, and shall appoint one of such persons to be the Chairman of the Board.*
>
> *(3) Two at least of the members of the Board (hereinafter referred to as "unofficial members") shall be persons who are not directly or indirectly employed in the Public Service of the Island."*

The Defendant argues that if the processing plant does not fall within the regulatory regime of the Mining Act and is also excluded from the provisions of the Factories Act, the health and safety in the alumina production facility would be unregulated.

The Law

Section 65 of the Mining Act 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."

The question is whether work on an elevator in the precipitation section of the Claimant's processing plant can be considered to be work in connection with prospecting or mining.

Section 2 of the Mining Act defines 'mine' as including 'any place, excavation or working whereon, wherein, or whereby, any operation in connection with mining is carried on.'

The term 'to mine' as defined by the said section "with its grammatical variations and cognate expressions means intentionally to search for, extract or win minerals, and include any operations necessary for the purpose."

'To prospect' is defined by the section *"with its grammatical variations and cognate expressions means to search for minerals and includes such working as is reasonably necessary to enable the prospector to test the mineral-bearing qualities of the land."*

The Webster's Concise Dictionary and Thesaurus published in 2005 defines the verb "mine" as: *"to dig or work a mine."*

Further, the **New Grolier Webster International Dictionary of the English Language** (Encyclopaedic Edition Vol. 1 1973) defines "mine' as:

"A pit or excavation of the earth, from which coal, metallic ores, or other mineral substances are taken by digging; the location, buildings, and equipment of such an excavation."

Additionally, *"to mine" is* defined as "*to dig away the foundation from; to undermine."*

Sir Peter Benson Maxwell the learned author of **The Interpretation of Statutes,** eight edition at pages 2 and 3 stated:

> *"The first and most elementary rule of construction is that it is to be assumed that the words and phrases of technical legislation are used in their technical meaning if they have acquired one, and, otherwise, in their ordinary meaning; and, secondly, that the phrases and sentences are to be construed according to the rules of grammar. From these presumptions it is not allowable to depart where the language admits of no other meaning. Nor should there be any departure from them where the language under consideration is susceptible of another meaning, unless adequate grounds are found, either in the history or cause of the enactment or in the context or in the consequences which would result from the literal interpretation, for concluding that that interpretation does not give the real intention of the Legislature. If there is nothing to modify, nothing to alter, nothing to qualify, the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences."*
>
> *"The safer and more correct course of dealing with a question of construction is to take the words themselves and arrive, if possible, at their meaning without, in the first place, reference to cases."*
>
> *The great fundamental principle is:-*
>
> > *"In construing wills and, indeed, statutes and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnancy or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified so as to avoid that absurdity and inconsistency, but not farther."*

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.

Graham-Perkins, JA in **Kaiser Bauxite Company v Alice Wishart** (1972) 12 JLR 986 stated at page 996:

> *"Where a statute, in a section which ascribes a particular meaning to particular words or phrases used in the statute, uses a word or phrase so defined it is, in my view , not permissible for any court to attribute any other meaning to that particular word or phrase. That this is an established fundamental of statutory interpretation is, I think, beyond debate."*
>
> *Maxwell on Interpretation of Statues (12th edition), pg. 270.*

He considered the definition of the verb "mine" at page 998 and expressed the view that there could be no meaning which was different from the meaning ascribed to it in Section 2.

The views expressed by Russell L J, English Court of Appeal in **English Clays Lovering Pochin & Co. Ltd. v Plymouth Corporation [**1947] 2 All ER 239 are supportive of this constricting interpretation.

The plaintiff was a mineral undertaker and a producer of China Clay. China Clay is a mineral found in granite. In order to be utilized industrially and to be merchantable it must be separated by the use of high pressured water jets which detaches the mechanical combination of China Clay and its associates. The mixture of water with the combination results in a slurry being formed. That process of extraction occurs at Lee Moor in the highlands. The slurry is transported a distance of three to four miles by means of pipelines along a narrow strip of land to a valley in which property known as Marsh Mills

is located. The location of Marsh Mills is convenient for the distribution of the merchantable China Clay.

At Marsh Mills, a process of refinement occurs whereby, most of the impurities and water are removed leaving mainly China Clay. The remaining slurry is filtered. The process of filtration separates the China Clay from water and other impurities. The result is China Clay. This substance may undergo a further heating process which removes the remaining water and leaves a cake or powder which is marketable.

The plaintiff desired to develop Marsh Mills by erecting a new building and plant. It sought a declaration that the development was allowed by the Town & Country Planning General Development Order 1963 which permitted the development without having to seek the permission of the local authority. The plaintiff contends that it was entitled to the declaration because Marsh Mills was land in or adjacent to and belonging to a quarry or mine comprised in its undertaking and as a result fell within the definitions in art 2(1) of the 1963 order.

Russell L J stated, at page 242 (c):

> *If the definitions that have been mentioned are applied to class XVIII, para 2, and to the mineral now in question, the requirements for inclusion in the general development order permission may be thus stated: (1) the building (for example) proposed to be erected on the particular land at Marsh Mills must be proposed to be erected by an undertaker engaged in the winning and working of a mineral (China Clay) in, on or under land whether by surface or underground working, China Clay in this case qualifying as a mineral in the context of a definition of a mineral as including substances in or under land of a kind ordinarily worked for removal by underground or surface working. (2) The particular land at Marsh Mills on which it is proposed to erect the building must be shown to be in or adjacent to and belonging to a site on which the winning and working of China Clay in, on or under land whether by*

surface or underground working is carried on (3) The site last mentioned must be comprised in the undertaker's undertaking. (4) The building on the particular land must be required in connection with the winning or working of China Clay, or required in connection with the treatment or disposal of China Clay. The crucial question in this appeal turns on the second of these requirements for inclusion in the general development order permission.

It first argues that Marsh Mills is a mine and therefore land in a mine in the sense that it is a site on which the working of China Clay on land by surface working is carried on. This argument reads "winning and working" as "winning or working," and asserts that working of the mineral continues until the merchantable China Clay in cake or powder form is produced by final filtration and drying at Marsh Mills. It is secondly argued that Marsh Mills is land in a mine because there is one site constituting a mine as "defined" which consists of Lee Moor, the pipe line, and Marsh Mills, in the whole of which the operation of winning and working China Clay is carried out, and of which site Marsh Mills is a part. It is thirdly and alternatively argued that if the land at Marsh Mills is not land in a mine as being itself a mine or part of a mine it is adjacent to and belonging to a mine at Lee Moor.

We entirely reject the first argument. 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 there from Lee Moor down the pipe. There is no China Clay to be found in nature at Marsh Mills. Does the definition of "mine" as including a site on which the winning and working of China Clay, whether by surface or underground working, are carried on carry the matter any further? Not in our judgment. The comprehensive phrase "winning and working" simply does not take place at Marsh Mills; and contrast the phrase "winning or working" in class XVIII para. 2

The second argument we also reject; that is., that there is a mine consisting of Lee Moor, the pipeline strip and Marsh Mills. It is quite fanciful, in our view, to describe these three aspects of the appellants undertaking as "a site" on which mining operations as defined are carried on. Rather, they are three sites on only one of which such operations are carried on …

> *It is perhaps not necessary to be dogmatic on the point in this case but our present view is that to "win" a mineral is to make it available or accessible to be removed from the land and to "work" a mineral "at least initially" is to remove it from its position in the land: in the present case China Clay is "won" when the over burden is taken away and "worked" (at least initially) when the water jets removed the China Clay together with its mechanically associated other substances from their position in the earth or land to a situation or suspension in water. Thereafter it may be that the processes of separation out are more aptly described as treatment. Hereunder we draw attention to the definition of "minerals" (already noticed) and in particular to the words "in or under land …ordinarily worked for removal," which suggests to us removal from the land – i.e. to say, the corporeal hereditament."*

The pertinent question is whether the processing of alumina is necessary in <u>connection with the claimant's mining and prospecting operations</u>.

It is the evidence of Chamet Atkin that the accident occurred in the precipitation section of the plant. In that section, the bauxite that is mined is processed in order to produce alumina. Repairs were being effected to an elevator in that section at the time of the accident.

<u>Evidence of Natalie Sparkes</u>

Natalie Sparkes, a Process and Chemical Engineer and Strategic Development Manager averred in an affidavit dated September 26, 2007 that the mining of bauxite ore and the processing of the bauxite ore into alumina are separate and distinct. She avers that the mining and processing take place in entirely different locations and entirely different equipment is used. Bauxite ore is excavated from the earth while the processing of alumina occurs at the processing plant.

Mining Operations

It is her evidence that the mining operations are carried out by subcontractors and supervised by the Claimant's mining division. The bauxite is mined at the Kirkvine Plant from open pits at their locations in Manchester namely - Shooters Hill, Blue Mountain and Content Plateau. Heavy duty equipment for example, front end loaders are used to remove the top soil. The red dirt containing bauxite ore is removed and trucked to loading stations in the mining area.

The red dirt is screened to remove limestone and other large materials, after which it is then conveyed to the stockpile location where it is pushed by front end loaders into a feeder system at the processing plant. Mining operations take place in daylight hours while processing takes place 24 hours per day.

Processing Operations

According to Ms. Sparkes, the processing of the bauxite ore into alumina involves the use of equipment such as kilns, digesters, precipitators and other vessels which facilitate the breakdown of ore into alumina by the application of a series of chemicals temperature and other processing. This results in the removal of alumina which is exported and this process takes two days

The processing occurs in the following stages:

1. Ball Mill where the bauxite is mixed with caustic liquor to form slurry. This slurry which is paste like in consistency is transferred to predesilication tanks via a pump. Lime is added and silica compounds removed.

2. Digester area – the mixture is transferred to the digester area where more caustic liquor, pressure and steam are added. This process results in the extraction of alumina into the caustic liquor solution.

3. Sand Removal System – the alumina solution is transferred to the sand removal system. Particles of sand above a certain size which were not dissolved are screened and removed.

4. Liquor Decanters - fine particles are removed by gravity with the aid of a chemical flocculant after which the alumina liquor goes to the press floor where the final screening is done to remove extremely fine foreign particles.

5. Precipitations - the alumina liquor is pumped to the precipitators which are tanks 60 feet high; there alumina seed is added. After 20-24 hours the material is transferred from the precipitators to furnaces where the larger particle, that is, the designated product is removed. The medium and finer particles are removed by additional vessels and reused as alumina seed. Whilst in the precipitations, the colour of the liquor changes from reddish brown to white. As the seed is added, the alumina precipitates from the liquor into the seed.

6. Calcinations process – the material is then transferred to the calcinations process. These are kilns, which are high temperature driers; they are used to remove the water from the alumina material. The resultant alumina crystals are exported.

Undoubtedly, the words in connection with prospecting or mining cannot be construed narrowly. However, in my opinion they can only be extended to work which is preparatory or ancillary to prospecting or mining operations. What is construed (considered) to be such work is a question of fact. I am guided by the principles enunciated by the Justices in the Australian case, **The Federal Commissioner of Taxation v Broken Hill South** 65 CLR 150

In that case a company was formed to take over the assets of a mining company. The company had not been engaged in ore winning operations because at that time it was not economical to extract ore. However, the company employed a staff of surface men and engine drivers to protect the mine. In order to keep the upper levels of the mine water free, pumping took place as it was a condition of the grant that the company drained their mines and employed a certain number of employees.

The company desired, pursuant to Section 23 (1) (i) of the Income Tax Assessment Act 1922 a deduction of $800.00 which represented a sum paid by it for calls. The Commissioner disallowed the claim on the basis that the company was not engaged in extracting ore from its mine and was consequently not engaged in mining operations. A majority of the board, however, were of the view that the expression "mining operations" covered activities in connection with a mine additional to the mere extraction of ore or metals, for example the maintenance of the plant which included not just below the surface but above and work done which was connected with mining rights, the safety of the mine and the protection of the mine.

Rich A.C.J. states at page 3:

> *"I do not think a narrow application should be given to the section, and I regard it as extending*

> *work which is preparation or ancillary to the actual winning of metal or ore. Maintenance work done by the Willyama Company during the relevant years was of this description"*

Starke J at page 4 said:

> *"The expression "mining operations" is not a term of art. It is popular and not technical … the common understanding of those words is not a question of law but a question of fact …"*

The appeal was dismissed as the court found that there "was material before it upon which it could reasonably reach its conclusion." (Per Starke J page 5)

In **Kaiser Bauxite Company v Wishart** the majority found that the construction of a railroad was an operation which was sought to be carried out in connection with mining operations and land being mined.

Graham-Perkins J A said at page 999:

> *"Having examined Mr. Hicks' evidence very closely I am of the clear view that the railroad which the applicant desires to construct over the respondent's land is patently necessary in connection with its mining operations."*

In both cases what was sought to be carried out were activities which were directly related to and were necessary in connection with mining activities.

It is the considered view of this court that work done to an elevator in the processing plant cannot be considered as work in connection with prospecting and mining.

The words of the enactment are clear and unambiguous. Had the legislator intended to include the processing of alumina it would have so expressed. Further, I accept the evidence of Miss Natalie Sparkes that the mining of bauxite ore and the

processing of alumina are entirely different operations and are carried out at different locations.

Counsel for the Defendant argues that an examination of the legislative scheme reveals a connection between processing and mining operations. Hence, it was the intention of the legislators to include accidents which occurred in the precipitation area.

The author of **The Interpretation of Statutes,** 8th edition stated at page 3:

> *"When the language is not only plain but admits of but one meaning, the task of interpretation can hardly be said to arise. It is not allowable, says Vattel, to interpret what has no need of interpretation."*

Although I consider the words used by the framers of the Act to be plain and unambiguous and that no useful purpose will be served by delving into the legislative scheme, I have nevertheless examined Counsels' submissions with regards to the legislative intent and scheme and the applicant's special mining lease.

Assuming that the mining lease is contingent upon the production of alumina and that there is no company presently operating in Jamaica which is not engaged in alumina, that in my view is not evidence that the legislators intended to extend the Commissioner's investigative power under Section 65 to the processing operations. Indeed, historically, both industries operated separately for example, Reynolds Bauxite Company exported bauxite in 1952, Kaiser Jamaica Bauxite Company Ltd., in 1952 exported only bauxite ore. Up to 2004, St. Ann Bauxite Company Ltd., which was formerly Kaiser, exported only raw bauxite ore. In 1963 Alcoa Bauxite Company shipped the unprocessed bauxite. However, in 1973 it built a refinery for the processing of bauxite.

In 1952 Jamalcan were producers of alumina and had plants at Ewarton and Kirkvine. Jamalco were bauxite producers in 1963 and extended their operations in 1972

to include the production of alumina. In 1969 Alpart were producers of hydro-alumina. Windalco (now known as Glencore) engaged in both. It has only been in recent years that the companies in Jamaica are engaged in both operations. The foregoing information was obtained from Jamaica Bauxite & Alumina Industry – History of the Industry (Jamaica Bauxite Institute Information Technical Unit, 13th January 2004, Economic Division JBI 2005). The legislators in the circumstances could not have intended that alumina operations were necessarily and inextricably connected with prospecting and mining operations.

Miss Nicole Brown submits that Section 84 (3)) treats alumina as a mineral hence, she submits it demonstrates the closeness in relationship of the mining and processing of this mineral.

Section 84 (1) states:

> *"He 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 on that behalf by the Minister in his discretion; and any person who contravenes the foregoing provisions of this paragraph shall be guilty of an offence and liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years."*

The submission that the legislature had in its contemplation the processing of alumina is not evidence in my opinion that it intended to extend the Commissioner's investigatory power under Section 65 to the processing of alumina. If the legislators had so intended, it should have so legislated.

I find support for this conclusion in the statement made by P. St. J. Langan in his

work, **Maxwell on the Interpretation of Statutes**, 12th Edition, page 28:

> *"The rule of construction is to intend the legislator to have meant what they have actually expressed." "The object of all interpretation is to discover the intention of Parliament, but the intention of Parliament must be deduced from the language used," for "it is well accepted that the beliefs and assumptions of those who frame acts of Parliament cannot make the law."*

The fact that Form 2 of the schedule to the Mining (Safety and Health) Regulations has been modified to include the precipitation area in the Accident Ledger, in my opinion, indicates that the Commissioner's supervisory roles have been enlarged and not that he has been conferred with investigatory jurisdiction over the processing plant.

The fact that alumina is referred to as a mineral for the purpose of the imposition of a penalty where there is a contravention of the export rules and regulations is not in my opinion evidence that it was the intention of the legislators for the purposes of Section 65 to regard the processing of alumina in the same manner as the mining of bauxite.

According to Miss Brown the fact that Section 2 of the Mineral (Vesting) Act defines minerals as including metalliferous minerals containing alumina, and in order to obtain alumina, the mineral would have to be processed shows a direct connection between the minerals and the processing of such minerals. That fact to my mind is not evidence that Section 65 was intended to extend the Commissioner's investigatory powers to include the processing plant. The intent of the legislation was to vest all minerals in the Crown. The words 'metalliferous minerals containing alumina' indicates to me that alumina can be found in other minerals besides bauxite. Section 2 (c) refers to bauxite in another category.

Miss Brown submits that the request by the Claimant that the Commissioner directed its regulatory and facilitation services over Windalco's mining and refining operations to the newly formed company is an acknowledgement by the Claimant that the Commissioner has jurisdiction to supervise its processing activities and underscores the close relationship between mining and processing. It cannot be challenged that the Commissioner has supervisory jurisdiction over both activities and there is a close relationship between both.

Undeniably, both industries are closely connected. 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. Special condition two (2) of the lease clearly speaks to alumina refining as a separate enterprise:

> *"The additional lands……to be included in any new special mining lease shall be lands which are as close as possible to and accessible from the lessees than existing bauxite mining operations which contains a sufficient amount of bauxite suitable for economic recovery in the lessees alumina refining enterprise*."

I cannot accept as tenable Counsel's submission that the fact that the Commissioner has supervisory and regulatory control over both alumina and bauxite operations, it follows that Section 65 extends to the precipitation plant. I adopt the following words of Sir Peter Maxwell on **The Interpretation of Statutes**:

> *"The words cannot be construed contrary to their meaning, as embracing or excluding cases merely because no good reason appears why they should be excluded or embraced."*

If by virtue of legislative oversight, the safety of workers in the processing plant is not subject to investigations by the Commissioner and is excluded from the Factories Act the competent authority to rectify the matter is the legislature.

The learned author of **The Interpretation of Statutes** at pages 5 and 6 stated:

> *"But if the meaning is plain and obvious, the Act must be construed in that sense though it may perhaps have been an oversight in the Framers of the Act. 'Our decision,' says Lord Tenterden 'may, in this particular case, operate to defeat the object of the Act; but it is better to abide this consequence than to put up on it a construction not warranted by the words of the Act, in order to give effect to what we may suppose to have been the intention of the legislator.'*
> *'I cannot doubt,' Lord Campbell, 'what the intention of the legislator was; but that intention has not been carried into effect by the language used …It is far better that we should abide the words of a statute, than seek to reform it according to the supposed intention.' 'The Act,' says Lord Abinger, 'has practically had a very pernicious effect not at all contemplated; but we cannot construe it according to that result.'*
> *In short, when the words admit of but one meaning, a court is not at liberty to speculate on the intention of the legislator, and to construe them according to its own notion of what ought to have been enacted. Noting could be more dangerous than to make such consideration the ground for construing an enactment that is unambiguous in itself. To depart from the meaning on account of such views is, in truth, not to construe the Act, but to alter it. But the business of the interpreter is not to improve the statute; it is to expound it. The question for him is not what the legislature meant, but what its language means; that is, what the Act has said that it meant. To give a construction contrary to or different from that which the words import or can possibly import, is not to interpret law, but to make it and judges are to remember that their office is jus dicere, not jus dare."*

Based on the foregoing I cannot accept Counsel's submission that Section 65 extends the Commissioner's investigatory jurisdiction to the precipitation plant.

Consequently, the following questions posed by Lord Morris of Borth-y-Guest in **Anisminic Ltd v The Foreign Compensation Commission & Another** [1969] 1 All ER 206. H.L., are answered in the affirmative:

> *"What were the questions left to it or sent to it for its decision? What are the limits of its duties and powers?" And "… so the question raised is whether in the present case, the Commission went out of bounds? Did they wander outside their designated area? Did they outstep the confines of the territory of their enquiry? (See p. 224)"*

I therefore hold that the Commissioner is not clothed with the requisite jurisdiction to enquire into the death of Mr. Astley Salmon.

In the circumstances, the first defendant is prohibited from holding an enquiry into the death of Astley Salmon.

Cost to be agreed or taxed.