HOUSE OF LORDS.

Friday, April 15, 1910.

(Before the Lord Chancellor (Loreburn), Lords James of Hereford, Atkinson, Shaw, and Mersey.)

BELLERBY *v.* HEYWORTH & BOWEN.

(On Appeal from the Court of Appeal in England.)

Dentist—Title or Description—Dentists Act 1878 (41 *and* 42 *Vict. cap.* 33), *sec.* 3—"*Person Specially Qualified to Practise Dentistry.*"

By section 3 of the Dentists Act 1878 all persons not registered under the Act are prohibited from using the designation of "dentist" or other words implying that they are "specially qualified to practise dentistry."

Held that the prohibition forbids such words as imply the possession of a diploma or licence or other qualification for registration under the Act, but does not forbid mere words of self-commendation.

The appellant was one of a partnership of three unregistered tooth extractors and adapters. By the contract of partnership it was provided that if any one partner should contravene the Dentists Act 1878, any other might terminate the partnership by written notice. The following notice was publicly displayed by the respondents:—"Bellerby, Heyworth, & Bowen. Finest artificial teeth. Painless extractions. Advice free. Mr Heyworth attends here." In consequence of this the appellant sought to exercise the power of terminating the partnership, and raised this action for the purpose of enforcing his alleged right. Judgment in his favour, pronounced by Parker, J., was reversed by the Court of Appeal (Cozens-Hardy, M.R., Buckley and Kennedy, L.JJ.).

At the conclusion of the argument for the appellant their Lordships gave judgment as follows:—

Lord Chancellor (Loreburn)—I think that the conclusion of the Court of Appeal in this case should be affirmed. The question of law here is the meaning of the words "specially qualified to practise dentistry," which are found in section 3 of the Dentists Act 1878. I look at the preamble of that Act, not for the purpose of controlling the wording of the section, but for the purpose of explaining the purpose of the Act. It looks as if the purpose was to procure registration wherever persons are "specially qualified to practise." Again, in sections 4, 5, 7, and 11 of this Act, we find reference to the "qualification" by diploma or certificate, or some form of hall-mark to use popular words, and not to "qualification" by competence or skill. But do the words in section 3 refer to qualifying or qualified in the same sense? The words are, "A person shall not be entitled to take or use the name or title of 'dentist' (either alone or in combination with any other word or words), or of 'dental practitioner,' or any name, title, addition, or description implying that he is registered under this Act, or that he is a person specially qualified to practise dentistry, unless he is registered under this Act." The appellant argues that this means that he must not imply himself to be a competent or skilful person—in other words, that self-commendation is prohibited except to registered persons—and that this is the effect of the enactment. Now such a purpose as the prohibition of self-praise seems to me not very germane to the scope of the Act, and not a very likely thing for Parliament to have resolved. The Act itself does not forbid anyone from practising dentistry—it only forbids the assumption of name, title, addition, or description. That looks like something very different from self-praise or self-commendation. On the whole, I think that what is referred to is the possession of qualifications for registration, and that the object or effect is to compel all who hold what I will in popular language call a hall-mark to become registered, or, if they are not registered, then they must not say either that they are registered or that they have the qualifications which would entitle them to be registered; and, of course, if they do not possess the qualifications which would entitle them to be registered they are still more disabled from making the affirmation prohibited under this section. I am aware that in expressing this opinion I am differing from the conclusion arrived at in the case of *Barnes* v. *Brown* [1909], 1 K.B. 38, which is undoubtedly a decision of a court entitled to very great weight, but there are other authorities conflicting with that decision, and I will particularly refer to the Irish case (*Rogers* v. *Byrne*, 1910, 2 Ir. Rep. 220) which has been cited to us. I might well content myself with merely expressing my concurrence with the judgment of Lord O'Brien, C.J., which seems to me a most exhaustive and convincing judgment. Compelled as we are to accept one or other of conflicting decisions, I think that the decision of the Irish Court is right, and that the construction of the Act is that which was maintained by Lord O'Brien, C.J. Under those circumstances I shall advise your Lordships to dismiss this appeal.

Lord James of Hereford—I concur.

Lord Atkinson—I agree, and I wish to express my concurrence in the judgment delivered by Lord O'Brien, C.J., in which the several provisions of the statute are carefully examined. I think that the conclusion is sound, and the reasoning by which it was arrived at commands my entire confidence and approval.

Lord Shaw—I desire to express my concurrence, together with your Lordships, with the judgment of Lord O'Brien, C.J., in the case of *Rogers* v. *Byrne* (*cit.*). In none of these cases, up to *Rogers* v.

Byrne, did there seem to me to be a full analysis of the term "specially qualified" occurring in section 3 of the Act, and as that term is illustrated by the subsequent sections of the Act, in which there is particular reference to the word "qualified," that qualification appears to be, as Lord O'Brien, C.J., says, something in its nature external to the person and not affecting his own personal competence. I assent to the motion which the Lord Chancellor has proposed, and I desire specially to record my assent to the analysis given by Lord O'Brien, C.J., in the case cited.

LORD MERSEY—I had some doubt as to whether I should take part in the hearing of this appeal, inasmuch as it involved the consideration of a judgment to which I was a party in *Barnes* v. *Brown* (*cit.*), but having heard the arguments, and having been convinced that the judgment in which I took part was wrong, I see no reason why I should not say so, and I think that it was wrong for the reasons given in the Irish case to which reference has been made.

Appeal dismissed.

Counsel for Appellant—W. F. Hamilton, K.C.—Boome. Agents—Dixon & Hunt, Solicitors.

Counsel for Respondents—Sir R. B. Finlay, K.C.—A. Grant, K.C.—Grimwood Mears. Agents—Percy Robinson & Company, Solicitors.

HOUSE OF LORDS.

Monday, April 18, 1910.

(Before the Earl of Halsbury, Lords Macnaghten, Atkinson, and Collins.)

BUTTERLEY COLLIERY COMPANY *v.* NEW HUCKNALL COLLIERY COMPANY.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Mines and Minerals—Right of Support—Upper and Lower Strata—Lease of Upper Stratum—Reserved Right of Working Lower Strata — Subsidence Necessary Result.

A stratum of coal was leased to the appellants under two leases which reserved expressly the right of working the strata below. One of the leases, which covered the greatest portion of the area, provided for the indemnification of the lessees for any "physical damage" thus caused; the other lease provided that there should be no liability for any damage caused. It was admitted that the proper way of working the seams in question was the long wall system; it was proved that the working of coal in a seam is inevitably followed by a sinking of the whole of the above strata. Subsidence of the upper stratum was actually brought about by the working of the lower stratum, and the appellants' company, whose operations were impeded, sued for an injunction against the colliery company of the lower strata to have them restrained from causing subsidence.

Held that by the necessary implication of the leases of the upper stratum the respondents were entitled to work the lower seams even to the extent of causing subsidence.

Under the circumstances stated *supra* in rubric the appellants obtained an injunction before NEVILLE, J., whose judgment was reversed by the Court of Appeal (COZENS-HARDY, M.R., MOULTON and FARWELL, L.JJ.).

Their Lordships gave considered judgment as follows:—

EARL OF HALSBURY—Although my judgment is contrary to that given originally by Neville, J., I cannot think that that learned Judge and I differ upon the question of law involved in the litigation. I believe that he would agree with me but for the construction which he placed upon Lord Macnaghten's words in the case of *Butterknowle Colliery Company* v. *Bishop Auckland Co-operative Society* ([1906] A.C. 305). I will deal presently with those words, and I think that I can see in what way the learned Judge has misconstrued them, but in the meantime I think what was said by Lord Blackburn in *River Wear Commissioners* v. *Adamson* (2 App. Ca. 743) and quoted by Farwell, L.J., in this case, is very relevant here, since I think that a great deal of the difficulty of the construction is solved by considering what are the facts to which the language is applied. Lord Blackburn said—"In construing a document in all cases the object is to see what is the intention expressed by the words used. But from the imperfection of language it is impossible to know what that intention is without inquiring further, and seeing what the circumstances were with reference to which the words were used, and what was the object appearing from these circumstances which the persons using them had in view, for the meaning of words varies according to the circumstances with respect to which they are used." Now it is most important here to note that we are dealing with two coalfields, one under the other, and that if the construction adopted by Neville, J., prevailed 75 per cent. of valuable minerals would remain unworked, but it is possible to work them both though it will cause additional expense in doing so, but without destruction to either. Now Cozens-Hardy, M.R., points out that in every one of the leases granted to the plaintiffs are to be found provisions which show that the working of the lower seam during the currency of the lease was contemplated by both parties, and in some of them obligations are imposed upon the plaintiffs to assist or not to obstruct the necessary