

pointed that that the challengers' argument in *Smith v. Gibbs* leads to the absurdity that co-holders of a permit to enter would commit trespass if they went upon the subject land singly and not as a complete team: [1985] 2 Qd. R. at 65.

The judgment of Macrossan J. touches in passing upon a broader and more interesting question. It concerns s.21(1) of the Queensland Act. That sub-section authorises the grant of a mining lease to an applicant 'complying with the provisions of this Act relating to such an application'. Its closing words state that '... a person shall be taken to have complied with the provisions of this Act if he has, in the opinion of the Governor in Council, substantially complied with those provisions.' It appears that some Departmental nervousness was felt about the lease under discussion and the relevant Executive Minute recited that the Governor in Council found 'substantial compliance.'

The effect of that opinion did not have to be considered in *Smith v. Gibbs* because, as the Court found, the lease was strictly in accordance with the Act. However Macrossan J., speaking *obiter*, did indicate some doubt about the ambit of an executive opinion under s.21(1).

Could it, for instance, cure a lease granted in the face of an express statutory prohibition such as the ban on granting a lease over private land to a person without a permit to enter? Such a defect was fatal to a New South Wales mining lease granted in *Bromley v. Muswellbrook Coal Company* (1973) 47 A.L.J.R. 710. But arguably the closing words of s.21(1) of the Queensland Act are more potent than a mere *de minimis* rule. They are in subjective terms: '... if he has, in the opinion of the Governor in Council, substantially complied.' Presumably the Governor in Council must appear to advert to the defect in the application and record his opinion as to 'substantial compliance'. (In *Smith v. Gibbs* Macrossan J., at page 60, noted in passing that the Executive Minute did not specifically refer to the fact that only one of the permit holders had applied for the lease.) But apart from such matters of form it can hardly be correct to interpret quite literally the closing words of s.21(1). Can it be law that any and every non-compliance with the Act or Regulations can be forgiven pursuant to that provision? The property of the Crown cannot be alienated by mere executive fiat: *Cudgen Rutile (No. 2) Pty Ltd v. Chalk* [1975] A.C. 520. Surely at some point, the courts would insert the word 'reasonable' or some other term of limitation before the words 'opinion of the Governor in Council'. But at what point and in what circumstances? The answer to this question awaits something more than the tantalising *dicta* in *Smith v. Gibbs*.

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LIST OF SEMINAR PAPERS AVAILABLE AT SECRETARIAT

The following is a list of papers held in the office which have been produced by various State Branches at Seminars and other meetings. It is not an exhaustive list because many of the papers have in fact been reproduced in the Bulletin over the years. There may be other papers outstanding in particular from the early years of the Association which have not been sent to the Secretariat. If readers are aware of any outstanding papers not listed below and not included in the Bulletin, would they be so kind as to advise the Secretariat.

SEMINAR PAPERS

1. Equitable Interests in Mining Titles by R.P. Meagher Q.C.
Commentaries by D. Frecker
R. M. Willcocks
J. R. Lehane
(12 December, 1980, N.S.W.)
2. Workshop on Aboriginal Land Rights — An Overview by V.B. Hughston,
The Legal Position in South Australia by Dr. Colin Branch,
The Legal Position in N.T. by Peter Walker and
The Legal Position in W.A. by Michael Hunt.
(February, 1981, S.A./N.S.W. Branch)
3. Mining and the Antarctic by David Flint
The Antarctic Treaty by Malcolm Booker
Mining and the Antarctic by Ian E. Nicholson, Department of Foreign Affairs
(March, 1985, N.S.W. Branch).
4. Registration of Offshore Petroleum Permits — Some Practical Problems by Peter Gore
(May, 1985, Victorian Branch).