

**NEW GORDON DIAMOND MINING COMPANY v DU TOIT'S PAN MINING BOARD (1891 – 1892) 9 SC 150**

<b>Importance</b>	<p>This is a fascinating case for illustrating how early legal issues relating to pumping water from the mines arose. The court left open the question whether a court can compel a public body to exercise a statutory duty, finding on the facts that the relevant law did not specifically require the Mining Board to remove excess, accumulated water from the mine. It is doubtful whether the court's decision on the other point of law raised in this case – the remedies available to a person affected by the public body's failure to exercise its statutory duty – still apply in a constitutional era (the court held that the <i>only</i> remedy available to such a party is an action for damages against the relevant public body). This case is related to <i>Reid v De Beers Consolidated Mines</i> (1891 – 1892) 9 SC 333.</p>
<b>Parties</b>	<p><b>Appellant:</b> New Gordon Diamond Mining Company  <b>Respondent:</b> Du Toit's Pan Mining Board</p>
<b>Facts</b>	<p>The appellants were owners of certain claims in the Du Toit's Pan mine (a diamond-mining area in Griqualand West) and they and one Reid were the only persons working the mine. Because certain other claims in the mine were not being worked (e.g. the claims held by the De Beers company – see <i>Reid v De Beers Consolidated Mines</i> above), a great quantity of water accumulated in the open workings of the appellants and had flooded their claims to such an extent as to make them unworkable below a certain level. Pumping machinery had been erected but it was found impossible to keep the water under due to an accumulation from the unworked claims not belonging to the appellant company.</p> <p>The Du Toit's Pan mine was governed by the mining board of the same name. Mining board had certain powers under an Act of 1883, including the power to incur expenditure for the removal of reef and water from the mines under their control. These included the powers to fix tariffs for this purpose and to raise funds to pay contractors under such tariffs by means of rates. Rates had to be passed as bye-laws and approved by the governor. The mining boards also had certain borrowing powers to raise funds for the due and efficient working of the mine which had to be exercised with the consent of the claim holders representing three-fifths of the assessed value of the mine.</p> <p>The court <i>a quo</i> held that the applicants needed to satisfy the court that conditions existed entitling them to obtain an ordinary interdict; i.e. that they had a clear right and that unless they obtained the relief sought they would be remediless in the premises. On the facts the court held that the appellants had not satisfied these requirements, nor was it clear whether a duty rested upon the mining board (or on some third party such as De Beers) to deal with the</p>

	water.
<b>Relief sought</b>	An application for a <i>mandamus</i> compelling the respondent board to take such steps as may be necessary for the removal of accumulated water in the Du Toit's Pan mine.
<b>Legal Issues &amp; Judgment</b>	<p><b>Issue 1:</b> Whether a court can compel the performance of a specific duty imposed by statute upon an individual or a public body?</p> <p><b>Judgment:</b> The court noted that it did not appear that a <i>mandamus</i> directing an individual or public body to perform a specific duty imposed by statute had ever been made (in a South African court) (at 154). On examining the Act of 1883, however, the court was of the opinion that it did not impose a specific duty on the Du Toit's Pan Mining Board to remove the water from the mine. While they were clearly <i>authorized</i> to do so and granted the necessary means (through the provisions on rates, tariffs and borrowing), they had a <i>discretion</i> to exercise these powers or not (<i>ibid</i>). Furthermore, if they were guilty of negligence in the exercise of their discretion, a person injured by such negligence had a remedy in an action for damages (at 155). In the court's opinion this was the only remedy available against a public body charged with duties which involved the exercise of judgment and discretion.</p>
<b>Outcome</b>	None.
<b>Obiter</b>	'Cases, however, may well be imagined in which it would be necessary for the due administration of justice to compel the performance of a specific duty by a mandatory interdict as it is in other cases to interdict the doing of illegal acts' (at 154).