

*Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Union Steamship Company of New Zealand, Limited, v. The Melbourne Harbour Trust Commissioners, from the Supreme Court of the Colony of Victoria; delivered February 6th, 1884.*

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Present :

LORD BLACKBURN.  
SIR BARNES PEACOCK.  
SIR ROBERT P. COLLIER.  
SIR RICHARD COUCH.  
SIR ARTHUR HOBHOUSE.

THE facts of this case, as far as they are material, may be shortly stated. The cause of action is that a vessel belonging to the Plaintiffs, and going into Melbourne Harbour, fell foul of a cable attached to the anchor of a dredge which was in the middle of the stream, having been placed there by the Defendants, and thereby sustained considerable damage. The declaration contained two counts, one alleging negligence on the part of the Defendants in mooring the dredge where they did, and the second complaining that they had not given notice whereby the danger might have been avoided. To this declaration there were many pleas by the Defendants, denying their liability, and also denying most of the allegations in the declaration; and there was a further plea, in these terms:—"And  
" for an eighth plea to the said declaration, the  
" Defendants say that the alleged grievances were  
" committed by the Defendants after the passing  
" of 'The Melbourne Harbour Trust Act, 1876,'  
" and were committed by the Defendants under  
" and by virtue of the said Act; and no notice in

“ writing of the intention to sue out the writ in this  
 “ action was delivered to the Defendants or left at  
 “ their usual place of abode one month before the  
 “ suing out of the said writ, pursuant to the said  
 “ Act.” The Plaintiffs demurred to that plea, and  
 also joined issue upon all the allegations contained  
 in it. Upon the case going down for trial the jury  
 found all the questions which may be said to relate  
 to the merits of the case in favour of the Plaintiff;  
 but the Judge, nevertheless, thought that a verdict  
 should be entered for the Defendants upon this  
 plea. The jury therefore, by his direction,  
 assessed damages contingently; and leave was  
 given to the Plaintiffs to move to enter a verdict for  
 them for the amount of those damages. That  
 rule, coming before the Supreme Court, was dis-  
 charged, and judgement was entered for the  
 Defendants. Against that judgement the present  
 Appeal is brought.

The argument upon this Appeal has been re-  
 stricted to two questions, with which alone their  
 Lordships propose to deal. The first question was  
 whether, assuming a notice of action to be neces-  
 sary, one was given; and, secondly, whether a  
 notice of action was necessary. The 46th section  
 of the Melbourne Harbour Trust Act is in these  
 terms:—“ All actions to be brought against any  
 “ person for anything done under this Act shall  
 “ be commenced within six months after the act  
 “ complained of was committed, and no writ shall  
 “ be sued out against nor any copy of any process  
 “ served upon any person for anything done by  
 “ him under this Act until notice in writing of  
 “ such intended writ or process shall have been  
 “ delivered to him or left at his usual place of  
 “ abode by the agent or attorney of the party who  
 “ intends to cause the same to be sued out, or  
 “ served at least one month before the suing out  
 “ or serving the same. Such notice shall clearly  
 “ and explicitly set forth the nature of the in-

“ tended action and cause thereof, and on such  
 “ notice shall be endorsed the name and place of  
 “ abode of the party intending to bring such  
 “ action, and the name and place of business of  
 “ his attorney or agent.” Then it goes on to say  
 that the Defendant may plead the general issue,  
 and that he may tender evidence.

It is contended that a letter written by  
 Messrs. McMeckan, Blackwood, & Co., agents of  
 the Plaintiffs, on the day after the accident  
 occurred, is a sufficient notice of action under  
 this Act. The letter is as follows:—“ Union  
 “ Steamship Company of New Zealand, Limited,  
 “ Melbourne, 21st October 1881. The Secretary,  
 “ Melbourne Harbour Trust Commissioners.—  
 “ Sir, we have the honour to bring under your  
 “ notice a very serious accident that happened to  
 “ ‘Rotorua’ steamer, owned by this Company.  
 “ When coming up the river yesterday morning,  
 “ and close to the Junction Point, and a little  
 “ way below the ‘Platypus,’ she struck the  
 “ chain of that dredge, it being laid in mid-  
 “ channel. The damage sustained is of an  
 “ extensive character.” Then the damage is  
 specified. “The surveyors are now surveying,  
 “ and may yet discover further damage. Pos-  
 “ sibly you may desire to send some of your  
 “ officers to view the extent of the mischief, all  
 “ of which we must hold the Commissioners  
 “ responsible for.”

It appears to their Lordships that the Court  
 below were right in holding that this was not a  
 notice of action in compliance with the Statute.  
 It was clearly not intended to be. It does not  
 give notice of any intended writ or process what-  
 ever: it does not clearly and explicitly set forth  
 the cause or nature of the action: it does not  
 give the name or place of business of the  
 attorney or agent who is to bring the action.  
 It appears to want all the necessary characteristics

of a notice of action as prescribed by the Statute.

Some cases have been quoted for the purpose of showing that notices of action are not to be construed with extreme strictness, a rule to which their Lordships subscribe. Cases have been quoted in which notices of action have been upheld which would have been bad upon special demurrer, or perhaps upon general demurrer; but those cases have no bearing on the present, where the notice of action is not, in form or substance, a compliance with the Act.

The question which remains is whether or not the Defendants are entitled to a notice of action. "In the construction and for the purposes of this Act the following terms shall, if not inconsistent with the context or subject matter, have the respective meanings hereby assigned to them." Then come these words:—"Person shall include a corporation." It, therefore, lies upon the Counsel for the Plaintiffs to show that to hold that a person in section 46 includes a corporation is inconsistent with the context or subject matter. The argument to this effect is that section 2 declares the Act to be divided into parts, and part 2 is headed "Officers"; that when we come to part 2, in section 33 we find the heading "Officers" and a number of sections grouped together under that heading; that, therefore, the word "person" in section 46 must be confined to "officers." The case in the House of Lords, of *The Eastern Counties and London and Blackwall Railways against Marriage*, has been cited as an authority for this argument on the part of the Plaintiffs. It should be observed as to that case, which dealt with the construction of the Lands Clauses Act, that in that Act were several headings so drawn as to be applicable grammatically to the sections which followed

them. The heading then in question was this: "And with respect to small portions of intersected land, be it enacted as follows." Then came two sections: first, the 93rd, relating to lands not being situated in a town; and then the 94th, beginning with "If such land shall be so cut through and divided." It was held by the House of Lords that "such land" referred, not to land mentioned in section 93, but referred back to the heading before section 93; namely, "with respect to small portions of intersected land, be it enacted as follows."

That case appears to their Lordships to have no application to the present. Here the heading "Officers" is not such a heading as could be grammatically read into any of the sections which follow. It seems to their Lordships to have been inserted for the purpose of convenience of reference, and not intended to control the interpretation of the clauses which follow. It may be, indeed, that the fact of a clause being found in a certain group may in some cases possibly throw some light upon its meaning; but it appears to their Lordships that the construction contended for on the part of the Plaintiffs that the term "officers" controls the meaning of the word "person" in section 46, applying it solely to officers and negating its application to a corporation, is untenable. If we examine the clauses which follow under the head of "Officers," we find that they do not relate solely to officers or to their powers or to their duties. The very first section which follows this heading, (section 33,) gives to the Commissioners power "from time to time to appoint a secretary, treasurer, and clerk, and appoint or employ such engineers, surveyors, collectors, and other officers, servants, and persons to assist in the execution of this Act as the Commissioners shall think necessary or proper." This section

therefore, under the heading of "Officers," confers not merely powers upon officers, but a most important power upon the Commissioners; a power without which they would be unable to act, for a corporation can only act through its officers. There are further provisions in section 40, enabling them to appoint a harbour-master and so on. It appears to their Lordships that, powers having been given to the Commissioners under these sections to appoint officers, and they being capable only of acting through their officers, it was a very proper and convenient place to insert a section which determined under what circumstances actions should be brought against them in respect of the acts of their officers. Accordingly, section 46 appears to their Lordships to be quite in its proper place, putting the interpretation upon it that it refers to actions brought not only against officers for anything done under the Act, but against the Commissioners themselves for anything done by their officers on their behalf; and all reasoning and probability would point to this having been the intention of the Legislature. It would be almost impossible to give any good reason why officers should be entitled to a notice of action, and the Commissioners not; or why officers should be entitled to tender amends, and the Commissioners should not.

Their Lordships will humbly advise Her Majesty that the judgement of the Court appealed against be affirmed, and that this Appeal be dismissed. The Appellants must pay the costs of the Appeal.