*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Hunter District Water Supply and Sewerage Board* v. *The Newcastle Wallsend Coal Company, Limited, from the Supreme Court of New South Wales; delivered 7th December* 1895.

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Present:

LORD HOBHOUSE.
LORD MACNAGHTEN.
LORD MORRIS.
SIR RICHARD COUCH.

[*Delivered by Lord Macnaghten.*]

The Appellants are a "Board of Water Supply "and Sewerage" for the District of the Lower Hunter. They were incorporated by Act XXVII. of 1892 as the "Hunter District Water Supply "and Sewerage Board."

The Respondents are owners and occupiers of a mining property within the district of the Lower Hunter comprising 8772 acres of land with a colliery in operation and a private railway connecting their works with the Great Northern Railway.

A water main belonging to the Board crosses the line of the Respondents' railway and runs through one corner of their land.

It is contended by the Board that according to the true construction of the Act of 1892 the whole of the Respondents' property including their private railway is rateable for water supply. This contention is disputed by the Respondents

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who use no water supplied by the Board whose land in some parts is above the level of the Board's reservoir and who if the contention of the Board is well founded would apparently be liable in addition to the rate to a charge of two shillings and sixpence for every horse and every head of cattle kept on their property and double that charge if they were to use any water supplied by the Board.

This action was brought by the Board to enforce their claim. There were no facts in dispute nor was there any question as to the amount of the rate assuming the view of the Board to be correct. A verdict was therefore taken by consent for the sum of 796*l.* 9*s.* 9*d.* which was the full amount of the rate claimed for the year with leave for the Respondents to move the Court to enter the verdict for them.

On appeal to the Supreme Court the verdict was entered for the Respondents. Sir Frederick Darley C.J. with whom Innes J. concurred was of opinion that the language of the Act was not so clear as to compel the Court to decide against the Respondents "considering the extra-"ordinary result of upholding the contention" of the Board. Foster J. who dissented thought that the verdict was a gross hardship on the Respondents but after full consideration he could not say that he had any such doubt as to the meaning of the words used by the legislature as to enable him to agree with the rest of the Court.

The Board is composed of seven members. Three who are styled "official members" are appointed by the Government. Four styled "municipal members" are elected—two by certain specified municipalities and two by smaller municipalities within the District of the Lower Hunter grouped together for the purpose of the election. The Board as was pointed out

by the learned Counsel for the Appellants is not a trading corporation. It earns no profits for itself or for any of the boroughs or municipal districts within the area under its charge or for the Government. The scheme of the Act is shortly this:—The water supply for a "water "district"—an expression defined by the Act as meaning "the area within which water is or "may be from time to time supplied by the "Board" (s. 2. s. 40)—is in the first instance provided by the Government. The main works are constructed by the Government and at their expense. When the works are passed and approved by the Government officer they are by a notification in the Gazette transferred to and vested in the Board "on behalf of Her Majesty." An account is made up and the whole cost becomes repayable by the Board by means of periodical payments. A similar account is made up every successive year for the whole amount expended on the works during the year. The repayments are divided into two classes under the heads of "Permanent Works" and "Renewable Works" with different periods of repayment. When the works are vested in the Board it becomes their duty to administer all matters relating to the water supply "in "correspondence . . . . with the Minister" (*i. e.*, the Secretary for Public Works or other responsible Minister of the Crown) "charged with the administration" of the Act and under the control of the Governor and Executive Council (s. 31, s. 32, s. 2). It is also their duty subject to the limitations in the Act to levy by rates and charges a sum sufficient for the service of the year (s. 129) but no money passes through the hands of the Board except for the purpose of collection and payment into the Treasury (s. 28, s. 29, s. 30). The Board therefore in substance is a Government Department acting under a sort of mixed commission.

For the purpose of carrying the Act into

execution the Board is empowered to make by-laws (s. 35). In regard to water-supply by-laws may be made for various purposes including the following:—

"(V.) For the appointment of a scale of charges for water "supplied by measure and the minimum quantity "of water to be charged for where water is so "supplied.

"(VI.) For determining making and levying the rate to be "paid in respect of lands and tenements to be "supplied with water for domestic purposes "otherwise than by measure or in respect of lands "and tenements distant not more than sixty yards "from any main constructed by or vested in the "Board although the lands or premises by or in "respect of which the water is used may be more "than one hundred and fifty feet from any "water reticulation pipe or although such lands "or premises are not actually connected with any "main" . . .

Omitting words which are immaterial or inapplicable to the case under consideration the Act declares that by-laws may be made "for "determining making and levying the rate to be "paid . . . in respect of lands and tenements "distant not more than 60 yards from any "main . . . although such lands or premises "are not actually connected with any main." Those are the words which seem to have given rise to so much difficulty in the Court below. The enactment says that the Board may rate lands within a certain distance from their main. How can that make lands outside the limit rateable? The Appellants contend that lands outside the prescribed limit are rateable when they form one holding with lands within the prescribed limit. Where is that to be found in the Act? There is nothing in the Act about lands forming one holding or being held together with other lands. There is nothing to show that the Act intended lands in one occupation or "held as under one ownership" to use Mr. Justice Foster's language to be regarded as one indivisible unit for rating purposes.

Foster J. indeed seems to think that the con-

tention of the Appellants is in accordance with the natural and ordinary meaning of the language used. After commenting on the expression "lands and tenements" "it would be sufficient" he says "for the purposes of this case to treat the "place rated as a tenement." "Two houses" he observes "or two tenements are clearly not more "distant than 60 yards from one another if the "nearest parts of each are within that distance." That may be so. The leading idea in the case put by his Honour is the distance between two places. But here it is not the purpose of the enactment to define or specify the distance between two objects. The purpose is to mark out an area for taxation which is a very different thing. For the sake of illustration suppose there were an Act declaring that for the purpose of maintaining a sea wall lands within the distance of one mile from high-water mark should be taxed would anybody seriously contend that the whole of a man's park or demesne containing perhaps a thousand acres or more was taxable because an acre or two of it happened to lie within the area of taxation?

It may perhaps be objected that in the case supposed the tax or cess would be at so much per acre and that consequently there would be no difficulty in arriving at the amount of the tax for any given quantity of land. Here as it was pointed out the tax imposed is according to the municipal valuation when the subject of taxation is within a municipality and included in the municipal valuation. That provision it was argued must create serious difficulty if the view of the Respondents be adopted. Now the first observation that occurs to one on that line of argument is this: If the Respondents are right —if there is nothing in the section, by or under which the tax is imposed, authorising a charge on lands outside the prescribed limit—why should

any such lands be taxed merely because otherwise there may be a difficulty in assessing some lands which are liable to taxation? Even if the difficulty was insuperable it would be more reasonable that lands declared to be liable to taxation should go scot free than that lands outside the taxable area should be swept within the net. But the truth is that when the Act is fairly construed the difficulties presented to their Lordships in the course of the argument such as they were vanish altogether.

It is to be observed that the Board is not "compellable to supply water to any person "whomsoever" (s. 51). In every case of supply to private persons the supply is apparently in point of law a matter of grace or of agreement. The legislature may well have thought that a public Board—in correspondence with and under the control of the Executive and in touch with the Municipalities within their district—would hardly need the pressure of legal compulsion and might be trusted to dispense the benefits at their disposal fairly and impartially to all concerned. It is also to be observed that the Board is authorised to require every consumer of water to put up a meter, and a by-law has been made providing that "if the "meter account exceeds the assessment calcu- "lated at the rate of two shillings per 1,000 "gallons" which is the prescribed rate for water supplied by meter "then such excess shall be "charged in addition to the assessment."

Now when water is supplied by meter or for domestic purposes without meter no question as to the 60 yards limit can arise. That question only comes in when there is no connection with the main. In such cases which are probably rare having regard to the provisions of s. 68 all the Board has to do is to assess the person who has failed to make a connection with the main and to assess him in respect of his

property lying within the prescribed limit of 30 yards. If the valuation of that property is "included" in the municipal valuation—that is if it is to be found there as an assessment available for the purpose of assessment by the Board—then the Board is to adopt the municipal valuation. If it is not included in the municipal valuation, then the Board is authorized to make a valuation of its own (s. 95). But in all cases a minimum charge of ten shillings is authorised though that charge may exceed 5 per cent. on the valuation which is the general limit (s. 35, subs. vi.). When therefore the valuation is under 10*l.* the precise amount is immaterial even if the premises are occupied. If the premises are vacant the rate according to the by-laws is only 4*d.* in the pound and then it is immaterial what the precise amount of the valuation is if it be under 30*l.*

Their Lordships were invited to approach the Act of 1892 as a confused and puzzling mass of legislation. They think it right to say that they have not found any difficulty involved in the question which has been submitted to them on this appeal.

They will therefore humbly advise Her Majesty that the appeal ought to be dismissed. The Appellants will pay the costs of the appeal.