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in England and in the Colonies, and it would have the effect of rendering the whole of sec. 245 nugatory.

For these reasons the order will be discharged with costs.

Appeal dismissed with costs.

Solicitor, for appellant, *Powers*, Commonwealth Crown Solicitor.

Solicitor, for respondent, *Croker*, Melbourne.

[HIGH COURT OF AUSTRALIA.]

THE LOCAL BOARD OF HEALTH OF THE CITY OF PERTH . . . . . DEFENDANTS, } APPELLANTS;

AND

WESLEY MALEY . . . . . PLAINTIFF, RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF WESTERN AUSTRALIA.

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PERTH, *Oct.* 11, 12.

Griffith, C.J., Barton and O'Connor, JJ.

Health Act 1898 (*No.* 24) (*Western Australia*), *sec.* 158—*Local Board—Construction of sewer—Trespass—"Necessary."*

By sec. 158 of the *Health Act* 1898 (No. 24) (Western Australia), a Local Board, *in case it is necessary for the proper drainage of any land* that drains or sewers should be made through private premises, is empowered to make an order on the owner requiring him to permit the construction of such drains or sewers, and, after one month from the making of the order, to form such drains or sewers as may, *in the opinion of the Local Board, be necessary* for the proper drainage of the land (*a*). The defendants, the Local Board of Health of the

(*a*) "158. In case it is necessary for the proper drainage of any land, street, lane, right-of-way, yard, passage, private premises, or other place, that drains or sewers should be made through or under any one or more private premises, whether occupied or not, it shall be lawful for the Local Board to make an order on the owner or owners of such premises requiring such owner or owners to permit the formation of such drains or sewers through or under such premises, and after the expiration of one month from the making of such order the Local Board may form or make through or under such premises such drains or sewers as may in the opinion of the said Local Board be necessary for the proper drainage of any such land, street, lane, right-of-way, yard, passage, private premises, or other place as

City of Perth, for the purpose of draining certain premises known as Town Lot 49, after having served the necessary order, entered upon the land of the plaintiff, adjoining Lot 49, and constructed thereon a sewer.

Held, that the discretion to determine that works were necessary was, by the Act, vested in the Local Board, and that, in the absence of *mala fides*, their decision as to the necessity of the undertaking could not be questioned by the Court.

Dictum of *Malins*, V.C., in *Vernon* v. *Vestry of St. James*, 49 L.J., Ch., p. 130, approved.

Judgment of the Supreme Court reversed.

This was an action in which the plaintiff, the registered proprietor of an allotment of land in the city of Perth, known as Perth Town Lot 50, sued the defendants for trespass to plaintiff's land for the purpose of laying a sewer thereon and constructing other works in and upon the said premises. The claim was for £1000 damages, for an injunction restraining the defendant from a repetition of the acts complained of, and from a continuation of

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aforesaid: Provided that such drains or sewers shall be made and maintained in good order so as not to be a nuisance or injurious to health.

"Where the Local Board have, under the powers conferred by this section, formed or made any drain or sewer through or under private premises, there shall be paid by the said Local Board to the owner or owners of such premises such equitable compensation as is agreed upon between such owner or owners and the said Local Board, or as in case of dispute may be awarded on appeal by either side to the Police, Resident, or Government Resident Magistrate of the district wherein such premises are situate, and the proceedings shall be conducted as if there had been a submission to him as defined by the *Arbitration Act* 1895.

"The amount of compensation so paid and all costs and expenses incurred by the said Local Board, together with the cost of forming or making any drain or sewer under the provisions of this section, shall in the case of the drainage of any land, yard, passage, or other premises be repaid to the said Local Board by the owner of the land, yard, passage, or other premises for the drainage of which such drain or sewer has been formed or made, or if there be more than one owner then such compensation and expenses shall be repaid to the said Board by such owners in such proportions as may be fixed by the said Local Board; and in the case of the drainage of any street, lane, or right-of-way, such compensation and expenses shall be repaid to the said Local Board, in such proportion as may be fixed by the said Local Board, by the owner or owners of the land or premises fronting, adjoining, or abutting on such street, lane, or right-of-way; and such compensation and expenses shall be recoverable by the said Local Board from such owners in the manner hereinafter mentioned."

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the trespass, and for an order directing the removal of the sewer and pipes and a re-instatement of the plaintiff's premises.

The defendants in their statement of defence denied the trespass complained of, and stated that on 20th January, 1903, in exercise of the powers conferred on them by sec. 158 of the *Public Health Act* 1898, they made an order on the plaintiff requiring him to permit the formation of a certain sewer through his land for the purpose of draining an adjoining allotment known as Town Lot 49; that on 6th May pursuant to the said order and in further exercise of their powers the defendants by their servants and workmen entered upon the plaintiff's land and constructed thereon the sewer mentioned in the order, and that they have always been ready and willing to pay to the plaintiff equitable compensation in respect of the premises to be assessed in the manner provided in sec. 158 of the *Public Health Act* 1898.

The defendants further paid into Court the sum of £10 with a denial of their liability.

The plaintiff in his replication also complained of other acts of the defendants which were in excess of the order referred to in the defence, and were committed in other parts of the plaintiff's land, and on other occasions and for other purposes than those referred to in the defence, viz:—Connecting a drain made for the purpose of draining Perth Town Lot 51 with the drain made by the defendants on the plaintiff's land.

The case was first tried before His Honor Mr. Commissioner Roe, who found, as a fact, on the evidence, that the drain followed the natural fall of the land and natural flow of water, and took the proper course, and gave judgment for the defendants. This judgment was reversed on appeal to the Supreme Court of Western Australia, and it was from the decision of that Court that the present appeal was made.

Northmore (with him *Robinson*), for the appellants. The Supreme Court held that the words "in case it is necessary," in sec. 158 of the *Public Health Act* of 1898, were equivalent to "in case it is unavoidable." That is not the natural meaning of the words. The section should be read "in case the Board thinks it

necessary," and if the Board's discretion be exercised *bonâ fide* the Court will not interfere.

[GRIFFITH, C.J.—There are, generally, at least two possible courses open, and, therefore, as neither is unavoidable, neither would be necessary.]

Whether the Board was right or wrong, the Full Court placed a wrong construction on the section. The Local Board must be the judges of the necessity.

[GRIFFITH, C.J.—Does not "necessary" mean highly expedient under the circumstances?]

Yes; and the Board is to be the judge of the expediency.

[GRIFFITH, C.J.—Is not the Court slow to scrutinize the decision of a local body invested with such statutory powers as these?]

The Board is the body to determine, and the Court will not interfere, without evidence to show that the decision was not *bonâ fide*. *Lewis* v. *Weston-Super-Mare Local Board*, 40 Ch. D., p. 55; *per Stirling*, L.J., at pp. 61 and 62. There is no difference in meaning for the purposes of this case between "if it is necessary" and "if it appears necessary." *Stroud* v. *Wandsworth District Board*, (1894) 1 Q.B., 64; and on appeal, (1894) 2 Q.B., 1, *per Kay*, L.J., at p. 8. In considering who is to determine the question of necessity, regard must be had to the object and purpose of the section. If two courses were open neither would be necessary in the sense of being unavoidable.

It is not a rule of construction that different meanings must necessarily be given to different expressions used in a Statute. Where different words are used, the meaning is often the same; *Lawless* v. *Sullivan*, 6 App. Cas., 373, at pp. 382 and 383; *Hadley* v. *Perks*, L.R., 1 Q.B., 444, at p. 457.

There are many instances in this Act which show that it is for the Local Board to decide the question of necessity. See secs. 23, 26, 39, 121, 141, 153, 157, 159, 166, 202, 215.

Sec. 141 deals with the powers of the Local Board where information has been received of the existence of a nuisance. Here the Board is made judge of the necessity. In the English Act which deals with the same subject is to be found a very similar section to the effect that when an order has been made and not

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complied with an application may be made to justices, who may order the carrying out of such works as may be necessary.

Under that section it was held that "necessary" meant "necessary in the opinion of the justices"; *Ex parte Saunders*, 11 Q.B.D., 191.

Ewing (with him *Marks*), for the respondent. The Court will not place a forced construction on a section by adding words to it. In sections of the Act relating to private rights the phrase "necessary" is used alone, and not "appears necessary." In such sections, therefore, no discretion is given to the Board. Sec. 155 places the discretion in the Board; but there the property in the land affected is already public. Sec. 157 only gives power to the Board where "it is necessary for the formation, continuance or completion of any right of way or passage." There private property is affected.

[GRIFFITH, C.J.—In the rigid sense is it ever necessary to form, complete, or continue a right of way through private premises from one street to another?]

If a piece of land can be reasonably drained into a watercourse without interfering with private property it should be done.

[GRIFFITH, C.J.—That could not be done in this case without draining into a higher level.]

[BARTON, J.—So, whenever it is avoidable, must you refrain from taking a drain across property, even though it necessitates going up hill?]

Whenever it is reasonably avoidable; *Fenwick* v. *East London Railway Co.*, 44 L.J. (Ch.), 602, at p. 604; L.R. 20 Eq., 544. In all cases in which the word "necessary" is used in giving power to the Board to perform works on private property, the Court should place a restricted construction on it. *Ex parte Saunders* (*supra*) proceeded on the construction of a section which empowered the Local Board to perform certain works if the Board were "satisfied of the existence of a nuisance."

[GRIFFITH, C.J.—That case was decided on the meaning of the words "necessary for the purpose." There the justices had to decide on the question of necessity. In *Hargreaves* v. *Taylor*, 3

B. & S., 613, it was held the Board had to determine the question what was necessary.]

In all the other cases cited on behalf of the appellant a discretion was given to an individual. In *The Queen* v. *Wycombe Railway Co.*, 36 L.J. (Q.B.), 121, "necessary" was given the more restricted meaning.

[GRIFFITH, C.J.—Does that apply to a public body ?]

O'CONNOR, J.—That was a case of obstruction to a highway.]

The cases where the Court confines the construction most closely are cases where the powers given are apt to interfere with the rights of property.

[O'CONNOR, J.—A distinction must also be drawn between cases where powers are given to private owners over the property of others, and where powers are given to public bodies; *Vernon* v. *Vestry of St. James*, 49 L.J. (Ch.), 130.]

GRIFFITH, C.J.—There the Vestry proposed to create a public nuisance, and not to do what was necessary. General words do not authorize breaches of the criminal law.]

"Necessary" cannot be read as extending to whatever the local authority thinks necessary; *Ex parte Whitchurch*, 50 L.J. (M.C.), 41.

If the Board have the discretion to enter, they also have a discretion as to the method. But they have not the former; *Morris* v. *Tottenham &c. Railway Co.*, (1892) 2 Ch., 47; 61 L.J. (Ch.), 215, at p. 217. The question of expense is unimportant. The only question is one of practicability; *City and South London Railway Co.* v. *London County Council*, 60 L.J. (M.C.), 149.

[GRIFFITH, C.J.—The question here is, is it necessary to run a drain through the plaintiff's land.]

The onus is upon the Board of Health to show it was necessary for that purpose to enter the plaintiff's land. Even when there is a discretion in the Board the Court will exercise control; *Simpson* v. *South Staffordshire Waterworks Co.*, 34 L.J. (Ch.), 380, at p. 388; 4 De G. J. & S., p. 379; *Stockton and Darlington Railway Co.* v. *Brown*, 9 H.L.C., 246. If the Board has an absolute discretion why is the word "necessary" used at all ?

[O'CONNOR, J.—It must be exercised *bonâ fide*, and the Board

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must not go outside what is necessary. Has the Local Board care of the construction of the main sewers ?]

They have control of what sewers there are.

Northmore in reply.

GRIFFITH, C.J. The question raised on this appeal is as to the construction of sec. 158 of the Western Australian *Health Act* of 1898, which provides that in cases where it is necessary for the proper drainage of any land, including private premises, that drains or sewers should be made through or under any one or more private premises, it shall be lawful for the Local Board of Health to make an order on the owner or owners of such private premises requiring them to permit the formation of such drain through or under such premises. And, further, that at the expiration of one month after such notice, the Local Board may form or make through or under such premises, such drains as may, in the opinion of the Local Board, be necessary. The defendants in the action, who are now the appellants, are the Local Board of the City of Perth; the respondent is the owner of certain private premises within the jurisdiction of the appellant Board, and it appears that the appellants, acting as the Local Board, conceived it necessary for the proper drainage of a piece of land described as Perth Town Lot 49, Malcolm Street, and adjoining the respondent's premises, that a drain should be made through them. The appellants accordingly made an order on the respondent to permit the formation of the drain through his premises for the purpose of draining Lot 49, Malcolm Street, and, after the expiration of a month, they proceeded to enter the respondent's land for the purpose of constructing such drains as they thought it proper should be made for that purpose. The respondent thereupon brought this action, claiming an injunction and damages. The case was tried before Mr. Commissioner Roe, who found certain facts. In the course of his judgment, he said: "The evidence adduced by the defendant Board, without going into it in detail, proved, I think, beyond all doubt that the present drain, by following the natural fall of the land and natural flow, took the proper course." The counsel for the respondent has

contended that, in order to justify the action of the Local Board in entering upon private land, it must be shown that it was necessary to do so, in the sense that it was not possible to drain the land in question except by going through the particular private premises. For the Board it is contended that that is not the meaning to be assigned to the word "necessary" in a statute of this kind; but that, although the word may have such a meaning attributed to it in some statutes, in a statute of this sort, dealing with the powers of public bodies, conferred and intended to be used for the benefit of the community, the intention is to leave it to the local body to determine what, in the *bonâ fide* exercise of their judgment, is sufficient evidence of the necessity for any given work. The judgment of the learned Commissioner was appealed against to the Full Court, and they reversed his decision and granted an injunction. The learned Chief Justice in the Full Court said, after pointing out that the land might have been drained in another way, which no doubt was true:—"Now I take it that a thing does not become necessary to be done unless it is unavoidable. It is incumbent upon the Board to show that the construction of this sewer through the plaintiff's land was unavoidable in order to drain the particular premises mentioned." And further he says, "I am of the opinion, upon the evidence before me, that there is nothing to show that the Board could not have taken the drain in another direction had they felt so inclined. They would no doubt have been put to greater expense, but that is not the question." There can be no doubt that the drain might have been made in some other way. It might have been made in an indefinite number of other ways, but it appears that, from the situation of the property and the contour of the surrounding land, the drain, as constructed, follows substantially the natural fall, and it is not suggested that the Local Board, in making the drain in this way, were exercising their powers otherwise than *bonâ fide*. Then the question is which is the true construction of the section. The first thing to be done is to consider what was the object of the legislature in passing this Act. On that point I will refer to the rule laid down in the *Sussex Peerage Case*, reported in 11 Cl. & F., 85 at p. 143. In that case Lord Chief Justice *Tindal* said,

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"The only rule for the construction of Acts of Parliament is that they should be construed according to the intent of the Parliament which passed the Act. If the words of the Statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such cases, best declare the intention of the lawgiver. But, if any doubt arises from the terms employed by the Legislature, it has always been held a safe means of collecting the intention to call in aid the ground or cause of making the Statute." The question in every case is, what was the intention of the Legislature? What then were the ground and cause of their making this statutory enactment? Obviously it was considered desirable that some provision should be made for the drainage of premises in a populous city, and that for this purpose powers should be conferred upon a public body who could be trusted to exercise them for the benefit of the whole community. The condition upon which they were to exercise the power of trespass on private land was that it should be necessary for the proper drainage of adjacent land. Now, in the sense suggested by the present respondent, it would never, or at all events very rarely, be unavoidable to go upon any particular person's land. To take the case suggested in the argument, a piece of land, lying higher than two other adjoining pieces of land, is to be drained. It is on the slope of a hill and cannot conveniently be drained upwards, therefore the drain must pass through one or other of the two lower pieces of land. If the argument suggested by the respondent is the correct one, it is not unavoidable to go through either of the two lower pieces. It is manifest that such a construction of the section would lead to a *reductio ad absurdum*. Another excellent rule in the interpretation of Statutes is that such a construction should be given as will render the legislation efficacious, and not idle. If any construction would render it nugatory it is *primâ facie* to be rejected. I will first refer to the case of *The Stockton and Darlington Railway Co.* v. *Brown*, 9 H.L. C., 246. That was a case in which a railway company had exercised certain statutory powers. Where statutory powers of this sort, involving the entering upon private property, and the diminution of private rights, are conferred, a

stricter rule is applied in the case of a private company carrying on business for its own profit than in the case of public bodies which are taking action in the public interest. Another distinction is made, depending on whether, as in the Statute now under consideration, compensation is given. In that case Lord *Cranworth* (at p. 256), said:—"Some general propositions admit of no doubt. In the first place, I think it clear that when the legislature authorizes railway directors to take, for the purposes of their undertaking, any lands specially described in their Act, it constitutes them the sole judges as to whether they will or will not take those lands; provided only that they take them *bonâ fide* with the object of using them for the purposes authorized by the legislature, and not for any sinister or collateral purpose. This is the construction to be put on all such legislative powers, whether the language of the Act is that the company may take so much of the lands as is necessary for the undertaking, or so much as is required, or is expedient to be taken, or simply (as in this case) that the company may take lands for the purposes of the undertaking. In such cases the legislature, having provided what it considers sufficient means of securing adequate compensation to the owners of the land, leaves it to those interested in the undertaking to say to what extent it will be useful to them to exercise their statutable powers." That case was decided in 1860. The Statute under consideration in the case of *Hargreaves* v. *Taylor*, 3 B. & S., 613, decided by the Court of Queen's Bench in 1863, had provided that when a drain was in bad order the Local Board of Health might give notice to the owner or occupier of the premises, requiring him to do the necessary work, and, if the notice was not complied with, the person upon whom the notice was served was liable to a penalty. It was held that the discretion to determine what work was necessary was vested in the Board. The case was argued before Lord Chief Justice *Cockburn*, and *Wightman*, *Blackburn* and *Mellor*, JJ. It is true that the argument was only on one side, but in giving judgment Mr. Justice *Mellor*, at p. 619, said: "Under such circumstances it seems more reasonable to hold that the discretion as to the nature and extent of the works required to be done is vested in the Local Board rather than in the justices

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at Petty Sessions, and we are therefore of opinion that the justices were wrong in assuming a jurisdiction to review the determination of the Board of Health as to this matter." It was there held that under a statute so worded the Local Board were the judges of what was necessary. *Vernon* v. *The Vestry of St. James, Westminster*, 50 L.J. (Ch.), 81, was an action against the respondents, who were a local authority, for carrying out a certain work which was found on the evidence to be a nuisance. The work was one of a class which they were authorized to do, but the learned Vice-Chancellor (*Malins*) had granted an injunction restraining them from carrying it out on the ground that from its situation it would be a nuisance. The Vice-Chancellor, as reported in 49 L.J. (Ch.) 130, at p. 135, said, "Now, if the question between the parties was merely whether one situation or another (in the mews) was more fit for the purpose, I should clearly be of opinion that that was a question to be decided by the Vestry only; they being authorized by the Act to place these conveniences in situations where they deem them to be necessary." He then referred to some decided cases and went on to say (p. 136), "If the question before me simply were, whether one place in the mews were better than another, I should be able to decide—in conformity with the Act of Parliament and these decisions—that the vestry are the sole judges as to what the situation should be. But vestries, like other public bodies, are liable to be controlled by this Court if they proceed to exercise their powers in an unreasonable manner; whether induced to do so from improper motives or from error of judgment." He then referred to the case of *Biddulph* v. *St. George's Vestry*, before the Court of Appeal, and quoted from the judgment of Lord Justice *Turner*, as follows:—"I am far from thinking that this Court has not power to interfere with public bodies in the exercise of powers which are conferred upon them by Act of Parliament. I take it that it would be within the power and the duty of this Court so to interfere in cases where there is not a *bonâ fide* exercise of the powers given by Parliament. On the evidence I can see nothing to warrant the Court in imputing to the defendants the exercise of their powers otherwise than *bonâ fide*." That case (which was affirmed by the Court of Appeal on the question of nuisance) suggests both the true

construction and the implied qualification. *Ex parte Saunders*, 11 Q.B.D., 191, is substantially the same as *Hargreaves* v. *Taylor* (*supra*). The question in *Stroud* v. *Wandsworth District Board*, (1894), 1 Q.B., 64, and on appeal (1894) 2 Q.B., 1, arose upon a Statute under which the local authority was empowered to execute any necessary works of repair. The question was whether the Board were the ultimate judges of what was necessary, or whether their judgment could be reviewed by any other tribunal. In that case the Court of Appeal affirmed the decision of the Court of first instance, and held that the Local Board were the final judges. Lord Justice *Lindley* (p. 4), said:—"Now, the question is, who is to be the judge of the necessity for these 'works of repair?' The answer is to be found by considering the object and purpose of this section. It is, in substance, an addition to a group of sections relating to the paving of streets. Under the earlier Acts there was power to pave streets, but not for doing works of repair before doing paving and other works referred to in those Acts. This section is put in to supplement the defect. In the Acts 18 & 19 Vict. c. 120, s. 105, and 25 & 26 Vict. c. 102, s. 77, it is clear enough that the judges of the necessity of paving are to be the local authority. In this Act it is not stated in so many words who are to be the judges of the necessity of works of repair; but, in my opinion, the true construction is that the persons who are to be the judges of the necessity of doing these works are to be the same as those who are to be the judges of the necessity of doing the works under the former Acts." He then referred to the case of *Reg.* v. *Marsham*, (1892) 1 Q.B., 371, and said (p. 6): "The question still remains, In whose judgment? And my answer is, in the judgment of the local authority; but, in order to recover the expenses of the repairs, they must show that the money has been expended in such repairs. . . . Any other construction of this Act of Parliament would lead to the wildest confusion." Lord Justice *Kay*, on the same point, said (p. 8): "Then there remains the question, What did the legislature mean by the word 'necessary'? It must be necessary in the judgment of someone. Was it, or was it not, necessary in the judgment of the Board who did the work? *Primâ facie*, one would think that a public body like a Local Board who had authority vested in them to repair

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highways which they have not yet determined to pave must have some discretion vested in them. The case of *Reg.* v. *Marsham* clearly shows that the judges in that case considered that a certain amount of discretion was vested in the Board; and I think that this word 'necessary,' though it is used in the Act of Parliament without additional words such as 'which they shall think necessary', or, 'which shall appear necessary,' may yet be fairly construed to mean 'necessary' in the opinion of the Local Board who have to take on themselves to do the work, pay for it in the first instance, then apportion the expenses among the householders, and then recover the apportionments from them." There is only one other case to which I need refer, *Lewis* v. *Weston-Super-Mare Local Board*, 40 Ch. D., 55. I refer to it for the remarks of Mr. Justice *Stirling* (at p. 61), who said: "Now, as to the first point, it was not contended that the word 'necessary' in the 16th section was to be read as equivalent to 'physically impossible to do otherwise.' What was urged upon me was that the route chosen by the defendants must, according to that section, 'appear necessary' to the tribunal which is to determine the question if raised; that is, I suppose, to the Court of first instance in the first place, and to the Court of Appeal if the decision of the Court of first instance be not acquiesced in, and finally the House of Lords, if that tribunal should be resorted to. Now there are few engineering questions on which it is not found that engineers of the greatest eminence take different views; and if the true construction of the enactment be that contended for by the plaintiff it appears to me to follow that no local authority can act upon a report of the kind in question without the risk of a protracted litigation, the result of which would depend on the view taken by the Court, whose decision was ultimately invoked, of the conflicting evidence of experts. In my opinion the enactment is not to be so construed. Although, apparently, the question now arises for the first time upon this particular Act, analogous questions have often been previously raised on similar enactments in other Acts of Parliament, and it is important to see how such enactments have been dealt with by the Court," and, again, at p. 67: "In such a case it seems to me that 'necessary' may well mean necessary for the efficient discharge of the duties in the way which is most for

the benefit of the public." The question in that case was as to the proper route for carrying a water main, very much like the present case, where it is a question of the proper route for carrying a drain. It was urged in that case that the words "appear necessary" should be construed as meaning "appear necessary to the tribunal before which the question is raised," but it was held that they should not be so construed. In my opinion, the Act now under consideration cannot be so construed. I think with Lord Justice *Lindley*, that such a construction "would lead to the wildest confusion," and the practical result would be that the section would become inoperative. This Act was passed in 1898. Now, it is usual to credit the legislature with a knowledge of the existing law on the subject dealt with, and when we find that such a meaning has been constantly attributed to the word "necessary" in other Acts dealing with similar matters, they may have reasonably expected that the word would in this Act be construed as having the same meaning. Against that construction no authorities have been cited. It has been suggested that the use, in the same sec. 158, of the words "such drains or sewers as may, in the opinion of the Board, be necessary," making the opinion of the Board an express test in the same section in which the word necessary is used without any reference to the opinion of the Board, shows that a more limited construction should be given to the word standing alone. That is, no doubt, an argument entitled to consideration; but, if that construction is adopted, the section will become nugatory, and "will lead to the wildest confusion." The question to be determined in this case is whether a drain on a particular piece of land is necessary to the proper drainage of an adjoining piece. Now, when the local authority is called upon to exercise its statutory powers, it is bound to consider the interests of the whole body of the ratepayers, as well as of the individuals concerned. They have to consider what is proper drainage. There may be various methods of drainage, and one may be better in the abstract than another; but in the particular circumstances it may be impossible. Local authorities are bound to consider practicability in the matter of expenditure as well as in the way of engineering facilities. It might be that an admirable system

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of drainage might be constructed at a cost of one million pounds, but it might be absolutely necessary for them to do the best they could with £50,000. In this case it was the duty of the Local Board to take all the circumstances into consideration, and if they arrived at their conclusions honestly and *bonâ fide*, no other tribunal can interfere. There is no suggestion of any want of *bonâ fides*. For these reasons I am of opinion that the judgment of the learned Commissioner was right, and that the judgment of the Full Court should be reversed.

BARTON, J. I entirely agree with what my learned brother has said.

O'CONNOR, J. I am of the same opinion.

Appeal allowed. The respondent to pay costs in the Court below and the costs of the appeal.

Solicitors, for the appellant, *Northmore, Lukin and Hale.*
Solicitor, for the respondent, *Ewing.*

END OF VOL. I.