THE PRESIDENT &c. OF THE SHIRE OF ARAPILES . . . . . } APPELLANTS;
PLAINTIFFS,

AND

THE BOARD OF LAND AND WORKS . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

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MELBOURNE, *Nov.* 2, 3, 4.

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

Vermin Destruction Act 1890 (*No.* 1153), *secs.* 3, 4, 7, 15, 46, 49, 55, 61, 62—*Supply of material for vermin proof fencing by Municipality to lessee of Crown land—Determination of lease—Liability of Board of Land and Works for payment of instalments—Interest.*

The effect of the provision in sec. 3 of the *Vermin Destruction Act* 1890 that the word "owner" shall include any person holding any land under lease or licence from the Crown, or any person deriving title from, under, or through such person, and that, save as to land so held, or as thereinafter provided, the Board of Land and Works shall be deemed to be the owner of all Crown land, is that the word "owner" as used in Part II. of the Act, means, in respect of all Crown land not for the time being falling within the first part of the definition, or within the exception, the Board of Land and Works.

Held, therefore, that wire netting having been supplied to a Crown lessee pursuant to Part II. of the Act, and the lease having subsequently been determined by the Crown, the Board of Land and Works was, under sec. 55, liable for the unpaid instalments which became due before the determination of the lease, and also for those which became due subsequently.

Held, further, that the Board was, under sec. 55, liable for interest on those instalments which became due subsequently to the determination of the lease, but not on those which became due before such determination.

Decision of Supreme Court (26 A.L.T., 76), reversed.

APPEAL from the Supreme Court of Victoria.

A. and J. McPhee were, prior to March, 1890, the lessees from Crown under the *Mallee Pastoral Leases Act* 1883 (Part II. of the *Land Act* 1890), of a Mallee allotment within the Shire of Arapiles. They joined in a petition to the council of that shire, under sec. 50 of the *Vermin Destruction Act* 1889 (sec. 49 of the *Vermin Destruction Act* 1890), to obtain a loan from the Governor-in-

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Council for the purpose of purchasing wire netting. The loan was granted and was duly expended by the council, and, in March, 1890, the council supplied to A. and J. McPhee three miles of wire netting valued at £95 4s. 7d. with which they constructed rabbit proof fences on their allotment. They, however, never paid any of the instalments due to the council in respect of the wire netting. On the 14th December, 1894, the lease of the allotment was determined by the Crown for breach of conditions and covenants thereof. Thereafter the land was not at any time held by any person under lease or licence from the Crown, nor by any person deriving title from or through any lessee or licensee from the Crown

The President, &c., of the Shire brought this action against the Board of Land and Works to recover £147 5s., being ten yearly instalments in respect of the wire netting supplied to A. and J. McPhee, and interest thereon at 8 per cent.

A special case was stated by consent of the parties setting out the foregoing facts and asking the following question:—"Is the defendant liable under Part II. of the *Vermin Destruction Act* 1890 for all or any and which or what part of the said instalments and interest?"

The Full Court (*Madden*, C.J., and *Hodges* and *Hood*, JJ.), answered the question in the negative and gave judgment for the defendant with costs (26 A.L.T., 76).

From this judgment the plaintiffs obtained special leave to appeal to the High Court.

Irvine and *Dethridge*, for the appellants. The *Vermin Destruction Act* 1890 is one of a series of Acts passed for the destruction of rabbits and other vermin, and a consideration of the whole series shows that the intention was that, in order to effect that object, the Board of Land and Works should for every purpose connected with the destruction of vermin, take the place of the owner as to land which had either never been alienated from the Crown, or which, having been alienated, had reverted to its hands. See *Rabbit Suppression Act* 1880 (No. 683); *Mallee Pastoral Leases Act* 1883 (No. 766); *Rabbit Suppression Act Amendment Act* 1884 (No. 813); *Vermin Destruction Act* 1889

(No. 1028). If the decision of the Supreme Court is right, one result will be that the Board would get the land with the fencing upon it, and might sell the fencing, while the council would have to repay the loan. Certainly the council has, by sec. 55, a charge on the land, but if that decision is correct, the charge does not extend beyond the interest of the lessees and those claiming through them. Another result would be this:—By sec. 147 of the *Land Act* 1890, all leases of Mallee lands expire not later than the end of 1903, and although by the *Vermin Proof Fences Advances Act* 1896 (No. 1434), the council has to pay 3 per cent. interest on loans granted by the Governor in Council, and the Government may deduct the amount of the instalments and the interest thereon from any moneys coming to the municipality, the council would lose its charge on the land at the end of 1903, and could not recover the loan from the Board of Land and Works. The object of sec. 55 of the *Vermin Destruction Act* 1890, was to give the council a charge over land no matter in whose hands it might be. The parties could come to the Court and work out the charge on equitable principles. There is nothing in Part II. of the *Vermin Destruction Act* 1890 which is inconsistent with the Board of Land and Works being deemed to be the owner. The whole scheme of the fencing provisions of the Act contemplates dealing with areas which would probably include land which had not been alienated from the Crown, or which, having been alienated, had reverted to the Crown. That scheme would be defeated if it could be said that a special area could not be created which contained some Crown land.

Bryant and *Levinson*, for the respondents. While the Board of Land and Works may be bound to some extent by Part I. of the *Vermin Destruction Act* 1890, it is not bound by Part II. No reliance can be placed on previous Acts, because they have been repealed. The interpretation of "owner" as including the Board is only applicable to sec. 15. The Board is substantially the Crown, and it would be absurd to suppose that the Crown should pay interest on money borrowed from the Crown. Sec. 62 relieves the council in case some of the instalments are not repaid. This Act should be interpreted in the light of the *Fences Act* 1890,

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which does not apply to the Crown. If the decision of the Supreme Court is wrong, then the words "save . . . as hereinafter provided" in the definition of "owner" in sec. 3 are surplusage. There is nothing in the Act to which those words could apply. It is improbable that the Legislature would have enabled the Board of Land and Works to petition the council for a loan from the Government.

[They referred to *Hardcastle on Statutes* (3rd ed.), p. 222, citing *R.* v. *Cambridgeshire*, 7 A. & E., 480; *The King* v. *Cheyne*, (1900) A.C., 622; *Treganowan* v. *Shire of Minhamite*, 29 V.L.R., 690; 25 A.L.T., 208; *Shire of Dimboola* v. *Yarrick*, 28 V.L.R., 210; 24 A.L.T., 39; *In re 4th South Melbourne Building Society*, 9 V.L.R. (Eq.), 54; *Allsopp* v. *Day*, 7 H. & N., 457, at p. 463.]

Irvine in reply. Sec. 4 satisfies the words "save . . . as hereinafter provided." There are many cases under different Acts where Crown lands are permanently or temporarily vested in or occupied or managed by a municipality, a council, commissioners, a board, or trustees. These bodies are to be deemed to be the owners of such Crown lands and not the Board of Land and Works. It was held by *Hood*, J., in *Shire of Mansfield* v. *Crockett*, 23 V.L.R., 394, that an owner was liable for instalments due before he became owner. But it seems that the interest being penal should be charged only against the person making default.

[GRIFFITH, C.J.—The language of the Act as to interest being a charge on the land is the same as that as to unpaid instalments. The Full Court in *Shire of Dimboola* v. *Yarrick* (*supra*), held that interest is not a charge on the land. The same reasoning would lead to the conclusion that the interest is only payable by the person in default.]

The amount of the instalments is a statutory debt, and is not affected by the *Statute of Limitations*. *Cork and Bandon Ry. Co.* v. *Goode*, 22 L.J.C.P., 198.

GRIFFITH, C.J. In this case the Court is called upon to construe sec. 55 of the *Vermin Destruction Act* 1890. The plaintiffs are a shire council and the defendants are the Board of

Land and Works, which is a statutory corporation incorporated under the laws of Victoria for various purposes of administration. It is empowered to hold lands, to make contracts, to resume lands for different purposes, and to do a number of other acts; and it is apparently constituted for the purpose of enabling rights and liabilities to be enforced as against the Crown in the same way as against ordinary individuals in the cases for which it is constituted. That must be borne in mind as the foundation of the whole question of its liability which is raised in this case.

The *Vermin Destruction Act* 1890 is the last Act of several, passed principally for the purpose of suppressing the plague of rabbits—I use the word, "suppress," because it is used in the Act itself. Various schemes were devised for suppressing that plague, the first being that in an Act passed in 1880. In all of these Acts the Board of Land and Works had been brought in to represent Crown lands upon which the plague was to be suppressed. In each of them were contained provisions of a varying nature, by which the Board was to have certain prescribed liabilities imposed upon it as between itself and other citizens, so that the Government, representing the people of the State in the aggregate, might bear its share of the expense to be incurred in suppressing the plague, instead of all that expense being cast upon the owners or lessees of land alienated from the Crown. The Act of 1890 is divided into two parts—the first described as "General Provisions," and the second as "Special Fencing Provisions." Amongst the general provisions of the first part are two interpretation sections. After those sections, and one or two conferring general authorities, are contained a series of provisions for the purpose of the suppression and destruction of what are called "vermin." That term includes "rabbits, foxes, wallabies, dingoes and dogs run wild or at large, and shall also include any kind of animal or bird which the Governor in Council may by proclamation in the *Government Gazette* declare to be vermin for the purposes of this Act." But the leading provision of the first part of the Act—which is itself a re-enactment of a former enactment—is sec. 7, which provides that "it shall be the duty of every occupier and of every owner of land including every occupier and every owner of mallee land from time to time to suppress and destroy all vermin from time

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to time on any land so occupied or owned by him, or on the adjacent half-width of all roads bounding or adjoining the same or any part thereof, and for such purpose to do all necessary or proper acts or things." Then follow provisions authorizing, amongst other things, the appointment of officers, a chief inspector and other inspectors, who are, of course, officers of the Government, and we are told that, in practice, they are subject to the Minister of Crown Lands, who is also president of the Board of Land and Works. Provisions are made by which an inspector may call upon the owner or occupier of land to destroy vermin thereon. If the owner or occupier fails to do so, the inspector may enter upon his land and destroy the vermin thereon, and, further, may recover any expenses of so doing from the owner or occupier.

Part II. of the Act introduces a new scheme. The idea of that scheme is that there may be special areas of land within the State in which steps should be taken for the suppression of vermin by means of rabbit proof or vermin proof fences. The provisions prescribed by sec. 46 are described as being made for the benefit of the special areas. The scheme is, shortly, this:— The majority in number of the owners of land in a special area owning more than half of the land in such area, may petition the local authority, that is, the shire council, to take advantage of that part of the Act. Certain directions are given as to what the petition is to set out. If the council agrees that the petition should be granted, it may apply to the Governor in Council for a loan, out of moneys appropriated for the purpose, to enable the municipal council to obtain material for constructing rabbit proof or vermin proof fences, and to supply such materials to the owners of land within the special area. If the Minister recommends the loan, the Governor in Council may grant the loan to the municipal council. The order in council granting the loan is, amongst other things, to determine the proportion of the loan that each owner of land within the special area shall pay to the council. The council, having obtained the loan, is to apply the money in the purchase of materials, and to supply to each of the owners within the special area materials according to the proportion of the loan which, as set out in the order in council, each is to bear. Then it

is provided by sec. 55 that the value of the materials supplied by the municipal council to each owner is to be a debt due to that council by the owner, and that one-tenth part is to be repayable in the month of February in each year, and that, in default of payment at the due date of a yearly payment, it shall bear interest at the rate of 8 per cent. per annum from the date appointed for its payment. Then comes the provision upon which the question now arises, viz., "If default is made in respect of any yearly payment the amount of such payment may be enforced at any time by the municipality in a summary way, or by action in any Court of competent jurisdiction from the owner for the time being of such land or any part thereof."

Now in this case the plaintiffs are a shire council. The special case sets out that a loan had been obtained by them under the provisions of this Act, that a certain portion of that loan had been applied in the purchase of fencing materials, which were supplied to persons named McPhee, who were then the Crown lessees of land within a special area, and that those persons made default in the whole of the ten yearly instalments. The plaintiffs claim that, the lease having been forfeited, the defendants, the Board of Land and Works, became the owner for the time being of the land, and that the plaintiffs are, therefore, entitled under the provisions I have just read, to bring an action against the Board for the whole of the ten instalments. The plaintiffs also claim interest.

In order to discover whether the Board is the "owner," it is necessary to refer to the words of the interpretation section, sec. 3 of the Act. That section provides:—"In this Act unless inconsistent with the subject-matter or context, . . .:—'Owner' shall include any person holding any land under lease or licence from the Crown or any person deriving title from under or through such person, and, save as to land so held or as hereinafter provided, the Board of Land and Works shall be deemed the owner of all Crown lands." In the present case the land having been held by the McPhees under a lease from the Crown, which was declared to be forfeited in December, 1894, the land clearly became Crown land, and, under the *primâ facie* meaning of the words of the interpretation clause, the Board of Land and Works are to be deemed the owner of that land. It is contended, however,

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that that meaning of "owner" must be rejected. If that meaning is given, then *cadit quaestio*. But it is said we cannot accept that construction. I confess that I have not been able to find much difficulty in construing sec. 55, if the broad rules of interpretation are considered and adhered to. I will refer to the rule as stated by *Tindal*, C.J., in *The Sussex Peerage Case*, 11 Cl. & F., 85, at p. 143, as follows:—"My Lords, 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 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 case, 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 mean of collecting the intention, to call in aid the ground and cause of making the Statute, and to have recourse to the preamble." I will read, also, the language of *Willes*, J., in *Christopherson* v. *Lotinga*, 33 L.J.C.P., 121, at p. 123. He refers to "the general rule for the construction of a Statute which is stated by Lord *Wensleydale* in *Becke* v. *Smith*, 2 M. & W., 195, in these terms, viz., 'to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature to be collected from the Statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified so as to avoid such inconvenience, but no further.' I certainly subscribe to every word of that rule, except the word 'absurdity,' unless that be considered as used there in the same sense as 'repugnance,' that is to say, something which would be so absurd with reference to the other words of the Statute as to amount to a repugnance."

Bearing in mind those rules, let us see what is the plain meaning of sec. 55. According to sec. 3 the word "owner" is to "include" certain persons. If a person is an owner in the ordinary sense he is an owner and no more need be said about it. "Owner" then is to include "any person holding any land under lease or licence from the Crown, or any person deriving title from, under, or through such person." Then it goes on—"Save as to land so held or as

hereinafter provided the Board of Land and Works shall be deemed the owner of all Crown lands." The lands in question here are not "lands so held," so that unless the respondent can bring the case within the other part of the exception, the Board is to be deemed to be the owner, unless there is something else in the Act which makes that meaning absurd. The term "absurd," when used in reference to the interpretation of an Act of Parliament, is not used in the sense that the legislature has, in passing the Act, done something which, in the opinion of some persons is absurd, but as indicating that the construction sought to be put upon the Act leads to a manifest absurdity upon the face of it. The Court is not called upon to say whether the legislation is wise or foolish, or whether the individual members of the Court would have voted in favour of it, or whether the difficulties in carrying the Act into operation are likely to render it futile. It is the Court's duty to interpret the language of the legislature, and, no matter how unreasonable the legislation appears to be, it is not the function of the Court to express an opinion on the point. I am very far from expressing any opinion that this legislation is absurd or unreasonable. Indeed, any argument upon that question seems to point in the opposite direction.

I come then to deal with the words "save . . . . as hereinafter provided," &c. Those words indicate that there is to be found in the Act some express exception to the general rule that the Board of Land and Works is to be deemed to be the owner of all Crown Lands. We naturally look to see whether there is any such express exception, and in sec. 4 we find it. That section provides that "Any lands permanently or temporarily vested in or (as the case may be) occupied or managed by any municipality council commissioners board or trustees whatsoever shall for all the purposes of this Act be deemed to be owned by such municipality council commissioners board or trustees respectively, and for the purposes of this Act such municipality council commissioners board or trustees (as the case may be) shall be deemed to be the owners of all lands so vested in or occupied or managed by them." Now we know that there are in Victoria considerable areas of Crown lands which, under various Acts, are managed by trustees or boards. It is unnecessary to refer to all the particular

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instances, but commons may be taken as an example. They are Crown lands, and but for this exception the Board of Land and Works would be deemed to be owners of them. This exception in sec. 3 says that save as hereinafter provided the Board of Land and Works is to deemed to be the owner of all Crown land, and then the next section goes on to provide that as to Crown lands vested in certain bodies those bodies are to be deemed to be the owners for the purposes of the Act. That exception being found there, we come to this, that the general rule is that the Board of Land and Works is to be deemed the owner of all Crown lands wherever the word owner is mentioned elsewhere throughout the Act, unless there is something in the context inconsistent with such a meaning. An argument was addressed to us that, the definition clause being in Part I. of the Act, it must be read as applying only to Part I. If that were so, the word "vermin" would have no definite meaning in Part II. Moreover, sec. 46 expressly incorporates the definition of "owner" contained in sec. 3. It provides that "In this Part of this Act . . . . 'property' or 'properties' shall mean the land of any 'owner'." That is a plain reference to "owner" as defined in Part I. of the Act.

So far the case seems to be quite plain. Where then does the difficulty arise? The learned Judges of the Supreme Court, so far as I can follow the report, laid down that the interpretation clause should be construed as meaning that the Board is to be deemed the owner as representing the Crown of all land which has never been alienated from the Crown, but not of land which had been leased, and had reverted to the Crown. The learned *Chief Justice* is reported as saying that the Board is placed in antithesis to the owner, and is to be deemed owner as owner paramount, the other classes of owners being persons to whom the Crown has alienated land or who claim through some alienee from the Crown; and, further, that "the liability for the repayment, *i.e.*, to the shire, attached either to the person who was alienee from the Crown or to some person claiming from or through that alienee. The Board never claimed, and could not claim, through any alienee. It could only hold waste land of the Crown never alienated. That is a broad principle and intelligible."

But I look in vain in the Act to find such a limitation. The words are that the Board of Land and Works is to be deemed the owner of all Crown land, with specified exceptions, and I am unaware of any authority which would justify us in adopting any such interpretation.

Another argument was used. It was admitted that some meaning must be given to the definition of the word owner, and it was said that a meaning could be given to it by taking it as applying to sec. 15. Part I. of the Act provides that notice may be given by an inspector to owners to destroy vermin on their land, and that if the owners do not destroy the vermin they may be summoned and fined. Sec. 15 is a proviso that if the owner is the Board of Land and Works notice to destroy vermin may be given by "any owner or occupier of other land situated within one mile of such land of the said Board." The object of such a proviso seems obvious. The inspector is an officer of the Government under the control of the Minister who is also president of the Board of Land and Works, and it would be a somewhat invidious duty for an inferior officer to give notice to his superior officer to destroy vermin on the land under his control. Another provision is therefore made for enforcing the obligation of the Board to destroy vermin on Crown lands, so that the obligation may be operative instead of inoperative. In that section the Board of Land and Works is spoken of as the owner and occupier, but I try in vain to understand why, because the word "owner" necessarily means the Board of Land and Works in that case, it should not mean the Board in any other cases. There is a hiatus which I have been totally unable to fill up in that argument. I take it that the meaning of sec. 3 is that the word "owner" is to be deemed to mean the Board of Land and Works in every case where it is used unless the context is repugnant to such a meaning.

As to the other objections, it is necessary to refer to Part II. of the Act. The loan obtained by the municipal council is to be expended in the purchase of materials for vermin proof fences, which is to be apportioned between the different owners of land within the special area, and the loan is to be proportionately repayable by such owners to the municipal council. This part of

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the Act applies to, amongst other lands, what are called mallee lands. At the time this Act was passed all these mallee lands were held under short leases, which were liable to forfeiture for non-payment of rent, and it was then extremely probable that many of the leases would be forfeited. The council, when it borrowed money, incurred the obligation to repay it, and became the creditor of the owners of land for the value of the fencing materials supplied, and also for interest at the rate of 8 per cent. on any payment by such owners as to which default might be be made. Crown land under lease at the time such a loan was granted might be protected by means of wire netting purchased out of the loan. That land might afterwards fall into the hands of the Crown by reason of forfeiture of the lease. If the Crown incurred no obligation to the council, and if the council obtained no remission of the loan, the result would be that, as to any land on which wire netting had been so erected, and which afterwards fell into the hands of the Crown, the whole burden of supplying that wire netting would fall upon the council, that is, upon the ratepayers, and the Crown, which got the benefit of the expenditure of the money, would bear no burden at all. That would be a somewhat singular result, and one that one would not expect to be intended by the legislature. A great deal was said as to the improbability of the government, through its agent, the Board of Land and Works, joining in a petition to a municipality to obtain a loan from the government. I agree that it would be very improbable that such a thing would be done. There would, ordinarily, be no necessity for it. But if the Board of Land and Works was the owner of a small piece of land adjoining land belonging to private owners, and it was desirable to enclose the whole by one ring fence, I can see no absurdity in the Board joining with the other owners in applying for a loan from the government in order to construct that fence. But the fact that a power alleged to be given by a Statute may be used unwisely is no reason for denying the existence of that power. If that were the only way the power could be used, it might be a reason for suggesting that the proposed meaning of the Act was not the true one. Further, the fact that some of the powers are not likely to be used by the body to which it is sought to attach them, is no reason for saying

that the Statute shall not apply to cases which fall within its express provisions.

In this case the municipal council has borrowed money from the Government and if there is any default in repayment, the Government may deduct it out of funds coming to the municipality. That money has been expended partly for the benefit of lands which for the last ten years have been Crown lands, but none of the instalments due have been paid to the municipal council. The Board of Land and Works now asks to be relieved from the liability of repaying the moneys which have been expended for the sole benefit of the Government. There is nothing unreasonable in saying that the Government should bear that liability. The device provided by the literal language of the Act gives full effect to the enforcement of the liability. The money has been advanced for the common benefit of the land within the special area, and the burden of its repayment is attached to the owners for the time being of that land. The Board is constituted for the purpose of the Government being put in the ordinary position of owners of property, and unless that liability is cast upon the Board, the result would be that the burden of improving Crown lands would be cast upon the municipality, that is to say, upon the owners of neighbouring lands.

If there were any doubt on the matter, reference might be made to previous legislation on the same subject, and, when that reference is made, we find that in every case the Crown bore its share of the common burden, and that the Board of Land and Works is the means through which that liability might be enforced.

Sec. 55 provides, after the words I have already referred to, that "The amount of every such yearly payment as it becomes due shall be, and until paid shall remain, a first charge upon such land." It was contended that it would be absurd to suppose that Crown lands should be charged with the payment of the debt. I cannot see anything absurd in supposing that a charge should be created over Crown lands in respect of money expended by a subject for the benefit of the Crown. There may, no doubt, be difficulties in enforcing that charge. That argument, however, has no weight at all.

For these reasons it seems to me that there is no alternative by

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which we may escape from holding that the plain language of the Act must have its natural meaning. The Board is the owner for the time being, and it is liable. The practical result is only to reduce the amount repayable by the council to the Government.

A subsidiary question has been raised as to how much the plaintiff is entitled to recover. The persons who were owners when the wire netting was distributed apparently failed to pay any of the instalments. The first was payable in 1891, and the first four instalments had become payable before the lease was forfeited.

It will be observed that a distinction is drawn in the section between the yearly payments and the interest. The yearly payment is described as being "payable by the owner of such land for the time being to the municipality until the whole debt is paid," and it is provided that "if default is made in respect of such yearly payment the amount of such payment may be enforced at any time by the municipality . . . . from the owner for the time being of such land or any part thereof." But the interest is to be "deemed a further debt due to the municipality by the owner by whom such yearly payment is due." The learned Judges of the Supreme Court held in *Shire of Dimboola* v. *Yarrick* (*supra*) that the interest on the unpaid instalments is not a charge upon the land. I see no reason to disagree with that view. The same reasons lead, as a matter of construction, to the conclusion that the unpaid interest is not a debt payable by the owner of the land for the time being, but is only payable by the person who is owner at the time when the particular yearly payments upon which the interest is charged, become due. In the case of the first four yearly payments, the Messrs. McPhee were then the owners, and from them alone and not from the Board the interest is recoverable. For the rest there is nothing to exempt the Board from the obligation to pay all the yearly instalments and interest on each of them except the first four. It is said to be absurd that the Crown should pay interest on a loan which is repayable to itself. We, however, find the provision in the Act, and, after all, it is merely a provision by which the municipality escapes from the obligation to repay money expended for the benefit of the Crown. In my opinion the

appeal should be allowed, and judgment should be given for the appellants for the amount of the ten yearly instalments, and for interest on those which became due after the Board became the owner of the land.

BARTON, J. I am of the same opinion, and I see no necessity to add anything.

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

Appeal allowed with costs. Judgment for appellants for £118 1s. 10d., with costs.

Solicitors for appellants, *Gibbs & Heales*, Melbourne, for *J. W. Power*, Horsham.

Solicitors for respondent, *Guinness*, State Crown Solicitor.

[HIGH COURT OF AUSTRALIA.]

J. M. CHRISTIE . . . . . APPELLANT;
INFORMANT,

AND

PERMEWAN, WRIGHT & CO. LTD. . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM A COURT OF PETTY SESSIONS OF VICTORIA.

Customs Act (*No.* 6 *of* 1901), *secs.* 4, 245, 248, 251—*Customs Prosecution—Procedure in Court of Summary Jurisdiction—Institution of prosecution in name of "Collector"—Justices Act* 1890 (*Victoria*) (*No.* 1105), *secs.* 18, 19.

A customs prosecution for a pecuniary penalty not exceeding £500 must be instituted in the name of the collector for the State.

In a customs prosecution in a Court of Petty Sessions in Victoria the information may be laid by a duly authorized agent of the Collector for Victoria, but must state that the information is in the name and on behalf of such Collector.

APPEAL, by way of order *nisi* to review, from a decision of a Court of Petty Sessions.