Under such circumstances it would be very dangerous for this Court to reverse the finding of two Courts on a pure question of fact.

BARTON J. I am of the same opinion. I think that it is totally unnecessary to add anything to the conclusive reasons given by *Cohen* J. in the Court below.

O'CONNOR J. I am of the same opinion, and have nothing to add.

Bradburn, for the appellant, asked for costs.

GRIFFITH C.J. I have never heard of an order for costs against a successful respondent. I doubt very much whether we have power to make such an order.

Appeal dismissed.

Proctor for the appellant, *S. Bloomfield.*

C. A. W.

Var Attorney-General (Qld) v Brisbane City Council (1909) 8 CLR 767

[HIGH COURT OF AUSTRALIA.]

THE COUNCIL OF THE CITY OF BRISBANE Appellants; Defendants,

AND

HIS MAJESTY'S ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND (at the Relation of JAMES THOMAS ISLES, a Ratepayer of the City of Brisbane) . . Respondent. Plaintiff,

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

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MELBOURNE, *Feb.* 26, 27, 28; *March* 23.

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

Local Authorities Act 1902 (*Qd.*) (1902, *No.* 19), *secs.* 191, 192, 209, 210, 261-265—*Local Authority whose area is divided into Divisions—Expenditure on works in one Division—Accounts—Declaration and Injunction.*

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Sec. 265 of the *Local Authorities Act* 1902 (Qd.), which requires a separate and distinct account to be kept of all moneys received in respect of General Rates levied upon the rateable land in each of the several Divisions of the area of a Local Authority and of any moneys received by way of endowment in respect of such rates, does not cut down the absolute discretion of the Local Authority as to expenditure from the Local Fund given in express terms by sec. 192.

So *held* by the Court, *Isaacs* J. dissenting.

The account so required to be kept should not be debited with a proportional part of the expenditure of the Local Authority for purposes other than works within the limits of the particular Division.

Decision of the Supreme Court : *Attorney-General, at the relation of Isles* v. *Council of the City of Brisbane*, 1907 St. R. Qd., 1, reversed.

APPEAL from the Supreme Court of Queensland.

An action was brought in the Supreme Court by the Attorney-General for Queensland, at the relation of James Thomas Isles a ratepayer of the City of Brisbane, against the Council of the City of Brisbane, in which the statement of claim was as follows :—

1. The plaintiff is the Attorney-General for the State of Queensland. The relator J. T. Isles is a ratepayer of the West Ward of the City of Brisbane and the President of the Central Ratepayers Association of Brisbane an association of upwards of one hundred ratepayers of the East and West Wards of the said City and as such President represents the ratepayers who are members of the said Association.

2. The defendants are the Council of the City of Brisbane a duly constituted Local Authority whose area is divided into seven divisions known respectively as East Ward, West Ward, North Ward, Valley Ward, Kangaroo Point Ward, Merthyr Ward, and Cintra Ward.

3. The defendants have in every year since 31st December 1902 made and levied general rates equally upon all the rateable lands within their area and have received large sums of money in respect of such general rates.

4. The defendants have in each year since 31st December 1902 made and levied a cleansing rate upon all lands in actual occupation within their area and have received moneys in respect of such cleansing rates but have not accounted for the same.

5. The defendants have not since 31st March 1903 by resolution passed at a meeting specially summoned for that purpose nor at all declared any work within their area to be a "general work" within the meaning of sec. 265 of the *Local Authorities Act* 1902 nor by any such resolution nor at all directed that the cost of the construction or maintenance of any work in their area should be defrayed out of the general revenues and should not be debited to the separate account of any division or ward.

6. The defendants have not expended the moneys received by them since 31st March 1903 in respect of general rates levied upon the rateable lands in the several divisions or wards of their area respectively upon works within the respective limits of the said several divisions or wards and have not kept separate accounts of the said several divisions or wards respectively showing the amounts standing to the credit or debit of the said several divisions or wards respectively but on the contrary have expended moneys which should be standing to the credit of the East and West Divisions or Wards respectively upon works within the limits of divisions or wards of their area other than the said East and West Wards.

7. The defendants refuse to account for the moneys received by them since 31st March 1903 in respect of general rates levied for the years 1903, 1904 and 1905 upon the rateable lands in the several divisions or wards respectively of their area particularly in the East and West Divisions or Wards respectively in accordance with the *Local Authorities Act* 1902 and particularly refuse in such accounts of such moneys as aforesaid to show the amounts standing to the credit or debit of the several divisions or wards respectively.

8. The defendants threaten and intend to expend the moneys hereafter to be respectively received by them in respect of general rates levied upon the rateable lands in the several divisions or wards of their area after all just deductions therefrom for salaries allowances and the management of the defendants' office and for such other expenditure as the defendants may hereafter from time to time by resolution properly direct otherwise than solely upon works within the respective limits of the several divisions or wards in respect of the rateable lands of which such

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general rates shall be respectively received and threaten and intend to keep the accounts of the said several divisions otherwise than separate and distinct from each other and otherwise than to show the amounts from time to time standing to the credit or debit of the said divisions respectively.

The plaintiff claims :—

1. A declaration that all moneys received in respect of general rates levied upon the rateable lands in the several divisions or wards of the defendants' area and all moneys received by way of endowment upon such rates after all just deductions for expenditure in respect of salaries allowances and the management of the defendants' office and for such other expenditure as the defendants may by resolution from time to time properly direct to be paid out of general revenues shall be expended solely upon works within the respective limits of the several divisions or wards in respect of the rateable lands of which such general rates have been received.

2. An injunction restraining the defendants from expending or directing or permitting to be expended any general rates received in respect of the rateable lands in the several divisions or wards or their area otherwise than in accordance with the terms of the declaration hereinbefore claimed.

5. And for such further or other relief as the nature of the case may require.

[The third and fourth claims were abandoned in consequence of the decision of the High Court: *Brisbane City Council* v. *Attorney-General for Queensland* (1).]

The defence so far as material was as follows :—

1. The general rate made and levied by the defendants for the year 1903 upon the rateable lands situated within the Cintra and Merthyr Wards respectively was 2½d. in the pound, whereas the general rate so made and levied for the same year upon the rateable lands situated within the East, West, North, Valley, and Kangaroo Point Wards was 1¾d. in the pound. Save as aforesaid the defendants admit the allegations in paragraph 3 of the statement of claim.

2. The defendants deny that they have not accounted for

(1) 4 C.L.R., 241.

the moneys received in respect of cleansing rates levied by them in each or any year since 31st December 1902 and say that they have in each year duly kept a separate and distinct account of all moneys received by them in respect of such rates. Save as aforesaid the defendants admit the allegations in paragraph 4 of the statement of claim.

3. All the moneys comprising the defendants' ordinary or general revenues and consisting of the general rates received as aforesaid ferry dues market charges rents fees and all other the moneys which the defendants have from time to time received under and in pursuance of the *Local Authorities Act* 1902 have been duly carried to the account of the City Fund and that the said City Fund has from time to time been duly applied by the defendants in and towards the payment of all expenses necessarily incurred in carrying the said Act into execution and in doing and performing all acts and things which the defendants were and are by law empowered and required to do and perform and in and towards the payment of sums due from time to time by the defendants under agreements lawfully made and of all such other sums as became payable by the defendants from time to time in respect of their loan indebtedness and in pursuance of lawful orders precepts and directions and not otherwise howsoever. The said City Fund consisting of the defendants' ordinary or general revenues as aforesaid has been so applied as aforesaid by the defendants under the authority of resolutions of the defendants in that behalf and in particular the cost of the construction maintenance and management of all local works and undertakings within the defendants' area has under the authority of such resolutions been defrayed out of the said City Fund. Save as aforesaid the defendants deny the allegations in paragraph 5 of the statement of claim.

4. The defendants have from time to time expended so much of the moneys received by them since 31st March 1903 in respect of general rates levied upon the rateable lands in the several divisions or wards as in their judgment and discretion they considered were necessary to be expended upon works within the respective limits of the said several divisions or wards. All the moneys so expended have been defrayed out of the said City Fund.

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5. The defendants have at all material times kept separate and distinct accounts of all moneys received in respect of general rates in the said several divisions or wards and all the moneys expended as aforesaid upon works within the respective limits of the said divisions or wards have been duly debited to the respective accounts of the said divisions or wards and the said accounts respectively disclose the relation between the amount of general rates received and the amount of moneys expended upon works in respect of each such division or ward. The defendants contend that they are not authorized or required by law to keep any separate account of the said several divisions or wards other than as aforesaid.

6. The defendants contend that they are authorized and empowered by law as and when in their judgment and discretion they deem it to be necessary to expend the moneys received by them from time to time in respect of general rates upon any works within any division or ward of their area without regard to the actual amount of the said general rates which has been received by them in respect of any of the said divisions or wards and the defendants have from time to time duly expended the said moneys accordingly.

7. Save as aforesaid the defendants deny the allegations in paragraphs 6, 7 and 8 of the statement of claim.

8. The ratepayers of the defendants' area have not at any time appealed to the Minister charged with the administration of the *Local Authorities Act* 1902 against any resolution of the defendants directing how the cost of the construction and maintenance of any work or how any other expenditure of the defendants shall be paid or defrayed.

9. The accounts of the defendants in respect of the years 1903, 1904 and 1905 have been duly balanced and audited and have been duly allowed by the auditor authorized by the Auditor-General of Queensland to audit the said accounts and having been finally examined and settled by the defendants have been duly allowed and have accordingly been duly certified and signed and the defendants contend that each and every of the said accounts is final against all persons whomsoever.

Upon this defence there was a joinder of issue.

The material facts are set out in the judgments hereunder.

The action was heard by *Cooper* C.J. who gave judgment by which it was declared that all moneys received since 20th April 1906 in respect of general rates levied upon the rateable lands in the several divisions or wards of the defendants' area, and all moneys received by way of endowment upon such rates after all just deductions for expenditure in respect of salaries, allowances and the management of the defendants' office, and for such other expenditure as the said defendants may by resolution from time to time properly direct to be paid out of general revenues, ought to be expended solely upon works within the respective limits of the several divisions or wards in respect of the rateable lands of which such general rates should have been received; and the defendants were directed to keep separate and distinct accounts for each division of their area in accordance with the *Local Authorities Act* 1902 so as to show the amounts from time to time standing to the credit or debit of the said divisions respectively; and it was ordered that the defendants should be restrained from expending any general rates so received in respect of the rateable land in the several divisions or wards of their area otherwise than in accordance with the terms of the above declaration: *Attorney-General, at the relation of Isles* v. *Council of the City of Brisbane* (1). From this judgment the defendants now appealed to the High Court.

The nature of the arguments sufficiently appears in the judgments.

Lilley & Shand, for the appellants.

Graham, for the respondent.

The following sections of the *Local Authorities Act* 1902 were referred to during argument:—Secs. 191, 192, 209, 210, 257, 261 to 265. Counsel also referred to:—*Queensland Rules of Court* 1900, Order XCI., r. 1; *Andrews* v. *Barnes* (2); *Valuation and Rating Act* 1890, sec. 34.

Cur. adv. vult.

(1) 1907 St. R., Qd., 1. (2) 39 Ch. D., 133.

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The following judgments were read :—

GRIFFITH C.J. This is an action by the Attorney-General for the State of Queensland at the relation of a ratepayer of the City of Brisbane against the municipal council of that city claiming (in effect) a declaration that moneys raised by general rates in the several wards into which the city is divided ought to be expended solely upon works within the respective wards, and an injunction to restrain any infringement of the declaration. *Cooper* C.J. made a declaration in the terms asked for, to which it will afterwards be necessary to refer more particularly.

The question arises upon the *Local Authorities Act* 1902 (Queensland), which was a consolidation with amendments of the previous law relating to Local Authorities.

Sec. 191 provides that :—"The ordinary revenue of an area (which means the district in which the Local Authority has jurisdiction) shall consist of the moneys following, that is to say :—

"Rates (not being Special Rates or Tramway Rates), ferry dues, market charges, and other dues, fees, and charges authorized by this Act, and rents;

"Moneys received by the Council under any grant or appropriation by any Act not containing any provision to the contrary, or in pursuance of any Act requiring moneys received by a Local Authority to be paid into the Local Fund;

"All other moneys which the Council may receive under or in pursuance of this Act not being the proceeds of a loan."

Sec. 192 is as follows :—

"(1.) All such moneys shall be carried to the account of a Fund to be called, in the case of a Town the 'Town Fund,' in the case of a City the 'City Fund,' and in the case of a Shire the 'Shire Fund.'" (By section 7 the term "Local Fund" means each of these funds as the case may be).

"(2.) The Local Fund shall be applied by the Local Authority towards the payment of all expenses necessarily incurred in carrying this Act into execution, and in doing and performing any acts and things which the Local

Authority is by this or any other Act empowered or required to do or perform, unless this or such Act contains express provision charging such expenses to any particular Fund or Account.

"(3) The Local Authority may pay out of the Local Fund any sum due under any agreement lawfully made for the purposes of this or any other Act, and any sum recovered against the Local Authority by process of law, and any sum which by any order made or purporting to be made under this or any other Act the Local Authority is directed to pay by way of compensation, damages, costs, fines, penalties, or otherwise, unless this or such other Act contains express provision charging such sums to any particular Fund or Account."

The Local Fund, then, is a single fund applicable to the payment of all expenses incurred in the discharge of any obligations lawfully incurred by the Council unless "this or some other Act" contains *express* provision charging such expenses to any particular fund or account. The burden, therefore, of showing that any particular expense is not to be defrayed out of the Local Fund lies upon the party making that contention. The analogy of the Local Fund to the Consolidated Revenue Fund is very obvious. I will directly refer to the provisions in the Act referred to by the words "any particular Fund or Account."

Part XII. of the Act deals with Rates.

Sec. 209 provides for two kinds of rates, general and special, of which the former only form part of the Local Fund. The amount of the general rates is not to exceed 3d. in the £.

Section 210 provides (par. 3) that when an area is divided, *i.e.*, divided into wards or subdivisions (in the Act spoken of as Divisions), the amount of the general rates made in respect of rateable land in the several divisions need not be the same. Secs. 213, 214, 216, 217, 220, 222, authorize the levying of special rates for certain specified purposes.

Part XIII. of the Act deals with Accounts and Audit. Subdivision 2 of this Part, which comprises secs. 261-265, is headed "Separate Accounts."

Sec. 261 is as follows :—

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"The Local Authority shall keep a separate and distinct account of—

(i.) All moneys received in respect of every Separate or Special Rate levied under this Act, and all moneys received by the Local Authority by way of endowment upon such rates respectively, so that the moneys so received shall be credited to the same accounts as the Rates in respect of which they were respectively received; and

(ii.) All moneys disbursed in respect of the purposes for which such Rates are levied, including in such disbursements such reasonable part of the expenditure in respect of salaries, allowances, and management of the office as the Local Authority may direct;

and shall apply the moneys standing to the credit of such account for the purposes for which such Rates are levied and no other."

Sec. 262 requires a "separate and distinct account" to be kept "of all moneys raised by Special Rates for constructing and maintaining works for the manufacture or conservation and supply of gas or electricity or hydraulic or other power, and all moneys received from such undertaking, which are charged—

Firstly—with the principal money and interest required from time to time to be paid in respect of the loan (if any) raised for the establishment of the undertaking; and

Secondly—with the cost of maintaining the undertaking in good repair, and of paying the actual working expenses thereof," and provision for depreciation, renewal, and extension and incidental obligations.

If at any time the undertaking becomes so profitable that the revenue (*i.e.* the annual revenue) is more than sufficient to defray all the expenses and also the moneys payable in respect of principal and interest, the surplus is to be first applied in liquidation of the loan (if any), and thereafter at the discretion of the Local Authority is either to be applied in establishing a Reserve Fund or to be placed to the credit of the Local Fund. It will be observed that in each of the cases dealt with by these two sections the revenue, being derived from special rates, is not to

be paid into the Local Fund. Although, therefore, the direction is only to keep a separate and distinct account of the moneys raised, the effect is to establish distinct funds, which, whether mingled in a common banking account with other moneys or not, are impressed with an exclusive trust for the purposes specified.

A third case is dealt with by sec. 263, which requires the Local Authority to keep a separate and distinct account of all revenue derived from waterworks, which is to be applied, firstly, in payment of the actual working expenses of the waterworks, and, secondly, in repayment of instalments due in respect of moneys borrowed for their construction. The balance may, at the discretion of the Local Authority, be applied in defraying the cost of maintenance, repair and extension of the works, or in reduction of the loan, and not otherwise.

In this case the balance would appear to fall within the terms of sec. 191, as being "other moneys which the Council may receive under or in pursuance of this Act not being the proceeds of a loan." But they are nevertheless specifically appropriated to the purposes mentioned. Substantially, therefore, they form a fund, which, though called an "account," and though not formally segregated from the Loan Fund, is to be treated as if it were a distinct fund.

A fourth case is dealt with by sec. 264, which requires the Local Authority to keep a separate account in some bank of any loan incurred by it, and the money raised by the loan is to be applied solely to the purposes for which it was borrowed. In this case it is contemplated that there should be a separate banking account, and consequently a separate fund.

In all four cases the moneys placed to the credit of the separate account might not inaccurately be described as a "particular Fund or Account," which are the words used in sec. 192.

Sec. 265 provides that when an area is divided the Local Authority must keep a separate and distinct account of all moneys received in respect of general rates levied upon the rateable land in the several Divisions, and of any moneys received by the Local Authority by way of endowment on such

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rates, the endowment being credited in proportion to the rates. This provision is an extension of sec. 34 of the *Valuation and Rating Act* of 1890, in which a similar provision was applied to cases where the amounts of rates levied in different divisions were not the same. In that Act it was apparently intended for statistical purposes or purposes of information and record only.

In sec. 265, however, the provision is of general application. The section goes on to make further provisions, upon which the question now under consideration arises. They are as follows:—"And save as hereinafter provided all moneys expended upon works within the limits of the Division shall be debited to the account of that Division:

"Provided that when a work is of such importance to the whole of the area that the cost of its construction and maintenance may reasonably be a charge upon the general revenue of the Local Authority, the Local Authority may from time to time, by resolution passed at a meeting specially summoned for the purpose, declare such work to be a 'general work,' and direct that the cost of its construction and maintenance shall be defrayed out of the general revenues, and shall not be debited to the separate account of any Division, and such expenditure shall be so defrayed accordingly:

"Provided also that unless the Local Authority has directed that any part of the expenditure in respect of salaries, allowances, or management of the office should be debited to any separate account as hereinbefore provided, the expenditure in respect of all salaries and allowances and the management of the office of the Local Authority, together with any other expenditure as to which the Local Authority may from time to time by resolution so direct, shall be paid out of the general revenues, and shall not be debited to the separate account of any Division."

This concluding provision seems to refer to the resolution mentioned in the preceding paragraph. It is conceded that the words "as hereinbefore provided" refer to sec. 261 (par. ii.).

The contention of the relator is, in substance, that these provisions require that the financial affairs of the several Divisions shall be kept entirely distinct, that the general rates

raised in each Division shall be treated as a separate earmarked fund, out of which the cost of all "works within the limits of the Divisions" which have not been declared general works under the first proviso is to be paid, with the consequence that the money expended upon such works cannot exceed the amount of those rates and the endowment upon them, and that the general expenditure of the Local Authority shall be apportioned among the several Divisions and debited to these funds, thus further reducing the amount available for works within the limits of the Divisions. He goes still further, and claims that each Division is entitled to have any balance to the credit of its fund expended upon works within the limits of the Division. The formal claim made and allowed by the judgment appealed from is a declaration "that all moneys received since 20th April 1906 in respect of general rates levied upon the rateable lands in the several Divisions or wards of the defendants' area, and all moneys received by way of endowment upon such rates, after all just deductions for expenditure in respect of salaries, allowances and the management of the defendants' office, and for such other expenditure as the said defendants may by resolution from time to time properly direct to be paid out of general revenues, shall be expended solely upon works within the respective limits of the several Divisions or wards in respect of the rateable lands of which such general rates shall have been received." I do not stop to inquire what is meant by "all just deductions," but I assume that it means some apportioned share of general expenses. I may say, in passing, that I doubt whether the judgment as drawn up correctly represents the opinion of the learned Chief Justice as expressed by him when delivering judgment.

Although this declaration is in form affirmative, it is in substance negative. The Court has, of course, no jurisdiction to compel a Local Authority to expend money upon works which it does not think necessary. So read, it is a declaration that the Council ought not to apply such parts of the Local Fund as have been derived from general rates to any purposes but those specified. Such a declaration is, *primâ facie*, inconsistent with sec. 192, which makes the whole Local Fund available for payment of all expenses incurred in carrying the Act into execution. It is,

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however, contended that it is justified by sec. 265. The argument is put in this way:—The section says that "save as hereinafter provided" all moneys expended upon works within the limits of a Division shall be debited to the account of that Division. It then says that the Local Authority may at a specially summoned meeting declare such a work to be a "general work," and direct that the cost of its construction and maintenance shall be "defrayed" out of the "general revenues" and shall not be "debited" to the separate account of any Division, and that such expenditure shall be so defrayed accordingly. These latter words, it is said, import that "defraying" expenditure out of a fund and "debiting" it to the fund are regarded as interchangeable expressions, and consequently that there is a direction that the cost of such works shall be defrayed out of the separate accounts, which, it is said, implies a prohibition against expending upon works in a Division which have not been declared "general works" (and which I will call "ward works") any greater sum than is standing to the credit of the account of the Division in respect of general rates and endowment upon them. A change of language in the same context does not, however, primarily suggest that the words are synonymous, but rather the contrary. Then it is said that the direction to "defray" the cost of "general works" out of the general revenues would on any other construction be idle, because sec. 192 has already made the same provision. This is, perhaps, true, but it is not unusual in a Statute to find a provision repeated by way of emphasis or antithesis.

At the first argument of this case I was strongly disposed to assent to this contention, and to think that the relator was entitled to a declaration that the moneys expended upon works within the several Divisions should not, in the absence of such a resolution as is prescribed in the first proviso to sec. 265, exceed the amounts standing to the credit of the accounts of the respective Divisions. Before further dealing with the case from this point of view, I will refer to the other, and, indeed, the main point of the relator's contention, which is that the "separate and distinct accounts" of the moneys received in respect of general rates and endowments upon them should be debited with a proportional part of the expenditure of the Local Authority for

purposes other than ward works. In the first place, this contention is in direct conflict with the express enactment of the second proviso that unless the Local Authority has directed any part of the expenditure in respect of salaries, allowances, or management to be "debited to any separate account as hereinbefore provided" such expenditure, together with any other expenditure as to which the Local Authority by resolution so directs, shall be paid out of the general revenues and "shall *not* be debited to the separate account of any Division." The words "hereinbefore provided" refer, as already pointed out, to sec. 261. The words "any separate account" used in that context must therefore refer to the accounts mentioned in that section, which are accounts of moneys raised by special rates. They may possibly also refer to the separate accounts of the Divisions, but I do not think so—possibly also to the accounts referred to in secs. 263 and 264. But, in the absence of such a direction, no part of these general expenses can be debited to the accounts of the Divisions, nor does the Act contain any provisions as to the proportions in which they should be charged to them. When, however, the legislature intended that any particular expense or share of expenses should be debited to particular accounts they knew how to express themselves clearly, as is shown by secs. 261, 264, and also by Part XVII. of the Act, which contains elaborate provisions for distributing the burden of general expenses of Joint Local Authorities among the several constituent authorities. Under these circumstances it is impossible to say that the Act contains "express provision" charging any part of what may be called general expenses to the separate accounts of the Divisions. Moreover, if the separate accounts of the Divisions were intended to be debited with a share of the general expenses, it would manifestly be necessary that the general receipts of the Local Authority from sources other than general rates should also be credited to the same accounts. The Act is absolutely silent on this point. I am therefore compelled to the conclusion that this contention fails.

I return to the contention that, at any rate, sec. 265 limits the maximum expenditure upon ward works to the amount standing to the credit of the Division in respect of general rates and

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endowment. In this connection reference was made to sec. 210, par. 4, which provides that if the Local Authority has, at the beginning of any year, to the credit of the Local Fund sufficient money to defray all its probable and reasonable expenses for the year, the Governor in Council may excuse the making of any general rate for the year either in respect of the whole area or any Division, or may reduce the maximum amount of any rate to be levied during that year; and it is suggested that the power to excuse from making a general rate in respect of a Division indicates an intention that the accounts of each Division should be kept separate at least to the extent contended for. The provision would, no doubt, be consistent with such an intention if it were shown by other provisions of the Act, but the general effect of the whole paragraph seems to me to tend in a contrary direction. For, if such a separation had been intended, we should expect the condition of the exercise of the excusing power in respect of a Division to be that there was sufficient money at the credit of the account of the Division to defray all proper and reasonable expenditure charged to that account, whereas the condition relates to the Local Fund as a whole, to which fund all such expenses are to be charged under sec. 192.

It is clear that upon any reasonable construction of sec. 265 it does not prohibit the expenditure upon ward works of revenue received from sources other than general rates. This was not, indeed, disputed.

Such a declaration as suggested would therefore be wrong. At most the declaration could be only to the effect that the expenditure upon ward works in any Division should not exceed the amount received in respect of general rates upon land in the Division (with endowment on them) together with such further amount as did not exceed the residue of the Local Fund after deducting the amounts raised by general rates in other Divisions, or, to put it in other words, that the Local Authority is not entitled to expend out of the Local Fund upon ward works in any Division such a sum that the residue of the Local Fund will be less than the total amount of the general rates raised in the other Divisions. In the case of the appellants the revenue from sources other than rates is itself more than the total amount spent

on ward works in all the Divisions, so that such a declaration would be idle—a declaration "in the air," as used to be said.

It was suggested that the declaration might be in the form that the appellants are not entitled to expend upon ward works in any Division any moneys which are the proceeds of general rates in any other Division. But, as already shown, the general rates form part of a common fund, and it is impossible to say that any particular expenditure is defrayed out of them rather than out of any other part of the fund. The second declaration, which I have described as idle, would therefore be the only one not inconsistent with the express provisions of the Statute. It is not that asked for by the relator, and there is no suggestion that the defendants have proposed to do anything inconsistent with it. In my opinion it ought not to be made in this action, even if it would correctly declare the law.

It was contended that the concluding part of sec. 265, which allows an appeal to the Governor in Council against a resolution of the Local Authority declaring a ward work a general work, shows that the provisions of the section were intended to have some greater effect than the mere keeping of records of ward receipts and expenditure. It certainly suggests that idea, and it may be that the whole section indicates that its framers had an idea of establishing a system of separate ward funds. But, if they had, they have not expressed their intentions in such a manner that effect can be given to them. It is, however, by no means clear that they had any such intention. They may have deliberately stopped short at making provision for records of divisional receipts and expenditure. On the whole, I cannot at present find any sure ground on which to rest the conclusion that sec. 265 cuts down the absolute discretion of the Local Authority as to expenditure from the Local Fund given in express terms by sec. 192.

I think, therefore, that the appeal must be allowed.

BARTON J. During the argument and re-argument of this appeal I have paid close attention to all that has been advanced in support of the plaintiff's contentions as to the meaning of the several enactments relied on, and as to the bearing of the facts.

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Barton J.

The case is a difficult one, but I have not been convinced, as I must be before agreeing to any declaration in his favour, that the plaintiff has made out a case of breach of the requirements imposed by the *Local Authorities Act* 1902 upon the defendant Council. I do not think that the evidence proves that the Council have failed to keep a separate and distinct account of the moneys received in the several Divisions for general rates and endowments, or that they have failed to debit to each such account the moneys spent on works within the Division the subject of the account. Nor is it established, although in one instance the facts were consistent with the assumption, that in the period under review they have expended on works within any Division more than the amount of the general rates received by them in respect of that Division. They may not have expended all moneys received in each Division for general rates and endowments solely in works within the Division in respect of which they have been received, and I do not see what part of the Act it is that binds them to do so. But the declaration, which, by the way, orders them to expend moneys in a certain way on works within the several Divisions, requires *inter alia* that, before doing so, all just deductions shall be made for expenditure on salaries, allowances and the management of the Council's office. It is here that a serious flaw in the plaintiff's contention appears. If it were possible within the terms of the Act to make the declaration in question with any prospect of its proving workable, it is plain that the "just deductions" directed must be made from the several divisional accounts. But then how are they to be made? The section, in the second proviso, prohibits such deductions except on a direction of the Local Authority, which has not been given. Even if they could be made, the Act is silent as to any principle on which the sums deducted could be apportioned to the several divisional accounts. I turn to the claim in its relation to the first proviso. In order that the plaintiff's contention may admit of the keeping of a series of divisional accounts which would represent actual financial facts, it is necessary that, where works are declared general (see first proviso to sec. 265), as the cost of their construction and maintenance is to be defrayed out of the federal

revenues, a corresponding sum should be deducted, or a transfer made, from the amounts at credit of the divisional accounts. Otherwise those accounts will show sums to credit far exceeding the actual money balances. And unless such deductions could be made from the divisional accounts and credited to the Local Fund or general account, that fund could not stand the stress of the continual debits for construction and maintenance without corresponding credits to meet them. If the general rates received are to be imprisoned in the divisional accounts, and the Local Fund is not to be replenished out of them, how can that fund remain solvent? The proviso says that "the cost of its construction and maintenance . . . . shall not be debited to the separate account of any Division" in such cases. In such a state of the law the passing of resolutions within the proviso would lead either to an entire disorganization of accounts or to financial disaster, yet the section and the rest of the Act are alike destitute of any provision to obviate such a result, easy as it was to have devised it if desired.

It appears to me that this consideration alone shows that if the legislature intended the complete "financial separation" contended for at the bar, which is open to doubt, they have not created the machinery necessary to make such a system practicable, and it is not the office of the Court to legislate by way of supplying the machinery. Nor could we possibly say what machinery the legislature would itself have created.

The whole section appears to be unworkable as a means of carrying out actual financial transactions. The framers must have had in view as a minimum the giving of information to ratepayers, and they seem to have meant more. But the section itself as it stands does not seem to be capable of being used even for accurate book-keeping, if I may dare venture on such ground. It is not unintelligible, but, in my judgment, it lacks the machinery which alone could make it the vehicle of an effective declaration. It seems to follow that the section does not operate to cut down the effect of sec. 192.

It has been suggested that the plaintiff is entitled to some relief to be founded on the defendants' admission and contention in paragraph 6 of the statement of defence. Even if the position

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they assert were untenable, it has no real relation to the plaintiff's claim of relief as it stands, and I do not see that it gives any basis for a declaration within that claim.

I am of opinion that the appeal must be allowed.

O'CONNOR J. The substantial question raised by this appeal is whether the Brisbane City Council are prohibited by the Statute under which they carry on their functions from expending any portion of the general rates collected in a Division on any works other than those within that Division. The learned Chief Justice in the Court below held that they were so prohibited, and made an order declaring that all moneys received by the Council since 20th April 1906, in respect of general rates levied upon the rateable lands in the several Divisions of the area under their control, and all moneys received by way of endowment on such rates should (after certain deductions to which I shall refer later on) be expended solely upon works within the respective limits of the several Divisions in respect of the rateable lands of which such general rates shall have been received. The order goes on to direct that the defendants shall from the date mentioned keep separate and distinct accounts for each Division in accordance with the provisions of the *Local Authorities Act* 1902, so as to show the amounts from time to time standing to the credit or debit of the said Divisions respectively. Finally, there is an injunction restraining the Council from expending or directing or permitting to be expended any of the rates before described contrary to their duty as stated in the declaration. The powers and duties of the Council are all to be found within the four corners of the *Local Authorities Act* 1902, and the question for our consideration is whether, on the true construction of that Statute, there is any justification for the order or for any part of it.

Before entering upon the main question I wish to refer to some subsidiary matters which it is necessary to deal with. The attempt to prove that the accounts were not kept in accordance with the Act has, I think, entirely failed. The obligation to keep the accounts is imposed by sec. 265. All the particulars required by that section are contained in the accounts in evidence

before us. The accounts of each year have been completed and closed in pursuance of the audit sections of the Act. The relator complains that they are insufficient because they do not in each year's accounts carry on the balance from previous years, so as to make the account continuous. I can find in the Act no direction, express or implied, that the accounts are to be so kept. In the absence of express direction to the contrary, the Council were, in my opinion, justified in treating the account as a record to be made and completed separately of each year's transactions, and, in so far as the judgment appealed from directs more than this to be done, it cannot be supported. It seems to have been assumed in the Court below that the appellants had expended and intended to go on expending, unless restrained by order of the Court, the proceeds of general rates on any object within the scope of the Act without recognizing any such limitations of their powers as are laid down in the judgment now under appeal. There was, it appears to me, no satisfactory evidence before the Court that the appellants had ever in fact exceeded their powers even as so limited. But the Council undoubtedly did take up the position in their sixth ground of defence, and they have maintained it up to the time of their coming before this Court, that they were authorized and empowered by law, as and when in their judgment they deemed it necessary, to expend the moneys received by them from time to time in receipt of general rates upon any works within any Division of their area without regard to the actual amount of general rates which had been received by them in respect of any of the said Divisions, and that they had from time to time duly expended the moneys accordingly. On the argument before us Mr. *Lilley* did not abandon that position, although he contended that the Council had not in fact expended out of the general rates on works within any Division more than the amount raised by general rates in that Division. It seems to me, therefore, that we cannot decide this appeal on the mere question of fact to which I have alluded, but that we must adjudicate on the issue of law raised by the defence, namely, whether the Council does or does not possess the powers which it has claimed all through the suit the right to exercise.

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Before entering upon a consideration of the several sections which must be referred to, it is well to note that the Act took over a system of municipal administration authorized under a long series of Statutes, and which had been in operation for many years. The principle of that system was not the union for general purposes of Divisions which for divisional purposes were financially self-contained; on the contrary it was the establishment of the municipal area as one administrative and legal entity, with power, if necessary, to apply the financial strength of the whole area in carrying out necessary works in any portion of it. For purposes of elections and of convenient administration it was subdivided into Divisions, but, except in the case of the exercise of special powers or in the administration of special rates, the Division was not a "separate financial unit" in the sense in which that phrase has been used by the learned Chief Justice in the Court below.

It was, of course, open to the legislature, in passing the comprehensive enactment under consideration, to have altered the old system so materially as to have erected the Divisions into "separate financial units." Whether they have done so or not can only be gathered from a careful consideration of the Act.

Sec. 191 establishes the City Fund, or, as it is called in the Act, the "Local Fund," which consists of (i.) Rates (not being Special Rates or Tramway Rates), ferry dues, market charges, and other dues, fees, and charges authorized by the Act, also rents; (ii.) Moneys received by the Council under any grant or appropriation of public moneys, unless the appropriating Act expresses a contrary intention; (iii.) all other moneys which the Council may receive under or in pursuance of the Act not being the proceeds of a loan. The general rates thus become part of the Local Fund mixed with revenues of the Council from many other sources. In marked contrast to the elaborate provisions for the collection and administration of special rates, there is no provision for keeping a separate account of general rates as distinguished from the other items that go to make up the Local Fund. Much less is there any provision by which the general rates of one Division are to be earmarked as distinguishing them from the general rates of another Division.

By sec. 192 (2) it is enacted that "the Local Fund shall be applied by the Local Authority towards the payment of all expenses necessarily incurred in carrying this Act into execution, and in doing and performing any acts and things which the Local Authority is by this or by any other Act empowered or required to do or perform, unless this or such Act contains express provision charging such expenses to any particular Fund or Account." In other words, the Local Fund is the general fund of the area containing its general revenues and applicable to its general purposes except in cases where there is express statutory provision to the contrary. Expenditure on municipal works in any Division of the area clearly comes within the words "expenses necessarily incurred in carrying this Act into execution," and by the terms of the section the Local Fund into which the general rates have been paid may be applied in payment of such expenses unless there is express statutory provision "charging such expenses to any particular Fund or Account." There is no Statute other than that under consideration which bears on this particular question, and it is in that Act, therefore, if anywhere, that such express statutory provision is to be found.

Before the respondent can succeed he must show that the Statute contains some express provision charging the expenditure in question upon some Fund or Account which contains only the general rates of the Division in which the works to be carried out are situated, or upon some fund containing such general rates, and kept on a system which will earmark the general rates of each Division. It must be admitted that there is no provision expressly directing the expenditure on works in each Division to be defrayed out of the proceeds of the general rates collected in that Division. But the respondent contends that sec. 265, when properly construed, has that effect. The appellants, on the other hand, ask us to view that section as merely a direction in the keeping of accounts, and contend that it in no way cuts down the authority conferred by sec. 192 to apply the proceeds of general rates forming part of the Local Fund to works in any Division indiscriminately. On the face of it sec. 265 deals merely with accountancy. It directs that an account shall be kept of the general rates raised in each Division,

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and that all moneys expended on works within a Division shall be debited to the account of the Division. Then follow the two provisos upon which the respondent relies. The first enacts that, "when a work is of such importance to the whole of an area that the cost of its construction and maintenance may reasonably be a charge on the general revenue of the Local Authority, the Local Authority may from time to time, by resolution passed at a meeting specially summoned for the purpose, declare such work to be a general work," and direct that the cost of its construction and maintenance shall be defrayed out of the general revenues, and shall not be debited to the separate account of any Division, and that such expenditure shall be so defrayed accordingly. The second proviso, dealing with expenditure for salaries, allowances, and office management, enacts that unless the Local Authority has directed that any part of such expenditure should be debited to any separate account "as hereinbefore provided" (referring to the power conferred by sec. 261 to make an apportionment of office expenses as part of the cost of works constructed out of special rates) the expenditure in respect of salaries, allowances, and management of the office of the Local Authority, together with any other expenditure as to which the Local Authority may from time to time by resolution so direct, shall be paid out of the general revenues, and shall not be debited to the separate account of any Division.

The history of the clause may be usefully considered. The *Valuation and Rating Act* 1890 is one of many Acts whose provisions have been repealed by, and in a modified form embodied in, the *Local Authorities Act* 1902. Sec. 34 of the former Act provides that, where the amounts of general rates levied in the several sub-divisions of a District are not the same, an account shall be kept in each such sub-division of the general rates raised in that sub-division and of endowments received in respect of such rates. That section effected nothing beyond compelling the keeping of the credit side of a separate account of the general rates raised in each Division, and it applied to a limited class of cases only. The provisions of sec. 265 not only extend the obligation to keep the account to the Divisions of every area, but establish also a debit side of each such account in which the

moneys expended on works in each Division are to be charged to the general rates account of that Division. On the face of the section up to that point there is nothing more than accountancy.

But the addition of the debit side to the account made it necessary to make some provision for the matters which are dealt with in the provisos respectively. It would be obviously unfair that the general rates of a Division should have placed to their debit the cost of a work which, although situated within the limits of the Division, was for the general benefit of the whole area.

Again, from a business point of view a proportion of office expenses would be properly debited to a Division as part of the cost of each work; in the case of works paid for out of special rates that is authorized to be done under the provisions of sec. 261. If it were not for the second proviso an ambiguity would have arisen as to whether the debits to be charged against a Division were to include a proportion of office expenses, and, if so, what proportion, or, if not specified in the Act, to be fixed by what authority. The proviso makes the intention of the legislature plain by enacting that, except where the expenditure is out of special rates within the terms of sec. 261, all salaries, allowances, and expenses of office management shall be paid out of general revenues and shall not be debited to the separate account of any Division. In my opinion, therefore, the provisos deal with the keeping of accounts only, and in no way cut down the power given by sec. 192 of applying the general rates as part of the Local Fund in the general administration of the Act. Indeed, that view of the provisos could not, I think, be questioned were it not that in both of them the expressions are used "defrayed out of the general revenues" and "paid out of the general revenues" as correlative to the expression "debited to the separate account of any Division." The argument is that the phrase "debited to," having been used in the provisos in the sense, as it is contended, of "paid out of" or "defrayed from," must be taken to have the same meaning in the earlier part of the section, and that the second paragraph of the section must therefore be read as if the words were "all moneys expended upon works within the limits of a Division shall be defrayed out of the funds of that Division."

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The provisos are no doubt clumsily drawn. There was no necessity to direct that the cost of the general works referred to in the first proviso, or of the office expenses mentioned in the second proviso, should be defrayed out of general revenues. That direction had already been given by sec. 192, and such a provision would ordinarily be out of place in a section which is concerned with account keeping. It may be it was deemed necessary for more abundant caution to repeat the direction so as to remove any ambiguity that might arise on a comparison of the sections relating to the general accounts kept for "special rates" and "separate rates" with that under consideration. Or it may be that the expressions to which I am referring were mere surplusage.

The general rule of interpretation, no doubt, is that a meaning must be given, if possible, to every word of a Statute. As Lord *Brougham* said in *Auchterarder, Presbytery of* v. *Lord Kinnoull* (1) in a passage quoted in *Hardcastle (Craies) on Statutory Law*, 4th ed., at p. 102:—"A Statute is never supposed to use words without a meaning." Courts will, however, when necessary, take cognizance of the fact that the legislature does sometimes repeat itself, and does not always convey its meaning in the style of literary perfection. Some expressions of judicial opinion collected on page 101 of *Hardcastle's* work from which I have just quoted are worthy of consideration in this connection :— "'It may not always be possible,' said *Jessel* M.R., in *Yorkshire Insurance Co.* v. *Clayton* (2) 'to give a meaning to every word used in an Act of Parliament,' and many instances may be found of provisions put into Statutes merely by way of precaution. 'Nor is surplusage, or even tautology, wholly unknown in the language of the legislature.' (*Income Tax Commissioners* v. *Pemsel* (3)). 'A Statute,' said Lord *Brougham* in *Auchterarder* v. *Lord Kinnoull* (1) 'is always allowed the privilege of using words not absolutely necessary.' And in *Income Tax Commissioners* v. *Pemsel* (4), Lord *Macnaghten* pointed out (3) that 'it is not so very uncommon in an Act of Parliament to find special

(1) 6 Cl. & F., 646, at p. 686.
(2) 8 Q.B.D., 421, at p. 424.
(3) (1891) A.C., 532, at p. 589, *per* Lord *Macnaghten*.
(4) (1891) A.C., 532.

exemptions which are already covered by a general exemption.' And Lord *Herschell* pointed out (1) that 'such specific exemptions are often introduced *ex majori cautelâ* to quiet the fears of those whose interests are engaged or sympathies aroused in favour of some particular institution, and who are apprehensive that it may not be held to fall within a general exemption'."

It may be admitted that the expressions relied on by the respondent are capable of the meaning he seeks to attach to them, and that it is grammatically possible to construe the whole section as he contends it should be construed. But, putting the argument most strongly in his favour, the utmost that can be said is that the expressions relied on by him are ambiguous. Under the circumstances the Court must ascertain the sense in which the legislature intended to use them by a consideration of the context in which they are found, the other sections of the Act, its scope and purpose as gathered from its provisions.

In addition to the provisos already referred to, the respondent relies upon two other portions of the Act—sub-sec. 4 of sec. 210 and the concluding paragraph of sec. 265. The former of these makes, in my opinion, against his contention. It provides that if the Local Authority has at the beginning of any year to the credit of the Local Fund sufficient money to defray "all its probable and reasonable expenses for that year" the Governor in Council may excuse it from making any general rate during that year in respect of the whole area or any Division thereof. The argument is that, because the Governor is empowered to excuse the making of a general rate for the year in respect of any Division, it indicates that within the contemplation of the section Divisions are intended to be financially independent. If the condition precedent necessary for calling the power into operation were that there should be to the credit of the Local Fund in respect of any Division sufficient money to defray all the probable and reasonable expenses of that Division for the year, there would be some force in the argument. But the condition precedent is not that: it is necessary that there should be sufficient money to the credit of

(1) (1891) A.C., 532, at p. 574.

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the Local Fund to defray the year's expenses of the whole area before any Division of it can be relieved from a year's rates by action of the Governor in Council, which would rather tend to show that the financial unity of the whole area, rather than the financial independence of any Division, was within the contemplation of the legislature when the section was passed. The respondent's contention gets more aid from the last paragraph of sec. 265. It certainly does seem to create somewhat weighty machinery for dealing with what is merely a matter of accounts. On the other hand, on its face it is quite consistent with the rest of the section regarded as an accountancy section only, and is entirely in aid of a vigilant control of the accounts of each Division by the ratepayers interested. After a careful examination of the respondent's contention in the light of all these considerations, I find myself unable to arrive at the conclusion that sec. 265 does anything more than direct the keeping of accounts for each Division showing on the credit side the amount of general rates levied in each Division, and the endowments received by the Local Authority in respect thereof, and showing on the debit side all moneys expended on works within the Division which do not come within the exception of the first proviso.

In stating my reasons for that conclusion I do not think it necessary to do more than refer in general terms to the sections bearing on the questions which I have already dealt with in detail. The Act lays down in outline a complete system of finance, a prominent feature of which is the difference between the collection, expenditure, and accounting for, general rates and special rates. The former, as I have already pointed out, are paid into the general fund of the Local Authority where they become mixed indistinguishably with revenue from other sources, there being no direction to separate, or machinery provided for separating them from any other form of revenue in the Local Fund. Further, there is no provision of the Act, unless sec. 265 may be so construed, which recognizes the existence of the general rates of the area, much less the general rates of a Division, as a separate fund, or as a separate account in the general fund, out of which any particular class of payments are

to be made. As to special rates, on the contrary, there are a number of provisions from sec. 261 onward dealing with every kind of special rate, and there are others placing the financial administration of such services as gas, electricity, and water supply, on the same footing. In all these cases there are express directions that a special account shall be kept of the proceeds of the rate or special service, that all expenditure for the special purpose for which the rate has been raised shall be defrayed out of and charged to that account, and, what is more important to the question now under consideration, there is in every case a provision that the proceeds of the special rate shall be applied to the purposes for which the rate has been raised, and to no other purposes.

One might reasonably anticipate that, if the legislature had intended to constitute the general rates levied in each Division as a separate fund available only for expenditure on the works of that Division, it would have used language express and definite to bring about so important a change in the law, and that, having regard to the elaborate provisions as to the administration of the separate funds created for the purposes of special rates, it would have provided, at least in outline, the necessary machinery for carrying the change into effect.

Consider also the impossibility of carrying out effectively a system of Divisions financially independent under the scheme of administration which the Act has provided. It is admitted by the respondent that the financial independence of the Division extends only to the proceeds of general rates. There is nothing to prevent the general revenues of the Local Fund from other sources from being expended on any Division, and to any amount which the Local Authority thinks fit to authorize. But where a divisional work is paid for out of the Local Fund there is no method expressly or impliedly directed to be followed which would enable the proportion of the payment which comes from general rates to be separated from the proportion which comes from other sources of general revenue ; much less are there means provided by which the proportion of the payment which came from the general rates levied in the Division in which the work

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was being carried out could be separated from the proportion which came from the general rates of other Divisions.

Again, it must be admitted that, if the cost of a work is to be charged against the funds of a Division, it would be fair and in accordance with ordinary business methods to debit the fund with a proportion of general office expenses in respect of the work. Indeed the relator's claim and the judgment under appeal following the form of the claim purport to apportion a share of the expenses to each Division. It is expressly provided that that apportionment may be made by the Local Authority in the case of work charged to a special fund. But in regard to general rates, not only is there no power to make any such apportionment, but sec. 265 expressly prohibits it in any case except where the apportionment has been made under sec. 261 in the case of expenditure out of special rates. Having regard to these considerations I have come to the conclusion that the interpretation which the respondent seeks to put upon sec. 265 is inconsistent with many sections of the Act, and with its whole scheme of financial administration. The appellants' interpretation, on the other hand, treating the section as dealing with accountancy only, is consistent with every provision of the Act, and is that which I think must be adopted. That being so, there is nothing in sec. 265 which cuts down the power given to the Council by sec. 192 of applying general rates as part of the Local Fund in the carrying out according to their own discretion of any works which the Act authorizes. I am, therefore, of opinion that the Act on its true construction does not support the view of the law taken by the learned Chief Justice in the Court below, and that this appeal must be allowed and the judgment appealed against set aside.

ISAACS J. I regret to find myself unable to concur in the opinion of my learned brethren upon the main question of this case, but, although sec. 265 of the *Local Authorities Act* 1902 is not so clearly and definitely expressed as it might have been, I cannot say I have any real doubt as to its meaning. The matter becomes even plainer to me when the course of previous legislation is followed.

In 1878 a *Local Government Act* was passed which related to

Municipalities; and in 1887 a further Act was passed, the *Divisional Boards Act*, which dealt with local government of Districts outside the boundaries of Municipalities. Under both Acts provision was made which enabled a local governing body to receive ordinary revenue and other revenue, or, in other words, special revenue.

Ordinary revenue was defined by sec. 175 of the first Statute, and sec. 189 of the second, and included general rates. The ordinary revenue, and therefore the general rates, were in each case carried to a fund, called respectively the Municipal Fund, and the Divisional Fund, and out of this fund the local body could pay everything in the nature of expense it incurred, whether the expense so incurred was for the general benefit, or for the special or exclusive benefit of some particular portion of the area.

All rate revenues were treated as general revenues of the local body, that is, they were the contributions to and the property of the Corporation as a whole; and once contributed, no separateness of interest in these rates was recognized as between various parts of the area.

This unity of interest was preserved even as to the making of the rates, because, by sec. 187 of the first Act and sec. 191 of the second, the general rates were to be made equally upon all rateable property within the municipal district or the Division as the case might be. Up to 1890 no separate account for any portions of the area in respect of general rates was required to be kept under either Act whether the area was divided or not.

In 1890 there was passed the *Valuation and Rating Act* which commenced to recognize some diversity of treatment between parts of a divided area. Sec. 31 provided as follows:—"When a District is subdivided the amounts of the General Rates made and levied upon the rateable land in the several subdivisions need not be the same, but every General Rate made and levied in respect of a subdivision shall be made and levied equally upon all rateable land within the subdivision." Sec. 34 was in the following terms:—"When the amounts of the General Rates levied upon the rateable land in the several subdivisions of a District are not the same, the Local Authority shall keep a separate and

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distinct account of all moneys received in respect of such Rates for each subdivision, and of all moneys received by the Local Authority by way of endowment upon such Rates respectively, so that the moneys so received shall be credited to the same accounts as the Rates in respect of which they were respectively received." So that it was not in every case of a subdivided area that this separate and distinct account of general rates was required, but only where a differentiation of rates took place. There was no consequence expressly declared to follow from the credit given to the subdivisional account. Sec. 175 of the one Act and sec. 189 of the other still remained unqualified, and under these, notwithstanding the 1890 Act, all expenditure for works was still payable indiscriminately out of the ordinary revenue and without reference to its source. Sec. 34 of the 1890 Act seems to have been inserted merely to ensure a standing record of actual differentiation and the result of it.

The legislature by the Act of 1890, apparently seeing that the invariable uniformity in rating up to that time led sometimes to unfairness or hardship, sought to remedy it by giving the local body power to correct it by differential rating where necessary, and compelling it to record the result of the differentiation so as to leave it always open to consideration with reference to its retention, modification or abolition. The possible difference in rating was thought sufficient to meet inequalities of situation or requirements.

So the matter stood between 1878 and 1902. In the last mentioned year, however, a marked change was adopted by Parliament in the language of its legislation.

It then gave express directions the nature and effect of which we have now to determine. They appear to me to be unmistakeable, and to amount to a plain departure in policy and principle.

The *Local Authorities Act* 1902 is entitled "An Act to consolidate and amend the laws relating to Local Authorities." It repealed the Acts of 1878, 1887, and 1890, with others, and brought all Local Authorities under the same enactment.

Sec. 191 defines ordinary revenue of a municipality very much as before. Sec. 192 provides that ordinary revenue (which includes general rates) "shall be carried to the account of a

Fund," which, speaking generally, is the Local Fund. The Local Fund is nothing more than the sum total of the ordinary revenues of the municipality, and these are to be carried to an account, called in this case the "City Fund."

Sec. 192 goes on to provide that the Local Fund is to be applied, briefly speaking, towards the payment of all lawful expenses incurred by the Local Authority, of every description, but subject to the all important qualification expressed in the words "*unless this or such other (that is, another) Act contains express provision charging such sums to any particular Fund or Account.*"

This was an inroad for the first time in the history of municipal legislation made into the universality of the power of the Local Authority to pay expenditure indiscriminately out of the ordinary revenues.

We have, therefore, to see what this Act contains whereby express provision is made charging expenditure to some particular fund or account, because *what is so directed to be charged cannot be paid under the authority of sec.* 192, and, if payable out of the ordinary revenue at all, must be so payable under and in accordance with some *other* statutory provision.

Secs. 261 to 265 are a cluster of sections dealing with separate accounts, and under the heading "Separate Accounts." Before examining these sections, attention may be drawn to sec. 251, in the same part of the Act, which concerns Accounts and Audit. That section provides that books are to be kept, and true and regular accounts are to be entered therein of all sums of money received and paid on account of the Local Authority, and of the several purposes for which they are received and paid. It directs that "every Local Authority shall cause the accounts to be balanced once at least in every month." The accounts then are to be true, they are to be regular, that is, the necessary entries are to be regularly made, and they are to be balanced at least once a month so that the exact state of each account may appear on inspection.

Turning now to the cluster referred to, one general observation is desirable. Substituting the appropriate heading, the words of Lord *Collins* in delivering the judgment of the Privy Council in

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the *Toronto Corporation* v. *Toronto Railway* (1) are exactly in point with reference to sec. 265. His Lordship said:—"This clause is the last of a fasciculus, of which the heading is 'Track, &c., and Railways,' and, as was held in *Hammersmith Railway Co.* v. *Brand* (2), such a heading is to be regarded as giving the key to the interpretation of the clauses ranged under it, unless the wording is inconsistent with such interpretation."

This leads to the *primâ facie* presumption that the account mentioned in sec. 265 is a separate account in the same sense as those mentioned in the other sections of the group, though the restrictions on the application of the moneys in each account are different.

Reading the enactment itself, sec. 261 requires a separate and distinct account of special and separate rates &c., and the exclusive application of the moneys raised by them to the proper purposes. Sec. 262 provides specifically as to special rates for gas, electricity and power works. Sec. 263 requires a separate and distinct account of revenue for waterworks, although, where not the produce of a separate rate, that revenue is, by sec. 191, part of the Local Fund; and sec. 264 provides for separate accounts as to loans. The last of the series is sec. 265. The first paragraph of this section is based upon sec. 34 of the Act of 1890, but with important and striking differences. Its opening words make the section applicable to all cases where an area is divided, and, unlike its prototype, it applies in such cases without exception to all general rates, whether equal or differential. In every case, that is, in every case of a divided area, a separate and distinct account is to be kept of general rates levied in the several divisions. There cannot be any doubt that this is a "particular account" within the meaning of sec. 192. The main problem is, does sec. 265 make provision charging the expense of divisional works to that separate account?

Not only is the first paragraph of sec. 265 enlarged in its operation, but the remainder of the section is entirely novel. The second paragraph is in these terms:—"And save as hereinafter provided all moneys *expended* upon works within the limits of a Division shall be *debited* to the *account* of that Division."

(1) (1907) A.C., 315, at p. 324. (2) L.R. 4 H.L., 171.

Much of the present controversy turns on the true meaning of that provision. The appellants contend that it is a mere book-keeping provision—that it has no practical effect, and is not intended to have any. They say, in short, that the Council has only to enter on the credit side of the account of the Division the amount received from it for the general rates, and on the debit side the sum, whether exceeding that amount or not, spent on works in that Division, and then the provision is fully complied with. They maintain, too, that general rates can be lawfully spent on divisional works exceeding the amount to the credit of the Division, even without the resolution and direction mentioned in the next paragraph of the section. Of course that reduces the rest of the section to a nullity, and the provision just quoted is at best a useless formality.

The other construction is that given to it by one branch—the main branch—of the argument of counsel for the respondent. He says, in effect, that the second paragraph of sec. 265 is one of the cases referred to in the qualifying passage beginning "unless" in sec. 192, and therefore there is no power under sec. 192 to pay for works within the limit of the Division. This view is, to my mind, supported by the words of the second paragraph of sec. 365 even without more. There is no difference between the expression "charged to" an account in sec. 192 and "debited to" the account in sec. 265, and therefore it appears to me that this particular class of expenditure is in any case outside the authority of sec. 192. If so, where is the authority to pay for divisional works out of general rates not being the general rates contributed by that Division? As far as I can see, that authority is contained in sec. 265, and only in compliance with the conditions there laid down.

Whatever doubt I might otherwise entertain as to the true meaning of the second paragraph, if the section ended there, is set at rest by the first proviso, which reads thus:—"Provided that when a work is of such importance to the whole of the area that the cost of its construction and maintenance may reasonably be a *charge* upon the general revenue of the Local Authority, the Local Authority may from time to time, by resolution passed at a meeting specially summoned for the

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purpose, declare such work to be a 'general work,' and direct that the cost of its construction and maintenance shall be defrayed out of the general revenues, and shall not be debited to the separate account of any Division, and such expenditure shall be so defrayed accordingly."

My first observation on this proviso is that the expression "general revenues" mean the revenues of the Corporation generally and irrespective of what Division they come from. Read in connection with the phrase "general work" no hesitation need be felt as to this. Now, the first proviso applies only when, notwithstanding the local situation of the works within a particular Division, they are declared by the Council to be so important to the whole of the area that they ought properly to be declared to be "general works," and that their cost of construction and maintenance should be defrayed out of the general revenues, and not debited to the separate account of the Division. In such case—and as I read the enactment, in such case only—the cost of these works is to be defrayed out of the "general revenues."

The legislature, it will be noticed, does not say anything whatever about debiting to a Local Fund, but speaks of defraying out of general revenues in contradistinction to debiting the divisional account. In other words, when once the resolution and direction are arrived at, the burden of the paying for the works, so far as it is necessary to resort to the general rates, is expressly transferred from the Division to the area, that is, from the moneys contributed by the Division to the whole of the general rates in the common purse. I should have thought it would be accepted as clear that, unless the resolution is passed and the direction is given, the cost of these works is not to be borne by "general revenue" so far as it consists of general rates. Otherwise what effect is to be given to the proviso? Passing by for a moment the next proviso, let us consider for this purpose the provisions as to appeal to the Minister. Suppose the Council passes the resolution and gives the direction already referred to, thereby making the payment lawful out of general revenues, what, if the Minister reverses the decision, is to be the consequence? Is the expense to be nevertheless met out of general revenue including

general rates, or, what is the same thing, out of any of the moneys said to constitute the combined and undistinguishable Local Fund? If so, it is hard to discern any practical virtue in the section at all, and quite impossible to attribute any force to the first proviso. On this assumption the precise stipulations as to a resolution and direction, and a subsequent appeal to the Minister were inserted as mere empty phrases, and to comply with them is so much expensive but utterly idle amusement. The second proviso appears to me to support the view I have already expressed, and shows what expenditure is to be paid out of general revenues without a resolution, in contradistinction to divisional works which are not to be so paid.

Looking at the various sections already referred to as a whole, they seem to me, however, to deliberately enact a policy as to the burden of works upon the general rates which varies according to the nature of the municipality.

Sec. 191 applies without variation to all municipalities and defines ordinary revenue. This is, of course, subject to any subsequent provision.

Sec. 192, except as modified by sec. 265, also applies to all municipalities whether divided or not. It applies without qualification to an undivided area, and, therefore, general rates may by mere force of the section be applied in the same way and to the same extent as any other part of the ordinary revenue. They remain in the "account" mentioned in that section, namely, the Local Fund account, and are credited there only and may be applied generally, as there is no special direction to the contrary. There is every reason for them, in that case, to be credited in the general account and applied generally, and none for crediting them to any other account, or for creating any exception to their application. But in the case of a divided area, though as to the rest of the ordinary revenue—except waterworks—sec. 192 continues to operate, sec. 263 makes a specific and inconsistent provision as to revenue from waterworks, and sec. 265 makes a new, distinct and inconsistent provision with respect to the application of general rates to divisional works. General rates, by force of the inherent exception expressly made by sec. 192, and the specific mandate of sec. 265, are not to be carried to the Local Fund

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account in the form of an indistinguishable bulk sum, as if the area were a unified area, but are to be carried to the several Divisions, and the powers of application in sec. 192 do not extend to them at all.

No authority to pay a shilling of general rates therefore exists in such case under sec. 192, and sec. 265 recognizes this by expressly providing the requisite authority, wherever such payment is proper by a local authority whose area is divided.

Shortly stated, the position is that no Division is to be bound to contribute general rates to pay for works in which it has no concern, but must contribute to all general expenditure. The tentative discretionary provisions intended to some extent to promote by voluntary action the same end, introduced by the Act of 1890, were replaced by a more stringent scheme, which leaves the operations of local government as free as before, but subject to the rule of permitting no exclusive benefit to some members of the corporation at the expense of their fellow corporators, as far as relates to contributions for general rates.

This interpretation of sec. 265 seems to me not only supported by the terms of the section, but the only one consistent with its language. The view presented by the appellants, that the section is merely book-keeping, attributes so much futility to the deliberate words of the legislature that, except as a construction of extremity, it ought not to be adopted. It is not at all necessary to extend the strict language in order to give it the meaning I have placed upon it, but if it were I should be prepared to do so in order to effectuate the obvious design of Parliament. As Lord *Hobhouse* said for the Privy Council in *Salmon* v. *Duncombe* (1):—"It is, however, a very serious matter to hold that when the main object of a Statute is clear, it shall be reduced to a nullity by the draftsman's unskilfulness or ignorance of law." See also on this point, *per* Lord *Alverstone* C.J. in *Rex* v. *Vasey* (2).

So far, I am entirely with the construction put upon the section by the respondent, which is that, in the absence of a resolution and direction within the meaning of the first proviso—or, in other words, so long as works in a Division are not shown to be of

(1) 11 App. Cas., 627, at p. 634.

(2) (1905) 2 K.B. 748, at p. 750.

general importance, so that their cost may reasonably be a charge on the general revenues, no matter from what source arising—then, so far as general rates are concerned, no other Division can be called upon to pay for them. Works exclusively for the benefit of one Division are not to be paid for out of general rates contributed by other Divisions, and the Local Fund, so far as it consists of general rates, is not applicable to the payment of such works.

I am, therefore, of opinion that on the main point the learned Chief Justice of Queensland was right.

But the respondent goes further in his argument and claims also that expenditure of general rates for general purposes in a divided area should be apportioned in some equitable manner amongst the various Divisions; so as to enable each Division to see how much of the money, representing general rates and still actually remaining in the common purse, belongs to that Division. He contends, too, that beyond the sum so properly appearing to the credit of any Division for general rates on accounts taken upon that basis, no works should be done in the Division, in the absence of a resolution and direction.

On this branch I am quite unable to follow him. There is nothing in the language of the Statute which will support that view. It would require some direction in the Act to debit not only the Division in which the works are done, but every other Division with proportion of the cost. Not a word can be found which justifies the debiting of any Division separately with the cost of works done in another Division. And no standard is suggested by the Act by which the apportionment could be made. It might be proportionate to contributions which, in case of a differential rate, would vary as to the rating value of property, or to the relative benefit each Division received from local works declared to be general. But no hint of any standard of apportionment is given, and I can see no justification in law for the contention, and I agree as to this with the majority of the Court.

The judgment of *Cooper* C.J. is therefore, in my opinion, erroneous to this extent. To put the matter concretely; my view is that, if an area consists of three Divisions, A, B, and C, of which A contributes £2,000 in general rates, B £3,000, and

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C £4,000, then, in the absence of a resolution and direction, no moneys being general rates can be spent in any Division above the amount of general rates contributed by the Division; but £7,000 could be spent in general works, even though located in A; and still £2,000 could be spent in A in local works; whether before or after the expenditure in the general works.

The appellants' view, on the contrary, is that the whole £9,000, even if it is the only money belonging to the municipality, can be spent on purely local works in A without the resolution and direction; and it is this which I cannot think to be the intention and effect of the Act.

But the question then arises, what should the order be? Should the action be dismissed outright, or should the judgment be varied in accordance with the law? I think the materials before the Court show that both branches of the respondent's case as argued before this Court were raised and fought between the parties, both on the pleadings and in the Court below. The writ undoubtedly raised specifically and separately the first and main branch. The statement of claim also contains it though in a more involved form, since the pleader has included it in the larger claim. Paragraphs 5 and 6, as I read them, allege, *inter alia*, that without the necessary resolution and direction general rates contributed by the East and West Divisions have been spent on local works in other Divisions. The plaintiff must have included this method of dealing with the general rates in the charges contained in paragraph 8, and although that paragraph taken by itself is somewhat ambiguous, it appears to me to be quite open to the view that the "just deductions" referred to include, if necessary, all amounts properly expendible otherwise than for works. The defendants clearly so understood it. Paragraphs 4 and 6 are really an admission of all the facts necessary to raise the plaintiff's contention in either aspect, and are a distinct declaration of intention to do all that is complained of, and a clear challenge as to the validity of that course in the future as well as in the past. I do not see why the law as stated by *Chitty* J. in *Shafto* v. *Bolckow, Vaughan & Co.* (1) should not apply. Both parties understood

(1) 34 Ch. D., 725, at pp. 728-729.

the ground they were fighting upon, and though there is some confusion of the two branches in the judgment of the learned Chief Justice of Queensland, that arises from the fact that his Honor was in favour of the plaintiff on both points and did not find it necessary to separate them. But the reference to general rates in the concluding passage of his reasons shows that the judgment was not going beyond the question of general rates and extending to absolute financial separation in every sense.

The point was openly fought out in both Courts, it is of great importance to the citizens of Brisbane, and the difficulty of proving a contravention of the Act should be no bar to forbidding it—rather the contrary, particularly when the difficulty of finding an appropriate remedy for actual contravention is considered—and the importance of the case extends even more strongly to many municipalities in Queensland whose Local Funds consist mainly of general rates. I think the Attorney-General is entitled to a declaration and injunction to the extent I have mentioned. The amplitude of his claim does not prevent him from obtaining such relief as, in the facts raised and admissions made, he is in law entitled to. This was the law as stated by the Privy Council in *Cockerell* v. *Dickens* (1) where the rule laid down by Lord *Eldon* L.C. in *Hiern* v. *Mill* (2) was followed. The Privy Council held that the Calcutta Court, while rightly refusing the particular relief asked for, was wrong in dismissing the bill, and their Lordships under the general prayer granted an injunction which gave relief of the same description as that specifically prayed for, being only a different qualification or modification of the specific relief prayed. For the reasons I have given I think that Lord *Eldon's* rule applies to this case also.

There should accordingly, in my opinion, be a declaration that the defendants are not entitled to spend, and an injunction restraining them from spending, general rates raised in any Division upon works constructed in another Division, in the absence of the resolution and direction prescribed by sec. 265.

HIGGINS J. I have had the advantage of reading the judg-

(1) 1 Mont. D. & De G., 45. (2) 13 Ves., 114, at p. 120.

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ment of the Chief Justice, and as it fully expresses my views, I have decided to withdraw the judgment which I had written to the same effect. As for the possible declaration to which the Chief Justice has adverted—possible in another case and in other circumstances—I should like to say, as the matter has been referred to, that I see nothing sufficient in the Act to encourage litigation against the municipalities for the purpose of obtaining such a declaration.

I shall only add this, that sec. 265 is the only section in which the book-keeping word "debit" is used; that there is not in sec. 265, as there is in the analogous sections 261-264, any provision as to the application or payment or defraying or charging of the general rates received in each Division; that, but for the form of the provisos in sec. 265, the case for the relator would not even be arguable; that, at the most, these provisos raise inferences in favour of the relator; that the absence of provisions for apportionment of general expenses as between the wards, and for other necessary matters, raises counter inferences; and finally, that, although argument by inference may aid in explaining what is ambiguous, it cannot be used to contradict or subtract from what is plain—especially in face of the distinct language of sec. 192 (2).

Appeal allowed. Judgment appealed from discharged. Judgment to be entered for the defendants with costs. Respondent to pay costs of appeal.

Solicitors, for the appellants, *Macpherson, Macdonald-Paterson & Co.*

Solicitors, for the respondent, *Atthow & McGregor.*

B. L.