[PRIVY COUNCIL.]

ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND (AT THE RELATION OF JAMES THOMAS ISLES) . . } APPELLANT;

AND

THE COUNCIL OF THE CITY OF BRISBANE . . . . . } RESPONDENTS.

PRIVY COUNCIL.* 1909. July 22.

Local Authorities Act 1902 (*Qd.*), (1902 *No.* 19), *secs.* 191, 192, 209, 210, 213, 214, 215, 223, 251, 261, 265—*Local Authority whose area is divided into Divisions —Rates raised in one Division—Expenditure on works in other Division—Accounts.*

Sec. 265 of the *Local Authorities Act* 1902 (Qd.) is not merely an accountancy section, but its effect in relation to sec. 192 is to place a limit upon the power of expenditure out of revenues derived from general rates on works in a Division of a Local Authority, such limit being the amount of the general rates received in respect of land in the Division, but it does not affect the right of the Local Authority to apply any other part of their ordinary revenue upon such works. The limit may be removed by a resolution and direction passed or given as prescribed by the Act.

Held, therefore, that a Local Authority were not entitled to expend moneys received by them in respect of general rates levied upon the rateable lands in one Division of their area upon works constructed in another Division of their area in the absence of the resolution and direction prescribed by sec. 265 of the *Local Authorities Act* 1902.

Decision of the High Court: *Brisbane City Council* v. *Attorney-General for Queensland*, 5 C.L.R., 695, varied.

APPEAL to His Majesty in Council from the decision of the High Court: *Brisbane City Council* v. *Attorney-General for Queensland* (1).

*Present.—Lord Loreburn, L.C., Lord Ashbourne, Lord James of Hereford, Lord Gorell and Lord Shaw.

(1) 5 C.L.R., 695.

PRIVY COUNCIL.
1909.

ATTORNEY-GENERAL FOR QUEENSLAND
v.
BRISBANE CITY COUNCIL.

The judgment of their Lordships was delivered by

LORD GORELL. The questions which are raised upon this appeal are of very considerable importance and difficulty. They depend upon the construction of certain sections of the *Local Authorities Act* 1902 for Queensland, which is an Act for the consolidation of the laws in force relating to municipalities (boroughs and shires) and divisions.

The Act is of general application in the State, but the present dispute arises in the City of Brisbane, for which the respondents are the duly constituted local authority. The area of the city is divided, under the provisions of the Act, into seven wards, and the relator, James Thomas Isles, is a ratepayer in one of them, viz, the West Ward, and represents the ratepayers who are members of an association of ratepayers of the East and West Wards of the city.

The appellant states in his case on appeal that the question arising in the appeal is whether the respondents are entitled to expend any portion of the general rates levied by them in one of the wards of the city upon the construction and maintenance of works in another or others of the wards of the city without having first duly passed (at a meeting specially summoned for that purpose) a resolution (1) declaring such works to be of such importance to the whole of the city that the cost of construction and maintenance may reasonably be a charge upon the whole of the respondents' general revenue, and (2) directing that the cost of construction and maintenance of such works shall be defrayed out of the respondents' general revenue.

The appellant commenced an action in the Supreme Court of Queensland on 20th April 1906 against the respondents to obtain a decision upon the points in dispute between them, but in his statement of claim he seems to have made a claim of a wider character than that involved in the question as above stated, for he claimed 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 shall have been received. There was also a claim for an injunction and an account. The substantial contention of the respondents in answer to this claim was (paragraph 6 of the statement of defence) that they were authorized by law, as and when in their discretion they deemed 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 general rates which were received by them in respect of any of the divisions or wards, and that they had from time to time duly expended the said moneys accordingly. Although the respondents do not appear to have in fact expended out of the general rates on works within any division more than the amount raised by general rates in that division, their contention as above stated was maintained through the Courts below.

The case was heard before the Chief Justice of Queensland, and on 13th December 1906 he gave judgment in favour of the appellant, and made a declaration in the terms asked for by the appellant in respect of moneys received since 20th April 1906, with an order upon the respondents to keep accounts for each division of their area in accordance with the provisions of the said Act, and he granted an injunction to enforce the declaration, and gave the appellant the costs of the action.

From this judgment the respondents appealed to the High Court of Australia. The appeal was argued first at Brisbane and afterwards re-argued at Melbourne, before the Chief Justice of the High Court, and *Barton*, *O'Connor*, *Isaacs* and *Higgins*, JJ.; and on 23rd March 1908 the Court set aside the said judgment and entered judgment for the respondents with costs. Mr. Justice *Isaacs* dissented, but was of opinion that the declaration aforesaid was too wide, and that a modified declaration should be made to the effect that the respondents were not entitled to spend general rates raised in any division upon works constructed in another division in the absence of the resolution

PRIVY COUNCIL. 1909.

ATTORNEY-GENERAL FOR QUEENSLAND v. BRISBANE CITY COUNCIL.

and direction prescribed by sec. 265 of the said Act, and that there should be an injunction accordingly.

In order to understand and appreciate the controversy, it is necessary to examine the legislation relating to the subject which has taken place during recent times in Queensland.

In 1878 was passed the *Local Government Act* of that year, which provided for the constitution of municipalities, including Brisbane, with powers to the Governor in Council to sub-divide a municipality into divisions, and contained full provisions for the government, &c., thereof. Sec. 145 dealt with the keeping of proper books of account showing receipts and payments. Sec. 175 stated of what the ordinary revenue of the body corporate should consist and dealt with the application thereof. Its terms were as follows:—

"The ordinary revenue of every municipality shall consist of the moneys following (that is to say)—

Rates (not being special or separate rates), tolls, and rents of tolls;

Moneys received by the council under any grant or appropriation by Act of the Parliament of Queensland not containing any provision to the contrary;

All other moneys which the council may receive under or in pursuance of this Act not being the proceeds of any loan.

And all such moneys shall be carried to the account of a fund to be called the "Municipal Fund," and such fund shall be applied by the council towards the payment of all expenses necessarily incurred in carrying this Act into execution and of doing and performing all acts and things which the said council are or shall be by this or any other Act empowered or required to do or perform."

The important matter to notice in this section is that it does not contain at the end any proviso or exception such as that which is to be found in the 192nd section of the Act of 1902 hereinafter set forth.

Sec. 187 provided that the council might make and levy general rates equally on all the rateable property in the municipal district, and by sec. 188 they had power to make and levy

separate rates equally on all rateable property situated within any particular portion of a municipal district for the purpose of defraying the expenses in doing or executing any work, improvement, or undertaking which they were authorized to do or execute for the special benefit of such portion of the district. According to sec. 189, they were to keep a separate account of separate and special rates, and apply the moneys in respect of such rates for the several purposes for which they were authorized to make and levy such rates and not otherwise.

In 1887 the *Divisional Boards Act* of that year was passed for consolidating and amending the laws relating to local government outside the boundaries of municipalities with somewhat similar and other provisions. Secs. 189, 191, 192, 195, 196, and 197 may be referred to.

In 1890 the *Valuation and Rating Act* of that year was passed. It did not repeal sec. 175 of the Act of 1878, nor sec. 189 of the Act of 1887, but repealed *inter alia* secs. 187, 188 and 189 of the former, and secs. 191 to 221 of the latter Act. The relative sections are 27 to 42, which refer to two kinds of rates, general and special. General rates were to be equally levied, but, where a district was sub-divided, need not be the same in each division, and sec. 34 provided that when the amounts of the general rates levied upon its rateable land in the several sub-divisions of a district were not the same, separate and distinct accounts were to be kept of all moneys received in respect of such rates for each subdivision, but made no provision for the disposal of the moneys so as to affect the general powers conferred by sec. 175 of the Act of 1878 and sec. 189 of the Act of 1887. Power was given by sec. 38 to make separate rates for works for local benefit, and under sec. 42 accounts of separate and special rates were to be kept and the moneys applied for the purposes for which the rates were levied and no other.

Then came the *Local Authorities Act* of 1902, under which the questions arise. It repealed the former Acts, continued the division of Brisbane into five wards with power to the Governor in Council to alter their number, under which power they have been altered to seven. A separate list of ratepayers was to be made for each division (sec. 26), general powers of control and of

PRIVY COUNCIL. 1909.

ATTORNEY-GENERAL FOR QUEENSLAND v. BRISBANE CITY COUNCIL.

construction and maintenance of necessary public works, &c., were given (secs. 60, 62, and 71), and in secs. 191 and 192 will be found the provision about revenue upon which so much turns in this case. These sections are as follows :—

"Sec. 191. The ordinary revenue of an area 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. (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.'

"(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 an 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."

Sec. 209 gives the local authority power to make two kinds

of rates, general and special. Subject to the provisions in the Act contained, relating to divided areas, general rates are to be levied equally upon all rateable land in the area. No general rate made in any one year shall exceed the amount of threepence in the pound of the value of the rateable land upon which it is made.

When an area is divided, the amounts of the general rates levied upon the rateable land in the several divisions need not be the same (sec. 210 (3)). If the local authority at the beginning of any year has to the credit of the local fund sufficient money to defray its probable and reasonable expenses for that year, the Governor in Council may excuse the authority from making a general rate during the year in respect of the whole area or any division thereof (sec. 210 (4)). Sec. 213 gives power to make special rates for purposes therein mentioned, and sec. 214 gives power to make special rates (called a separate rate) upon any part of an area for works for its special benefit, and there are further provisions as to special rates. Sec. 215 provides that a special rate may be a separate rate, or may be made and levied equally upon all rateable land in the area. Sec. 251 requires proper books of account to be kept of all moneys received and paid and of the purposes for which they are received and paid. Sec. 261 directs separate and distinct accounts to be kept of separate and special rates, and of "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 further directs the authority to apply the moneys standing to the credit of such account "for the purposes for which such rates are levied and no other."

There are further provisions with respect to separate accounts for gasworks and waterworks, and the application of the moneys raised and received therefor, and with respect to loans and the application of money borrowed, and then comes the following section, which is of so much importance in the present case:—

"Sec. 265. When an area is divided the local authority shall in all cases keep a separate and distinct account of all moneys received in respect of general rates levied upon the rateable land

PRIVY COUNCIL. 1909.

ATTORNEY-GENERAL FOR QUEENSLAND v. BRISBANE CITY COUNCIL.

in the several divisions, and of any 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 save as hereinafter provided, all moneys expended upon works within the limits of a 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.

"Any twenty ratepayers of an area may, by petition to the Minister, appeal against a resolution of the local authority under this section, and the Minister shall thereupon cause such inquiry to be made as he thinks necessary, and shall either confirm such resolution with or without amendment, or disallow the resolution, and his decision shall be final and binding. But the Minister may re-consider such decision at any time upon the petition of the local authority or any twenty ratepayers of the area."

It is to be noticed that sec. 192 (2) contains at its end an exception, or proviso, limiting the power of the authority with regard to the application of the local fund, of which the general

rates form part, and this limitation, together with sec. 265, gives rise to the difficulty in the case.

Before passing to a consideration of the more important sections, it may be worth while, as bearing on the practical powers which exist for making each area bear the burden of works for its special benefit, to point out that there is a maximum to the amount of the general rate, and (sec. 223) to the special rates, *not being separate rates*, special water rates, special loan rates, cleansing rates, or tramway rates, that the general rate may differ in different divisions, and that there may be separate rates for works of local benefit.

Now, the contention of the appellant appears to be that the effect of secs. 192 and 265 is to require that all moneys expended upon works within the limits of a division shall be paid out of the general rates collected in the division, unless there has been a resolution declaring those works "general works"; and further, as their Lordships understand, that what is duly declared to be general expenditure shall be apportioned among the several divisions, and that any difference between the costs of the works in a division, together with its proportion of the general expenditure and the general rates received in the division, shall be applied solely for works in the division and retained for that purpose. In effect, the appellant wishes to treat each ward as an entirely separate financial unit.

The respondents' contention in answer to this is that sec. 265 is merely an accountancy section for the purpose of providing information on which differential rating might be based, and does not contain any express provision as to the application of general rates, so that there is nothing to limit their general power to apply the moneys received from general rates as they think fit for any of the purposes of the Acts which they have to carry out and perform, and that they are in no way prevented from continuing the system which they have hitherto adopted.

After a very careful consideration of the sections of the Act, which appears to have been very loosely drawn in certain respects, and, indeed, drawn in such a manner as to lead to perplexing difficulties of construction, which might have been avoided by clear expressions of what was intended in such

PRIVY COUNCIL. 1909.

ATTORNEY-GENERAL FOR QUEENSLAND v. BRISBANE CITY COUNCIL.

important matters as were being dealt with by the Act, their Lordships consider that a proper and reasonable construction of the sections shows that neither party is entirely in the right in their views.

It seems from a comparison of the previous Acts and the Act in question that an effort was being made to place more burden on a locality where works were done for its special benefit than on divisions to which the works were of no benefit, and although there were powers of differential rating and of making special rates on a division in respect of works done for its special benefit, the sections in question seem to have contemplated that this effort might be to some extent responded to in dealing with general rates; but, even if the moneys expended upon works in a division are to be paid out of the general rates received in that division, still, so long as the former amount is less than the latter, no practical result is attained, unless something is to be found in the Act which prohibits the difference from being used for general purposes. As a matter of fact, in no case in the accounts before their Lordships have the moneys expended for works in a ward exceeded the amount of general rates received in that ward.

Now, it seems clear from sec. 192 (2) that the local fund, which includes general rates, not only may be applied, but "shall be applied" towards the payment of all expenses necessarily incurred in carrying the Act into execution, and the doing and performing any acts and things which the local authority is by the Act or any other Act empowered or required to do or perform, unless there is an express provision charging such expenses to any particular fund or account.

As this section is dealing with the actual application of money, and not with the method of keeping accounts, it is obvious that the proviso is intended to place some limitation upon the mode of application of the money, and that the words "charging such expenses to any particular fund or account" are equivalent to a direction that the particular fund or account is to bear such expenses as the express direction deals with. Then sec. 265, while it directs that, save as thereinafter provided, all moneys expended upon works within the limits of a division shall be

debited (that must mean the same as charged) to the account of that division, requires all the general rates levied in a division to be credited to an account for the division; but the effect of this is to place a limit upon the amount which can be applied to works in that division, because by sec. 192 the authority is only able to apply its local fund (which includes such rates) for purposes the expenses of which have not been charged to a particular fund or account.

The limit of amount, then, by virtue of the two sections which can be expended in a division on works in it is the amount of general rates received in it (apart, of course, from any separate rate under sec. 214).

If, however, a resolution were passed declaring the works "general works," such works would be defrayed out of general revenue, and not be debited to the separate account of the division, and the limit would not operate on those works.

But suppose that the cost of works in a division does not amount to the sum received for general rates in the division, there is nothing in the sections which says that the difference is to remain, so to speak, the property of the division, and that it cannot be applied without any resolution to the general expenses of the area. The proviso in sec. 192 only appears to cut down the general powers to the extent of the expenses which are charged to the particular fund or account, that is to say, to the cost of the works in the division to which the account relates.

So, again, the second proviso in sec. 265, the first part of which appears to refer to the power to bring part of the expenditure for salaries, &c., into the separate account mentioned in sec. 261 (2), is not of any practical effect material to this case, for there is, except this reference, no express provision charging the expenses mentioned in it to any particular fund or account other than the general revenues.

Their Lordships consider that, on the one hand, to treat sec. 265 as a mere accountancy section would be to give no real effect to it, but, on the other hand, the effect to be given to it as related to sec. 192 is to place a limit upon the power of expenditure out of ordinary revenue on works in a division, such limit being the amount of general rates received in it, but not to affect the right

PRIVY COUNCIL. 1909.

ATTORNEY-GENERAL FOR QUEENSLAND v. BRISBANE CITY COUNCIL.

of the respondents to apply the general rates received in any division so far as they exceed the cost of the works in such division to any of the general purposes of their area.

These considerations leave the position of the parties for all practical purposes unaffected so long as the respondents do not without a proper resolution and direction spend (except, of course, out of special separate rates, with which the case is not concerned) more money on works in a division than the amount of general rates received therein. If they were to exceed this amount, then, unless there be a resolution and direction in accordance with the first proviso in sec. 265, they would be exceeding their powers. But it seems reasonably clear that, so long as less is spent on works in a division than the amount of general rates received in the division, no other division can be said to be called upon to pay out of the general rates of such other division for such works. At the same time, if the general rates are equally levied, and if the works in such other division are of small amount, so that their cost bears a less proportion to the general rates in it than the cost of works in the first-mentioned division bears to the general rates in it, the ratepayers in the other division will be contributing a larger proportion of their general rates to general expenses than those in the first-mentioned division. This, however, does not appear to be dealt with by the Act, except so far as there are powers to make different rates in different divisions and to make special separate rates in divisions.

It seems desirable that disputes between the ratepayers of a divided area and the council thereof, such as those which have given rise to this case, should be put an end to by the legislature, and that the rights and liabilities of the respective ratepayers should be more clearly and distinctly defined than they are under the Act of 1902. At present, however, the appellant does not, in the opinion of their Lordships, appear to be entitled to the declaration as claimed, but only to a modified declaration as suggested by Mr. Justice *Isaacs* to meet the extreme contention made in the 6th paragraph of the statement of defence. It may be noticed that the Chief Justice of the High Court was, on the first argument of the case before that Court, disposed to assent

to the making of such a declaration, though his final conclusion was not in favour of doing so.

Their Lordships, after much consideration, are of opinion that the judgment of the High Court and the judgment of the Supreme Court of Queensland should be discharged, and in lieu thereof that it should be declared and ordered that the respondents are not entitled to expend moneys received by them in respect of general rates levied upon the rateable lands in one division or ward of their area upon works constructed in another division or ward of their area in the absence of the resolution and direction prescribed by sec. 265 of the *Local Authorities Act* of 1902, and that an injunction should be granted restraining them from so expending general rates, and that each party should bear their own costs of the action both in the said High Court and in the said Supreme Court.

Their Lordships will humbly advise His Majesty accordingly.

There will be no costs of this appeal.

[HIGH COURT OF AUSTRALIA.]

MINERALS SEPARATION LTD. . . . APPELLANTS;

AND

POTTER'S SULPHIDE ORE TREATMENT LTD. . . . . } RESPONDENTS.

POTTER'S SULPHIDE ORE TREATMENT LTD. . . . . } APPELLANTS;

AND

MINERALS SEPARATION LTD. . . . RESPONDENTS.

ON APPEAL FROM THE COMMISSIONER OF PATENTS.

June 21, 22, 23, 24, 25.

Patent — Specification — Amendment — New principle — Disclaimer—Correction—Explanation—Patents Act 1903 (*No.* 21 *of* 1903), *secs.* 71, 78.

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