

H. C. OF A.
1910.

Appeal dismissed with costs.

WEBB
v.
AUSTRALIAN
DEPOSIT AND
MORTGAGE
BANK LTD.

Solicitor, for the appellant, *Guinness*, Crown Solicitor for
Victoria.

Solicitors, for the respondents, *Davies & Campbell*.

B. L.

[HIGH COURT OF AUSTRALIA.]

JAMES WALTER RAE APPELLANT;

AND

CHARLES SIMMONS RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF
NEW SOUTH WALES.

H. C. OF A.
1910.

SYDNEY,
Aug. 24.

Griffith C.J.,
Barton,
Isaacs and
Higgins JJ.

Pastures Protection Act 1902 (N.S.W.) (No. 111 of 1902), secs. 49-52—Local Government Act 1906 (N.S.W.) (No. 56 of 1906), sec. 75—Destruction of rabbits on roads — Powers of Pastures Protection Board — Interference with roads under control of shire councils.

Under sec. 49 of the *Pastures Protection Act 1902* it is the duty of the occupier of land to destroy rabbits upon any roads bounding his land, in accordance with the requirements of the Pastures Protection Board.

Sec. 75 of the *Local Government Act 1906* provides that a council shall have the control and management of all public roads in its area, and that no person shall use any road, or permit a road to be used, so as so affect the exercise of the rights and powers of the council.

Proceedings were taken against the appellant for failing to destroy rabbits on a road bounding his land. The means which the appellant was required by the board to adopt included the destruction of briar and blackberry bushes, which necessitated a breaking of the surface of the road. The Supreme Court held that sec. 49 of the *Pastures Protection Act* did not conflict with sec. 75

of the *Local Government Act*, and that the board was entitled to proceed against the appellant for not adopting the means specified. Special leave to appeal to the High Court was sought on the ground that the sections in question did conflict.

Held, that the case was one in which special leave should not be granted as the decision was manifestly right.

Special leave to appeal from the decision of Supreme Court : *Rae v. Simmons*, 10 S.R. (N.S.W., 582; 27 W.N. (N.S.W.), 142, refused.

H. C. OF A.
1910.
—
RAE
v.
SIMMONS.
—

APPLICATION for special leave to appeal from the decision of the Supreme Court upon the hearing of a special case stated by a magistrate under sec. 101 of the *Justices Act* 1902 (No. 27).

An information was laid against the appellant under sec. 49 of the *Pastures Protection Act* 1902 (No. 111), for that he, being the occupier of certain land, and liable to destroy and suppress rabbits and noxious animals under the *Pastures Protection Act*, did upon the roads bounding such land fail to suppress and destroy rabbits and noxious animals from time to time fully and continuously by all lawful means, at his own cost, and in accordance with the requirements of the Board.

Sec. 49, as amended by sec. 2 of the *Pastures Protection Amendment Act* 1904 (No. 20), provides that "it shall be the duty of the owner or occupier respectively of any land from time to time to suppress and destroy, by all lawful means, at his own cost, and in accordance with the requirements of the Board as specified under the provisions of sec. 52 of the said Act, all rabbits and noxious animals which may from time to time be upon such land, or upon any roads bounding or intersecting the same, or any part thereof."

The requirements of the Board, as specified under sec. 52, in this case were "poisoning, hunting, shooting, trapping, and especially destruction of rabbit harbours, which includes briars and blackberries." It appeared from the evidence that the appellant had not taken steps towards carrying out the requirements of the Board, that blackberry and briar bushes were growing on the road in question, that to eradicate the briar bushes it is necessary to dig them out below the bulb, and that this would necessitate a breaking of the surface of the road. It

H. C. OF A.

1910.

}

RAE

v.

SIMMONS.

was also stated that there were rabbit burrows under the bushes which would have to be dug out.

Sec. 75 of the *Local Government Act* 1906 (No. 56) is as follows: "(1) a council shall have the control and management of all public roads in its area, and may use such roads and the soil thereof to any required depth in the exercise of any powers conferred on the council; (2) no person shall use any such road, or the soil of or under such road, or permit the same to be used in derogation or so as to affect the exercise of the rights or powers of the council. This provision shall bind the Crown."

The magistrate held that sec. 49 of the *Pastures Protection Act* was in conflict with sec. 75 of the *Local Government Act*, and that the Board had no power to compel an owner or occupier of land bounded or intersected by roads to destroy rabbits by the means prescribed by the Board, to wit the destruction of blackberry and briar bushes growing on the said roads, such roads being under the control of a shire council, and dismissed the information: *Rae v. Simmons* (1).

There was no evidence of any objection on the part of the council to the directions issued by the Board.

The Supreme Court held that the decision of the magistrate was erroneous in point of law, and that the Board had power to compel the appellant to comply with the requirements as specified.

Mocatta, for the appellant. The appellant cannot comply with the requirements of the Board without breaking the surface of the road, which would render him liable to a penalty under the *Local Government Act*. The magistrate was therefore right in holding that the appellant was not liable to a penalty for failing to carry out the directions of the Board.

GRIFFITH C.J. The only question submitted to the Supreme Court was whether sec. 49 of the *Pastures Protection Act* 1902 conflicted with sec. 75 of the *Local Government Act* 1906. They held that it did not. This decision is manifestly right. Leave to appeal must therefore be refused.

(1) 10 S.R. (N.S.W.), 582; 27 W.N. (N.S.W.), 142.

BARTON, ISAACS, and HIGGINS JJ. concurred.

H. C. OF A.
1910.

Application refused.

RAE
v.

Solicitor, A. W. Simpson, Armidale, by *Sly & Russell*.

SIMMONS.

C. E. W.

ed to
nitech
y Celrix
mmaceu-
ls Inc
95) 34 IPR

[HIGH COURT OF AUSTRALIA.]

ENGLELBERT SCHWER APPELLANT :
PLAINTIFF,

AND

CHARLES HENRY FULHAM AND } RESPONDENTS.
WILLIAM ROBINSON }
DEFENDANTS,

ON APPEAL FROM THE SUPREME COURT OF
NEW SOUTH WALES.

*Patent—New manufacture—Inventiveness—Use of known contrivance—Construction
of sheet metal baths.*

The plaintiff brought a suit against the defendants for infringement of his patent for an improvement in the construction of sheet metal baths. The patent consisted of a device by which the strengthening board under the bath was kept in position by cast iron bearers and centre stays.

Held, that the plaintiff's patent was invalid for want of invention.

Held, also, that there was no evidence of infringement.

Decision of *Street J.*, 10th June 1910, affirmed.

H. C. OF A.
1910.

—
SYDNEY,
August 18,
22.

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

APPEAL from the decision of *Street J.* dismissing the plaintiff's suit for infringement of letters patent, dated 23rd November 1908, and granted to the plaintiff for an invention described as "an improvement in the construction of sheet metal baths."