[HIGH COURT OF AUSTRALIA.]

MUNRO . . . . . APPELLANT;
PLAINTIFF,

AND

THE COONAMBLE PASTURES PROTECTION BOARD . . . . . } RESPONDENTS.
DEFENDANTS,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

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SYDNEY, *Nov.* 24, 25; *Dec.* 4.

Barton A.C.J., Isaacs and Gavan Duffy JJ.

Pastures protection—Inspector—Power of Governor to appoint more than one inspector for one district—Appointment of rabbit inspector—Pastures Protection Act 1902 (*N.S.W.*) (*No.* 111 *of* 1902), *secs.* 14, 15.

Held, that under sec. 14 of the *Pastures Protection Act* 1902 the Governor has power to appoint one inspector only for any one Pastures Protection District, and has no power under the Act to appoint a rabbit inspector.

Decision of the Supreme Court of New South Wales: 12 S.R. (N.S.W.), 646, affirmed.

APPEAL from the Supreme Court of New South Wales.

A suit was brought in the Supreme Court by John Munro against the Coonamble Pastures Protection Board. By his statement of claim the plaintiff alleged that on 8th August 1903 he had been appointed by the Governor as an inspector for the Pastures Protection District of Coonamble; that his salary had been fixed by the Minister for Lands at £250 per annum, and that that salary had been paid to him by the defendants up to 12th July 1911; that on 12th July 1911 the defendants purported to dispense with his services; and that the Minister

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had declined to give his sanction to their dismissal of the plaintiff. The plaintiff contended that it was not competent for the defendants to dismiss him of their own motion, and he claimed (*inter alia*) :—(1) a declaration that he still retained the position of inspector to which he had been appointed; (2) an order that the defendants should pay his salary after 12th July 1911 until the institution of the suit, and should continue to do so until the plaintiff should be legally discharged from or should resign his office; (3) an injunction restraining the defendants from interfering with the plaintiff in the discharge of his duties under any claim of right of dismissal by the defendants of their own motion. The suit was heard before *Rich* J., who granted the relief claimed (1). On appeal by the defendants the Full Court reversed that decision (2).

From the decision of the Full Court the plaintiff now appealed to the High Court.

The facts are stated in the judgment of *Barton* A.C.J., hereunder.

Langer Owen K.C. (with him *Wickham*), for the appellant.

Maughan, for the respondents.

Cur. adv. vult.

Dec. 4.

BARTON A.C.J. read the following judgment:—In this suit *Rich* J., at the hearing (1), declared the plaintiff, now appellant, entitled to retain the position of inspector to which he was appointed as set out in the statement of claim, and the defendant board, now respondent, was ordered to pay the appellant his salary from 12th July 1911 onwards. The respondent board was enjoined against interfering with the plaintiff in the discharge of his duties under any claim of right on dismissal by the respondent board of its own motion. On appeal (2), the Full Court of New South Wales reversed the decree of *Rich* J.

The appointment relied on by the appellant is thus set forth in the statement of claim:—

"(3) In pursuance of the powers conferred upon the Governor by sec. 14 of the *Pastures Protection Act* 1902 the said Governor

(1) 12 S.R. (N.S.W.), 426. (2) 12 S.R. (N.S.W.), 646.

on 8th August 1903 appointed the plaintiff as an inspector for for Pastures Protection District of Coonamble, such appointment to date from 1st August 1903, and the said appointment was duly proclaimed by notification in the *Government Gazette* dated 12th August 1903."

As a matter of fact the evidence of the appellant's appointment, so far as the Governor in Council purported to make it, was contained in a copy of the *Government Gazette* of 12th August 1903, in which was this notification :—

"Department of Lands,

"Sydney, 8th August 1903.

"His Excellency the Governor, with the advice of the Executive Council has, under the provisions of sec. 14 of the *Pastures Protection Act* 1902, been pleased to appoint Mr. John Munro as rabbit inspector for the Pastures Protection District of Coonamble, such appointment to take effect from the 1st instant.

W. P. Crick."

Mr. Crick was then Minister for Lands. This *Gazette* notice was communicated to the respondent board by a letter from the Chief Inspector of Stock dated 19th August 1903.

The respondent board is a corporate body duly constituted, under the *Pastures Protection Act* 1902 and the amending Acts, for the Pastures Protection District of Coonamble.

On 25th June 1903, at a meeting of the respondent board, a resolution was carried that a rabbit inspector be appointed at a salary of £200 per annum subject to the Minister's approval. A further resolution was carried that the appellant be appointed subject to the Minister's approval. A third resolution was carried that a Mr. Thomas Medley be recommended to the Minister for the position of stock inspector.

The Minister does not seem to have given any formal approval of the appointment of the appellant by the respondent board, but, as has been seen, the appellant relies on the appointment notified in the *Government Gazette* of 12th August as an appointment by the Governor in Council under sec. 14 of the *Pastures Protection Act* 1902, as it purported to be.

But the *Government Gazette* of 22nd July 1903 contained a notification of that date under the hand of the Minister of the

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appointment by the Governor in Council of a number of persons as inspectors under the Act of 1902 for the pastures protection districts set out against their names, such appointments to take effect from the first of the same month. Among these appointments was "T. W. Medley," the gentleman of that name mentioned in the board's minutes of 25th June, and against his name the *Gazette* placed the word "Coonamble," as the pastures protection district to which he was appointed. The appellant did the work of a rabbit inspector, and was paid by the board out of the pastures protection fund; and he continued so to act and to be paid until 12th July 1911, when the respondent board purported to dispense with his services. It will be seen that at the time of the appellant's appointment by the Governor in Council Mr. Medley had already been appointed by the same authority to be inspector for the district. It will be further seen that, by this purported appointment of the appellant, the Governor in Council had designated him as *rabbit* inspector for the same district. The respondent board contends that the appellant has never been appointed under sec. 14 within the true meaning of that section; that an inspector under sec. 14 is not a rabbit inspector; and that the Governor in Council had no power to appoint any person as rabbit inspector. Its position is that it appointed the appellant a rabbit inspector under the power given it by sec. 15 of the *Pastures Protection Act* 1902, and that the power under sec. 14 extends only to the appointment of the chief inspector for the State and one inspector for each district, these officers being inspectors of sheep under the *Pastures Protection Act* 1902, and inspectors of cattle or sheep under the *Stock Act* 1901 (No. 27 of 1901).

The question that I shall first consider is whether the Executive had power under the *Pastures Protection Act* 1902 to appoint more than one inspector for any one district. If it had such power the further question will arise whether it had power to appoint a rabbit inspector for the district of Coonamble. If, however, the first question must be answered in the negative, it is not essential to this case to decide the second.

Sec. 14 of the *Pastures Protection Act* 1902 is as follows:— "The Governor may appoint a chief inspector for New South

Wales, and inspectors for any one or more districts. Such inspectors shall be under the control of the Minister, and shall be paid such salaries as he may from time to time determine. When an inspector is appointed for one district only, the board shall pay his salary out of the pastures protection fund, and where an inspector is appointed for two or more districts, the boards of such districts shall pay his salary out of their said funds in such proportions as the Minister directs. The chief inspector and inspectors so appointed shall be inspectors under and within the meaning of the unrepealed provisions of the *Stock Act* 1901," *i.e.*, No. 27 of 1901. By sec. 4 "chief inspector" means "the chief inspector of sheep appointed or continued under the Act No. 27, 1901, or appointed under this Act." "Inspector" means "the chief inspector as herein defined or any inspector appointed under this Act." For the appellant sec. 14 was the only authority shown for the appointment by the Governor in Council of inspectors *eo nomine* under the *Pastures Protection Act* 1902.

Sec. 15 is as follows:—"The board may appoint a secretary and any other necessary officers, and pay them out of the pastures protection fund; but every such appointment by the board, and the salaries to be paid in every case, shall be subject to the approval of the Minister. Such secretary and other necessary officers shall be under the exclusive control of the board, and subject to dismissal at any time."

By sec. 6 the directors or members of the Pastures Protection Board are inspectors *ex officio*, but they are not salaried inspectors, nor is there any formal appointment of them as inspectors by the Governor in Council. Sec. 6 has no reference to the primary question in the case.

The words "inspectors for any one or more districts" in sec. 14 are, apart from the context, open to two interpretations. They may mean that there may be inspectors acting conjointly for a single district, or for several districts, or, on the other hand, they may mean that there cannot be more than one inspector for any one district, although a single inspector may be appointed for more districts than one, as appears later in the section. When the rest of the Act is examined, however, there cannot in my opinion be any doubt on this question. In a number of sections,

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e.g., secs. 55, 96, 112, 125, 146, 150 and 158, we find the term "the inspector for the district" or "the inspector of the district," as the learned Chief Justice pointed out in the Supreme Court. In my view its use in these sections is such as to exclude the notion that there can be more than one inspector for any one district. There are other sections which tend to show that the exercise of an inspector's powers by more than one person in the same district would tend to a division of authority which would throw the administration of the Act into confusion. That, indeed, is the case as to several of the sections just enumerated, notably secs. 55, 96, 125 and 158. Such, also, is the case as to sec. 85, for obviously there should be no danger of conflicting decisions on the question whether sheep are infected. Sec. 98 gives in sub-secs. (3) and (5) certain powers to "the inspector," and in sub-sec. (4) requires the sanction of "an inspector" for certain proceedings. In the former cases the powers are such as ought to be exercised by the local official, and in the latter case the sanction is such as any inspector who can be found might properly give. But, as the learned Chief Justice has observed, sec. 158 is especially significant, because it imposes upon the inspector of the district the duty of keeping the register of sheep, and it is obvious that the legislature did not intend to insure confusion by causing two or more officials to keep separate registers each of which might be correct as far as it went, and each of which also would, in all probability, fail of the completeness essential to make such a record useful.

As to this part of the case, therefore, it seems to me that the learned Judges of the Supreme Court are clearly right.

As I have said, if the Executive has not power to appoint two inspectors to act in the same district concurrently, it has not validly appointed the appellant, and it is not essential to determine whether the Governor in Council has, under sec. 14, authority to appoint a rabbit inspector for a pastures protection district. But the answer to this question forces itself upon the attention in the discussion of the first point, for one cannot but perceive that the powers given by sec. 14, when read, as we have had to read them, in connection with the interpretations, clearly extend only to the appointment of inspectors of stock. Indeed,

a consideration of the other sections cited will show that the duties of district inspectors appointed under sec. 14 relate exclusively to live stock.

In point of fact, the term "rabbit inspector" does not occur in the *Pastures Protection Act*. It appears, however, to be the name usually given to an officer appointed by the Pastures Protection Board for the more efficient discharge of its administrative duties under Part III. of the Act ("Destruction of Rabbits and Noxious Animals"), secs. 27 to 71 inclusive. The destruction of rabbits is under the supervision of the Pastures Protection Boards, who have charge of the erection and maintenance of rabbit-proof barrier fences. They have power to cause private rabbit-proof fences to be constructed; and there are many other functions of the boards in the execution of this part of the Act which require for their efficiency the service of officers whose duties would necessarily include inspection and report. The application of the name "rabbit inspectors" to such officers does not impair the right of the board to appoint them, subject to ministerial approval, where their services are necessary, and to pay them out of the pastures protection fund, as they may under sec. 15. The appellant seems to have been such an officer. He was either the appointee of the board as such officer, or he had no valid appointment at all, whether as a second inspector for a particular district, or as a rabbit inspector and not an inspector of stock. The Executive could not validly give him either the one office or the other. If he was the appointee of the board, he was under sec. 15 subject to their exclusive control, and they could dismiss him at any time.

Reference was made to an amended regulation 87, made on the 5th and gazetted on 8th August 1893. The appointment of the appellant, though dated of the 8th, was not publicly notified by gazettal until four days later. But it is almost needless to say that such a regulation cannot affect in favour of the appellant the clear meaning of the Act of Parliament itself.

I refrain from referring to the earlier legislation discussed on both sides, except to say that the *Pastures and Stock Protection Act* 1898 and the *Rabbit Act* 1901 are wholly repealed by the *Pastures Protection Act* 1902, which also repeals secs. 3 to 142,

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inclusive, of the *Stock Act*, No. 27 of 1901. The interpretation section of the last mentioned Act, sec. 143, which, when read with the concluding part of sec. 14 of the Act of 1902, is very adverse to the appellant's claim, is one of the sections still in force. There is nothing in the previous Acts which, to my mind, has the least effect in reducing the clearness of the construction of sec. 14 when read with the rest of the Act.

For the above reasons I am of opinion that the appeal must be dismissed, and that the appellant must bear the costs of the appeal.

ISAACS J. read the following judgment:—I agree that this appeal should be dismissed.

To the reasons stated by *Cullen* C.J. I entirely assent. The ground taken by the Full Court is strengthened by further considerations appearing upon the Statutes. The appellant's view involves the power of the Governor to appoint an unlimited number of inspectors depending upon the discretion of the Crown. Whether the first appointed inspector be ill or well another might be appointed, and his salary must be paid by the board equally with that of the first. If that were correct, there would have been no necessity to pass sec. 7 of the amending Act, *Pastures Protection (Amendment) Act* 1906 (No. 20 of 1906). That section provides for the suspension, illness or absence of an inspector, and enables the Minister to appoint "a person who may exercise the powers and shall discharge the duties of such inspector" in the meantime, at such salary as the Minister determines, and the board must pay it, "as in the case of the appointment of an inspector."

Payment of the inspector's salary—if he be suspended or absent —may, with the Minister's consent, be discontinued.

Now, that indicates two things: first, that some provision for the temporary incapacity of an inspector was necessary—which would not be the case if the appellant were right; and next, provision was also thought essential to compel the board to pay more than one salary for the duties of inspector.

The financial aspect is of great importance. Inspectors are appointed by the Crown and their salaries fixed by the Crown

quite independently, so far as the Statute is concerned, of any recommendation or wish of the board.

But the Act compels the board to pay the salary nevertheless, and its means of paying that salary depends on the rates (sec. 18 and following sections). I do not think that Parliament by the original Act intended to compel any board to raise taxation to pay more inspectors than one, and the amending sec. 7, already referred to, confirms that view.

Then there is an independent ground which is equally fatal to the appellant. He was appointed as "rabbit inspector." That connotes restrictions of his duties to "rabbits," and all that pertains to their destruction. It excludes duties with respect to "sheep" and large stock.

The way to his appointment was paved by adding—8th August 1903—some words to regulation 87 as it then stood. Those words dispensed with the requirement of an examination certificate or a Stock Act certificate "in the case of a person appointed as a rabbit inspector."

But either the appellant is an inspector within the meaning of sec. 14, or he is not. If he is not, there is an end of his case; but if he is, then he is by sec. 14, *ipso facto*, an inspector under the unrepealed provisions of the *Stock Act* 1901, and not a mere "rabbit inspector." That term is unknown to the Statute, and no such appointment is within the purview of sec. 14. The "inspector" contemplated by that section is of the same nature as the "chief inspector" therein mentioned, but subordinate to him. In my opinion, therefore, the appointment by the Crown of Munro as "rabbit inspector" was invalid both because the office of "inspector" was full by the appointment of Medley, and also because—supposing a vacancy existed—there is no power to appoint a person under sec. 14 as "rabbit inspector." If such an office were possible, there would be no limit to the classes of inspectors. There might be "wire-fence inspectors," and "marsupials inspectors," and "native dog inspectors," and so on, with independent authority and possibly conflicting action.

The board is by sec. 15 empowered to appoint "necessary officers," and if it finds it necessary to have a person to inspect its territory, with respect to rabbits, it may appoint him under that

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section and confer any title it pleases, whether rabbit inspector or otherwise. But that would not support the appellant's claim against the board, as put forward in this action, and so it must fail.

GAVAN DUFFY J. I concur.

Appeal dismissed with costs.

Solicitor, for the appellant, *F. S. Hegarty*, Coonamble, by *Mackenzie & Mackenzie.*

Solicitors, for the respondents, *McGuinn & McGuinn*, Dubbo, by *L. G. B. Cadden.*

B. L.

[HIGH COURT OF AUSTRALIA.]

NORTON . . . . . APPELLANT;
DEFENDANT,

AND

HERALD . . . . . RESPONDENT.
PLAINTIFF,

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SYDNEY, *Dec.* 10, 11.

Isaacs, Powers and Rich JJ.

Practice (High Court)—Costs—Taxation—Action instituted in one Registry—Costs of attendance of solicitor on proceedings in another Registry.

An action was brought in the New South Wales Registry of the High Court by a Melbourne solicitor, who had acted for a client in a libel action in the Supreme Court of Victoria, to recover from the client, who was a resident of Sydney, the amount of his bill of costs in respect of that action, and an order was made for the taxation of those costs. The bill of costs was taxed in Melbourne, and such an amount was taxed off it that the client became entitled to the costs of taxation. On the taxation of the last mentioned costs a certain sum was claimed as being the travelling expenses of the client's