[HIGH COURT OF AUSTRALIA.]

THE CITY OF PERTH . . . . . APPELLANT;
PLAINTIFF,

AND

CRYSTAL PARK LIMITED AND ANOTHER RESPONDENTS.
DEFENDANT AND THIRD PARTY,

ON APPEAL FROM THE SUPREME COURT OF WESTERN AUSTRALIA.

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MELBOURNE, *Oct.* 28.

SYDNEY, *Nov.* 26.

Rich A.C.J., Starke and Williams JJ.

Local Government—Rating—Exemptions—Board having powers of control and management of land—Whether land "vested" in board under Parks and Reserves Act 1895 (*W.A.*) (59 *Vict. No.* 30)—*Municipal Corporations Act* 1906-1938 (*W.A.*) (*No.* 32 *of* 1906—*No.* 49 *of* 1938), *secs.* 380*, 412—*Land Act* 1933-1937 (*W.A.*) (*No.* 37 *of* 1933—*No.* 39 *of* 1937), *sec.* 33*.

On 9th March 1938, pursuant to the *Parks and Reserves Act* 1895 (W.A.), the State Gardens Board, a statutory unincorporated body, was appointed to control and manage certain Crown land proclaimed as a recreation and parking area. In July 1938, pursuant to sec. 33 of the *Land Act* 1933-1937 (W.A.), the Governor in Council purported to vest the land in the board (without naming the members thereof) for a recreation and parking area with power to lease the same. In September 1938 the board leased a portion of the land to a private company which carried on business thereon for private gain. The City of Perth sought to rate the company in respect of its occupation, but the company objected thereto.

* Sec. 380 of the *Municipal Corporations Act* 1906-1938 (W.A.) provides:—"All land shall be ratable property within the meaning of this Act save as hereinafter excepted, that is to say:—(1) Land the property of the Crown and used for public purposes or unoccupied. . . . (5) Land vested in any board under the *Parks and Reserves Act*, 1895, or in trustees for agricultural or horticultural show purposes, or zoological or acclimatization gardens or purposes, or for public resort and recreation."

Sec. 33 of the *Land Act* 1933-1937 (W.A.) provides that "the Governor may by Order in Council published in the *Gazette*—(*a*) direct that any reserve shall vest in and be held by any municipality road board body corporate or persons to be named in the Order in trust for . . . public purposes to be specified in such Order," and that "a power to sublet the reserve or any portion thereof may be conferred."

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Held, by *Starke* and *Williams* JJ. (*Rich* A.C.J. doubting), that by virtue of sec. 380 (5) of the *Municipal Corporations Act* 1906-1938 (W.A.) the land was exempt from rating.

Per Starke J. : Sec. 380 (5), by the words " vested in any board under the *Parks and Reserves Act*," referred, not to a vesting under the latter Act, but to a vesting otherwise effected in a board appointed under that Act, and the land in question was, pursuant to the *Land Act* and the Order in Council of July 1938, vested in the persons constituting the State Gardens Board as if they were named in the Order.

Per Williams J. : The word " vested," in sec. 380 (5), was not to be understood in the strict sense, and it was sufficient for the purposes of that sub-section that the State Gardens Board had the control and management of the land.

Observations on the validity of the Order in Council purporting to " vest " the land in question in the State Gardens Board, and, generally, on the meaning of the word " vest."

Municipality of South Perth v. *Hackett*, (1908) 8 C.L.R. 44, applied.

Taff Vale Railway v. *Amalgamated Society of Railway Servants*, (1901) A.C. 426, referred to.

Decision of the Supreme Court of Western Australia (*Dwyer* J.) affirmed.

APPEAL from the Supreme Court of Western Australia.

The City of Perth sued Crystal Park Ltd. for rates in the Supreme Court of Western Australia, and Crystal Park Ltd. joined Louis Shapcott, chairman of the State Gardens Board, as a third party in the proceedings. The parties to the action then prepared a special case for the opinion of the Supreme Court. It was substantially as follows :—

1. The plaintiff is a municipal corporation within the meaning of the *Municipal Corporations Act* 1906-1938 (W.A.).

2. The defendant is a company incorporated under the provisions of the *Companies Act* 1893 (W.A.).

3. The third party is the chairman of the State Gardens Board.

4. The State Gardens Board is a board consisting of two persons appointed by the Governor in Council pursuant to sec. 3 of the *Parks and Reserves Act* 1895 (W.A.) to control and manage certain specified parks and reserves. The State Gardens Board is not an incorporated body.

5. (*a*) The first members of the board were Louis Edward Shapcott and Charles Glazebrook Morris, who were appointed by the Governor in Council on 15th December 1920. The following is a copy of the notification of appointment as gazetted on 17th December 1920 : " It is hereby notified, for public information, that His Excellency

the Governor in Executive Council has been pleased to appoint, under the provisions of the *Parks and Reserves Act* 1895 Mr. L. E. Shapcott, Secretary, Premier's Department, and Mr. C. G. Morris, Under Secretary for Lands, as a board to be known as the 'State Gardens Board' to control and manage reserves Nos. 17615, 5957, B7122, A10887, A13012, 12510, 13375, B3595, A1150 and A17375, and to appoint Mr. L. E. Shapcott as chairman of the aforesaid board. (*b*) Pursuant to the provisions of sec. 8 of the *Parks and Reserves Act* 1895 the State Gardens Board (consisting of L. E. Shapcott and C. G. Morris) made by-laws in respect of the above-mentioned reserves. The by-laws were published in the *Government Gazette* dated the 17th December 1920 and provide (*inter alia*) :—(1) The term "Gardens" shall mean and include only those reserves or portions thereof which have been enclosed by a fence for the purpose of utilising the land for gardens parks or recreation. "Permission" shall mean the permission of the board expressed in writing. (2) The gardens shall be open to the public from 8 a.m. to sunset free of charge except on special occasions (i.e. band or other concerts or entertainments sports gatherings &c.) on any of which occasions an admission fee not exceeding 1s. per head may be charged and taken if the consent in writing of the board has been obtained. (3) No person except by permission shall bring into or use in the gardens or on these reserves any cart truck bicycle motor car motor cycle aeroplane airship or other vehicle of any description whatsoever.

6. The present members of the board are Louis Edward Shapcott and George Loder Needham, the latter being appointed vice Charles Glazebrook Morris (resigned) by the Governor in Council on 17th March 1937. The following is a copy of the notification of appointment as gazetted on 25th March 1937 : "It is hereby notified that His Excellency the Lieutenant Governor in Executive Council has been pleased to appoint, under the provisions of the above Act, George Loder Needham, Under Secretary for Lands, to be a member of the board (known as the State Gardens Board) controlling the reserves set out in the notice appearing on pages 87 and 88 of the *Government Gazette* of 22nd January 1937, vice Charles Glazebrook Morris (resigned) ; and to appoint the said George Loder Needham to be Acting Chairman of the said State Gardens Board during the absence from the State of Mr. L. E. Shapcott."

7. By approval of the Lieutenant Governor obtained in Executive Council on 9th March 1938, reserve No. 5957 mentioned in the minute in Council dated 15th December 1920 and referred to in the minute in Council dated 17th March 1937 was cancelled and a new reserve No. 21824 was created. The following is a copy of the notice of

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approval of creation of the new reserve as gazetted on 18th March 1938 :—" His Excellency the Lieutenant Governor in Executive Council has been pleased to set apart as public reserves the lands described in the schedules below for the purposes therein set forth : —1076/37. Perth—No. 21824 (recreation and parking area) Lot No. 731 (4a. 0r. 22p.) (Plan Sub. 36). Reserves 1152, 5957 and 6167 are hereby cancelled."

8. By approval of the Lieutenant Governor obtained in Executive Council on 9th March 1938 the board was appointed to manage and control the reserve No. 21824 " for the purposes of recreation and parking area." The following is a copy of the appointment as gazetted on 18th March 1938 : " His Excellency the Lieutenant Governor in Executive Council has been pleased to appoint, under the provisions of the above Act, the State Gardens Board as a board to manage and control reserve 21824 (Perth Lot 731) for the purposes of recreation and parking area."

9. By Order in Council dated 24th March 1938 the reserve No. 21824 was vested in the board in trust " for recreation and parking area " with certain powers of leasing. The following is a copy of the Order in Council, which was gazetted on 1st April 1938 :— " Whereas by section 33 of the *Land Act* 1933-1937, it is made lawful for the Governor to direct that any reserve shall vest in and be held by any municipality, road board or other person or persons to be named in the order in trust for any of the purposes set forth in section 29 of the said Act, or for the like or other public purposes to be specified in such order, and with power of sub-leasing : And whereas it is deemed expedient that reserve 21824 (Perth Lot 731) should vest in and be held by the State Gardens Board in trust for recreation and parking area, Now, therefore, His Excellency the Lieutenant Governor, by and with the advice and consent of the Executive Council, doth hereby direct that the before-mentioned reserve shall vest in and be held by the State Gardens Board in trust for recreation and parking area, with power to the said State Gardens Board to lease, subject to the approval of the Governor, the whole or any portion of the said reserve for any term not exceeding ten years from the date of the lease."

10. By Order in Council dated 13th July 1938 the reserve No. 21824 was vested in the board in trust " for recreation and parking area " with certain additional powers of leasing. The following is a copy of the Order in Council, which was gazetted on 22nd July 1938 :—" Whereas by section 33 of the *Land Act* 1933-1937 it is made lawful for the Governor to direct that any reserve shall vest in and be held by any municipality road board or other person or

persons to be named in the order in trust for any of the purposes set forth in section 29 of the said Act, or for the like or other public purposes to be specified in such order, and with power of sub-leasing: And whereas it is deemed expedient that reserve 21824 (Perth Lot 731) should vest in and be held by the State Gardens Board in trust for recreation and parking area: Now, therefore, His Excellency the Lieutenant Governor, by and with the advice and consent of the Executive Council, doth hereby direct that the before-mentioned reserve shall vest in and be held by the State Gardens Board in trust for recreation and parking area with power to the said State Gardens Board to lease subject to the approval of the Governor the whole or any portion of the said reserve for any term not exceeding fifteen years from the date of the lease. The Order in Council dated 24th March 1938 regarding the above is hereby superseded."

11. By agreement dated 6th September 1938 the board leased portion of the reserve therein described to the defendant.

12. The defendant has occupied that portion of the reserve since 1st November 1938 and still occupies it and has used part thereof for the purposes of recreation, part for the purposes of a parking area and part for the purpose of an automobile service station.

13. In the month of December 1938 the plaintiff, purporting to act under the provisions of the *Municipal Corporations Act* 1906, made and levied rates totalling £38 15s. for the year ending on 31st October 1939 in respect of that portion of the reserve occupied by the defendant.

14. Notice of the valuation and rating of the said land was served upon the defendant on or about 30th January 1939.

15. If the defendant was liable in respect of the said rates, they were payable by it to the plaintiff as to £19 7s. 6d. on 1st January 1939 and as to £19 7s. 6d. on 1st July 1939, but no part thereof has been paid.

16. The parties to this action have agreed that the question to be decided by the court is:

> Is that portion of the said reserve leased to the defendant ratable property within the meaning of the *Municipal Corporations Act* 1906-1938 during its occupancy by the defendant or any successor in title?

17. The parties have also agreed (*a*) that, if the answer to the question propounded in par. 16 is affirmative, judgment shall be entered in favour of the plaintiff against the defendant for the sum of £38 15s. with costs to be taxed and in favour of the defendant against the third party for the amount payable by the defendant to the plaintiff, including costs together with the defendant's costs

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to be taxed; (*b*) that, if the answer to the said question is negative, judgment shall be entered in favour of the third party and the defendant dismissing the plaintiff's claim and ordering the plaintiff to pay to the defendant and to the third party their costs to be taxed.

Dwyer J., who heard the action, answered the question by stating that the property was not ratable and gave judgment for the defendant and third party in terms of the special case, with costs.

The City of Perth, by special leave, appealed to the High Court.

Leake K.C. (with him *A. D. G. Adam*), for the appellant. Sec. 380 of the *Municipal Corporations Act* 1906-1938 (W.A.) provides that all land shall be ratable property, with the exemptions set out in that section. There is a proviso to the section which provides any lands exempted by sub-secs. 2, 3 and 4 shall also be deemed ratable while the same is leased or occupied for any private purpose. This proviso does not apply here. Under sub-sec. 5 of the section, land "vested" in any board under the *Parks and Reserves Act* 1895 (W.A.) or in trustees for public resort and recreation is exempted from rating. Under sec. 412 of the *Municipal Corporations Act* the occupier of the land is rated. Here the occupier of the land is the lessee. [He referred to *Attorney-General for Quebec* v. *Attorney-General for Canada* (1).] But there is no land "vested" here in the board. No land can be "vested" under the provisions of the *Parks and Reserves Act* 1895 at all. [He referred to sec. 33 of the *Land Act* 1933-1937 (W.A.).] The exemption applies where land is vested in a board under the *Parks and Reserves Act* only; "vesting" may mean the committing of the conduct and management by the Crown of one of its reserves pursuant to the *Parks and Reserves Act*. "Vest" may have that meaning, but the Orders in Council under which the board claims do not result in such a "vesting." The "vesting" is claimed under *Land Act* 1933-1937, which necessarily implies that the powers of control and management conferred on the board by the *Parks and Reserves Act* 1895 must have automatically ceased. If that is so, then there is no land vested in any board under the *Parks and Reserves Act* 1895. The only vesting is under the *Land Act* 1933-1937, and this is not exempted by sec. 380 of the *Municipal Corporations Act* 1906-1938.

There was no appearance for the respondent Crystal Park Ltd.

Dunphy, for the respondent Shapcott. This land is either land vested in a board under the *Parks and Reserves Act* 1895 or land

(1) (1921) 1 A.C. 401.

vested in trustees for public resort and recreation. In either case it is exempt from rates (sec. 380 (5) of the *Municipal Corporations Act* 1906-1938). The test is not the use which is made of the land. While the land is vested either in such a board or in trustees it is non-ratable (*Municipality of South Perth* v. *Hackett* (1)). The *Municipal Corporations Act* was passed in 1906, whereas the *Parks and Reserves Act* was passed in 1895, and therefore, as the latter Act refers to the former, the legislature must have had the provisions of the former Act in mind. Therefore, when the word "vest" is used in the later Act, it must have that interpretation which is consistent with the terms used in the earlier Act. The land must be "vested" in the board within the meaning of sub-sec. 5, but the word "vest" should not be interpreted strictly or narrowly (*In re Brown* (*A Lunatic*) (2); *Corporation of Hyde* v. *Bank of England* (3); *Directors &c. of Great Western Railway Co.* v. *May* (4)). Finally, this is land vested for public resort and recreation or vested in trustees for public resort and recreation. The only section which deals with the vesting of reserves is sec. 33 of the *Land Act* 1933-1937 (W.A.). There is no word "trustee" in that section, but land may be vested by the Governor by Order in Council "in trust for public purposes." The Order in Council of 24th March 1938 purported to vest the land in the board "in trust for recreation and parking area." The appointment of the board under the *Parks and Reserves Act* and the vesting of the land in the board under the *Land Act* does not have the effect of removing the exemption provided for in sec. 380 (5) of the *Municipal Corporations Act*. From the proviso to sec. 380 it is clear that land the subject of sec. 380 (5) does not lose the exemption merely because it is "leased or occupied for any private purpose."

Adam, in reply. The relevant legislation conferred no power on the Crown to vest the land in the State Gardens Board as a board. The Order in Council, to be valid, must be read as vesting the land in the members constituting the board as individuals. The land is not vested in any board under the *Parks and Reserves Act* 1895 or in trustees for public resort and recreation within the meaning of sec. 380 of the *Municipal Corporations Act*. [He referred to *Mayor &c. of Essendon* v. *Blackwood* (5).] *Municipality of South Perth* v. *Hackett* (6) is distinguishable.

Cur. adv. vult.

(1) (1908) 8 C.L.R. 44, at 46.
(2) (1895) 2 Ch. 666.
(3) (1882) 21 Ch. D. 176; 51 L.J. Ch. 747.
(4) (1874) L.R. 7 H.L. 283; 43 L.J. Q.B. 233.
(5) (1877) 2 App. Cas. 574, at pp. 583, 584.
(6) (1908) 8 C.L.R. 44.

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NOV. 26.

The following written judgments were delivered :—

RICH A.C.J. This is an appeal by special leave from an order made by *Dwyer* J. dismissing an action by the City of Perth for rates. The defendant to the action was Crystal Park Ltd., but Crystal Park served a third-party notice on L. E. Shapcott, secretary to the Premier's Department, who with C. G. Morris forms the State Gardens Board. It appears that by an instrument dated 6th September 1938 the board leased or purported to lease portion of a reserve within the City of Perth to the defendant company. Since 1st November 1938 the company has occupied the portion of the reserve so leased and has used part of it for the purposes of recreation, part of it as a parking area and part of it as an automobile service station. Needless to say, in all three respects the company conducts its operations for its own gain. *Dwyer* J. dismissed the claim for rates on the ground that the land occupied by the company was not ratable.

The matter came before his Honour on a special case submitted by the parties for his opinion. As I have already said, the claim of the City of Perth was against the company, not against the State Gardens Board, which was drawn in only as a third party by the defendant. But for some reason that does not appear but may conceivably be explained by the terms of the lease from the board to the company, which was not laid before the court, all three parties agreed that, if judgment passed against the company, the liability should be transferred to the board as third party and judgment over should be entered against it. Not unnaturally, the company lost interest in the matter and was not represented before *Dwyer* J., and before us the counsel for Shapcott supported the judgment dismissing the action.

The legislation affecting the liability or immunity of the land in question to or from rates is confused to the point of bewilderment, but the one thing that stands out clearly from it is that the State Gardens Board can be under no liability to the City of Perth for rates. Whether it has been unwise or unfortunate enough to incur to the company a liability to indemnify it against a possibility of the company's liability for rates I do not know, but at all events I am not willing to impose any liability upon the board in respect of the company's occupation of the land for the company's benefit. The State Gardens Board derives its existence from the *Parks and Reserves Act* 1895, which is entitled "An Act for the Management of Parks and Reserves vested in the Crown." The Act confers power on the Governor to appoint persons to form boards of parks

and reserves, to control and manage such of the parks and reserves as he may from time to time think fit (sec. 3). Parks and reserves are defined to mean parks and reserves vested in the Crown (sec. 2). The duty of the board is to control and manage the parks and reserves so committed to them (sec. 4). It will be noticed that the fundamental principle of the Act is that the board shall be charged with the management only of public parks and reserves which are vested in the Crown and therefore subject to all the powers and privileges belonging to the Crown. In the *Municipal Corporations Act* 1906-1938 there are to be found the exemptions which may be regarded as material to the question whether the land of a board of parks and reserves is ratable. They are sub-secs. 1 and 5 of sec. 380. Sub-sec. 1 excepts land the property of the Crown used for public purposes or unoccupied. If the State Gardens Board had given no lease of the land to the company or anybody else, this would have been a sufficient exemption so long as the reserve remained vested in the Crown as the *Parks and Reserves Act* 1895 contemplates. Sub-sec. 5, however, excepts land vested in any board under the *Parks and Reserves Act* 1895. How can land be vested in such a board? Control and management of the land can be and is committed to such boards, but to vest the land in the board is another matter. Perhaps the legislature made a mistake and forgot the nature of the *Parks and Reserves Act* 1895, but a court cannot proceed on the assumption that in matters of statute law the legislature is fallible. Perhaps a practice had arisen before sub-sec. 5 was enacted of attempting to vest land in boards of parks and reserves. For in the present case it appears that Orders in Council were made in the purported exercise of the power given by sec. 33 of the *Land Act* 1933-1937 directing that the land in question should be vested in and be held by the Parks and Gardens Board. I take leave to doubt the possibility of using sec. 33 in this manner. But, if a practice had grown up of making such vesting orders, it would explain sub-sec. 5 of sec. 380. Now, it is clear that sub-sec. 1 will give no immunity from rates to the company. Its occupation of land the property of the Crown would be a ratable occupation if that sub-section were the only source of immunity. But sub-sec. 5 says nothing about occupation or public purposes. If the land is vested in any board under the *Parks and Reserves Act* 1895, that is enough to relieve it from rates. Can the land in the present case be regarded as so vested within the meaning of this sub-section? The respondent Shapcott says that it can be so regarded because of the Order in Council to which I have referred. But the Order in Council can only be supported under sec. 33 of the *Land Act*, and, apart from the doubt I have already expressed as to

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using that section to vest a reserve in a board of parks and reserves formed under the *Parks and Reserves Act* 1895, there are certain other troubles under the power. The only relevant power is to direct a reserve to vest in and be held by persons to be named in the order. A board of parks and reserves is not a corporation but an unincorporated statutory body. The order "names no names" but attempts to vest the land in the board. Clearly enough it means that the land shall be vested in the board as a statutory body of changing membership. It does not mean that when a member dies the land shall remain vested in him together with his former colleagues or, if they all die, that it should pass to the executor of the last survivor. In short, I have little faith in the validity of this order. But then the question remains whether sub-sec. 5 ought not to be regarded as an effort on the part of the legislature to give exemption to all land under the control and management of boards of parks and reserves. If so, notwithstanding the inappropriate use or, indeed, misuse of the word "vested," the court, if it can see the intention, should give effect to it. My brother *Williams* in his judgment, which I have had the advantage of reading, citing *Attorney-General for Quebec* v. *Attorney-General for Canada* (1), has pointed out that the word "vest" is a word of "elastic import," which I take to mean that the application of the word depends upon the context and subject matter. But I cannot rid myself of the feeling that the draftsman is less unlikely to have been mistaken as to the true operation of the *Parks and Reserves Act* 1895 than to have used the phrase "land vested" in the sense of land the management of which is "committed to" a board. The high authority of the Privy Council in the case cited shows that some such meaning may be given to the phrase "land vested in trust," at all events when the person in whom the land is to be vested is a Commissioner of Indian Tribes and the object of the trust a tribe of Indians. It was held that the result of these words was that the title to the land remained in the Crown and the commissioner was given "such an interest as will enable him to exercise the powers of management and administration committed to him by the statute," but it does not appear what that interest was. In the present case the draftsman in other parts of the *Municipal Corporations Act* 1906-1938 shows a more technical tendency in his use of the word "vest": sec. 6, definition of public reserve —"vested in or under the care, control, or management of the council." The case of *Municipality of South Perth* v. *Hackett* (2), to which counsel referred, turned upon an exemption of all land

(1) (1921) 1 A.C., at p. 409. (2) (1908) 8 C.L.R. 44.

belonging to a public body created by statute. The persons rated were public trustees established under an Act of Parliament, and the land was vested in them. They had set aside portion of the land for the use of a tennis club, but no attempt had been made to rate the tennis club. This court decided that the trustees were a public body created by statute within the meaning of the exemption, that the exemption formed a good defence to an action for rates notwithstanding that the trustees had not appealed from the rate and that the occupation of the tennis club and the question of whether, in allowing it, the trustees had gone beyond their powers had no bearing upon the ratability of the trustees themselves in respect of the land, which according to the decision of the court was exempt. In this decision I have been unable to find any Ariadne's thread to guide me through the labyrinth of this case. However, as I understand my colleagues are agreed in the conclusion that the provision ought to be applied to the land in question and as in point of probability I have no reason to think that this conclusion does not effectuate what the legislature had in view, I am not prepared to dissent from the opinion of the majority of the court that the appeal should be dismissed.

STARKE J. An Order in Council of December 1920 set apart certain land in the City of Perth as a public reserve. This Order in Council was, I presume, made under the authority of the *Land Act* in force at the time. An Order in Council, also made in December of 1920, but pursuant to the provisions of the *Parks and Reserves Act* 1895, appointed a board to be known as the State Gardens Board to control and manage the reserve. In March of 1938 the reservation of the land as a public reserve was cancelled and a new reserve was created. An Order in Council of 16th March 1938 again set apart the land as a public reserve and a description of the reserve and of the purposes for which the reservation was made (recreation and parking area) was published in the *Gazette*. All this was done, I apprehend, under the provisions of the *Land Act* 1933-1937, Part III., Reserves. Also on 16th March 1938, an Order in Council, made under the provisions of the *Parks and Reserves Act* 1895, appointed the State Gardens Board to manage and control the reserve last mentioned for the purposes of recreation and parking area. But " parks and reserves " under that Act means parks and reserves vested in Her Majesty : See sec. 2. Also by an Order in Council of 24th March 1938, which was superseded by an Order in Council made in July 1938 under the provisions of sec. 33 of the *Land Act* 1933-1937, it was directed that the reserve should vest in

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Starke J.

and be held by the State Gardens Board in trust for recreation and parking area with power to the State Gardens Board to lease subject to the approval of the Governor the whole or any portion of the reserve for any term not exceeding fifteen years from the date of the lease. This section provides that the Governor may direct that any reserve shall vest in and be held by any municipality, road board, body corporate or persons named in the order in trust for the public purposes named in the order. The State Gardens Board is not a body corporate, but it is a " collective name " for members of the board. The Order in Council thus names with sufficient clearness the persons in whom the reserve is vested : See *Taff Vale Railway* v. *Amalgamated Society of Railway Servants* (1).

In September of 1938 the State Gardens Board granted a lease of portion of the reserve to the respondent the Crystal Park Ltd., which thereafter occupied and still occupies the portion of the reserve so leased to it for the purposes of private gain as a recreation and parking area and as an automobile service station. The City of Perth, pursuant to the *Municipal Corporations Act* 1906, made and levied a rate for the year 1939 upon all ratable property within its municipal district and charged the Crystal Park Ltd. to such rate as the occupier of the land which it had leased from the State Gardens Board. The Crystal Park Ltd. contends that the land so leased and occupied by it is not ratable.

The *Municipal Corporations Act* 1906-1938, sec. 380, provides that all land shall be ratable property within the meaning of the Act save as thereinafter excepted. One of the exceptions is " land vested in any board under the *Parks and Reserves Act*, 1895, or in trustees for . . . public resort and recreation." A proviso to the section, which makes ratable certain excepted lands, if leased or occupied for private purposes, is inapplicable to the exception relied upon by the Crystal Park Ltd. The State Gardens Board was appointed under the *Parks and Reserves Act* 1895 to manage and control the reserve of which the land leased to the Crystal Park Ltd. for the purposes of recreation and parking area forms a part. The power to reserve Crown lands for public purposes and to vest them in public authorities depended, in all probability, at the time of the passing of the *Parks and Reserves Act* 1895, upon the provisions of various enactments relating to Crown lands. The legislation governing the matter at the time of the passing of that Act I have been unable to trace, but the provisions of the consolidating *Land Acts* of 1898, sec. 42, and of 1933-1937, sec. 33, so provide. And these Acts confer, as already noticed, a power of leasing upon the authority

(1) (1901) A.C. 426, at pp. 439, 440, 445.

in which the land was vested. Further, the exception from ratability in the case of lands vested in any board under the *Parks and Reserves Act* 1895 and in trustees for public purposes was only enacted in its present form in 1906: See *Municipal Institutions Act* 1900 and its amendments, and the *Municipal Corporations Act* 1906, sec. 376, which is sec. 380 in the reprint 1906-1938.

The result of this examination of the relevant legislation brings the present case precisely within the decision of this court in *Municipality of South Perth* v. *Hackett* (1). The *Parks and Reserves Act* 1895 authorizes the appointment of boards to manage and control parks and reserves vested in His Majesty, but it does not vest or authorize any park or reserve to be vested in such boards. The vesting power comes from the legislation relating to Crown lands. Consequently the provision in the *Municipal Corporations Act* 1906 excepting land vested in any board under the *Parks and Reserves Act* 1895 cannot refer to vesting under that Act but to a vesting otherwise effected in a board appointed under that Act. The exception then is of land vested in any board appointed under the *Parks and Gardens Reserves Act* 1895, without any reference to the purpose of the vesting or the occupation or use of the land, and the proviso to sec. 380, which makes ratable certain excepted lands, if leased or occupied for any private purpose, is inapplicable. Accordingly, the lease to and the occupation of portion of the park and reserve in the present case by the Crystal Park Ltd. for private purposes is irrelevant, for the Act excepts the land in the circumstances stated from ratability in any and every hand.

The appeal should be dismissed.

WILLIAMS J. The appellant, the municipal council of the City of Perth, appeals against a decision of the Supreme Court of Western Australia that portion of reserve No. 21824, situated in the municipality and at present occupied by the respondent company—Crystal Park Ltd.—is not ratable property within the meaning of the *Municipal Corporations Act* 1906-1938, during its occupancy by the company or any successor in title. The decision was given in a special case stated in an action in which the appellant sued the company to recover rates amounting to £38 15s. for the year ending 31st October 1939. The other respondent, the president of the State Gardens Board hereinafter mentioned, was added as a third party to the action and the special case. Notice of the valuation and the rating of the land was served upon the company by the appellant on or about 30th January 1939.

(1) (1908) 8 C.L.R. 44.

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The *Municipal Corporations Act* 1906-1938, sec. 380, provides that " all land shall be ratable property " save as therein provided. Seven sub-sections then follow, describing the lands which are exempt. I need only refer to sub-sec. 5, which is in the following terms : " Land vested in any board under the *Parks and Reserves Act*, 1895, or in trustees for agricultural or horticultural show purposes, or zoological or acclimatization gardens or purposes, or for public resort and recreation."

The *Parks and Reserves Act* 1895, sec. 2, defines " board " to mean " a board of parks and reserves appointed under this Act," and " parks and reserves " to mean " parks and reserves vested in Her Majesty." Sec. 3 provides that (sub-sec. 1), for the purpose of controlling and managing parks and reserves, the Governor shall appoint persons to form boards of parks and reserves, and may from time to time cancel and revoke such appointments and may appoint each of such boards to control and manage such of the parks and reserves as he may from time to time think fit ; (sub-sec. 3) a board may sue and be sued and all legal proceedings may be taken by and against a board in the name of the president of the board. Sec. 4 provides that it shall be the duty of a board to control and manage all parks and reserves committed to it. The Act confers on a board various express powers of control and management, all of which are exercisable by the board itself or by a committee thereof. The Act does not authorize a board to grant a lease.

The use and disposal of Crown lands in Western Australia is regulated by the *Land Act* 1933-1937. Part III. thereof deals with reserves. Sec. 29 authorizes the Governor to dispose of Crown land for the objects and purposes therein mentioned. Such objects and purposes include public gardens and the endowment of road boards within the State. Sec. 33 is in the following terms :—" The Governor may by Order in Council published in the *Gazette*—(*a*) direct that any reserve shall vest in and be held by any municipality, road board, body corporate, or persons to be named in the order, in trust for the like or any other public purposes, to be specified in such order ; or (*b*) may lease the reserve in the form in the Fourth Schedule, or grant the fee simple, to secure the use thereof for the purposes for which such reserve was made. In either case a power to sublet the reserve or any portion thereof may be conferred."

In 1938 one of the boards appointed under the *Parks and Reserves Act*, consisting of L. E. Shapcott and G. L. Needham, was known as the State Gardens Board. By Order in Council made on 9th March 1938 this board was appointed under that Act to manage and control the reserve No. 21824 for the purpose of recreation and parking

area. By an Order in Council dated 13th July 1938, gazetted on 22nd July 1938, made under the provisions of sec. 33 of the *Land Act*, this reserve was vested in the State Gardens Board to be held in trust for recreation and parking area with power to the board to lease, subject to the approval of the Governor, the whole or any part thereof for any term not exceeding fifteen years from the date of the order.

On 6th September 1938 the board leased portion of the reserve to the company, and it has occupied this portion since 1st November 1938 and has used parts thereof for the purpose of recreation, a parking area and an automobile service station respectively. All these parts have always been used by the company for the purpose of private gain.

Under sec. 33 of the *Land Act* no power exists to vest land in any board except a road board. The State Gardens Board is not a road board. Land can, however, be vested in persons to be named in the order in trust for the purposes mentioned in sec. 29 or any other public purpose to be specified in the order. No such persons were mentioned *nominatim* in the order of the 13th July. It is not necessary to decide the point finally for the purpose of this judgment, but it is possible that the State Gardens Board can be regarded as a collective name designating the individuals of which it consisted on that date (See *Taff Vale Railway* v. *Amalgamated Society of Railway Servants* (1); *Bombay-Burmah Trading Corporation* v. *Dorabji Cursetji Shroff* (2); *In re Jodrell*; *Jodrell* v. *Seale* (3); *In re Land Credit Co. of Ireland* (*Weikersheim's Case*) (4)) and that the order was effective to vest the reserve in Messrs. Shapcott and Needham as individuals on the trusts and with the power to lease therein mentioned. The reserve would then be land vested in trustees for public resort and recreation and would be exempt from rates under sub-sec. 5. The exercise of the power to lease would not make the land ratable, as the provisos to sec. 380 with respect to leases do not apply to land included in sub-sec. 5.

If the order of 13th July was invalid because no persons were specifically named therein, the preceding order of 24th March would also have been invalid and the reserve would have remained in the Crown, but subject to the control and management of the State Gardens Board in accordance with the order of the 9th March. The purported lease to the company would be void, and the company would be a trespasser (*Roach* v. *Bickle* (5); *Maritime Electric Co.*

(1) (1901) A.C., at pp. 439, 440.
(2) (1905) A.C. 213.
(3) (1890) 44 Ch. D. 590; (1891) A.C. 304.
(4) (1873) 8 Ch. App. 831, at pp. 837, 838.
(5) (1915) 20 C.L.R. 663.

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Ltd. v. *General Dairies Ltd.* (1)). But the land would nevertheless be exempt from rates under sub-sec. 5.

The word " vest " is a word of elastic import, and a declaration that lands are vested in a public body for public purposes may " pass only such powers of control and management and such proprietary interest as may be necessary to enable that body to discharge its public functions effectively " : See *Attorney-General for Quebec* v. *Attorney-General for Canada* (2) ; *Bradford* v. *Mayor &c. of Eastbourne* (3) ; *Municipal Council of Sydney* v. *Young* (4).

The fact that the *Parks and Reserves Act* gives to a board the power to control and manage parks and reserves which are to remain vested in the Crown shows that the word " vest " in sub-sec. 5 is used in this wide sense because the legislature must have intended that such parks and reserves should be exempt from rates, and the express reference to such boards appears to indicate that this exemption was meant to flow from this sub-section.

It follows that, whether the Order of 13th July was effective and the lease was authorized or it was ineffective and the lease was unauthorized, the result is the same. On either view the case is governed by the decision of this court in *Municipality of South Perth* v. *Hackett* (5) to which we were referred. The rating statute there in question, the *Municipal Institutions Act* 1900, exempted, *inter alia*, land belonging to public bodies created by statute. It was held that the trustees under the *Zoological Gardens Act* 1899 (W.A.) were such a body and that land which had been granted to and belonged to them did not become ratable because they allowed it to be used as a private tennis club, whether this use was authorized by the terms of their trust or not.

The appeal should be dismissed.

Appeal dismissed with costs.

Solicitors for the appellants, *Northmore, Hale, Davy & Leake*, Perth, by *Hedderwick, Fookes & Alston*.

Solicitor for the respondent Shapcott, *Dunphy*, Crown Solicitor for Western Australia.

O. J. G.

(1) (1937) A.C. 610.
(2) (1921) 1 A.C., at p. 409.
(3) (1896) 2 Q.B. 205, at p. 211.
(4) (1898) A.C. 457.
(5) (1908) 8 C.L.R. 44.