[HIGH COURT OF AUSTRALIA.]

MARINE BOARD OF LAUNCESTON . APPELLANT;
DEFENDANT,

AND

MAYOR, ALDERMEN AND CITIZENS OF THE CITY OF LAUNCESTON . . RESPONDENT.
PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF TASMANIA.

H. C. OF A. 1955.

HOBART, *Feb.* 15, 16;

SYDNEY, *April* 1.

Dixon C.J., Fullagar, Kitto and Taylor JJ.

Marine Boards (Tas.)—Control of wharves within proclaimed boundaries—"Jurisdiction" exclusive of that of local authority—Liability for rates—Marine Act 1921-1953 (*Tas.*), *s.* 14 (2).

Local Government (Tas.)—Buildings within "jurisdiction" of marine boards—Rateability—Marine Act 1921-1953 (*Tas.*), *s.* 14 (2).

The levying of a rate is the exaction of a sum of money from a person in respect of his connection with land and involves the charging of the rate upon the property by way of security. It involves no exercise of power, authority or control over the use of the land, the activities conducted thereon or in connection therewith, or the persons present thereon.

Section 14 (2) of the *Marine Act* 1921-1953 (Tas.) provides: "(2) Within the boundaries of the wharf so defined as aforesaid, the board or trust shall have jurisdiction exclusive of that of any municipal or local authority, and the by-laws of a board or trust in relation to the management and control of such wharf shall have effect, notwithstanding anything to the contrary contained in the *Traffic Act* 1925, or in the by-laws of any municipal or local authority."

Held, that the word "jurisdiction" in s. 14 (2) is used in the sense of power, authority and control, and not territorial extent, and accordingly wharves in respect of which a marine board would otherwise be rateable are not removed by the sub-section from the rating power of a local authority.

Decision of the Supreme Court of Tasmania (*Gibson* J.), affirmed.

APPEAL from the Supreme Court of Tasmania.

The Mayor, Aldermen and Citizens of the City of Launceston (hereinafter called the respondent) brought an action in the Supreme Court of Tasmania against The Marine Board of Launceston (hereinafter called the appellant) to recover the sum of £4,398 17s. 2d. for rates levied pursuant to the *Launceston Corporation Act* 1941 against the appellant in respect of certain of its buildings within the City of Launceston and standing within areas proclaimed as wharves by virtue of the *Marine Act* 1921-1953. The trial judge (*Gibson* J.) gave judgment in favour of the respondent for the amount claimed and costs, whereupon the appellant brought the present appeal to the High Court.

The material facts and the relevant statutory provisions appear in the judgment of the Court hereunder.

D. I. Menzies Q.C. (with him *N. L. Campbell*), for the appellant. Section 14 of the *Marine Act* 1921-1953 deprives the Launceston City Council of any power within the boundaries of a wharf defined pursuant to s. 14 and the council therefore has no power to impose rates in respect of property within such boundaries. The scheme of the *Marine Act* appears to be that the whole coastline of Tasmania is subject to the control of various boards, which are part of the local government of the State. The trial judge sought to impose some limit on the jurisdiction of the defendant corporation. Having decided that the word "jurisdiction" in s. 14 of the *Marine Act* had some type of limited meaning he held that this meaning did not itself exclude the rating power of the Launceston City Council. If, by virtue of the *Marine Act*, the Launceston City Council is excluded from rating within the boundaries of a wharf as defined there is no need for an express exemption in s. 115 (1) of the *Launceston Corporation Act* 1941. There can be no power in the Launceston City Council to rate these lands without the authority which is denied by the opening words of s. 14 (2) of the *Marine Act*.

R. C. Wright (with him *M. B. Lamacraft*), for the respondent. The purpose of s. 14 of the *Marine Act* 1921-1953, as ascertained from its history, is a purpose different from that of rating. Its purpose was to define areas. The object of s. 14 (2) of the *Marine Act* is to give jurisdiction to the Marine Board of Launceston within the defined boundaries and to exclude inconsistent authority of the Launceston City Council. The type of "jurisdiction" that is contemplated by s. 14 (2) is control. The best guide to the powers

H. C. OF A. 1955.

MARINE BOARD OF LAUNCESTON v. LAUNCESTON CORPORATION.

of the Marine Board is given by ss. 62, 63 and 64 of the *Marine Act*. It is only to the extent that the Marine Board has authority that the Launceston City Council is excluded, and even if the Marine Board has power to rate there is no reason why this power should be denied to the Launceston City Council.

D. I. Menzies Q.C., in reply. The argument for the respondent corporation means that the word " jurisdiction " is imported into s. 14 of the *Marine Act* 1921 to provide a limit, but the language of s. 14 (2) is a complete denial of the jurisdiction of the Launceston City Council. Secondly, " jurisdiction " has been construed in relation to wharf purposes. This is contrary to all the principles of statutory construction. Parliament intended to resolve the difficulties by giving the Marine Board exclusive jurisdiction, not by establishing a metaphysical test of inconsistency. The purpose of the section is to prevent interference by the Launceston City Council.

Cur. adv. vult.

April 1.

THE COURT delivered the following written judgment :—

The question for decision upon this appeal is whether the Marine Board of Launceston is rateable in respect of certain buildings or structures. The buildings or structures are described as sheds, sheds and offices, or stores, and in one instance as a " hall etc." occupied by the Waterside Workers' Federation. They all stand within areas that have been proclaimed as wharves and in point of property are said to be vested in the Crown. But they are not occupied by the Crown. They are situated within the boundaries of the City of Launceston.

The Launceston City Council made and levied on the assessed annual value of the buildings and structures certain rates for the recovery of which it has sued the Marine Board. The action was tried by *Gibson* J. who gave judgment for the plaintiff municipality. From that judgment the defendant Marine Board now appeals. The liability has been imposed on the Marine Board as " owner " within the statutory meaning of that word. The *Launceston Corporation Act* 1941 (Tas.) incorporates the Mayor, Aldermen and Citizens of Launceston as a city and, among other things, arms the Council with the power to make and levy rates upon " owners ". Section 3 of the Act contains a long artificial definition of the word " owner ". It includes the person who is at the relevant time in actual receipt of, or entitled to receive, or who, if the property were

let to a tenant, would be entitled to receive the rents and profits thereof. It also includes, where used in relation to any land or building which is the property of the Crown and is occupied by any person otherwise than on behalf of the Crown, the occupier of such property for the purposes only of the levying, payment, and recovery of rates. It was admitted at the trial of the action that the defendant Marine Board was, within the definition, the " owner " of the buildings and structures rated.

Section 115 of the *Launceston Corporation Act* contains a long list of exemptions from rates but the Marine Board is not mentioned among them. One subject of exemption is any land or buildings belonging to and occupied on behalf of the Crown. But it was not contended that, if the Marine Board is to be considered in occupation of the property rated, the occupation is one on behalf of the Crown : cf. *Mersey Docks* v. *Cameron* (1). Sub-section (2) of s. 115 provides that, where any land or building belonging to the Crown is occupied by any person for purposes other than those of the Crown, the rates levied in respect of such land or building shall be payable by, and may be recovered from, such occupier and not otherwise. The statement of claim places opposite the descriptions of each of the buildings or structures rated the name of some company or body other than the Marine Board and describes it as occupier. But no attempt was made on behalf of the Board to show that under sub-s. (2) only the company or body so described as occupier could be made liable for rates. It may be that there was no exclusive occupation in the companies or body mentioned. The Board may have been the real occupier. It is also possible that, in view of the admission that the Board is the owner, as defined, of the buildings and structures rated, the Marine Board treated it as sufficiently clear that they could not " belong " to the Crown within the meaning of sub-s. (2). The case made for the appellant Board depended entirely on the *Marine Act* 1921 (Tas.). Under that Act the marine boards, including the Marine Board of Launceston, obtain their authority over ports and coast line. The contention for the appellant Board is that the Act excludes the municipality entirely from any power, privilege, authority or right with respect to any place proclaimed as a wharf, including the authority to make and levy rates. This, it is said, is accomplished by s. 14. That section contains two sub-sections, the second of which was added by the *Marine Act* 1930 : s. 2. The contention depends upon the sub-section so added but it is necessary to set out the entire section :—

(1) (1865) 11 H.L.C. 443 [11 E.R. 1405].

H. C. OF A. 1955.

MARINE BOARD OF LAUNCESTON v. LAUNCESTON CORPORATION.

Dixon C.J. Fullagar J. Kitto J. Taylor J.

"(1) The Governor may, by proclamation, define the boundaries for the purposes of this Act, of any wharf, and alter and redefine any such boundary, and the boards and trusts respectively shall have jurisdiction over any wharf so defined from the landward side to the water's edge. (2) Within the boundaries of the wharf so defined as aforesaid, the board or trust shall have jurisdiction exclusive of that of any municipal or local authority, and the by-laws of a board or trust in relation to the management and control of such wharf shall have effect, notwithstanding anything to the contrary contained in the *Traffic Act*, 1925, or in the by-laws of any municipal or local authority." As will be seen from the text of the provision, the question whether it excludes rateability depends upon the words "jurisdiction exclusive of that of any municipal or local authority". The word "jurisdiction" occurs in a number of places in the *Marine Act* 1921, as it did in the corresponding earlier legislation. Generally it seems to refer rather to the ambit than the content of the authority of the boards.

The Launceston Marine Board was first set up by or under the *Marine Board Act* of 1857, 21 Vict. No. 16. Section 2 of that Act, which provided also for a marine board at the Port of Hobart Town, empowered and required the Governor in Council to establish a guild at the Port of Launceston to be constituted as thereinafter provided which should be called the "Launceston Marine Board". Under the heading "*Jurisdiction* of Boards" s. 14 provided, in the case of the Launceston Board, that its *jurisdiction* should extend to all ports, harbours and islands between the 42nd parallel of south latitude (*scil.* on the west coast) and Cape Portland round the western and northern coasts and one nautical league to the seaward from low water mark along the whole coast line between such localities. Section 15 provided that the boards respectively should have and take the charge, management, and control of all ports and of all wharves, quays, piers, docks now or thereafter constructed, within their respective *jurisdictions*. Among the Acts which amended and amplified the early provisions was the *Marine Board Amendment Act* of 1869, 31 Vict. No. 30. By this it was enacted that the Governor in Council might by proclamation divide and alter the limits of the *jurisdiction* of the Launceston Marine Board and create other marine boards. Every marine board so created was to have, within the limits of its *jurisdiction* as defined the same rights and powers and be subject to the same liabilities as the Launceston Marine Board then had or was subject to. The legislation relating to marine boards was consolidated by the *Marine*

Boards Act 1889 (53 Vict. No. 34). In ss. 6, 7 and 9 the word "jurisdiction" was used in the same way to refer to the ambit of the authority of marine boards. In the existing *Marine Act* 1921 the word is employed with various shades of meaning. In s. 6 it is declared that the marine boards shall have *jurisdiction* in and over all ports, harbours and waters comprised within the limits of coast line respectively set out in a schedule. In s. 8 it is provided that the *jurisdiction* of each board shall extend one nautical mile seaward from low water mark along the coast line within the *jurisdiction* or authority of the board. Section 12 enables the Governor to alter and redefine the limits of the *jurisdiction* of any board. It is unnecessary to multiply instances of the use of the word in reference to the local ambit of a board's authority: cf. ss. 86 (2), 86A, 153, 2nd schedule. The concern of sub-s. (1) of s. 14 seems to be the local extent of the Board's powers not their content. The Board is to have "*jurisdiction* over any wharf so defined from the landward side to the water's edge." In sub-s. (2), however, the word has much less of a territorial sense. It refers much more to authority and power. When it says that within the boundaries of the wharf the board shall have jurisdiction exclusive of that of any municipal or local authority it means that the power authority and control over the wharf shall be in the board to the exclusion of the municipality: cf. the definition of "local authority" in s. 46 of the *Acts Interpretation Act* 1931. But does that extend to the levying of a rate upon the statutory "owner"? The levying of a rate is the exaction of a sum of money from a person in respect of his connection with land. It of course involves a charging of the rate upon the property. But it is by way of security. It involves no exercise of power or authority or control over the use of the land, the activities conducted upon or in connection with it, or the persons who may be present there. Section 14 (2) is concerned rather with regulation, order, health, cleaning, lighting, traffic direction or control and the like, not with fiscal or quasi-fiscal liabilities arising out of "ownership" or occupation or, indeed, with any liabilities of a financial character. It would be stretching the conception of exclusive jurisdiction to apply it to rateability. It would be a strange and indirect way of conferring immunity from rates otherwise assessable. No doubt one might antecedently expect a marine board to be exempt from rates in respect of its wharves. Section 173 (vi) of the *Local Government Act* 1906 for example confers upon marine boards an exemption from rates levied under that Act. But the Act does not apply to

H. C. OF A. 1955.

MARINE BOARD OF LAUNCESTON v. LAUNCESTON CORPORATION.

Launceston. Perhaps the reason why the *Launceston Corporation Act* 1941 confers no corresponding exemption lies in some traditional idea that the Marine Board of Launceston exercised authority in relation to the port and wharves but had no rateable occupation or " ownership " of property. Be that as it may, there is no exemption of the appellant Board, express or implied.

The appeal should be dismissed.

Appeal dismissed with costs.

Solicitors for the appellant, *Archer, Hall, Waterhouse & Campbell*, Launceston, by *Butler, McIntyre & Butler.*

Solicitors for the respondent, *Ritchie, Parker, Alfred Green & Co.*, Launceston, by *Crisp & Wright.*

M. G. E.