[HIGH COURT OF AUSTRALIA.]

THE MAYOR, ALDERMEN AND CITIZENS OF THE CITY OF LAUNCESTON, PLAINTIFF, } APPELLANT;

AND

THE HYDRO-ELECTRIC COMMISSION, DEFENDANT, . RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF TASMANIA.

H. C. OF A. 1959.

HOBART, *Feb.* 18;

MELBOURNE, *Mar.* 13.

Dixon C.J., Fullagar, Menzies and Windeyer JJ.

Crown (Tas.)—Municipal rates—Exemption from liability to, of land "belonging to and occupied on behalf of Her Majesty"—Certain parcels of land vested in Hydro-Electric Commission pursuant to provision that "the Governor . . . may declare by proclamation" that Crown land specified in a certain way "shall vest in the Commission for the purposes of this Act"—Certain other parcels not formerly Crown land purchased by commission pursuant to provision that it may purchase land "which it may deem necessary for the purposes of this Act"—Certain other parcels of Crown land occupied by commission and in process of being vested in commission but no proclamation made—Whether land in question within exemption—Launceston Corporation Act 1941 (4 & 5 *Geo. VI No.* 91) (*Tas.*) *ss.* 3, 115—*Hydro-Electric Commission Act* 1944 (8 & 9 *Geo. VI No.* 22) (*Tas.*) *ss.* 35, 36.

The Hydro-Electric Commission is an independent statutory corporation constituted under the *Hydro-Electric Commission Act* 1944 (Tas.) and in performing the functions committed to it under the Act it is not a servant of the Crown. Accordingly land vested in it is not land belonging to the Crown nor is Crown land occupied by it occupied on behalf of the Crown.

Section 115 of the *Launceston Corporation Act* 1941 (Tas.) provides:—"Except as hereinafter provided the council shall not levy or demand any rate whatever upon or in respect of—(1) Any land or building belonging to and occupied on behalf of Her Majesty". The Launceston City Council levied rates against the Hydro-Electric Commission in respect of seven parcels of land in its occupation, five of which were vested in it in fee and two of which were Crown lands. The commission disputed its liability to pay the levy by reason of s. 115.

Held, that the council was entitled to recover the amount of the levy from the commission.

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

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APPEAL from the Supreme Court of Tasmania.

The Mayor Aldermen and Citizens of the City of Launceston commenced an action in the Supreme Court of Tasmania against the Hydro-Electric Commission claiming the sum of £247 12s. 10d. as rates due to it by virtue of the *Launceston Corporation Act* 1941 in respect of seven parcels of land occupied by the commission.

The action was heard before *Gibson* J., who ordered that judgment be entered for the defendant. From this decision the plaintiff appealed, pursuant to special leave, to the High Court.

R. C. Wright, for the appellant. Where the question is whether or not a body is entitled to exemption from rates the sole test is whether the body comes within the statutory test of exemption. The history of the legislation relating to the Hydro-Electric Commission is set out in *Rollins* v. *Hydro-Electric Commission* (1). The *Hydro-Electric Commission Act* 1929 was an Act constituting a separate independent statutory commission the members of which were appointed by the Government. In the commission was vested the property in land and other assets of the hydro-electric undertaking. That commission was a separate corporation with defined statutory and specific obligations only, expressing its responsibility to Parliament. In other respects the corporation was as independent as a private corporation or a municipal corporation or gas corporation subject only to express specific statutory obligations as to its responsibility for public purposes. In s. 15 of the *Hydro-Electric Commission Act* 1944 the words " on behalf of " are not equivalent to " as agent for ". Section 15 does not override e.g. the vesting section, s. 35, or the independence of discretion otherwise given. Nor is " the State " in s. 15 equivalent to " Her Majesty ". The State is a different constitutional concept from the Crown. [He referred to *Re Scully* (2).] Even if the land is occupied on behalf of Her Majesty it is not land which belongs to Her Majesty. [He referred to *Reg.* v. *Ponsonby* (3); *Mersey Docks* v. *Cameron* (4); *Coomber* v. *Justices of Birks* (5), and *Gilbert* v. *Corporation of Trinity House* (6).] The expression " belonging to Her Majesty " in s. 557 of the *Merchant Shipping Act* 1894 is discussed in *The Sarpen* (7). Agent means a person employed to carry out a function in the manner directed by his principal: see *Electricity Commission of*

(1) (1953) Tas. L.R. 42, at pp. 45 et seq.
(2) (1937) Tas. L.R. 3.
(3) (1842) 3 Q.B. 14 [114 E.R. 412.]
(4) (1865) 11 H.L.C. 443, at pp. 463, 465, 508 [11 E.R. 1405, at pp. 1413, 1430.].
(5) (1883) 9 A.C. 61.
(6) (1886) 17 Q.B.D. 795, at p. 801.
(7) (1916) P. 306, at pp. 312, 321.

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New South Wales v. *Australian United Press* (1) and *Bank Voor Handel En Scheepvaart N.V.* v. *Administrator of Hungarian Property* (2). The question of control is the criterion of agency: see *Metropolitan Meat Industry Board* v. *Sheedy* (3) and *Tamlin* v. *Hannaford* (4). Sections 35 et seq make clear the distinction between Crown land and commission land. Those sections distinguish this case from e.g. *Commissioners of the Government Savings Bank* v. *Temora Municipal Council* (5) and *Electricity Trust of S.A.* v. *Linterns Ltd.* (6). In *Grain Elevators Board (Vict.)* v. *Dunmunkle Corporation* (7) this Court decided that the criterion of exemption was property. " Belonging " in s. 115 of the *Launceston Corporation Act* means " the property of ". The words " for and on behalf of the State " in s. 15 of the *Hydro-Electric Commission Act* 1944 mean merely " for the community ".

D. M. Chambers Q.C., Solicitor-General for the State of Tasmania (with him *J. L. Phelps*), for the respondent. All the lands in question are lands " belonging to and occupied on behalf of Her Majesty " within the meaning of s. 115 of the *Launceston Corporation Act*. The words " for and on behalf of the State " in s. 15 (2) of the *Hydro-Electric Commission Act* 1944 appear in a section which is the dominant section of the whole statute. Having regard to the provisions of that Act as a whole the commission is a real agent of the Crown, carrying out governmental functions. In the case of those lands of which the legal estate is in the commission, the beneficial estate is in the Crown or alternatively there are sufficient statutory rights in the Crown to attract immunity. If the words " for and on behalf of the State " in s. 15 (2) merely mean " for the community " the words at the end of s. 15 (2) (a) " in the interests of the State " are otiose. The words " for and on behalf of " are words of agency. Property was only one of the matters to which the Court had regard in *Grain Elevators Board (Vict.)* v. *Dunmunkle Corporation* (7). The other was degree of control by the Crown (8). The word " control " in this context has not the same meaning as with regard to a contract of service. If the executive government retains considerable powers of veto, as here, that is sufficient to destroy the independence of the corporation within the meaning of the authorities. [He referred to the *Hydro-Electric Commission Act* 1944, ss. 14, 16, 17, 28, 29, 34, 36, 63, 66.] The

(1) (1955) 55 S.R. (N.S.W.) 118, at p. 125; 72 W.N. 65, at p. 70.
(2) (1954) A.C. 584.
(3) (1927) A.C. 899, at p. 905.
(4) (1950) 1 K.B. 18.
(5) (1919) 19 S.R. (N.S.W.) 111.
(6) (1950) S.A.S.R. 133, at p. 137.
(7) (1946) 73 C.L.R. 70.
(8) (1946) 73 C.L.R., at pp. 75 et seq. 81, 87.

words in s. 115 of the *Launceston Corporation Act* " belonging to " are wider than " is the property of ". [He referred to *In re Miller*; *Ex parte Official Receiver* (1) and *Huntington* v. *Lancashire & Yorkshire Railway Co.* (2).]

R. C. Wright, in reply.

Cur. adv. vult.

THE COURT delivered the following written judgment :—

The judgment against which this appeal is brought by special leave rejected a claim for rates by the City of Launceston against the Hydro-Electric Commission on the ground that the lands rated were exempt from rates by virtue of s. 115 of the *Launceston Corporation Act* 1941 (Tas.) which by sub-s. (1) provides as follows :— " Except as hereinafter provided, the council shall not levy or demand any rate whatever upon or in respect of—(I) Any land or building belonging to and occupied on behalf of Her Majesty." Two other provisions of the Act which are concerned with the rating of Crown land should be quoted. In s. 3, owner is defined to mean the person who is, or if it were let would be, entitled to receive the rent of the land and then follow these words :—" . . . and, where used in relation to any land or building which is the property of—(I) Her Majesty, and is occupied by any person otherwise than on behalf of Her Majesty : or (II) . . . —it includes the occupier of such property for the purposes only of the levying, payment, and recovery of rates." The other provision is s. 115, sub-s. (3), which is as follows :—" Where any land or building belonging to Her Majesty is occupied by any person for purposes other than those of Her Majesty 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 significance of these provisions, and particularly the addition to the definition of owner, is that they indicate that the phrase " belonging to " in s. 115, sub-s. (1) (I) is synonymous with the phrase " is the property of ", so that if land is to fall within the exemption provided thereby, it must be (1) the property of Her Majesty, and (2) occupied on behalf of Her Majesty.

Rates are levied on the assessed value of any piece of land or building within the city according to the assessment roll for the city (s. 107) and are payable by the owner of the land and in default by the occupier (ss. 108 (2) and 122).

The rates which the action was brought to recover were in respect of seven parcels of land, each of which was occupied by the Hydro-Electric Commission. The commission was registered under the

(1) (1893) 1 Q.B. 327, at pp. 333 et seq. (2) (1901) 17 T.L.R. 458.

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Real Property Act as the proprietor of five of the parcels but the other two were Crown lands, although it seems that steps were in train, pursuant to s. 35 of the *Hydro-Electric Commission* Act 1944, to vest these lands in the commission and that all that remained to be done was the making of the requisite proclamation.

We have no doubt that the five parcels of which the commission was the registered proprietor were rateable and did not fall within the exemption, since the land in question was the property of the commission and not of Her Majesty. Some of the land in question had been vested in the commission pursuant to s. 35 of the *Hydro-Electric Commission Act* 1944, sub-s. (1) of which is as follows:— "The Governor, on the recommendation of the Commissioner of Crown Lands, and on the certificate of the Commission that any Crown land specified in the certificate is required for the purposes of this Act, may declare, by proclamation, that the land so specified shall vest in the Commission for the purposes of this Act." The remainder had been purchased by the commission pursuant to s. 36 (1) of the Act which provides that "the Commission may, with the approval of the Minister (*a*) purchase . . . any land, other than Crown land, which it may deem necessary for the purposes of this Act . . ."

It seems clear that land which is the property of the commission is not land belonging to Her Majesty and nothing could make this clearer than s. 35 itself because the whole purpose and effect of a vesting proclamation under that section is to turn Crown land, that is, land belonging to Her Majesty, into something else, that is, land the property of the commission. It is, of course, true that legal title is not decisive and if land were held by the commission on trust for the Crown it would properly be regarded as belonging to Her Majesty for the purposes of s. 115 (1) (I). There is, however, nothing in the Act to support the conclusion that land vested in or acquired by the commission is held upon trust for the Crown. Such land, as s. 35 says, is held by the commission "for the purposes of this Act" and may be used by the commission for the purposes of its undertaking or it may, with the approval of the Minister, be sold or let. The statutory limitation upon the power of the commission to alienate its land does not carry with it any implication that its land is the property of Her Majesty; it means no more than that parliament has seen fit to subject the commission to the Minister's veto in the exercise of its power to alienate some, but not all, of its property. This conclusion is supported by the consideration that the proceeds of the sale of any property sold with the approval of the Minister belong to the commission but by virtue of s. 36, sub-s. (2)

shall be used by the commission for capital expenditure or paid by it to the Treasurer towards redemption of loans as the commission shall determine.

The conclusion that land belonging to the commission is not land belonging to Her Majesty is in accordance with the decision of this Court in *Grain Elevators Board (Vict.)* v. *Dunmunkle Corporation* (1), and what is said there by *Starke* J. (2) and *Dixon* J. (3) could not be more directly in point. This appears from the following passage in the judgment of *Starke* J., from which the authorities cited are omitted :—" The shire, pursuant to the *Local Government Act* 1928 (Vict.), s. 249, levied a rate for the year ending in the month of September, 1943, upon all land within its municipal district. The *Local Government Act*, s. 249, provides :—' All land shall be ratable property within the meaning of this Act save as is next hereinafter excepted (that is to say) :—(1) Land the property of His Majesty which is unoccupied or used for public purposes.' The appellant claims that the land registered in its name and occupied by it is not ratable property by reason of this exception. In England the exemption of the Crown from ratability is based upon the doctrine that the Crown is not bound by statute unless specially named or clearly intended. But in Victoria there is the express statutory exception already mentioned. The land must be the property of His Majesty, but the provision does not require that it be vested in His Majesty (cf. s. 249, sub-s. (3) (*a*) and (*b*)). Land may be the property of His Majesty because it is vested in him or because the land is held in trust for him or for his use by some other person or body. Land, however, vested in or belonging to statutory bodies for purposes defined in the statutes constituting them and which confer upon them discretionary powers of their own in relation to the use of the land is not property vested in or belonging in any sense to His Majesty." (2)

The two parcels of Crown land are, however, land " belonging to Her Majesty " notwithstanding that all that is required to vest them in the commission is a proclamation under s. 35. Until such a proclamation is made, the lands remain Crown lands and in advance of that there is no justification for treating the commission as having the beneficial ownership of the lands. This conclusion makes it necessary to consider whether the lands, the property of Her Majesty, which are occupied by the commission, are " occupied on behalf of Her Majesty " or, to use the language of s. 115 (3), are occupied " by any person for purposes other than those of Her Majesty ".

(1) (1946) 73 C.L.R. 70.
(2) (1946) 73 C.L.R., at p. 81.
(3) (1946) 73 C.L.R., at p. 84.

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The claim that the commission, in occupying these lands, did so on behalf of or for the purposes of Her Majesty, was rested entirely upon the contention that the commission is a servant of the Crown and accordingly requires examination of the *Hydro-Electric Commission Act* to ascertain the relationship of the commission to the Crown and the extent to which the commission has powers and discretions exercisable independently of the control of the Executive Government.

The commission is a statutory corporation charged with the development, management and control of an undertaking of great importance to the State which before 1929 was the responsibility of a department of State, viz. the Hydro-Electric Department. When the commission was set up, the State hydro-electric works were vested in it but the department was continued and constituted " the machinery for carrying out under the Commission the provisions of this Act " (*Hydro-Electric Commission Act* 1929, s. 21). This continued to be the position until 1944 when the commission was given and exercised the power to appoint such officers as it deemed necessary " to carry on the hydro-electric works, or otherwise for carrying out the purposes of this Act " (*Hydro-Electric Commission Act* 1944, s. 15 (2) (*e*)). This history, which is set out more fully in the judgment of *Gibson* J., in the present case and in that of *Crisp* J., in *Rollins* v. *Hydro-Electric Commission* (1) may perhaps be regarded as justification for treating the functions of the commission as concerned with matters that are the province of government rather than as commercial functions and so as assisting an inference that the commission is a servant of the Crown : in *Halsbury's Laws of England*, 3rd ed., vol. 9, par. 12, p. 10, it is stated that " the inference that a corporation acts on behalf of the Crown is more readily drawn where its functions are not commercial but are connected with matters, such as the defence of the realm, which are essentially the province of government ". Giving this history its full weight, we are nevertheless satisfied from an examination of the *Hydro-Electric Commission Act* 1944 as a whole that the proper conclusion is that the commission is an independent statutory corporation and is not a servant of the Crown such that its occupation of land should be regarded as occupation on behalf of Her Majesty or for the purposes of Her Majesty.

The commission is a corporation established by the Act to carry out the functions committed to it by the Act. In the discharge of its statutory duties it is in some respects subject to ministerial power ; so, for instance, the Minister may summon a statutory

(1) (1953) Tas. S.R. 42.

meeting of the commission, attend meetings and require information (s. 14); the commission is required to make an annual report to the Minister of its operations, business and affairs (s. 19), and to attach to its report audited accounts (s. 33); the power of the commission to borrow money is only to be exercised with the consent of the Treasurer or the Governor in Council (ss. 28 and 34); the securities in which the commission may invest its money are those approved by the Governor in Council (s. 29); the exercise of its power to acquire or alienate land requires the approval of the Minister (s. 36). These and other like provisions to ensure ministerial and parliamentary supervision of the commission do not, however, constitute the commission the servant of the Crown or require the conclusion that it is not an independent statutory corporation. Were the decision to rest upon the implication to be derived from the Act as a whole, the language of *Denning* L.J., in *Tamlin* v. *Hannaford* (1) would be entirely appropriate :—" In the eye of the law, the corporation is its own master and is answerable as fully as any other person or corporation. It is not the Crown and has none of the immunities or privileges of the Crown. Its servants are not civil servants, and its property is not Crown property." (2)

It was argued, however, and this was an argument that found favour with *Gibson* J., that here it is not necessary to rest upon any implication because the commission is expressly made the servant of the Crown by a provision in the Act, namely s. 15 (2), whereby it is provided that " the Commission may for and on behalf of the State " do certain things.

For a number of reasons, we cannot accept the view that the use of the words " for and on behalf of the State " make the commission the servant of the Crown. In the first place, the provision that the commission may " for and on behalf of the State " do certain things, is not as a matter of language equivalent to enacting that the commission should represent the Crown. Had Parliament wanted to incorporate the commission as " an emanation of the Crown ", it could have employed time-honoured language to effect its purpose. The words of s. 15 (2) do no more than emphasise that the commission is a public authority with public purposes, as distinct from a private undertaking engaged upon a merely commercial enterprise, and that its powers are to be exercised for the good of the State. Furthermore, the context suggests that the words are in no way directed to defining the relationship between the commission and the Crown. They appear in the part of the Act which deals with the general powers of the commission rather than its character and constitution and they

(1) (1950) 1 K.B. 18. (2) (1950) 1 K.B., at p. 24.

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introduce an enumeration of powers that is far from complete. It is extremely unlikely that words giving the commission the character of a servant of the Crown would be found in such a context. Finally, the particular enumeration of powers in s. 15 (2) suggests strongly that the opening words are not concerned with the character of the commission as a servant of the Crown: see the powers conferred by s. 15, sub-s. (2) (*e*) to appoint officers, and sub-s. (*f*) to delegate its powers to a commissioner. We regard the words in question as having the same general purpose as the words " in the interests of the State " in s. 15 (2) (*a*), viz. as indicating that the powers conferred upon the commission are to be exercised for the good of the State of Tasmania. This conclusion is supported in some degree by the use of the words " the State " rather than the words " the Crown ".

It is not necessary in this case to undertake a detailed review of the relevant authorities. Both in England and in Australia there is evidence of a strong tendency to regard a statutory corporation formed to carry on public functions as distinct from the Crown unless parliament has by express provision given it the character of a servant of the Crown. This tendency is illustrated by *Tamlin* v. *Hannaford* (1); *Grain Elevators Board (Vict.)* v. *Dunmunkle Corporation* (2); *Victorian Railways Commissioners* v. *Herbert* (3), and *Rural Bank of New South Wales* v. *Hayes* (4). Cases such as *Wynyard Investments Pty. Ltd.* v. *Commissioner for Railways (N.S.W.)* (5) where the statutory provision was " for the purposes of any Act the Commissioner for Railways shall be deemed to be a statutory body representing the Crown "; *Commissioners of the Government Savings Bank* v. *Temora Municipal Council* (6) where the statutory provision was " the Commissioners shall hold all real and personal property whatsoever vested in them . . . for and on behalf of the Government of New South Wales "; and *Glenorchy Municipality* v. *Board of Management of the Agricultural Bank of Tasmania* (7) where the statutory provision was that property should be held " for and on account of the Crown ", are all cases in which decisions that the body represented the Crown were based upon the express provisions of the particular statute. These cases are distinguishable from the present for the reasons already given. *The Electricity Trust of South Australia* v. *Linterns Ltd.* (8) is a decision that stands on a somewhat different footing; the question there was whether the trust was an " instrumentality " of the Government of South Australia. *Ligertwood* J. decided that it was, but in reaching this

(1) (1950) 1 K.B. 18
(2) (1946) 73 C.L.R. 70.
(3) (1949) V.L.R. 211.
(4) (1951) 84 C.L.R. 140.
(5) (1955) 93 C.L.R. 376.
(6) (1919) 19 S.R. (N.S.W.) 111.
(7) (1936) 31 Tas. L.R. 75.
(8) (1950) S.A.S.R. 133.

decision he distinguished cases such as *Tamlin* v. *Hannaford* (1) and *Victorian Railways Commissioners* v. *Herbert* (2) on the ground that the description " instrumentality " was wider than " servant or agent ", so that the decision rests substantially upon the special language of the South Australian *Landlord and Tenant (Control of Rents) Act* 1942-1949. The decision in *Bank Voor Handel en Scheepvaart N.V.* v. *Administrator of Hungarian Property* (3) where the House of Lords decided that the Custodian of Enemy Property was entitled to Crown immunity from income tax because he was a servant of the Crown, depended upon the conclusion that the custodian was entitled to no independent discretion but was in all things subject to the direction of the Board of Trade : see per Lord *Reid* (4). The position of the Hydro-Electric Commission is in marked contrast because it is apparent from the Act that where the commission is subject to ministerial control, that control is a limitation upon what is otherwise a completely independent discretion.

For the foregoing reasons, we consider that this appeal should succeed and that the judgment of the Supreme Court of Tasmania should be set aside, and in lieu thereof there should be judgment for the plaintiff for £247 12s. 10d. with costs.

Appeal allowed with costs. Set aside the order of the Supreme Court of Tasmania and in lieu thereof order that judgment be entered for the plaintiff in the sum of £247 12*s.* 10*d. with costs.*

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

Solicitor for the respondent, *J. L. Phelps.*

R. D. B.

(1) (1950) 1 K.B. 18.
(2) (1949) V.L.R. 211.
(3) (1954) A.C. 584.
(4) (1954) A.C., at pp. 616-618.