

COURT OF APPEAL.

WELLINGTON, 24TH JULY, 1867.

PRESENT :

THEIR HONORS MR. JUSTICE JOHNSTON AND MR. JUSTICE RICHMOND.

SINCLAIR (APPELLANT) — BAGGE (RESPONDENT).

This Case was called on for Judgment.

JOHNSTON, J.—This case came before the Supreme Court, at Wellington, by way of appeal from a decision of the District Court of Marlborough, held at Picton; and the hearing was, by order of the Supreme Court, and by consent of the parties, referred to this Court, under the provisions of "The Court of Appeal Act, 1862," section nineteen.

His Honor read the case stated by the parties, as follows:—

C A S E.

This is a suit brought by John Bagge, as Clerk of the Board of Works for the town of Blenheim, against James Sinclair, of the town of Blenheim, merchant, to recover the sum of £92 9s. 3s., amount of rates levied upon the lands of the defendant within the town of Blenheim, by the Board of Works for the said town, under an assessment made the 17th day of November, 1865.

By "The Blenheim Improvement Act, 1864" (which Act is to be taken as forming part of this case), a Board of Works was created for the town of Blenheim, under the title of "The Board of Works for the town of Blenheim," consisting of five members.

By the thirteenth section of the Act, the Board is empowered from time to time to levy a rate upon all lands within the town of Blenheim, based upon the estimated value to sell of such lands.

Section fourteen empowers the Board, by writing, under their hands, or of any three of them, to appoint one or more fit person or persons as assessor or assessors to assess such lands, and declares that the assessment to be made shall specify the full and fair value to sell of lands, and the names of the owners and occupiers thereof when known.

The sixteenth section of the Act provides that—

"If any person shall think himself aggrieved by such assessment on the grounds that it includes any property for which he is not rateable under this Act or that it assesses his rateable property beyond its full and fair value or that the name or property of any person is omitted out of such assessment or that the property of any person is assessed below its full and fair value, the person so considering himself aggrieved may at any time within twenty-eight days after public notice of such assessment shall have been given as aforesaid notify in writing to the Board of Works the grounds of his objection to the assessment and his intention to appeal to a Bench of not less than two Justices of the Peace and shall also send a similar notice to the Clerk to the Resident Magistrate or Clerk to the Justices who shall thereupon by advertisement in some newspaper generally circulated in the town of Blenheim summon a meeting of Justices of the Peace for the consideration of appeals such meeting to be held within fourteen days after the expiration of the aforesaid twenty-eight days and in case it shall appear that the Appellant is entitled to relief on account of being erroneously or too highly assessed or that the name or property of any person has been omitted out of the assessment or that the property of any person is assessed below its full and fair value the said Court of Appeal shall order the assessment to be altered or amended in such manner as it shall deem necessary but the assessment shall not be questioned or altered with respect to any other person named therein and the said Court shall have power to order the costs of such appeal to be paid by either the Appellant or the Board, and the determination of the said Court of Appeal shall be final and conclusive."

The Board proceeded to levy a rate; and three members thereof appointed, in writing, the other two members, one being the Chairman of the Board, to be assessors, who assessed the lands of the defendant and prepared the assessment.

The assessors received no consideration for assessing the lands or forming the assessment.

By the forty-seventh section of the Act, "No member of the Board shall during the continuance of his office become a contractor with or hold any paid office in the gift of the Board."

A meeting of Justices of the Peace was held for the consideration of appeals under the sixteenth section of the Act, and appeals were by such Justices heard and determined, and the assessment was thereupon amended by order of the Justices.

The defendant did not appeal under the provisions of the said Act, and the amendment made in the assessment did not directly affect the lands of the defendant.

The plaintiff, as Clerk of the Board, sues the defendant upon the assessment as amended by the Justices or Court of Appeal. Judgment having been given for the plaintiff, the defendant appeals against such judgment.