

1908.  
NEW ZEALAND.

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# CHRISTCHURCH DRAINAGE BOARD

(REPORT ON THE WORKING OF THE).

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*Return to an Order of the House of Representatives dated the 31st July, 1908.*

*Ordered, "That the report (dated 1907) of Mr. Commissioner Short on the dispute between the Christchurch City Council and other local authorities regarding the rating, expenditure, and proportional responsibility of such authorities under the Christchurch Drainage Board be laid before this House and be printed."—(Mr. TANNER.)*

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Department of Roads, Wellington, N.Z., 2nd July, 1907.

To His Excellency the Right Honourable William Lee, Baron Plunket, Knight Commander of the Royal Victorian Order, Governor and Commander-in-Chief in and over His Majesty's Dominion of New Zealand, &c.

MAY IT PLEASE YOUR EXCELLENCY,—

I have the honour to submit for the information of Your Excellency the following report on the working of "The Christchurch District Drainage Act, 1875," and its amendments, pursuant to the Commission issued under the hand of Your Excellency, and dated the 7th January, 1907.

The inquiry was commenced at Christchurch on Monday, the 10th, and was concluded on Saturday, the 15th June, 1907, the proceedings having lasted for six days continuously.

Mr. T. W. Stringer, K.C., appeared, with Mr. A. F. Wright, for the claimants or plaintiffs, who comprise the Heathcote, Avon, Riccarton, and Spreydon Road Boards, and the Woolston and New Brighton Borough Councils. Messrs. Wilding and Cowlishaw represented the City Council, and Mr. T. G. Russell represented the Christchurch Drainage Board.

Mr. T. I. Joynt, K.C., also specially represented the Avon Road Board, and Mr. G. Harper specially appeared for the Riccarton Road Board.

The inquiry arose out of certain indefinite complaints as to the working of "The Christchurch District Drainage Act, 1875," and its amendments, and the Commission was set up to investigate the matter.

This being so, and with a view of ascertaining more particularly what the trouble really is, I communicated with all the local bodies whose districts lie either wholly or partially within the limits of the jurisdiction of the Drainage Board. I met them twice in conference, and it was then decided that those who

had any grievance against the Drainage Board should formulate the same in the shape of a claim for relief, and that the Drainage Board and any other parties who supported the Board should be supplied with a copy of such claim, and should then make a statement of defence, as in any ordinary action-at-law. This was done, and the statements of claim and defence will be found in the appendix to this report. I treated the claimants as plaintiffs, and the Drainage Board and Christchurch City Council as defendants and sub-defendants respectively.

#### STATEMENTS OF CLAIM AND DEFENCE.

These statements of claim and defence are voluminous, but they resolve themselves into five issues, which were argued before me, and which issues may be summarised as follows :—

##### *Issue I.*

The plaintiffs claim that certain lands in the drainage district known as “the Rural Areas” have, *inter alia*, been made to pay a sum of £37,533 12s. 11d. to the Drainage Board, and which money has been applied by the Board towards paying interest and sinking fund in respect to the portion of a loan of £200,000 which was spent by the Board in what is known as “the Sewage Area.” They ask that this money be returned to them, with interest amounting to £15,923, thus making a total money claim of £53,456 8s. 1d. (This amount was, however, afterwards reduced to £43,149 8s. 3d., as will appear later on.)

The Drainage Board admitted that it had collected about £32,000 more from the Rural Areas than they were equitably entitled to pay, but pleaded that it had no option but to collect the money, and that what it did was according to law and by direction of the Supreme Court. The Board stated, however, that it would submit to any finding the Commissioner might make in respect to this money, but pleaded that interest should not be allowed.

The City Council, within whose district the Sewage Area is situated, denied that any money was due by the Sewage Area to the Rural Areas, and contended that upon the true state of the accounts, and after crediting the Sewage Area with works done therein that benefited the Rural Areas, the latter should be debited with a sum of £14,245 2s. 7d. This amount was, however, afterwards increased to £45,820 1s. 5d. (See Exhibit 23A.) As, however, the City Council also admitted that the Rural Areas had paid £27,525 more than their own proper share of the rates, this counterclaim of £45,820 1s. 6d. must be held to be liable to be reduced by the sum of £27,525 aforesaid.

On this issue therefore there is a claim of £53,456 8s. 1d. by one party, a partial admission by another party of £32,000, and a denial by a third party of anything being due; and, in addition, a counterclaim for £45,820 1s. 5d.

##### *Issue II.*

The plaintiffs claim that the method of charging for cleaning rivers and streams in proportion to frontage as adopted by the Drainage Board is inequitable, and that the charge should be according to benefits received.

The Drainage Board said their method of charge was just and fair.

The City Council did not object to plaintiffs' contention.

##### *Issue III.*

The plaintiffs contended that the present method of electing the members of the Drainage Board should be amended with the view of giving the local bodies (whose districts are comprised in the drainage district) direct representation on the Board—*i.e.*, the local bodies should themselves nominate the members.

The Drainage Board opposed this contention.

The City Council supported plaintiffs to some extent.

*Issue IV.*

The plaintiffs contended that the system of book-keeping adopted by the Drainage Board should be altered or improved so as to show clearly at any time the state of the account of each rural or sewage district.

The Drainage Board said that their system of book-keeping was a good one, and that the accounts were clear and needed no amendment.

The City Council expressed no opinion on this subject.

*Issue V.*

The plaintiffs contended that in any legislation required to give effect to this report provision should be made for the incorporation therein of similar provisions to those in "The Public Works Act, 1905," under which disputes as between the local bodies representing the Rural or Sewage Areas and the Drainage Board might be settled by Commission.

The Drainage Board opposed this contention.

The City Council offered no opposition to it.

The statements of claim and defence go into great detail, and give many more particulars than have been mentioned above, but as the subject is complicated, and as it will be necessary to elaborate the contentions of parties as I proceed, the above summary will be found sufficient to enable the difficulties which have arisen between the parties to be understood.

Your Excellency has directed me to answer certain definite questions that are set forth in the Commission. This will be done; but as the answers to such questions depend upon the conclusions which may be arrived at in respect to these issues, and as the consideration of these issues is necessary to enable such answers to be understood, they have been reserved for the concluding portion of this report.

## CONSIDERATION OF ISSUES.

*Issue I.—Does the Sewage Area owe to the Rural Areas the sum of £53,456, or any other sum, as alleged by plaintiffs? or do the Rural Areas owe the Sewage Area the sum of £45,820, or any other sum, as alleged by the sub-defendants, the City Council?*

To understand this matter it must be stated that the Christchurch Drainage Board was incorporated by "The Christchurch District Drainage Act, 1875," which, *inter alia*, gave the Board power to borrow moneys on the security of the rates which the Act empowered the Board to levy. Section 50 of the Act restricts the rate to 1s. in the pound on the annual rateable value of property in the drainage district, and out of this rate the Board is required to provide for its ordinary expenses and works, as well as to pay interest and sinking fund on the loans which it may raise.

The district of the Board embraces the City of Christchurch, as well as a very large area of surrounding country included either wholly or partly within the jurisdiction of the several adjacent local authorities who were represented at the inquiry. (See Exhibit I.)

The Christchurch District Drainage Act of 1875 gave the Drainage Board no authority whatever to make differential rates in various parts of its districts proportionate to the expenditure of the money therein or in proportion to benefits received from the works. The Act required the Board to levy the same rate over the whole of its district, no matter whether any benefit accrued or not, and in this fact is to be found the root of the whole trouble that has arisen between the Board and the districts lying outside the City of Christchurch.

By "The Christchurch District Drainage Act 1875 Amendment Act, 1876," the Drainage Board was empowered to raise a loan of £200,000, but the Act contained no provisions modifying those in the Act of 1875 relating to the uniform rate of 1s. in the pound save and excepting that section 8 of the Act of 1876

provided that interest and sinking fund should be paid out of the proceeds of such rate. Later Acts gave the Board power to raise further loans, but, as there is no dispute about these moneys, they will not be further referred to.

The loan of £200,000 was duly raised; but the parties very soon began to see that, as the bulk of the money would be spent within the then City of Christchurch or in its immediate vicinity, the ratepayers in the outside districts would have to contribute very largely to the cost of constructing sewers and drains in the central area, which would be no direct benefit to themselves.

To remedy this state of affairs "The Christchurch District Drainage Act 1875 Amendment Act, 1877," was passed, which required the Drainage Board, before striking any rate, to make an estimate of the expenditure incurred or to be incurred for the benefit of the portion of the district which was situated in the City of Christchurch, and also of the portions of the district outside the city. The Act also required that the rates should be "in proportion to the expenditure which shall have been incurred or to be incurred for the benefit of the city and suburban and rural districts respectively," and the Board was required also to define the boundaries of such districts, with power to alter the boundaries from time to time. This Act therefore required that there should be differential rates in proportion to expenditure, but, while this was so, section 3 of the Act provided that "nothing in the Act should prevent the Drainage Board from levying the rate of 1s. in the pound equally over the whole district, if so required, to provide for interest and sinking fund in respect to the loan."

The Drainage Board then proceeded with its works, and defined the districts as required by the Act of 1877. It called the central district (which is now included in and forms part of Greater Christchurch) "the Sewage Area" (see Exhibits 1 and 19), and it called the portions of the city and surrounding districts that lie outside the Sewage Area "the Rural Areas," and in doing so it distinguished them by the name of the special local district in which each is situated—thus: "Rural Christchurch," "Rural Heathcote," "Rural Avon," &c. (See Exhibit I.)

The Drainage Board, however, very soon found that the differential rating, provided for in the Act of 1877, could not be applied so as to provide all that the Act required, for the Board found that the rates which could be levied on the Sewage Area were not sufficient to provide for interest and sinking fund (on the portion of the loan chargeable to that area) as well as to provide for the necessary maintenance-works therein. The proceeds of the rates were sufficient to provide for necessary works and for payment of interest, but not sufficient to provide for the sinking fund, and the payment of the latter therefore fell into arrear or was not made.

This state of things continued until October, 1890, when the Supreme Court, by mandamus, in the case of *The Solicitor-General (ex relatione J. H. Hopkins) v. The Christchurch District Drainage Board*, compelled the Board to strike a rate over *the whole of the rural districts* sufficient not only to provide for the general expenses, interest, and sinking fund properly chargeable to these districts, but to make up the deficiency in providing for the same things in the Sewage Area. (See Exhibit 9.)

This additional burden was then cast upon the Rural Areas, and they continued to bear it for several years, until in or about the year 1900 or 1901, owing to the increase in the value of property in the Sewage Area, the valuation of that area at last increased to such an extent as to enable the Board to obtain from it the whole of the money year by year necessary to pay the interest and sinking fund in respect to its own share of the loan as well as to provide for its share of maintenance and general expenses.

Now, it is the magnitude of the amounts which the Rural Areas had to pay to assist the Sewage Areas in these years from 1890 onwards that is the real grievance between the parties and in respect to which the local authorities representing the Rural Areas seek relief.

The Drainage Board appears to have always had in view the fact that the Rural Areas were entitled to relief, but the Board has never been in the necessary

legal position to give such relief. What the Board has done was within the four corners of the law (however unfair it may have been to the Rural Areas), and the Board was safe, so it contented itself with showing in its books the overpayment by the Rural Areas, thus making it possible for them at any time to raise the moral claim to adjustment, and this is what they are now so strongly urging. The Rural Areas, however, have all along protested against these overpayments, and have from time to time endeavoured to get the necessary legislative authority to enable the adjustment to be made, but without success.

In the statement of claim the plaintiffs contend that the Rural Areas are entitled to £37,533 12s. 11d. (plus interest) from the Sewage Area, but the Drainage Board contends that £32,000 only is owing, and when the case opened the plaintiffs accepted this amount as correct, plus their claim for interest; but as the case went on and as the result of conferences between the parties, this £32,000 was by consent reduced to £30,649 19s. 8d. The plaintiffs also claim interest in addition, amounting to £12,499 8s. 7d., or a total amended claim of £43,149 8s. 3d. These amounts, it is claimed, should be credited to the rural districts as follows:—

| Districts.            | Principal.  | Interest on<br>£27,174 10s. only. | Total Claim. |
|-----------------------|-------------|-----------------------------------|--------------|
| Rural Heathcote—      | £ s. d.     | £ s. d.                           | £ s. d.      |
| Heathcote ... ..      | 3,999 16 0  | 1,631 6 0                         | 5,631 2 0    |
| Woolston ... ..       | 1,443 0 0   | 588 1 6                           | 2,031 1 6    |
| Rural Avon ... ..     | 3,233 9 11  | 1,318 4 7                         | 4,551 14 6   |
| " Riccarton ... ..    | 8,194 13 1  | 3,343 10 0                        | 11,538 3 1   |
| " Spreydon ... ..     | 1,987 6 5   | 810 2 0                           | 2,797 8 5    |
| " New Brighton ... .. | 1,047 8 3   | 427 0 0                           | 1,474 8 3    |
| Rural Christchurch—   |             |                                   |              |
| Richmond ... ..       | 262 10 4    | 107 0 0                           | 369 10 4     |
| Linwood ... ..        | 2,213 11 6  | 902 3 0                           | 3,115 14 6   |
| Sydenham ... ..       | 5,498 11 2  | 2,242 17 6                        | 7,741 8 8    |
| St. Albans ... ..     | 2,769 13 0  | 1,129 4 0                         | 3,898 17 0   |
| Totals ... ..         | 30,649 19 8 | 12,499 8 7                        | 43,149 8 3   |

(See Book of Analysis of Accounts, page 24, and Exhibit 26, herewith.) The City Council admitted (subject to their counterclaim) that £27,525 had been overpaid by the Rural Areas. This amount is included in the sum of £30,649 19s. 8d. admitted by the Drainage Board, and the difference between these amounts is to be found in the Deposit Account, the bank overdraft, and uncollected rates. In one case the amount represents actual cash. In the other case it represents the balance between certain assets and liabilities, as well as actual cash. Thus:—

|                                                 | £     | s. | d. | £      | s. | d. |
|-------------------------------------------------|-------|----|----|--------|----|----|
| Amount admitted as due by Drainage Board ... .. |       |    |    | 30,649 | 19 | 8  |
| Minus rates outstanding 31st March, 1907 ... .. | 5,271 | 15 | 6  |        |    |    |
| Plus contractors' Deposit Account £1,450 0 0    |       |    |    |        |    |    |
| „ Bank overdraft ... ..                         | 696   | 15 | 10 |        |    |    |
|                                                 |       |    |    | 2,146  | 15 | 10 |
| Total ... ..                                    |       |    |    |        |    |    |
|                                                 |       |    |    | 3,124  | 19 | 8  |

Amount as agreed upon by the City Council (which represents actual cash) ... .. 27,525 0 0

It is therefore quite clear, from the admission of the Drainage Board and City Council, that a sum of either, say, £30,650 or £27,525 will be collected or has been collected from ratepayers in the Rural Areas which ought strictly to have been contributed by ratepayers in the Sewage Area, if the method of apportioning the receipts and expenditure which the Drainage Board adopted is the correct one. The plaintiffs and the Board contend that it is correct. The

City Council contends that the basis is not correct, and they sought to prove their contention.

The scheme of apportionment which the Board has adopted and under which its operations have been carried out is known between the parties as "Mr. Napier Bell's apportionment."

Mr. Napier Bell was Engineer to the Drainage Board when the loan of £200,000 was expended. He was a civil engineer of some considerable eminence in his profession, and for the purposes of "The Christchurch Drainage Act 1875 Amendment Act, 1877," he made an apportionment of the loan of £200,000 to the different districts concerned, and this apportionment was adopted by the Board.

The apportionment, as subsequently subdivided by the Board when some of the original districts were divided, is as follows:—

|                     | £       | s. | d. | £       | s. | d. |
|---------------------|---------|----|----|---------|----|----|
| Loan of ...         |         |    |    | 200,000 | 0  | 0  |
| Expenditure—        |         |    |    |         |    |    |
| Sewage Area         | 185,248 | 8  | 8  |         |    |    |
| Rural Christchurch— | £       | s. | d. |         |    |    |
| Sydenham            | 710     | 7  | 11 |         |    |    |
| St. Albans          | 2,510   | 1  | 2  |         |    |    |
| Linwood             | 544     | 11 | 3  |         |    |    |
| Christchurch        | 556     | 1  | 4  |         |    |    |
|                     |         |    |    | 4,321   | 1  | 8  |
| Rural Avon ...      | 4,094   | 17 | 6  |         |    |    |
| „ Heathcote         | 4,659   | 6  | 6  |         |    |    |
| „ Riccarton         | 1,597   | 7  | 11 |         |    |    |
| „ Spreydon          | 78      | 17 | 9  |         |    |    |
|                     |         |    |    |         |    |    |
| Total               |         |    |    | 200,000 | 0  | 0  |

(See Exhibit 7.)

There is nothing now to show whether these figures represented the actual expenditure in each district, or whether or not in allocating the money Mr. Napier Bell took into account benefit as well as expenditure. The fact, however, is indisputable that nearly all the money was spent in the Sewage Area, and that this allocation had stood unchallenged by all parties from the day it was formally adopted by the Drainage Board until it was questioned at the inquiry by the City Council. This being so, the onus of proving that the allocation was unjust or incorrect lay on the City Council. This they attempted to do by producing certain old maps showing levels, from which it might be inferred that the drainage or catchment basins in certain instances extended beyond the Sewage Area and should therefore have been included therein. The city also sought to show by some indefinite evidence that certain areas, which used to be swamp, are now dry, and also that the health of the city and Rural Areas has very greatly improved since the drainage of the Sewage Area was completed. All this evidence, save that as to improved sanitation and health, was of the most inconclusive and indefinite character. It would not satisfy any Court of law, and much of it broke down utterly on cross-examination. The City Council was, moreover, quite unable to support the details which made up its counter-claim, and in some cases its witnesses admitted the figures were incorrect. The principal fact ultimately relied upon was that, as the health of the ratepayers in the Rural Areas had improved so greatly since the Drainage Board had constructed its works, that therefore these Rural Areas should bear part of the burden caused by the construction of sewage-works in the Sewage Area. At what value that benefit could be assessed no one could say, neither is it possible that they could do so. I have no doubt that the health of the people in the Rural Areas has improved owing to the improved sanitation of the Sewage Area, but this is not by any means the entire cause.

The drainage of the Rural Areas has been improved and better sanitary conditions prevail. If, however, the health of the people in the Rural Areas

has improved as the result of the Sewage Area, this does not seem to me to give the Sewage Area any greater claim on the Rural Areas for assistance, for, if the condition of things in the Sewage Area was such as to breed fever and disease and thus infect the Rural Areas, it was the duty of the people in the Sewage Area to remove the cause, and this seems to have been done very effectively.

As regards the claim that some of the drains charged to the Sewage Area have reclaimed swamp lands in the Rural Areas, rebutting evidence was brought to show that there are several other drains and water-channels which may, either wholly or partly, have conduced to the reclamation of these swampy areas.

The City Council could not prove that Mr. Napier Bell had not taken into account benefit as well as the actual expenditure when his allocation was made, and it is quite clear from the facts already mentioned that the city had no sufficient evidence to support its counterclaim. All its defence amounted to was this: that if the plaintiffs are morally entitled to a refund of the money paid by them for the benefit of the Sewage Area, then the Sewage Area is morally entitled to some recognition from the Rural Areas on account of the improved sanitary conditions which its works have caused, and that in any case justice cannot now be done. It is contended that this is so, because the persons who would now have to pay the additional rates that would be required to adjust the matter, as well as those who would receive the benefit of the same, are not the same, or only partly the same persons.

This last argument will not, however, stand criticism because it is opposed to the principles of municipal or local government, and it is moreover frequently impossible of application even in ordinary affairs of life. It means that because one cannot do absolute and individual justice that therefore justice should not be done at all, but this is unreasonable. For, suppose an undertaking, such as a tramway, which benefits property, and which has been constructed out of loan-money, did not pay sufficiently to enable interest and sinking fund to be paid out of the receipts from the same, where would the extra money that would be required come from? Would it not come from the ratepayers, who would have to pay it as rates? Of course it would, whether they were the people who voted for the undertaking or not, or whether they had received benefit by the increased value which it had given to their properties before they had bought them or not.

The fact is that property in a large area like the Christchurch Drainage District is changing ownership continually, and not a day passes but some change is made; but, although this is so, the land abides continually and the Corporation of each of the local authorities remains the same, and every person who allies himself to such a Corporation by holding property within its limits thereby takes upon himself all the benefits and all the disabilities of the entity with whom he has chosen to identify himself.

The principles which the City Council endeavours to invoke to evade the claim on the ratepayers in its Sewage Area should be such as should guide the Council if it were dealing with one of its own difficulties. Thus, if by miscalculation or from any other cause its expenditure were to exceed its revenue, and at the end of a series of years it were faced with a deficit of £30,000 or £40,000, would it have any compunction in raising its rates to such a sum as would cover the liability simply because some of the people who had benefited by the expenditure had left the city and would not have to pay, whereas those who had taken their place and had not benefited would have to pay? I do not think the City Council would consider such people at all; it would do the reasonable and common-sense thing and levy the rate, and justify its action on the ground that the holder of property takes it subject to all its disabilities as well as its advantages.

Under these circumstances, therefore, and as the evidence showed that a very great many people who paid the rates in the Rural Areas, as well as a great many people who received benefit for such money in the Sewage Area, are still ratepayers in such areas respectively, I fail to see that the contention of the City Council is of sufficient weight to preclude justice being done to the Rural Areas. The money cannot, of course, be refunded to those who paid it,

but it can be paid to the Drainage Board in trust to expend the same in the Rural Areas from whence it was derived.

The claim for interest was not pressed, and very little evidence was given in support of it. The fact, however, remains that the ratepayers in the Sewage Area have been relieved, at the expense of the Rural Areas, for a great many years from the payment of a very large sum of money, and this has been of considerable value to the ratepayers in the Sewage Area. The interest thus saved to the ratepayers in the Sewage Area (counting it at the rate of 4 per cent. only) is above £12,000, and this, together with the difference between the sum of £30,650 admitted by the Drainage Board and the sum of £27,525 admitted by the City Council (and which refers to uncollected rates), may well be set aside as fully compensating the Sewage Area for any benefit which may have accrued to the Rural Areas from the construction of sewage-works paid for by the sewage district.

On the facts therefore, as proved before me, I consider there is a very strong moral claim that the Sewage Area should be made to refund the actual money which was admitted by the City Council, and supported by the Drainage Board, as having been overpaid by the Rural Areas. This sum is £27,525, or, say, in round numbers, £27,500. If this amount were raised by loan it would require a rate to provide interest and sinking fund of so small an amount as to be hardly felt. The evidence of one of the professional accountants showed that if a loan were raised on the Sewage Area to cover the claim—

At 5 per cent. on a currency of 26 years the rate would be  $\frac{1}{19}$ d. in the pound.

|                  |   |    |   |                   |   |
|------------------|---|----|---|-------------------|---|
| „ $4\frac{1}{2}$ | „ | 35 | „ | $\frac{1}{21}$ d. | „ |
| „ 4              | „ | 41 | „ | $\frac{1}{24}$ d. | „ |

It will be seen from this that a property valued at £1,000 would be liable for about 4s. 5d. per year for twenty-six years, or about 4s. a year for thirty-five years, or about 3s. 6d. a year for forty-one years; and as the capital value of the Sewage Area increases these rates would become correspondingly less in the pound.

This amount of £27,500 should, in my opinion, be raised by the Drainage Board on loan, on the security of the Sewage Area, either in one lump sum or in such sums as the Board may from time to time think fit, and it should be used for such permanent works in the various rural districts as the Board may determine, in the exact proportions in which the money was originally paid by the ratepayers of such Rural Areas respectively; and this, based on the figures making up the total of £30, 649 19s. 8d. agreed to by the Drainage Board, would give approximately the following results, viz. :—

| Rural Heathcote—    |     |     |     | £     | £      |
|---------------------|-----|-----|-----|-------|--------|
| Heathcote           | ... | ... | ... | 3,589 |        |
| Woolston            | ... | ... | ... | 1,295 |        |
|                     |     |     |     | —     | 4,884  |
| Rural Avon          | ... | ... | ... |       | 2,901  |
| „ Riccarton         | ... | ... | ... |       | 7,353  |
| „ Spreydon          | ... | ... | ... |       | 1,783  |
| „ New Brighton      | ... | ... | ... |       | 939    |
| Rural Christchurch— |     |     |     |       |        |
| Richmond            | ... | ... | ... | 235   |        |
| Linwood             | ... | ... | ... | 1,986 |        |
| Sydenham            | ... | ... | ... | 4,934 |        |
| St. Albans          | ... | ... | ... | 2,485 |        |
|                     |     |     |     | —     | 9,640  |
| Total               | ... | ... | ... |       | 27,500 |

The answer therefore to the first issue is that the evidence shows that £27,500 is due by the Sewage Area to the Rural Areas. I should, however, point out that more than one third part of this money—viz., £9,640—is due to the Rural Areas in the City of Christchurch itself.



*Issue II.—Is or is not the Board's method of charging the different districts for clearing streams and rivers a just one?*

The Drainage Board is in the habit of charging each district under its control with a proportion of the cost of cleansing the rivers and streams that pass through such district. The work appears to be usually let by contract, and the cost is divided among the different districts through which the river runs in direct proportion to the chainage length of the river-bank in each district. If two districts are divided by a stream, then half the cost per chain frontage is charged to each. If the stream is not a boundary one, then the district is charged the full amount in proportion to the length of the stream in such district.

The plaintiffs contended that this is not always fair, and they affirm that the surface drains in Christchurch bring a great deal of silt and other matter into the river that passes through the city, which silt lodges in the lower reaches of the river, and which will in time require to be dredged out at the expense of all. This being so, plaintiffs contend that it is not just that the city should only pay at the same rate as do the other districts. They also point out that occasionally, when the pumping station is unable to cope with the full amount of sewage-matters, that the overflow is sent down one of the storm- or surface-water drains, thus creating a nuisance. The plaintiffs therefore ask that the apportionment should be on the basis of benefit received, and not necessarily on a chainage basis without reference to benefits, and they propose that in the case of dispute some method of appeal, as by commission, as is the case under sections 118 and 119 of the Public Works Act, should be adopted.

The City Council did not object to the plaintiffs' proposal, but the Drainage Board said that the system of charging in proportion to frontage had worked very well and was just and fair, and they objected strongly to have any tribunal to which dissatisfied persons might appeal from their decisions, as it would be likely to lead to endless delay and trouble.

In my opinion the system of charging a proportionate rate according to frontage is a sound one, provided always that some discrimination is used in adopting it, and under the system it is quite as possible to charge according to benefit received as under any other system, and there is nothing to prevent the Board using such discrimination. The evidence showed it had attempted to do so in one case at least—viz., in the case of one of the rivers that flows through the city area; but for some unaccountable reason, which was not disclosed, it charged the area in the city very much less per chain than it charged the outside areas for cleaning the same river. This, however, had now been altered, and the same rate is charged per chain in the city as in the other areas. It is conceivable and probable that one district may tend to pollute and send much more silt and other matter down a river than another portion, especially if such portion takes drainage from factories, or silt in large quantities is allowed to flow through the drains into the river. Consequently a rigid adherence to a proportional chainage basis on one average rate for the whole river would not in such case be fair. The district, or even persons, who cause the extra charge should, I consider, be made to contribute to the extra cost thrown by their action on the Board, and this would be the measure of the amount which should be paid by such district beyond the average chainage rate. But I do not mean that, because, owing to natural causes, it may cost more or less in one subdistrict than in another to cleanse a river, that therefore such subdistrict should necessarily pay more or less than the others. Each case should be considered on its merits. Thus there is much more vegetable growth in the river in and near Christchurch, that has to be removed, than there is at the estuary at New Brighton, but this does not seem to give New Brighton any claim that it should pay very much less than the other districts, because what benefits the flow of the river in one place benefits it all through, and if the flow of the upper waters were impeded by vegetation the lower portions might tend to silt up and damage would ensue.

The answer then to this issue, therefore, is that, while the Board's method of charging the different districts in proportion to the length of the frontage of

the river or stream in such districts respectively is, in my opinion, a sound one, still some discrimination should be used in applying it where it is manifest that, owing to causes other than natural ones, one district causes the Board more expense than would be the case if such cause did not exist. The question of appeal from the Board's decision will be dealt with in answering Issue V.

*Issue III.—Should or should not the present method of electing the members of the Drainage Board be continued?*

The plaintiffs ask that the law be altered so as to enable the local authorities within the Rural and Sewage Areas to nominate members from among themselves to act on the Drainage Board, as they contend that the Board would then be more in touch with the local requirements, and would thus be much more efficient.

A great deal of evidence was given both for and against this contention, but no evidence whatever was given to show that the Board was wasteful, or that it mismanages its funds or constructs improper or insufficient works, or, in fact, has been guilty of any impropriety or want of tact whatever, save and except that it sometimes tells local bodies who ask for information "to go and find it out from the Board's books for themselves." (See next issue.)

On the other hand we have medical testimony showing that whereas before the Board was set up typhoid and diphtheria were rampant in and about the city and Rural Areas, yet now the city is one of the healthiest cities in the Dominion. Exhibit 14 shows that, whereas in 1875 in the City of Christchurch, with a population of 10,611, there were 49 deaths from typhoid and 21 from phthisis and the general death-rate was 30·4, yet in 1889, with a population of 16,785, there were only 5 deaths from fever, 8 from phthisis, and the general death-rate was 9·77, and the health of the city appears to be as good now as it was in 1889, and the health of the city reflects itself in the Rural Areas.

No doubt it would be a very good thing to have the assistance on the Drainage Board of such a man as, say, the present Mayor of Woolston if he were nominated by his Council, as he has had very great experience in local matters and his ability and knowledge would be invaluable; but all members of local bodies have not the same knowledge, time, and zeal that he has. There are also very serious objections to nominated Boards, and the idea is opposed to the democratic notions of the age.

Under these circumstances therefore, and as the plaintiffs failed to show that the present Board were in any way incapable of fulfilling their trust or had mismanaged it, or were not supported by public opinion, I can only report that the evidence did not support the contention that the present method of electing the members of the Board should be altered. The Board originally consisted of eight members. The Act of 1880 increased the number to nine, and the Act of 1902 increased the number to eleven. It may be that this number requires to be increased to give better representation to some of the more congested districts, but this question was not argued before me.

*Issue IV.—Is or is not the system of book-keeping adopted by the Board sufficient?*

A very great deal of professional and other evidence was given on the subject, and the books themselves and voluminous accounts were produced.

The evidence shows that at the present time the books and accounts of the Board are kept strictly in accordance with the law, and that they fulfil their purposes quite well enough *from the point of view of the Board*.

They do not, however, always disclose in plain form certain information which the plaintiffs from time to time require, although it is not difficult for any one who knows the run of the books or for a trained accountant to find the information therein. Thus the yearly balance-sheet summarises the operations of the Board as an entire district, and, while it gives the principal items of

receipts and expenditure, assets, liabilities, &c., and shows the position of the whole drainage district, it nowhere discloses the position of each of the sub-districts known as the Rural Areas and the Sewage Area. (See Exhibits 3 and 5.)

Again, the financial statement which is made up each year (but not published), and *which shows the position of each district*, is a statement made up from various sources. There is no ledger-entry in the books of the Board which directly shows how the figures therein are made up. Several books have to be consulted if one requires to get at all the details.

What the plaintiffs ask is that appended to the balance-sheet should be attached statements showing the position of each rural and sewage district, somewhat in the same way as the separate accounts of the Selwyn County are shown in the county balance-sheet (Exhibit 12), and also that a ledger account should be kept by the Drainage Board against each rural and sewage district, by means of which a clerk of any of the local bodies in the Rural Areas could easily ascertain the state of his district in account with the Drainage Board. The local bodies also ask that a copy of the balance-sheet and of the Board's yearly estimates of expenditure should be submitted to them.

There seems to have been a disposition on the part of the Drainage Board to ignore the local authorities and to look upon them as having no more right to ask for information than any single ratepayer, for whenever one of those bodies has asked for information the usual reply has been, "The books are open for inspection. Send some one to get therefrom the information you require." In some instances information has been supplied by the Board's official, or it has been found by the clerk who was sent to look for it; in other instances the clerk has come away without the information; but access to the books has never been refused. This action on the part of the Board has had the effect of alienating the sympathy of the local authorities, whose clerks are not always sufficiently adept in accountancy-work to be able to understand the Board's system of book-keeping, and besides which they have their own duties to attend to. This issue, and Issues III and IV, have, I think, been largely caused by the Board's practice of practically telling the local bodies who want information to "find it out for themselves."

The local bodies in the drainage district are required by law to raise such rates for drainage-works in their several districts as the Drainage Board directs them to levy, and it is reasonable therefore that such local bodies, as representing their own ratepayers, should desire to know something of the Board's business in so far as it affects their own districts and the necessity for the rate they are required to raise. The local bodies are therefore agents for the Board and trustees for their own ratepayers. The members of the Drainage Board are, on the other hand, only trustees in a larger sense, and it is their duty as trustees to give full information to their beneficiaries, and the local authorities representing such beneficiaries have, I think, the right to the information. The Drainage Board evidently has nothing to conceal, and their action appears to have been prompted by motives of economy and not by any desire to withhold information, but economy may be carried too far. The Board says that if it has to keep the books as required and to give the information asked for it would have to employ another clerk at £250 a year. I think this may perhaps be a slight exaggeration, but probably the Board's accountant has enough to do, and additional office help would be required. Supposing, however, that the Board would have to employ another accountant at £250 a year, then the salary of such an official would hardly be felt in the volume of the Board's income and expenditure, and I consider therefore that full and reasonable information should be supplied by the Board whenever it is asked for by the local authorities.

In my opinion no sufficient evidence was brought to show that the Board's system of book-keeping was defective, although I think that ledger accounts might be kept against each of the districts. There would thus be a permanent record. This, however, is a mere detail, and it in no way affects the real book-keeping system of the Board.

What I do think should be done is that the Board should be required to send a copy of its estimates, financial statement, and balance-sheet to each local authority within its district so soon as these documents have been adopted by the Board. Also, the balance-sheet should, either in itself or in schedules attached to it, be made to disclose the position of each of its Sewage and Rural Areas. If these things were done, and if reasonable information were supplied by the Board to the local authorities when they asked for the same, the present cause of complaint as to the insufficiency of the Board's books would cease to exist.

*Issue V.—Whether or not there should be any tribunal to which disputes between the Drainage Board and the local bodies representing the Rural or Sewage Areas should be referred to for settlement?*

This question refers primarily to the dispute as to the method adopted by the Drainage Board in apportioning the cost of cleansing rivers and streams, referred to in Issue II, and if that were likely to be the only trouble that might arise in future between the Board and the outside areas I should advise that such a tribunal be not set up, because the Board itself is quite competent to settle a matter of this nature.

The Drainage Board opposes the setting-up of any such tribunal as likely to lead to endless disputes between the Board and the Rural and Sewage Areas. This result would, however, not follow, because once a decision had been come to Your Excellency would be no more likely to allow such a decision to be questioned before a Commission, without good *prima facie* evidence having been given, than is now required in similar cases under sections 118 and 119 of "The Public Works Act, 1905"; and if apparently there were good reasons for complaint why should not the Board's actions be subject to review the same as the action of any other local authority? There are several sections in "The Counties Act, 1886," which give a right of appeal, and, in particular, section 321 provides for a general appeal to Your Excellency on several different grounds; but I know of only one instance in which an appeal under that section has been made, and then the case was a strong one.

In the Public Works Act and in most Acts relating to local bodies there are various rights of appeal, and in asking for such a right as against the Drainage Board the plaintiffs are only asking for what is well recognised in the case of most other administrative bodies with even greater powers and responsibilities than the Drainage Board. No doubt the Drainage Board would rather not leave it open that any of their actions could be subject to review or appeal; but had there been a right of appeal with power to make an adjustment there would never have been any necessity for the present expensive inquiry, and the present grave difficulties would not have arisen, because they would long since have been adjusted.

I am of opinion therefore that in the interest of all parties there should be a general right of appeal to Your Excellency, both for the Board itself and for the Rural and Sewage Areas, and that Your Excellency should have power to make such order from time to time as Your Excellency may think fit as being necessary to adjust complaints or difficulties that may arise and to carry out the intent of and purpose of the several Acts that relate to the drainage district.

#### CONCLUSION.

Coming now to the specific questions to which Your Excellency desires a reply I respectfully answer as follows:—

*Question A:* Have the various local authorities whose districts are comprised wholly or partially in the Christchurch Drainage District any legitimate cause of complaint by reason of the provisions of "The Christchurch Drainage Act, 1875," or its amendments or of the action of the Christchurch Drainage Board thereunder, and, if so, how should such cause of complaint be removed,

remedied, or adjusted?—*Reply*: The answers to the above issues show to what extent causes of complaint exist, and what in my opinion should be done to remedy the same.

*Question B*: What additional legislative powers are required to enable such grievance to be removed, remedied, or adjusted?—*Reply*: (1.) Power is required to enable the Drainage Board to raise a loan not exceeding £27,500 without poll, on security of a special rate over lands in the Sewage Area, to construct such necessary works in the Rural Areas as the Board may think fit, such money to be apportioned and spent by the Board on the basis set forth in my answer to Issue No. I. (2.) A direction that the Drainage Board should keep separate accounts showing from time to time the financial position of each Rural and Sewage Area respectively, and that the balance-sheet of the Board should, in addition to a general statement of account, also contain schedules showing the financial position for the year of each Rural and Sewage Area respectively. Also that the Board should supply to each local authority within its district each year a copy of the balance-sheet, estimates, and financial statement, as suggested in my answer to Issue No. IV. (3.) Power is also required to enable Your Excellency to make adjustments or to settle disputes from time to time as between the Board and the Rural and Sewage Areas or the local authorities in the drainage district, or to compel outside bodies whose districts may benefit by works constructed by the Board to contribute towards the cost of the same. Power is also required that would enable Your Excellency to give any necessary direction that may from time to time be required for the more effectively carrying out the purposes of the Act, and with power also to enforce Your Excellency's decision or direction in respect to any of the above matters. (4.) A general power for the Drainage Board to raise loans from time to time for new works, upon a poll of the ratepayers either in the whole or in any portion of one or more Rural or Sewage Areas, and power also for the Board to declare the whole or any portion of any such area to be a special-rating district for the purpose of such loan in the manner prescribed by "The Local Bodies Loan Act, 1901," which Act should be made to apply, *mutatis mutandis*, to the Christchurch Drainage District. This last power was not specially asked for by the plaintiffs, but it was suggested by the City Council, and the evidence shows that it is a very necessary one for the Board to possess, not only in its own interest but in the interest of the rural and sewage districts.

*Questions C and D*: What amounts should each subdistrict have contributed, or what amounts should it contribute to the sinking fund?—*Reply*: The answers to these questions are practically given in discussing Issue No. I.

In conclusion it only remains for me to state that, as the interest at stake is very considerable, and that as so many local bodies are concerned in the matter, and as their interests to some extent conflict with one another, I do not consider that a local Bill would have any chance of becoming law, and I therefore respectfully suggest that if my recommendations are approved they should be given effect to by a public Bill.

#### Costs.

The plaintiffs, having succeeded in the main, are entitled to costs. They asked that such costs should be made to include the costs connected with the local Bill that they sought to get passed by Parliament last session to remedy the matter. I have, however, no power to deal with anything else than the costs incident or necessary to the present inquiry. These costs are, no doubt, considerable. Exception was taken to the costs entailed in the employment of accountants in examining the accounts of the Board, and it was contended that the result could have been gained without all the labour employed.

In my opinion it was necessary that a proper examination of the accounts should be made, for without it the plaintiffs would have been in no strong position to prove their claim; and I think it is most probable that, as the plaintiffs were prepared with full details of the figures, this may have had much to

do with the fact that the Board and City Council admitted liability as already mentioned. In saying this I offer no opinion as to the correctness or otherwise of the charges made for the work by the accountants.

The City Council failed in its defence, and admitted the plaintiffs' moral claim to the extent of £27,525. It should therefore pay part of the costs, but it does not seem to me that they should pay the whole of such costs, because the Council will not have to pay the £27,525.

The Drainage Board admitted the moral claim of the Rural Areas to a refund to the extent of £32,000; and, as representing the whole district, it is the duty of the Board to see that justice is done to all parts of such district, and as the Sewage Area is part of such district the Board ought, I think, to pay part of the costs, and charge the same to the Sewage Area.

Under these circumstances, therefore, I hereby order that the Christchurch City Council and the Christchurch Drainage Board shall together pay in equal proportions towards the cost of the plaintiffs the amounts allowed by rules made on the 15th December, 1903, under "The Commissioners Act, 1903," which are ninety-six guineas counsels' fees, together with out-of-pocket expenses and witnesses' fees and expenses on the Supreme Court scale; provided, however, that the total costs shall not exceed £300.

I understand that the costs of the plaintiffs will amount to much more than is allowed under the Commissioners Act, and that the sum of £300, mentioned above, will not cover such costs. I have no power to order more, but, if it be considered desirable to give legislative effect to the recommendations herein contained, then provision ought perhaps be made that the amount of such costs, as the Registrar of the Supreme Court at Christchurch may consider to be necessary for the purpose of this inquiry, over and beyond the said sum of £300, should be paid by the Drainage Board and charged to general expenses.

I consider that the City Council and the Drainage Board should pay the expenses of the Commission in equal shares, if so ordered by Your Excellency.

Notes of evidence and exhibits at the inquiry are sent herewith.

I have, &c.,

W. S. SHORT,  
Commissioner.

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