Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Syed Asgar Reza v. *Hayes and Others, from the High Court of Judicature at Fort William in Bengal; delivered the* 16*th February,* 1905.

Present:

LORD DAVEY.
LORD ROBERTSON.
SIR ARTHUR WILSON.

[*Delivered by Lord Davey.*]

THEIR Lordships are obliged to Counsel for the Appellant for putting the case so fairly before them. As Counsel stated in his opening, the Appellant, before he can move a step, has to prove that he has received substantial injury by reason of the alleged irregularities in the execution sale. Counsel also told their Lordships, quite fairly, that both the Courts below had come to the conclusion, on the consideration of the evidence before them, that the Appellant had not received substantial injury. It is true that the evidence on which the Courts proceeded, and the calculations which they made for the purpose of arriving at the amount of the rent of the property in question, may be open to small criticisms, but the fact remains that the question whether the Appellant received substantial injury, and received substantial injury by reason of the alleged irregularities, is a question of fact, and both Courts have come to the conclusion that the condition under which alone the Appellant can maintain this Appeal has not been fulfilled.

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Their Lordships therefore have no alternative but to follow the usual course in regard to concurrent findings of fact, and they will humbly advise His Majesty that this Appeal ought to be dismissed. The Appellant must pay the costs of it.

miles from the City of Sydney, buildings, yards, and other premises for the sale of cattle, and authorized them to purchase and hold lands for the purpose; and to provide funds for the erection and maintenance of such buildings, yards, and premises by borrowing money.

Section 133 provided that after such sale-yards were ready to receive cattle the Government might proclaim them to be the Metropolitan sale-yards, and they should thenceforth be the only market or place within the City of Sydney and the limits mentioned in Section 132 for the sale of cattle, except as provided in Section 138: and any person who sold cattle or offered them for sale (except as after provided) within the City or 14 miles thereof was subjected to a penalty.

Section 137 provided for the application of the proceeds of the fees on the sale of cattle at such yards, and all other profits accruing therefrom, after payment of the current expenses incident to the maintenance of such premises, towards payment of the principal sum borrowed and interest; an account thereof to be called the "Cattle Sale-yards Fund" being kept by the City Treasurer. No provision is found in the Act dealing with the application of any such moneys as the Appellants are suing for.

Section 138 gave the Council power to erect, maintain, or license sale-yards within the City of Sydney, or 14 miles therefrom, for the sale of calves, lambs, pigs, milch cows, and horses; and also to license places within the said City or limits for the slaughter of pigs, calves, and sheep, and to frame regulations for the management thereof.

Section 139 runs as follows: —

"When any sale-yards are established, and bye-laws in "respect to such yards are made and published, it shall be "lawful for the Council to take and demand in respect of any "cattle intended for slaughter yarded or brought for sale by "auction to any sale-yards or premises in the City of Sydney

" or within the distance of 14 miles therefrom as hereinbefore " provided the fees or charges specified and set forth in bye- " laws to be made in that behalf, such fees and charges not to " exceed the scale provided in Schedule G hereto."

Section 224 provided that the Council might make bye-laws for carrying out the provisions of the Act.

Schedule G to that Act, specifying the scale of maximum rates of market fees and charges, was confined to animals received into the yard for sale. There is no reference to or charge for animals intended for slaughter.

The Appellants long since completed and proclaimed the sale-yards contemplated by Sections 132 and 133, and they are known as the Metropolitan Cattle Sale Yards at Flemington, or the Flemington Sale Yards. The Council also duly made bye-laws under Section 224 which were amended in 1894, and again in December 1900; and bye-law 10 of the bye-laws as last amended is as follows:—

" *Scale of Market Dues.*

" The following tolls or dues shall be the fees and charges " payable to the Council on cattle received into the Metro- " politan Cattle Sale Yards at Flemington for sale, and upon " all cattle intended for slaughter only yarded in yards (other " than those licensed or owned by the Council) in the City " of Sydney or within 14 miles thereof."

And then follows a list of the tolls.

The Appellants, in support of their contention that the bye-law is authorized by Section 139, rely upon the fact that the word "in" is not found following the word "yarded," and must be sought elsewhere; and they find it by reading the Section as though it ran "yarded in the City " of Sydney or within the distance of 14 miles " therefrom as hereinbefore provided," omitting the intervening words. But no plausible reason was given for such omission; and it is a far more arbitrary alteration of the Section than the mere addition of the word "in" after "yarded." Moreover, it gives no meaning to the words "as

" hereinbefore provided "; for there is no antecedent provision in the Act contemplating the imposition of a charge upon a person merely slaughtering his own cattle on his own close. If those words refer to yards for the establishment and licensing of which provision is made by Sections 132 and 138 their meaning is intelligible; but then the Respondents do not come within them. It was suggested that the words " as " herein-before provided " referred to the limits; but in that case they would be unmeaning and useless, as the limits have just been mentioned.

In the opinion of their Lordships, the meaning of Section 139 is free from doubt, though it is not very happily worded. It must be construed as if the word " in " had followed the word " yarded." It contemplates an owner of cattle intended for slaughter bringing them to sale yards established by the Council, who are authorized to make charges for the use thereof; but not the case of a person bringing his own cattle to his own private yard, and lawfully killing them there.

The dissentient Judge in the Supreme Court relied upon an earlier Act, the short title of which was the " Cattle Sale Yards Act, 1870 " (33 Vict. No. 16), the 6th Section of which was, for present purposes, identical with Section 139 of the Act of 1879, by which latter Act the Act of 1870 was repealed. The learned Judge held that, under Section 6 of the first Act, the Council could legally have imposed fees and charges upon any cattle intended for slaughter yarded in the City of Sydney or within 10 miles thereof; and that Section 139 of the later Act, in which the same words were used, was intended to preserve a right to the Council similar to that which it had possessed under Section 6 of the former Act. Their Lordships do not concur in this view of the earlier Act. It

is hardly worth while to criticize in detail the language of an Act repealed 25 years ago. It is sufficient to say that, looking to the title, the preamble, and the material sections of that Act, their Lordships are of opinion that it conferred no right to charge fees, except in respect of the use of yards established for the sale of cattle. The conclusion drawn by the learned Judge from his wider construction of the earlier Act is therefore, in their Lordships' view, not well founded.

Their Lordships are of opinion that the 10th bye-law, so far as it purports to authorize charges for cattle intended for slaughter yarded in yards not established or licensed by the Council is *ultra vires* and invalid; and they will humbly advise His Majesty that the Appeal should be dismissed.

The Appellants must pay the costs of the Appeal.