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seamen for wages, to which will be added a proper sum for subsistence. No allowance can be made to them for return-passage to their homes. I think the principle of such allowance extends only to foreign seamen. In the case of British seamen, if they cannot find re-engagement they are entitled to be returned to their homes as distressed British seamen.

Judgment accordingly.

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Jan. 11.

[APPELLATE JURISDICTION.]

GROVER *v.* TOWN BOARD OF SUVA.

Appeal as to legality of rates—Competent valuer—Towns Ordinance 1883, *ss.* 53, 55, 56, 57—*Ordinance V. of* 1885, *s.* 8—*Public Education Ordinance* 1890, *ss.* 25, 27—*Local rate.*

In an action brought by the Town Board of Suva against a ratepayer for non-payment of rates, the Commissioner having declined to allow the question of their legality to be raised at the trial on the ground that it should have been disposed of in the Stipendiary Magistrate's Court under s. 56 of the Towns Ordinance 1883,

Held, on appeal, that the Commissioner was wrong in disallowing this, as the question of the "value" of a rate alone could have been raised in the Stipendiary Magistrate's Court; and that a ratepayer whilst acquiescing in such value may still raise the question of its legality by refusing to pay it.

Held, also, that the clerk of the Town Board is not a sufficiently competent valuer within ss. 53, 55 of the Ordinance.

Held, further, that the expression "local rate" in ss. 25 and 27 of the Public Education Ordinance 1890, means the local rate authorised by that Ordinance, and obviously means an extra rate.

This was an appeal from the decision of Mr. Commissioner Hunter on the 19th November last in an action brought by the Town Board of Suva against Mr. T. D. Grover, of Suva, to recover certain town rates, viz., 4*l.* 4*s.* remaining unpaid in respect of the year 1895 and 6*l.* 15*s.* for the year 1896, in which the Commissioner had given

judgment for the plaintiff on both claims with costs, holding that it was then too late for the defendant to dispute the validity of the rate.

Mr. Shaw for the appellant.

The Attorney-General (Mr. Udal) and *Mr. Garrick* for the respondent.

The grounds of appeal that were raised upon the argument were as follows:—

1. That the 1895 rate was vitiated by reason of the valuation for that year having been made by the Board's own servant—the late town clerk.

2. That no assessment and rate of the appellant's property had been transcribed in the rate-book in conformity with ss. 46, 47, and 50 of the Towns Ordinance 1883.

3. That the making of the special rate of 1*s.* in the pound for the year 1896 was *ultra vires*, being in excess of the Board's requirements, within the meaning of s. 48.

4. That the general and special rates for the year 1896 together exceeded 2*s.* in the pound, in contravention of s. 49.

Mr. Shaw, for the appellant, contended with regard to the first ground of appeal that the rate struck for the year 1895 was invalid, because s. 53 of the Towns Ordinance 1883, required that the valuation upon which such rate was made should be made by two "competent" persons; and the Board had appointed their own servant—the late town clerk—as one of the valuers, the holding of which office must necessarily disqualify him from acting as one of the valuers.

The second ground of appeal went to the whole matter of the rate for 1896. In the rate-book the property was merely described as "premises," Victoria Parade, owned by T. D. Grover. He cited ss. 46, 47, and 50 of the Ordinance as not having been complied with, and also *Rex* v. *Aire and Calder Navigation Co.* (1) as

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showing the insufficiency of the description in the rate-book, which he contended must result in the disfranchisement of any occupier of these premises.

The third ground raised the question as to whether the special rate of 1*s.* was not in excess of the requirements of the Board, but on his Honour holding that the question had not been sufficiently raised in the Court below, Mr. Shaw did not press his ground further.

On the fourth ground it was urged that the maximum combined rate of 2*s.* in the pound allowed by the Ordinance had been exceeded by the fact that the general rate was 1*s.*, the special rate 1*s.*, and the school rate 6*d.*, and he referred to ss. 25 (as amended by XVII. of 1891) and 27 of the Public Education Ordinance 1890.

On his Honour intimating that he did not require to hear the respondent on any but the first two grounds, the *Attorney-General* submitted as an objection to all the grounds of appeal that his Honour had no jurisdiction to hear this appeal; that any impeachment of the validity of the rates should have been the subject of an appeal to the Stipendiary Magistrate's Court under s. 56 of the Ordinance, which decision shall be final. For though, apparently, that section only referred to appeals relating to the "value" of rateable property, yet it must be taken to include all other grounds also, because by s. 59 it is provided that in any proceeding to recover rates the production of the rate-book shall be conclusive evidence of the rate "for all intents and purposes." All questions as to the validity of the rate must necessarily therefore be settled before the rate is struck, and *a fortiori* before proceedings are taken to enforce payment thereof. This is consonant with the English practice which makes the Quarter Sessions Court (equivalent to the Stipendiary Magistrate's Court

here) the final Court to test the validity or amount of a rate, and the High Court (equivalent to the Supreme Court here) only has jurisdiction to entertain matters of law, &c., reserved for its consideration by the Sessions. After the appeals to the stipendiary magistrate have been decided the rate-book is adjusted, if necessary, and the rate is struck; after which no objection can be heard. Indeed on no other basis could any rating authority carry out its work—if its assessment was liable to be challenged whenever an action was commenced or a distress warrant issued for the recovery of unpaid rates. An adverse decision in an important case might mean the whole re-rating of the town which would lead to endless confusion and inconvenience. The appellant therefore not having raised these points at the time he appealed against the "value" assessed upon his property in the Stipendiary Magistrate's Court, is precluded from raising them now, and must wait until a fresh valuation is made when he must object within the time allowed by law.

With regard to the particular grounds of appeal, he said that of the two he had to answer, the first only related to the 1895 rate, and argued that although it might not have been altogether wise for the Board to have appointed one of its own servants as one of the valuers, yet the late town clerk had so acted for several years together with a competent valuer, and no objection had previously been taken by the ratepayers, nor was such a course anywhere forbidden in the Ordinance.

With regard to the second ground of appeal he contended that the words "premises, Victoria Parade," in the rate-book were a sufficient description of the appellant's property and could mislead no one—and was indeed quite sufficient for Mr. Grover to appeal—

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and successfully—as to the value put upon it to the Stipendiary Magistrate's Court. He was therefore stopped from denying its sufficiency on the present appeal. The case cited of *Rex* v. *Aire and Calder Navigation Co.* (1) was clearly distinguishable; there the rate was quashed because no description at all of what or where was the subject of the rate appeared in the rate-book. The names of the occupiers for the premises could not be inserted as there was no evidence there were any but the appellant himself. The question of disfranchisement had nothing to do with this point. If the rate had been paid any occupier would have had a right to apply to the Board under ss. 11 and 12 of the Ordinance to have his name inserted for municipal purposes; but that was not the case here.

Mr. Shaw, in reply, contended that the questions now involved could not have been raised until the appellant was sued for his rates, for s. 56 of the Ordinance allowed an appeal to the Stipendiary Magistrate's Court on the ground of "value" only, and called his Honour's attention to the case of *Harman* v. *The Town Board of Leruka* (2) in which a special rate for the erection of a town hall had been recently quashed on appeal to his Honour.

SIR H. S. BERKELEY, C.J. This is a case of some difficulty; comprising two amounts, one for 4*l.* 4*s.* in respect of the last half-year's rate for 1895 and 6*l.* 15*s.* in respect of the rate levied for 1896. I do not think the appellant can succeed on any of the grounds of appeal other than, perhaps, the first two. The third ground suggests that the rate for 1896 was *ultra vires*, as being beyond the requirements of the Board, but I

(1) 2 B. & C. 713. (2) Unreported.

do not see anything in the Ordinance limiting the discretion of the Board in this matter. The fourth ground suggests that the school rate should have been paid out of the town rates. This cannot be supported. The expressions in ss. 25 and 27 of Ordinance XIV. of 1890 as to "local rate" means the local rate authorised by the Public Education Ordinance 1890, and obviously means an extra rate. The two first grounds however require more serious attention. The first argument by the Attorney-General was that the Court ought to dismiss this appeal because an appeal on these grounds should have been brought in the Stipendiary Magistrate's Court, and he contends that s. 56 of the Towns Ordinance 1883 should be read as imparting more grounds for appeal than "value." But I do not think I am so precluded in restricting the right of appeal to this Court. It seems to me that if the appellant had gone before the stipendiary magistrate on the points here raised he would not have heard him, the matter not being a question of the "value" of the rate. The words of the section are clear, and allow appeals on one subject only, namely that of value. The question here is, has the appellant any appeal at all? The appellant, or any ratepayer who is aggrieved at any *modus operandi* in making a rate, has not the right of raising it in that way. But whilst acquiescing in point of value he may still raise the question of legality by refusing to pay. A ratepayer can be sued under s. 57 of the Towns Ordinance 1883; or, under s. 8 of V. of 1885, he can be sued before a Commissioner of the Supreme Court. Here he has been sued before a Commissioner and the Commissioner has given judgment against him. With regard to the validity of the rate he had no opportunity of raising the question before he was sued. I think, therefore, I have jurisdiction to hear this appeal.

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An important point has been taken as to the valuation for the 1895 rate, and after careful consideration I have come to the conclusion that the appointment of Harding, the late town clerk, as one of the valuers was an impropriety, as he was necessarily interested in keeping up the values of the rateable property of the town, though I do not mean to impute any improper motive to the Board. [His Honour then referred to ss. 53 and 55 of the Ordinance.] I think that such a defence as that now taken would have been a good one, and could not have been taken before it was. I do not think that the payment of the first half of the year's rate is any bar to the appellant's raising it now, and I am therefore of opinion that the Commissioner's decision must be varied by ordering the repayment of this 4*l.* 4*s.* if it has been paid. With regard to the second ground I am of opinion that the word "premises" is a sufficient description in the rate-book coupled with the words "Victoria Parade," but I think that in future a fuller description should be given. The judgment of the Commissioner therefore for the sum of 6*l.* 15*s.* representing the rates for 1896, and 6*s.* costs of summons should stand. I do not think, however, he should have given costs. The Commissioner's judgment therefore will be varied to the above extent, and each party must pay its own costs of this appeal.

Judgment of Commissioner varied accordingly.