

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Attorney-General for New South Wales v. Rennie, from the Supreme Court of New South Wales ; delivered 9th May 1896.

Present :

LORD WATSON.

LORD HOBHOUSE.

LORD DAVEY.

SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

The question in this appeal relates to the construction of the "Parliamentary Representatives' Allowance Act" of the Colony of New South Wales (No. 12 of 53 Victoria 1889). The second section is as follows:—"Every Member of the Legislative Assembly now serving or hereafter to serve therein shall, unless he is one of the persons specified or referred to in the next following section, be entitled to receive, by way of disbursement for expenses incurred by him in discharge of his parliamentary duties, an allowance at the rate of three hundred pounds per annum; which allowance shall be charged on the Consolidated Revenue Fund, and be payable monthly at the rate aforesaid to every such Member of this present Legislative Assembly now serving

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“ from the date of the passing of this Act, and
 “ to every such Member hereafter elected, from
 “ the time of his taking his seat, and in every
 “ case, until he shall resign or his seat be
 “ vacated, or until Parliament shall be dissolved,
 “ or shall expire by effluxion of time.” By the
 “ Constitution Act ” of the Colony, 17 Vict.,
 No. 41, assented to by Her Majesty by virtue of
 the Imperial Act, 18 & 19 Victoria, chap. 54,
 it was enacted as follows:—Section 1. “ There
 “ shall be in place of the Legislative Council now
 “ subsisting one Legislative Council and one
 “ Legislative Assembly to be severally constituted
 “ and composed in the manner hereinafter pre-
 “ scribed, and within the said Colony of New South
 “ Wales Her Majesty shall have power by and with
 “ the advice and consent of the said Council and
 “ Assembly to make laws for the peace welfare
 “ and good government of the said Colony in all
 “ cases whatsoever. . . . Provided that all Bills
 “ for appropriating any part of the Public Revenue
 “ or for imposing any new rate tax or impost sub-
 “ ject always to the limitation contained in clause
 “ sixty-two of this Act shall originate in the
 “ Legislative Assembly of the said Colony.”
 Section 10 and following sections provide for
 the number, qualification, and election of
 members of the Legislative Assembly. By
 Section 23 every Legislative Assembly was to
 continue for five years from the day of the
 return of the writs for choosing the same and
 no longer, subject to be sooner prorogued or
 dissolved by the Governor of the Colony. This
 period was by a Colonial Act, No. 7 of 37 Victoria
 1874, reduced to three years.

The question of the construction of the Act
 was raised by an information in the Supreme
 Court of New South Wales, in Equity, in the
 name of the Appellant alleging that the Legis-

lative Assembly in existence at the time of the passing of the Act 53 Victoria No. 12 was no longer in existence and charging that the provisions of the Act had ceased to be operative; and the prayer of the information was that it might be declared that there were no monies legally available or applicable to the payment of members of the then present or any future Legislative Assembly and that the Defendant (the Auditor General of the Colony) might be restrained by injunction from countersigning any instrument authorizing any such payment. The suit came on for hearing upon a motion for injunction turned into a motion for decree before the Judge in Equity of the Supreme Court; and the parties consenting that the judgment should be taken *pro forma* only it was ordered that the information should be dismissed with costs. The informant appealed from this decree to the Full Court which unanimously affirmed it.

The Appellant's contention in this appeal was that according to the true construction of the Parliamentary Representatives' Allowance Act the words "every member of the Legislative Assembly now serving or hereafter to serve therein" can only refer to members of the Legislative Assembly in existence at the date of the passing of the Act, inasmuch as the words "hereafter to serve therein" can only apply to the Legislative Assembly previously mentioned, and such Legislative Assembly is defined by the words "now serving therein" to be the Legislative Assembly in existence at the date of the passing of the Act. A further contention was that if the language of the Act was ambiguous or doubtful then the Act ought to be construed in the manner above mentioned inasmuch as it was in substance and effect a grant of public

moneys, and any doubtful point or ambiguity ought to be construed in favour of the public and against those claiming to be recipients of the public monies. The question is what is the meaning of "the Legislative Assembly." In their Lordships' opinion the words "now serving therein" are not used to show the meaning of or should be considered as defining the Legislative Assembly to which the Act was to apply. If the Act was intended to apply to the existing Assembly "now serving therein" are apt words for that purpose, and "hereafter to serve therein" are apt words to make it applicable to members of a future Assembly as well as to members elected to fill a vacancy that might occur in the existing one. It does not appear to their Lordships that the language of the Act is ambiguous or doubtful. They think that, according to the ordinary use of the term "Legislative Assembly," it means the Assembly created by the Constitution Act which though liable to be dissolved or to expire by effluxion of time is an essential part of the Constitution of the Colony and must be regarded as a permanent body. If it was considered to be just or proper to give an allowance for expenses to the members of the existing Assembly it may be reasonably presumed that it would be considered to be equally so to give the same allowance to the members of a future Assembly. It is very difficult to suppose that the Act was intended to apply only to the members of the existing Assembly. If this was intended it ought to have been clearly stated. Such a distinction between the existing and a future Assembly would not, their Lordships think, have been left in ambiguity. They are of opinion that Section 2 of the Act applies generally to the Legislative Assembly of the Colony and was not

limited to the then existing Assembly and they will humbly advise Her Majesty to affirm the decree of the Supreme Court and to dismiss the appeal. The Appellant will pay the costs of it.
