Privy Council Appeal No. 34 *of* 1933.

The Mayor, Councillors and Burgesses of the Borough of New Plymouth - - - - - - - - *Appellants*

v.

The Taranaki Electric-Power Board - - - - *Respondents*

FROM

THE COURT OF APPEAL OF NEW ZEALAND.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 27TH JULY 1933.

Present at the Hearing:

LORD ATKIN.
LORD TOMLIN.
LORD MACMILLAN.
LORD WRIGHT.
SIR GEORGE LOWNDES.

[*Delivered by* LORD MACMILLAN.]

Their Lordships have in this appeal to consider the meaning to be assigned to the word " adjoining " as employed in Section 282 of the New Zealand Municipal Corporations Act 1920. That section reads as follows :—

> " A Council, having established electric light works for the purpose of lighting the streets and public places of the borough and of supplying electricity to the inhabitants of the borough may (*a*) supply electricity to any person residing beyond the borough, with the consent of the local authority of the district in which the supply is given, and the provisions of this Act as to the supply of electricity to the inhabitants of the borough shall, so far as applicable, extend and apply to the case of such supply beyond the borough, and (*b*) contract with the local authority of any adjoining district to supply electricity to such local authority upon such terms and conditions as may be mutually agreed upon."

This section applies to the appellants, the council of the borough of New Plymouth, who are authorised by Orders in

Council made under the Public Works Amendment Acts of 1908 and 1911 to supply electricity within an area of supply which embraces not only the borough but also a large surrounding territory.

The boroughs of Inglewood and Waitara lie outside but border on the appellants' area of supply. They are distant respectively eight miles and six miles from the borough of New Plymouth. By agreements entered into in 1924 and subsequently modified in 1928 the appellants contracted with the borough councils of Inglewood and Waitara to supply them with electricity, and have since been affording supplies to these boroughs. The supplies are delivered in bulk at a point in each case within the appellants' area of supply. By a Local Legislation statute passed in 1931 these agreements were validated but only up to 30th September, 1933.

In view no doubt of the expiry of this period the present proceedings were initiated in the Supreme Court of New Zealand by an originating summons taken out by the respondents which submitted for determination the question on which the validity of the agreements depends, namely, whether the boroughs of Inglewood and Waitara are " adjoining districts " to the borough of New Plymouth within the meaning of the statute of 1920.

The matter came in the first instance before Macgregor, J., who answered the question in the affirmative. The Court of Appeal in turn unanimously came to a contrary decision.

Their Lordships agree with the learned Judges of the Court of Appeal that the primary and exact meaning of " adjoining " is " conterminous." At the same time it cannot be disputed that the word is also used in a looser sense as meaning " near " or " neighbouring." But as Lord Hewart, C.J., said in a recent case, where the question was as to the meaning of the word " contiguous " :—" It ought to be the rule and we are glad to think that it is the rule that words are used in an Act of Parliament correctly and exactly and not loosely and inexactly. Upon those who assert that that rule has been broken the burden of establishing their proposition lies heavily. And they can discharge it only by pointing to something in the context which goes to show that the loose and inexact meaning must be preferred " (*Spillers Ltd.*, v. *Cardiff (Borough) Assessment Committee* [1931], 2 K.B. 21 at p. 43).

The context in the present case does not help the appellants as it helped the plaintiffs in *Cave* v. *Horsell* [1912], 3 K.B. 583. Indeed, it is rather against them for in paragraph (*a*) of Section 282, reference is made to " any person residing beyond the borough," while in paragraph (*b*) the reference is to the local authority, not of any district beyond the borough, but of " any adjoining district." The contrast is significant.

In *Mayor of Wellington* v. *Mayor of Lower Hutt* [1904], A.C. 773, this Board refused to interfere with a judgment of the

New Zealand Court of Appeal which decided that the City of Wellington was "adjacent" to the borough of Lower Hutt within the meaning of Section 219 of the former Municipal Corporation's Act of 1900, although they were over six miles apart. It is noteworthy that Sir Arthur Wilson, in delivering their Lordships' judgment, said, at p. 775, "'Adjacent' is not a word to which a precise and uniform meaning is attached by ordinary usage. It is not confined to places adjoining and it includes places close to or near." The framers of the present Municipal Corporation's Act in employing in Section 282 the word "adjoining" and not the word "adjacent" may well have had in mind the contrast thus drawn between the two terms and have designedly selected the stricter word.

But it is unnecessary to pursue the matter. It is enough to say that there is here no context constraining their Lordships to give to the word "adjoining" any other than its exact and literal meaning. Their Lordships thus see no reason to differ from, but on the contrary, every reason to agree with, the interpretation placed upon the word by the learned Judges of the Court of Appeal.

Their Lordships will humbly advise His Majesty that the appeal be dismissed. The respondents will have their costs.

In the Privy Council.

THE MAYOR, COUNCILLORS AND BURGESSES OF THE BOROUGH OF NEW PLYMOUTH

v.

THE TARANAKI ELECTRIC-POWER BOARD.

DELIVERED BY LORD MACMILLAN.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.

1933.