Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Pacific Co-operative Steam Coal Company, Limited, v. *The Railway Commissioners of New South Wales, from the Supreme Court of New South Wales; delivered the 29th July* 1904.

Present at the Hearing:

LORD DAVEY.
LORD ROBERTSON.
SIR ARTHUR WILSON.
SIR HENRI TASCHEREAU.

[*Delivered by Lord Robertson.*]

The question raised by the present Appeal is whether the Appellants are not liable in the costs of (1) a certain arbitration, and (2) a certain action. The liability asserted against the Appellants is said to be created by the express terms of Section 116 of the Public Works Act 1900, of New South Wales.

The Appellants were lessees of coal mines in New South Wales; and the Respondents' railway came to be constructed in such proximity to those mines that the Respondents gave the Appellants notice not to work. It is unnecessary to set out the procedure leading up to this notice, all that is relevant being the result, viz., that the Respondents became bound to pay compensation for preventing the Appellants from working the minerals; and they tendered the Appellants 2,000*l.* The Appellants having refused to accept this sum, the compensation to be given went, under the Statute, for settlement by Arbitrators. Before the Arbitrators the Appellants claimed 25,000*l.*, and were awarded 18,450*l.* The Respondents, being dissatisfied

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with this award, and desiring to have the compensation settled by a jury, gave notice to that effect to the Appellants. By this notice the Appellants were, under the Statute, disabled from enforcing the award of the Arbitrators, and had no means of recovering compensation except by an action in the Supreme Court. This action accordingly was brought; the case was tried by Mr. Justice Pring and a special jury, with the result that a verdict was found assessing the compensation at 17,609*l.*, being less by 841*l.* than the award of the Arbitrators. The Appellants signed judgment for 17,609*l.* and costs; but the Supreme Court, on 28th August 1903 set aside the judgment. The sum of 17,609*l.* having been paid, the only question is as to costs, including both costs of action and costs of the arbitration.

Now the Statute, by Section 116 (2), deals with the question of costs, in several events, and the Respondents maintain that head (*b*) of that sub-section is in terms applicable to this case.

For greater clearness the whole of Section 116 is here set out:—

"S. 116. (1) If the compensation awarded by the "Arbitrators exceeds the sum of three hundred pounds, "and either party is dissatisfied with the award and desires "to have the compensation settled by a Jury, and, within "fourteen days after the making of the award and notice "thereof, signifies such desire by notice in writing to the "other party, then no steps shall be taken to enforce per- "formance of the Award, but the party claiming compensation "shall proceed by action in the Supreme Court, in the usual "manner, to recover from the Constructing Authority the "compensation to which he may be entitled under the provisions "of this Act.

"(2) Upon the trial of the said action, if the verdict is—

"(*a*) For a greater sum than the sum previously offered "by the Constructing Authority and awarded by "the Arbitrators, all the costs of the said Action "and of the Arbitration and Award shall be borne "by the said Constructing Authority;

"(*b*) For a less sum than the sum so awarded, all the "costs of the said Action and of the Arbitration "and Award shall be borne by the Claimant;

"(c) For the sum awarded by the Arbitrators, all the "costs of the said Action and of the Arbitration "and Award shall be paid by the party requiring "the same to be referred to a jury.

"(3) In every such case the costs of the Arbitration and "Award shall be added to, and be recoverable as, the costs of "the Action."

It seems to their Lordships perfectly clear that by "sum so awarded" in Sub-section (*b*) is meant simply sum "awarded by the Arbitrators," those being the words in the immediately preceding context, to which the word "so" relates. Their Lordships find it impossible to introduce, through the word "so," the words "previously offered by the Con- "structing Authority and" which occur in head (*a*). The sum so awarded being the sum awarded by the Arbitrators according to the plain meaning of the words, there is an end of the Appellants' case.

That the result is singular cannot be denied. If the verdict is to be taken as the true test of the compensation due, the tender of the Respondents was inadequate, and it is equally clear that (apart from negotiation) the Appellants had no means of getting more except by going to the Arbitrators, and, when the Respondents refused to pay the sum awarded, then raising action and going to a jury. That the Appellants should bear the whole costs of both proceedings has been represented with much plausibility as surprising. This consideration however cannot be allowed to operate further than to induce caution in accepting the interpretation which involves this result. Having given due weight to these considerations, their Lordships find the language of the Statute to be unambiguous.

They will therefore humbly advise His Majesty that the Appeal ought to be dismissed; and the Appellants will pay the costs of the Appeal.