

tain public works. The defendants admitted the amount, but asserted that it had been paid over, under the Workmen's Compensation Act, to the Board, upon a demand by the Board for that amount as due by the plaintiff to the Board under the Act. The plaintiff replied that he was not indebted to the Board as alleged.

The case turned entirely upon whether or not this amount had in fact been assessed by the Board against the plaintiff under the Act. There was no official record of an assessment having been made by the Board. The question was, whether what was done amounted to a valid assessment under the provisions of the Act.

After referring to many of the provisions of the Act, the learned Judge said that no pay-roll had been furnished by the plaintiff, and Mr. Giles, an officer of the Board, made some inquiry and estimated the amount of the pay-roll at \$75,000. The Board, as such did not fix any sum as the probable amount of the pay-roll. The Board, in fact, never acted or assumed to act under sec. 78 (3) of the Act. The Board could not be said to have made the assessment. The amount of the plaintiff's assessment was ascertained by applying the rate of 3 per cent., duly fixed by the Board, to what Mr. Giles considered should be the amount of the pay-roll.

The learned Judge examined the evidence in detail, and referred to some authorities, including Halsbury's Laws of England, vol. 8, para. 769.

He then said that, having regard to the law applicable to a corporation such as this, whose function was largely judicial, the Board could not delegate its authority to fix the amount of the roll upon which the Board might act. With some doubt, he had reached the conclusion that, although the assessment made by Mr. Giles on the pay-roll as fixed by him was not binding on the plaintiff, yet the question having been opened at the plaintiff's request and the Board having confirmed what Giles had done, that was an act of the Board which cured the defect and rendered the assessment valid.

The action should be dismissed. The costs should remain as fixed by the order allowing further evidence—that is, no costs of the first hearing. The plaintiff should have the costs of the rehearing to judgment.