

V.-C. M. **RICHMOND WATERWORKS COMPANY AND THE
SOUTHWARK AND VAUXHALL WATERWORKS
COMPANY v. VESTRY OF RICHMOND (SURREY).**

1875
Feb. 10;
March 23.

[1875 R. 25A.]

Company incorporated by Act of Parliament—Delegation of Powers—Illegal Agreement—Public Health Act, 1875, s. 52—Company able and willing to supply Water.

A waterworks company is not, within the meaning of the 52nd section of the *Public Health Act*, 1875, able and willing “to supply water within the district of a local authority,” unless it has both the necessary powers and the requisite supply of water.

Where company *R.* had the necessary powers but no water, and company *S.* had the requisite supply of water but no powers within the district, and company *R.* sold its plant to company *S.*, and certain members of company *S.* bought all the shares in company *R.* with the intention of allowing company *S.* to exercise the powers of company *R.* :—

Held, that the powers could not be so delegated, and that neither company was “able and willing” within the meaning of the Act, and consequently that neither was entitled to notice under the 75th section of the *Public Health Act*, 1848, or the 52nd section of the *Public Health Act*, 1875.

Section 75 of the *Public Health Act*, 1848 (11 & 12 Vict. c. 63), is not materially extended by sect. 52 of the *Public Health Act*, 1875 (38 & 39 Vict. c. 55), and therefore a local authority, desiring to construct waterworks, and having, before the passing of the latter Act, given the notices required by sect. 75 of the former Act, is not, in consequence of the passing of the latter Act, required to give the notices under sect. 52 of that Act.

Statement.

THE *Richmond Waterworks Company* was incorporated by a local Act of 5 & 6 Will. 4. c. lxxxi., intituled “An Act for supplying the Parish of *Richmond*, in the County of *Surrey*, with Water,” which, after reciting that the parish “hath not at present a secure means of being supplied with water for domestic and other purposes, or in case of fire, but such inconveniences might be prevented, and much public benefit obtained, if proper waterworks were established,” incorporated the company. And by the 8th section of the Act it was provided as follows: “And in order to enable the said company and their successors to obtain and have at all times a good and sufficient supply of water for the purposes of this Act, be it further enacted, that it shall and may be lawful for the said company and their successors to make and for ever hereafter to

maintain and keep a tunnel or aqueduct from the river *Thames* to the premises purchased by the said company as aforesaid, and thereby to take and supply from the said river such quantities of water as shall be requisite for the said undertaking and for supplying and keeping a sufficient supply thereof in the wells, reservoirs, and other works of the said company, and with such sluice gates and other appurtenances to the said tunnel or aqueduct as may be necessary and proper."

By the 23rd section of the Act it was provided as follows: "And be it further enacted, that in case the said company shall neglect or refuse to supply any of the said inhabitants occupying any private dwelling house in any square, street, close, or lane, where the pipes of the said company shall be laid with water for the use of his or her own family, at the rate or rent aforesaid, for the space of five days (after demand in writing shall have been made by such inhabitant to the secretary, clerk, engineer, or other servant of the said company for the time being, for such supply of water, and tender made to such secretary, clerk, engineer, or other servant, of the amount of the rate or rent as payable immediately in advance for such supply), the said company shall forfeit," &c., specifying certain penalties.

The *Richmond Waterworks Company* carried out the works required by their Act, and continued till the year 1860 to supply *Richmond* with water, which they drew from the *Thames* at a point a little above *Richmond*. About that time the water at their intake had become so deteriorated by various sources of pollution as to be no longer fit for use for domestic purposes, and many complaints were made by the inhabitants of *Richmond* as to its quality, and the company in consequence made some unsuccessful attempts to obtain water by means of an artesian well.

Applications were then made by a committee of the inhabitants of *Richmond* to the *West Middlesex, Grand Junction, and Southwark and Vauxhall Waterworks Companies*, who all drew their water from the *Thames* at some distance above the point of supply of the *Richmond Company* to lay on and supply water for the use of the parish of *Richmond*. This parish, however, was beyond the districts which any of these companies had powers under the Acts by which they were constituted to supply with water, and the

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V.-C. M. *West Middlesex and Grand Junction Companies* declined to extend their supply to *Richmond*.

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The *Southwark and Vauxhall Company* was constituted by an Act of 9 & 10 Vict. c. lxix., and under its Parliamentary powers drew water from the *Thames* at *Hampton*, and in accordance therewith, its mains were carried through part of the parish of *Richmond*, but without the right or obligation to supply any part of the parish with water.

In August, 1860, some negotiations were commenced between the *Southwark* and the *Richmond Companies*, which resulted in their entering into a provisional agreement, subject to the sanction of Parliament, by a memorandum dated the 14th of December, 1860, for the purchase by the *Southwark Company* of the undertaking of the *Richmond Company* for £16,500.

In pursuance of this agreement the *Southwark Company* applied to Parliament in the next session to confirm the agreement, and vest in them the undertaking of the *Richmond Company*, and to extend their limits of supply to certain parishes which included *Richmond*. But, in consequence of opposition by the ratepayers of *Richmond*, made with the view of obtaining a reduction in the water rates proposed to be charged by the united companies, the bill was withdrawn. It was then arranged that, in substitution for the agreement of the 14th of December, 1860, certain of the shareholders in the *Southwark Company* should purchase in their own names, but really on behalf of the *Southwark Company*, the whole of the share capital of the *Richmond Company* at the price of £137 10s. for each £100 share, and the entire share capital was accordingly purchased and transferred into the names of shareholders in the *Southwark Company*.

From that time the two companies were as far as possible consolidated. There were no meetings of the board of directors, and no elections to fill any vacancies, and the secretary and other officers of the *Southwark Company* were appointed to the same offices in the *Richmond Company*. The name of the *Southwark Company* was also substituted for that of the *Richmond Company* at the office of the latter company at *Richmond*. Shortly afterwards the *Richmond Company* sold the land through which they had power to draw water from the *Thames*, and sold their mains,

pipes, and appliances to the *Southwark Company*. The demand notes for water rates and receipts for payments were from the same time made out in the name of the *Southwark Company*.

About the year 1870 the vestry having become dissatisfied both with the quality of the water supplied to them by the *Southwark Company*, and also with the amount of the rates, determined to take some steps towards effecting an improvement. Accordingly, after an ineffectual attempt to induce the *Southwark Company* to apply to Parliament for further powers to enable them to improve the supply of water to *Richmond*, the vestry passed resolutions which they afterwards served at the old office of the *Richmond Company* in *Richmond*, which since its absorption by the *Southwark Company* had been used as the *Richmond* office of that company, a notice in accordance with the 75th section of the *Public Health Act*, 1848, which, after reciting amongst other things that the limits within, for, or in respect of which the *Richmond Waterworks Company* had been established for supplying water included the parish of *Richmond*, and that the parish was not supplied with water proper and sufficient for all reasonable purposes for which it was required by the vestry and the inhabitants of the parish, and that the vestry, as the urban sanitary authority of the parish, were desirous that a proper and sufficient supply of water for all reasonable purposes should be provided for the use of the inhabitants of the parish, gave notice that the vestry, as the urban sanitary authority of the parish, were desirous of laying on or supplying water for the use of the inhabitants of the parish, and that the purposes for and the extent to which water was required for the vestry were as follows:—

“For private or domestic use by the inhabitants of the said parish, for use in coach-houses, stables, manufactories, breweries, laundries, and by persons carrying on any trade, occupation, or business whatsoever within the said parish, for extinguishing fires within the said parish, for the supply of fountains within the said parish, and, when deemed necessary, for flushing the public sewers within the said parish.”

The notice then proceeded as follows:—

“The extent to which water is required by the said vestry for

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the purposes aforesaid is 600,000 gallons per day. Further, take notice that if you the said company do not within one calendar month from the date hereof inform the said vestry that you are both able and willing to lay on water proper and sufficient for all reasonable purposes for which it is required by the said vestry for the purposes aforesaid, and agree upon the terms on which you will supply such water, that then the said vestry will, under the powers in that behalf conferred upon them by the *Public Health Act*, 1848, proceed to provide their district with sufficient supplies of water for all or any of the purposes aforesaid by such means as in the said Act are mentioned or referred to."

This notice was sent on from the office of the *Southwark Company* at *Richmond* to the office of the *Southwark Company* in *Southwark*. Another copy, which was sent by post, addressed to the *Richmond Waterworks Company*, also reached the office in *Richmond*, and was there received by the collector for the *Southwark Company*.

A meeting of the vestry was held on the 7th of October, 1873, at which it was resolved that it was expedient for the urban sanitary authority to provide a sufficient supply of water for their district and for private use, and that the vestry, having decided to take the water supply of the town into their own hands, application be made to the *Southwark and Vauxhall Water Company* to ascertain whether and on what terms the company would sell to the vestry the mains and other pipes in the parish then used for the supply of the parish with water.

Application was made accordingly to the *Southwark Company*, but they declined to entertain any proposal with that object.

The vestry then prepared the plans and specifications of a scheme for the construction of an artesian well and other works estimated to cost £28,000, which they were advised would provide a suitable supply of water; and on the 28th of January, 1874, they resolved to submit the plans and specifications to the Local Government Board for their approval and for their sanction to the borrowing of the money required for carrying out the works from the Public Works Loan Commissioners.

The Local Government Board then appointed Major *Tulloch* their inspector to hold a local inquiry. This was held at the

Vestry Hall, at *Richmond*, on the 23rd and 28th of April, 1874. Neither the *Richmond* nor the *Southwark Company* appeared on the inquiry, but the *Southwark Company* presented a memorial to the Local Government Board, stating as follows :—

“That your memorialists have, ever since the year 1861, supplied the said town and parish of *Richmond* with water, having in the last-named year purchased the works and pipes belonging to a company then existing under the name of the “*Richmond Waterworks Company*,” and which supplied the town of *Richmond* with water under the powers of an Act of Parliament.

“That the said *Richmond Waterworks Company* supplied the town only partially and inefficiently, and with water taken from the River *Thames* at *Richmond*, and delivered without filtration, and it was in consequence of strong representations from the medical practitioners of the town and the inhabitants generally that your memorialists undertook the supply and made the purchase above mentioned.”

Some correspondence then took place between the Local Government Board with reference to the position of the *Southwark Company*, resulting in the determination of the board to allow that company to be heard before the Government inspector, the inquiry being reopened for that purpose. This further inquiry took place on various days between the 9th of November, 1874, and the 10th of May, 1875.

On the 24th of October, 1875, the clerk to the vestry received a letter addressed to him by the secretary to the Local Government Board, and dated the previous day, which was partly as follows :—

“Sir,—I am directed by the Local Government Board to state that they have had under their consideration the report made by their inspector, Major *Tulloch*, after his inquiry at *Richmond*, with respect to the application to the vestry of that parish acting as the urban sanitary authority, for the board’s sanction to their borrowing £28,000 for works of water supply.

“The Board observe that it was contended at the inquiry that the parish is within the limits of supply of a water company empowered by Act of Parliament to supply water, and that the

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sanitary authority are not empowered, owing to the provisions contained in sect. 52 of the *Public Health Act*, 1875 (which is now substituted for the previous provisions of the Sanitary Acts on this subject), to supply water to their district.

“Having regard, however, to all the circumstances of the case so far as they are aware of them, the Board do not feel justified in withholding their sanction to the proposed loan, but the fact that this sanction is granted will not relieve the vestry from the responsibility of satisfying themselves that they are legally empowered to execute the works.

“The Board’s formal sanction to the loan is herewith enclosed, and they direct me to state that they have recommended the Public Works Loan Commissioners to advance the money at $3\frac{1}{2}$ per cent., under sect. 243 of the *Public Health Act*, 1875, the loan to be repaid within a period not exceeding thirty years.

“The Board may add that their power only extends to recommending the Public Works Loan Commissioners to make advances under the section referred to. It is for the Commissioners to determine whether they will act upon this recommendation, and the sanitary authority should communicate with them on the subject.”

To the letter was appended the formal sanction of the Local Government Board to the loan.

In pursuance of a resolution of the vestry passed on the 27th of October, 1875, they, without serving any fresh notices under the *Public Health Act*, 1875, caused estimates to be prepared and tenders invited for carrying out the works; and on the 9th of November, 1875, they contracted with one *Joseph Simms* for the purchase of a piece of land.

The notices inviting tenders were advertised by the vestry, as the urban sanitary authority for *Richmond*, in several newspapers, and included the following objects:—

“1. The making of a well, and the construction of the works connected therewith.

“2. The construction of an engine and boiler-house.

“3. The construction and erection of steam-engines, boilers, and pumps.

"4. The construction of a service reservoir.

"5. The supply of cast-iron pipes.

"6. The laying and joining of cast-iron pipes, and the supplying and fixing of sluice-cocks, hydrants, &c."

Thereupon, on the 13th of November, 1875, Messrs. *Bircham & Co.*, as solicitors for the directors of the *Richmond* and *Southwark* companies, wrote a letter to the Vestry of *Richmond*, in which they called attention to the fact that the *Richmond Company* was empowered by Act of Parliament to supply water to *Richmond*, and had for many years past (in co-operation with and by the agency of the *Southwark and Vauxhall Company*) supplied, and was then supplying, and was able and willing to supply, the parish with water proper and sufficient for all reasonable purposes. They requested an immediate assurance that the vestry would not proceed further with the proposed works, at all events until the requirements as to notice and arbitration of the 52nd section of the Act had been complied with, and threatened to apply for an injunction to restrain the vestry from going on with their scheme. Further negotiations took place, but the vestry persisted in their claim, and the present action was ultimately commenced by the *Richmond Company* and the *Southwark Company* suing together as Plaintiffs.

They asked for an injunction restraining the *Richmond Vestry* from commencing, or proceeding to construct, waterworks in the parish of *Richmond*, unless and until they should have first given to the *Richmond Company* a written notice of the purposes for which and the extent to which, under the provisions of the *Public Health Act*, 1875, water was required by them as the urban sanitary authority for the parish, and unless and until, in case any difference should thereupon arise between them and the company as to whether the water which they were able to lay on was proper and sufficient for all purposes, or whether the purposes for which it was required were reasonable, or (so far as the charges of the company were not regulated by Parliament) as to the terms of supply, such difference should have been settled by arbitration in manner provided by the Act.

The *Southwark Company* had in the present session applied to Parliament for an Act extending their limits of supply so as to include the parish of *Richmond*.

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There were two points raised in the case. They were, first, whether the Plaintiff companies, or either of them, were or was at the commencement of the action a company able and willing to supply water to the parish of *Richmond* within the meaning of the 75th section of the *Public Health Act*, 1848 (1), as extended by the 51st section of the *Local Government Act*, 1858 (2); and,

(1) Section 75 of the *Public Health Act*, 1848 (11 & 12 Vict. c. 63), is as follows :—

“And be it enacted that the local board of health may provide their district with such a supply of water as may be proper and sufficient for the purposes of this Act, and for private use to the extent required by this Act; and for those purposes, or any of them, the said local board may from time to time, with the approval of the General Board of Health, contract with any person whomsoever, or purchase, take upon lease, hire, construct, lay down, maintain such waterworks, and do and execute all such works, matters, and things as shall be necessary and proper; and any waterworks company may contract with the local board of health to supply water for the purposes of this Act in any manner whatsoever, or may sell and dispose of, or lease their waterworks to any local board of health willing to take the same; and the said local board may provide and keep in any waterworks constructed or laid down by them under the powers of this Act a supply of pure and wholesome water, and the water so supplied may be constantly laid on at such pressure as will carry the same to the top story of the highest dwelling-house within the district supplied. Provided always, that before constructing or laying down any waterworks under the powers of this Act within any limits within, for, or in respect of which any waterworks company shall have been established for supplying water, the said

local board shall give notice in writing to every waterworks company within whose limits the said local board may be desirous of laying on or supplying water, stating the purposes for and (as far as may be practicable) the extent to which water is required by the said local board; and it shall not be lawful for the said local board to construct or lay down any waterworks within such limits, if and so long as any such company shall be able and willing to lay on water proper and sufficient for all reasonable purposes for which it is required by the said local board, and upon such terms as shall be certified to be reasonable by the General Board of Health, after inquiry and report by a superintending inspector in this behalf, or (in case such company shall be dissatisfied with such certificate) upon such terms as shall be settled by arbitration in the manner provided by this Act; and in case any difference shall arise as to whether the water which any such company is able and willing to supply or lay on is proper and sufficient for the purposes for which it is required by the said Local Board, or whether the purposes for which it is required are reasonable, the same shall be settled by arbitration in the manner provided by this Act.”

(2) Section 51 of the *Local Government Act*, 1858 (21 & 22 Vict. c. 98), is as follows :—

“The powers given to local boards by the 76th section of the *Public Health Act*, 1848, shall extend to any house within their district to which a supply

secondly, whether the notices given under the former Act were a sufficient compliance with the provisions of the 52nd section of the *Public Health Act*, 1875 (1).

In November, 1875, and with the view of strengthening their position for the purposes of the present action, an ostensible revival of the *Richmond Company* was effected, and a meeting of the board of directors took place.

The Plaintiffs now moved for an injunction in accordance with the first paragraph of the prayer of the statement of claim.

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J. Pearson, Q.C., J. Beaumont, and Michael, for the Plaintiffs :—

The *Richmond Company* were incorporated by Act of Parliament for the purpose of supplying *Richmond* with water, and they have ever since continued to carry out the objects for which they were incorporated. The only difference between the mode of supply at first adopted and that now followed is, that since the water at the *Richmond Company's* source of supply became unfit for use they have, under an arrangement with the *Southwark Company*, employed them as their agents to draw the water from the river at a place higher up than their own source of supply. The *Southwark Com-*

of water can be provided at an expense not exceeding the water rate authorized by the said Act, or any local Act in force in the district, and notices under that section shall be served on owners of houses so supplied instead of occupiers, and expenses incurred under that section shall be recoverable from such owners."

(1) Section 52 of the *Public Health Act*, 1875 (38 & 39 Vict. c. 55), is as follows :—

"Before commencing to construct waterworks within the limits of supply of any water company empowered by Act of Parliament, or any order confirmed by Parliament, to supply water, the local authority shall give written notice to every water company within whose limits of supply the local authority are desirous of supplying water, stating the purposes for which, and

(as far as may be practicable) the extent to which water is required by the local authority.

"It shall not be lawful for the local authority to construct any waterworks within such limits, if and so long as any such company are able and willing to supply water proper and sufficient for all reasonable purposes for which it is required by the local authority; and any difference as to whether the water which any such company are able and willing to lay on is proper and sufficient for the purposes for which it is required, or whether the purposes for which it is required are reasonable, or (if and so far as the charges of the company are not regulated by Parliament) as to the terms of supply, shall be settled by arbitration in manner provided by this Act."

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pany have a constant supply of water suitable in quality and quantity for the parish of *Richmond*, and through them the *Richmond Company* have continued to comply with the requirements of their Acts. The *Richmond Company* has not ceased to exist. Having been created by an Act of Parliament, its existence can only be terminated by the same authority. The only change effected in the constitution of the company by the arrangement with the *Southwark Company* is, that certain shareholders in the *Southwark Company* have bought up the shares in the *Richmond Company*, and that for the purposes of supply the *Southwark Company* represent both companies, and are the agents of the former. It is not a case of amalgamation as in *Shrewsbury and Birmingham Railway Company v. Stour Valley Railway Company* (1), and *Stace and Worth's Case* (2). So long as water is in fact supplied, it makes no difference to the inhabitants of *Richmond* whether the water is taken from the *Thames* at *Richmond* or higher up the river, except that at the latter place it is purer. But if necessary, the Plaintiffs have still power to take water from the *Thames*, or by means of an artesian well. It is quite immaterial whether there are directors who were legally elected if there were directors in fact: *Scadding v. Lorant* (3); *In re County Life Assurance Company* (4).

Secondly, the vestry are not entitled to take measures to supply themselves till they have complied with the requirements of sect. 52 of the *Public Health Act*, 1875, and given to the Plaintiff companies the notice thereby required. This section is wider in its scope than sect. 75 of the *Public Health Act*, 1848. The powers conferred by the 52nd section of the *Public Health Act*, 1848, were limited to supplying water for the purposes mentioned in the Act, which are those specified in sects. 46 and 76, namely, for sewerage purposes and cleansing of streets, slightly extended by sect. 51 of the *Local Government Act*, 1858. But the purposes for which power is conferred by sect. 52 of the *Public Health Act*, 1875, to supply water are practically unlimited, and it may well be that the Local Government Board would have granted authority to obtain water for the limited purposes of the previous Acts, and not for the ex-

(1) 2 D. M. & G. 866.

(2) Law Rep. 4 Ch. 682.

(3) 3 H. L. C. 418.

(4) Law Rep. 5 Ch. 288.

tended objects. All the powers the vestry obtained under the inquiry before Major *Tulloch* were for constructing the waterworks allowed by the previous Acts, and could not authorize them to construct works for the more extended objects. The vestry must serve the notices required by the Act of 1875, and a further inquiry must take place as to the ability of the Plaintiff companies, and if necessary, there must be an arbitration as to the amount of the rates. The notice to the Local Government Board itself differs widely from that which would be required under the Act of 1875. It was not a legal notice under that Act. Notices are always construed strictly against the parties giving them, as in the case of a notice to a tenant to quit: *Doe v. Lea* (1); *Goode v. Howells* (2).

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Glasse, Q.C., for the vestry, commenced by referring to the application to Parliament by the Plaintiff companies, when the Vice-Chancellor said that, inasmuch as the passing of the Act applied for might render the present application unnecessary, the motion had better stand over till the bill had been either passed or disposed of.

March 23. The bill brought into Parliament by the Plaintiff companies having been withdrawn by the promoters, the motion was now brought on again.

Glasse, Q.C., *Meadows White*, and *A. Glen*, for the vestry of *Richmond* :—

The *Richmond Company* is now practically defunct, and the *Southwark Company* has no power to supply the inhabitants of *Richmond* with water.

The *Richmond Company* has by its acts deprived itself of being in the position of a company able and willing to supply the parish with water. And the *Southwark Company* have no right to take from the *Thames* at *Hampton* more water than is required for the places which they are bound to supply with water, and which they have a right to supply. The *Southwark Company* would have no answer to a suit against them by the Conservators of the *Thames*

J.-C. M. or any other body to restrain them from supplying water to the
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It is also a fatal objection to the Plaintiffs' claim that the *Richmond Company* had no power to delegate its powers, and the attempt to do so is illegal: *Great Northern Railway Company v. Eastern Counties Railway Company* (1). The question really is, whether there is a company able and willing to supply the parish with water, and there can be no reasonable doubt that there is not. The *Richmond Company*, as constituted by their Act, had not sufficient capital or powers to enable them to carry out the necessary works, and they ought to have applied to Parliament for further powers if they wished to put themselves in a position to carry out their obligations.

As to the question of giving a second notice in consequence of the passing of the *Public Health Act*, 1875, it is clear that it is not necessary. There is no substantial difference between the enactments, and the grounds on which the application was granted apply equally to the provisions of both Acts.

J. Pearson, in reply :—

If the vestry have a grievance in consequence of the changes in the constitution of the *Richmond Company*, it is one quite *absque damno*, and therefore gives them no title to relief. Moreover, the changes were made quite consistently with the powers given by the Acts of Parliament. The case cited to shew the illegality of what has been done is *Great Northern Railway Company v. Eastern Counties Railway Company*. But if it were necessary to object to that case, it might be said that it was heard in vacation, and could not be treated as a fully considered case. But it has really nothing to do with the present case. It was the case of a bill for an injunction to restrain a party to an agreement from doing things contrary to it, and the Court simply declined to aid the party applying. Where a third party comes to the Court, the case is different. That point arose in *Midland Railway Company v. Great Western Railway Company* (2), where there was a third party setting up the illegality of an agreement between two contracting parties, which did not interfere with the action of the

(1) 9 Hare, 306.

(2) Law Rep. 8 Ch. 841.

third party, and that distinguished it from *Beman v. Rufford* (1), and the other cases in which agreements were held illegal on the ground of such interference. If *Great Northern Railway Company v. Eastern Counties Railway Company* (2) goes the length suggested by the vestry, it must be considered as overruled by *Midland Railway Company v. Great Western Railway Company* (3). There is, in this case, no real delegation of powers, and all that has been is quite *intra vires*. In order to set aside an agreement of this kind, something must be shewn on its face foreign to the objects of the companies: *Hare v. London and North Western Railway Company* (4). In entering into this arrangement the *Richmond Company* was simply carrying out the duty of securing the best possible supply of water for the parish. Its primary object was to supply *Richmond* with water, and incidentally there was power given to draw water from the *Thames*. But it was open to the company to obtain water otherwise, as by sinking an artesian well, or by such an arrangement as has been made with the *Southwark Company*. And it is not competent to parties outside the agreement to say that such an arrangement is illegal, so long as the primary object of the company is secured: *Shrewsbury and Birmingham Railway Company v. Stour Valley Railway Company* (5).

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Argument.

MALINS, V.C., after referring to the facts of the case continued:—

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The *Richmond Company*, having handed over all their powers as far as they could, although legally continuing to exist, practically ceased to do so from that time, and the minute book shews that there was a meeting of the directors upon the 20th of March, 1862, and that from that day down to the 26th of November, 1875, there were no directors and no meetings.

That is quite consistent with the case that was presented to me on behalf of the Defendants, that no directors were elected, and no meetings held, because in point of fact the *Richmond Company* had, as far as they could, sold everything they had to the *Southwark Company*. It has been proved that whereas up to 1862 the demands for water rates were made in the name of the *Richmond*

(1) 1 Sim. (N.S.) 550.

(3) Law Rep. 8 Ch. 841.

(2) 9 Hare, 306.

(4) 2 J. & H. 80.

(5) 2 D. M. & G. 866.

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Company, from that time the demands were made in the name of the *Southwark Company*, and the *Southwark Company*, when they proceeded to exercise the power of opening streets, lanes, and so forth, were the parties who gave the notice, and if on some occasions they professed to give it on behalf of the *Richmond Company*, it was the officers of the *Southwark Company* who did these things, and the *Richmond Company* had, in point of fact, practically ceased to have any existence. I say "practically" as distinguished from "legally," because, as I have already said, "legally" they no doubt had and still have an existence. This state of things continued till towards the end of the year 1873, though in the meantime complaints were made on the part of the inhabitants of *Richmond* on account of the great increase in the rates charged, and of insufficient supply, and unsatisfactory quality of the water. Application was then made for assistance to the Public Works Loan Commissioners, and they, having been satisfied that the construction of the works proposed was proper, having due regard to the interests of the inhabitants of *Richmond*, authorized a loan of £28,000 for the purpose at $3\frac{1}{2}$ per cent. These circumstances are very strong in favour of the right of the vestry to construct their own waterworks; but this is a motion for an injunction to prevent their doing so. Now, whatever privileges are conferred upon the *Richmond Company* by the Act of 1835, there is no provision in it that no other waterworks company shall be established there by another Act of Parliament, or in any other way. They are in the same position as a railway company which cannot, by running over a certain district, claim the right to prevent any other railway from running in the same direction. Independently of other Acts of Parliament to which I am about to refer, there is no monopoly, but by virtue of them the *Vauxhall Company* and the *Richmond Company* claim a monopoly in the supply of water to *Richmond*. This claim, first of all, depends upon the *Public Health Act*, 1848, which was in force on the 23rd of August, 1873, when the vestry first proceeded to give the notices as they were bound to give.

[His Lordship then read the 75th section of that Act, and continued :—]

Mr. *Pearson*, in opening this case, referred to the *Public Health Act*, 1875, but I do not find any very material difference between the

two enactments. The Act of 1875 may be considered as laying down the law to the same effect, that the urban sanitary authority, that is in this case the vestry of *Richmond*, may provide the district or any part thereof, and any rural authority may provide their district, with a supply of water proper and sufficient for public and private purposes, and for those purposes may construct and maintain waterworks, dig wells, and so on; and that is what the *Richmond* vestry propose doing. Then they may take on lease or hire any waterworks, or purchase any waterworks, or any water, or right to take or convey water, either within or without their district, and any rights, powers, and privileges of any water company.

[His Lordship then read the latter part of the 52nd section of the *Public Health Act*, 1875, and continued:—]

Now, as I have already said, there are two things which must concur in order to secure to a waterworks company a monopoly as against the sanitary authority. If there is an existing company able and willing to give a good supply of water, such as is required by the Legislature, then in that concurrence of circumstances they are entitled to the monopoly; but if there is a company having merely a legal existence, and not able and willing to give that supply, no such monopoly is given.

Now, with regard to the present case, there is the fact that the *Richmond Company*, in 1861, sold to the *Southwark Company* all the works and pipes belonging to them then existing, and which supplied the town of *Richmond* with water under the powers of this Act of 1835, and also disposed of their land. It is as plain as anything can be that the *Richmond Company*, by the sale of their pipes, mains, land, and effects, have absolutely disabled themselves from supplying *Richmond* with water. They therefore *qua Richmond Company* are not able. They may be willing, but they are not able, and they must be both able and willing. But then they say (I suppose intending to adopt the legal maxim, *Qui facit per alium, facit per se*), “Although we do not do it, we have done it by our agents”—that is, the *Southwark Company*. The answer to that is, that the *Southwark Company* is a distinct company, created by different Acts of Parliament, having limited powers

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unquestionably, and no powers at all at *Richmond*. I have already intimated my opinion that there is nothing unreasonable, though it may not be legal, when the *Richmond Company* found themselves unable to do this themselves, in their applying to an adjoining company, whose pipes were laid through or near *Richmond*, to turn the water into *Richmond*, so as to give a better supply than they could give from a lower part of the *Thames*. Then comes the question, whether one company can delegate to another its powers, and can arm that company with the powers which itself relinquishes. Upon the former occasion, the decision of Sir *G. Turner* in *Great Northern Railway Company v. Eastern Counties Railway Company* (1) was appealed to, and Mr. *Pearson* this morning referred to a great many other authorities—for instance, *Shrewsbury and Birmingham Railway Company v. Stour Valley Railway Company* (2), which he so much relied upon, but that appears to me to be a totally distinct case. That was a case in which several railway companies had the power amongst them of running over a large tract of country, and the consequence of their running in opposition was to destroy each other. Thereupon they came to an arrangement that they would throw the common earnings into one purse, and divide them in certain defined proportions. There was nothing illegal in that, and the contract was decided by the Court of Queen's Bench not to be illegal. But where one company attempts to transfer all its powers, privileges, and authorities to another company, then I apprehend it does fall within the rule laid down by Sir *G. Turner*, which I have heard no authority to refute, and in which I entirely agree. In the case of the *Great Northern Railway Company v. Eastern Counties Railway Company* there was an agreement between two railway companies, made without the authority of the Legislature, whereby one of them delegated to the other all the powers which had been conferred upon it by Parliament, and it was held that it was an unlawful attempt to effect that which Parliament alone could authorize, and was against public policy, and in such a case the Court would not interfere to assist either of the parties in obtaining a collateral benefit which the agreement would give, or aid them in any manner which would promote the object

(1) 9 Hare, 306.

(2) 2 D. M. & G. 866.

of the agreement. Sir *G. Turner* says (1): "If, therefore, this case had rested wholly upon the construction of the agreement between the Plaintiffs and the Defendants, I should have thought it the duty of the Court to interfere to some extent by injunction; but I think there lies at the root of this case a question of public policy, which precludes the interference of the Court. It is impossible to read the agreement between the Plaintiffs and the *East Anglian Railways Company* without being satisfied that it amounts to an entire delegation to the Plaintiffs of all the powers conferred by Parliament upon the *East Anglian Company*. All the stock of that company is to be taken by the Plaintiffs without any obligation to restore it. The Plaintiffs are to manage and regulate the railways of the *East Anglian Company*, for the purposes of the agreement; and although in form it is declared that the instrument shall not operate as a lease or agreement for a lease, it amounts in substance either to one or the other. It is framed in total disregard of the obligations and duties which attach upon these companies; and is an attempt to carry into effect, without the intervention of Parliament, what cannot lawfully be done except by Parliament in the exercise of its discretion with reference to the interests of the public." In this case every power that the *Richmond Company* had is attempted to be transferred, and, as I have already said, when the streets were opened the notices were served by the *Southwark Company*, or when the rates were levied they were levied by the *Southwark Company*, and it is the *Southwark Company* who demand the payment of the rates, and receipts are given by them.

I would say here it is extremely remarkable that for thirteen years this state of things should have gone on without any legal proceedings being instituted, because it does seem to me perfectly plain that the *Southwark Company* when they made out their charges could not have enforced them, because any ratepayer might have disputed their right to make the charges.

I have already said that the case lies in a very narrow compass, and depends entirely upon the question whether this company, being admittedly a legally existing company, is one able and willing to supply the district. How can they be able to supply

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the district when the only means they had of supplying it was from the River *Thames* at a particular place, and that is now closed against them by their own act? How can they be able to do this when they have no power whatever of getting water anywhere except by what is in effect buying it from the *Vauxhall Company*?

The Legislature having by an Act of Parliament secured to an existing waterworks company, in the district in which the proposed works had to be erected, a monopoly upon certain conditions, I think, upon general principles, that the persons who are claiming that monopoly are imperatively bound to shew that they have performed every part of the conditions in such a manner as shall leave no doubt in the mind of the Court; and it seems to me, upon the principle laid down by Sir *George Turner*, that the *Richmond Company* have deprived themselves of the right to this monopoly by attempting to transfer their powers to another company which cannot exercise the powers conferred upon the original company, and which the original company, for the reasons I have stated, have entirely deprived themselves of the power of exercising.

Upon these grounds, therefore, I come to the conclusion that the case made by the Plaintiffs has failed.

The vestry, being dissatisfied with the supply, have, in my opinion, the right to proceed to erect new works, unless the company represented by Mr. *Pearson* can distinctly establish a state of things which entitles them to say, "We have the monopoly, and no man shall interfere with us;" but that, in my opinion, they have failed to do, and consequently the motion must be refused with costs.

Solicitors: *Bircham & Co.; Montagu Scott.*