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Judgment
37, 1964

No. 25 of 1964

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF NEW ZEALAND

B E T W E E N

HER MAJESTY'S ATTORNEY-GENERAL FOR NEW ZEALAND on the relation of ROBERT RICHARD LEWIS and ERIC BERNARD ELLIOTT — Appellant

78645

and

THE MAYOR COUNCILLORS AND CITIZENS OF THE CITY OF LOWER HUTT — Respondent

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C A S E FOR THE APPELLANT

RECORD

1. This is an appeal from a judgment of the Court of Appeal of New Zealand dated the 13th day of December 1963, dismissing an appeal from a judgment of the Supreme Court of New Zealand dated the 20th day of September 1963. — p.71, p.44

2. The action out of which the appeal arises was brought in the following circumstances.

3. The Respondent, the Mayor, Councillors and Citizens of the City of Lower Hutt, is a local authority incorporated under sections 4(b), 5 of the Municipal Corporations Act 1954. Under section 240 of that Act the Respondent is empowered to construct

> waterworks for the supply of pure water for the use of the inhabitants of the district ... and may from time to time do all things necessary thereto

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In exercise of that power the Respondent for many years maintained and operated waterworks for the supply of water for the use of the inhabitants of the district of the City of Lower Hutt.

p. 2, ll. 4-6
p. 5, ll. 6-7

4. The Relators reside within that district and have no other source of supply of drinking water or water for domestic purposes than the waterworks maintained by the Respondent.

p. 2, ll. 7-10
p. 5, ll. 8-12
p. 2, ll.11-15
p. 5, ll.13-14
p. 8, ll. 8-11
p.32, ll.39-41
p.33, l. 1

5. Some time before July 1959 the Respondent acquired and installed equipment for the purpose of adding sodium silico-fluoride to the water supplied by it within its district, and from that time sodium silico-fluoride has been added to that water with the result that together with such fluoride as may exist naturally in the water, a proportion is obtained of approximately one to one million parts of water.

pp. 1-3

6. An action was commenced on the 22nd day of April 1963 in the Supreme Court of New Zealand by the Appellant by way of relator proceedings against the Respondent to obtain a perpetual injunction to restrain it, its servants or agents from adding sodium silico-fluoride or any similar substance to the domestic water supplied by the Respondent to the Relators and to other persons within the City of Lower Hutt.

7. The principal questions involved in this appeal are whether the Respondent's actions in installing and maintaining its fluoridation plant and in adding sodium silico-fluoride to its water supply are within the power conferred upon the Respondent as a local authority by the
p.47, ll. 3-13
p.55, ll. 4-9
General Assembly of New Zealand. Both in the Supreme Court and in the Court of Appeal only three statutory provisions were cited as possible authority for the Respondent's actions. They were:-

(a) section 240 of the Municipal Corporations Act 1954, which provides as follows:-

> (1) The Council may construct waterworks for the supply of pure water for the use of the inhabitants of the district, or of

the shipping in any harbour adjoining, and may keep the same in good repair, and may from time to time do all things necessary thereto; and in particular may -

(a) Subject to the provisions of this Act and to any right granted under any prior Act, take the water from any river, stream, lake, or pool:

(b) Break up or dig into the surface of any street, private street, or public place within the district, or of any road or street beyond the district:

(c) Alter any drain, sewer, or gas pipe on or under any such road or street so far as is necessary for that construction or repair:

(d) Prospect for water by boring, whether the land to be prospected is situated within or beyond the district.

(2) The powers granted by this Act in respect of the construction of waterworks shall be deemed to include the power of extending or enlarging any such waterworks.

(3) All such waterworks shall be vested in the Corporation of the district.

The term "waterworks" is defined in section 239 of the Act as follows:-

(1) In this Part of this Act, unless the context otherwise requires, the term "waterworks" includes all streams and waters and all rights appertaining thereto, and all lands, watersheds, catchment areas, reservoirs, dams, tanks, and pipes, and all buildings, machinery, and appliances of every kind acquired or constructed by the Council under the authority of this Act, for collecting or conveying water for or to the district or any part thereof, or beyond the district.

RECORD

(2) All waterworks which heretofore have been purchased or acquired, or constructed, and established by any Council under any special or other Act for the supply of water within or beyond the district shall be deemed to have been purchased or acquired, or made, constructed, and established under this Act, and all the provisions of this Act relating to waterworks, shall apply to those waterworks accordingly.

(b) section 288 of the Municipal Corporations Act 1954, which provides as follows:-

> The Council may do all things necessary from time to time for the preservation of the public health and convenience, and for carrying into effect the provisions of the Health Act 1920 (now Health Act 1956) so far as they apply to the district.

(c) section 23 of the Health Act 1956, which provides as follows:-

> Subject to the provisions of this Act, it shall be the duty of every local authority to promote and conserve the public health within its district, and for that purpose every local authority is hereby empowered and directed -
>
> (a) To appoint all such Inspectors and other officers and servants as in its opinion are necessary for the proper discharge of its duties under this Act:
>
> (b) To cause inspection of its district to be regularly made for the purpose of ascertaining if any nuisances, or any conditions likely to be injurious to health or offensive, exist in the district:
>
> (c) If satisfied that any nuisance, or any condition likely to be injurious to health or offensive, exists in the district, to cause

all proper steps to be taken to secure the abatement of the nuisance or the removal of the condition:

(d) Subject to the direction of the Board of Health or of the Director-General, to enforce within its district the provisions of all regulations under this Act for the time being in force in that district:

(e) To make bylaws under and for the purposes of this Act or any other Act authorising the making of bylaws for the protection of the public health:

(f) To furnish to the Medical Officer of Health from time to time such reports as to diseases and sanitary conditions within its district as the Board of Health or the Director-General or the Medical Officer of Health may require.

8. The fluoridation process adopted by the Respondent consisted of feeding sodium silico-fluoride in powder form into its water supply which was drawn from artesian wells. At or near the pump room a certain proportion of the artesian water is led into a by-pass in the course of which the sodium silico-fluoride is fed into the water from a hopper. The water in the by-pass, which then contains a concentrated suspension of the added chemicals in a very large volume of water, is returned to the main supply. To ensure uniformity of the mixture the main supply then passes through three points of turbulence ensuring thereby that the whole water supply contains an even mixture with the proportion of fluoride to water one part per million. The whole supply then passes in the ordinary manner to consumers.

p. 6,ll.15-33
p.35,ll.17-31

9. Before the addition of sodium silico-fluoride the content of fluoride in the water drawn by the Respondent from its

p. 7,ll.12-16
ll.21-24
p.32,ll.32-37

RECORD

p. 8,ll. 8-11
p.17,ll.14-15
p.32,ll.39-41
p.33, l.1
p.15,ll.36-40

sources of artesian supply was so minute that its presence could not be demonstrated, although the Dominion Analyst's report estimated it to be 0.05 per million. After the addition the precise proportion of fluoride to water in one sample which was the subject of examination for the purpose of the action was 0.96 parts per million. Immediately after the addition of the sodium silico-fluoride to the water that compound is broken down to sodium fluoride, hydrofluric acid, and silicon. Each of those substances then remains in solution in the water.

10. When water containing sodium fluoride is consumed or ingested, either by a pregnant woman or by a child under the age of 12 to 16 years the fluoride ion is incorporated into the atomic lattice of the growing teeth of the human embryo or of the child, as the case may be, and thereby built into the intrinsic structure of the tooth. After eruption of the tooth the fluoride is also taken up in the tooth's surface. The storage of fluoride in teeth begins at the time of calcification of the teeth, which with milk teeth is about 4 months before birth and with permanent teeth until the age of 12 to 16 years. The effect of the incorporation of the fluoride during calcification is to reduce the solubility of the tooth enamel in acid. The ingestion of water containing sodium fluoride also has an appreciable, but relatively insignificant, local effect on the surface of the tooth.

p.20,ll.20-21
p.22,ll.23-27
p.24,ll.12-19
p.25,ll.11-26
p.27,ll.22-28
p.34,ll. 8-11
p.24,ll. 6-11

11. On the evidence adduced by the Respondent at the hearing of the action in the Supreme Court the learned Judge (McGregor J.) was satisfied (1) that there is a high incidence of dental caries in New Zealand generally (2) that there is an almost complete absence or at least a high deficiency in the fluoride content in the natural artesian water supply of Lower Hutt (3) that the absorption of fluoride has a substantial effect in reducing the incidence of dental caries, especially in young children (4) that there are no deleterious or toxic effects on the human body from the absorption of fluoride, more emphatically

p.40,ll.14-27

RECORD

in the minute proportion of one part to a million (5) that any surplus fluoride taken into the body is excreted without harmful effects and (6) that tablets or other vehicles for the taking of fluoride are unsatisfactory, in that the required regularity with children would not be achieved, and that natural water is the only really satisfactory vehicle.

12. Fluoride is found in very small amounts in all New Zealand waters. In comparison with many other countries the level seems to be low. — p.17,11.14-19; p.25,11.7-8 38-40; p.26,11.1-2; p.28,11.28-30; p.33,11.10-11

13. In the Supreme Court McGregor J. held that section 240 of the Municipal Corporations Act 1954 (power to construct waterworks for the supply of pure water) did not authorise the Respondent's action. He accepted that the expression 'pure water' does not mean chemically pure water (H_2O). Natural water in so far as it is free from noxious impurities may, so long as it is reasonably potable and wholesome, be described, in his view, as pure water. McGregor J. found that the natural artesian water in the Respondent's supply is pure water before fluoridation, and that after fluoridation it is pure water in the sense that it is potable or wholesome water: it is no more and no less pure than the natural supply. The installation of the fluoridation plant did not come within the meaning of the term 'waterworks' in section 239 of the Municipal Corporations Act 1954, nor was the installation of the fluoridation plant necessary to collect and convey water to any part of the Respondent's district. Where the water supplied is already pure McGregor J. considered that the addition of fluoride thereto was neither incidental nor consequential to the supply of pure water: it was for the purpose of supplying what might be termed medicated pure water, a view which seemed to him to be in accord with that accepted by the Court of Appeal of Ontario in Village of Forest Hill v. Municipality of Metropolitan Toronto [1956] O.R. 367 and by the Supreme Court — p.39,11.27-30; p.37,11.8-15; p.37,11.19-38; p.39,11.9-15; p.37,11.42-43; p.37, 1.43; p.38; p.39,11.1-8

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of New Brunswick (Appeal Division) in The Queen v. Fredericton (1955) 2 D.L.R.(2d) 551.

p.42,ll.41-42
p.43,ll. 1-3

14. However, McGregor J. held that section 288 of the Municipal Corporations Act 1954 authorised the installation of the fluoridation plant and the addition of fluoride to the Respondent's water supply as a thing necessary to be done from time to time for the preservation of the public health. The addition of fluoride to the water supply and the taking of such medicinal water has the effect of guarding teeth from decay or destruction, and a consequence is the improvement of bodily health in later life, or the guarding thereof from many diseases or ailments which are a consequence of dental caries. In his view, that action amounts to the preservation of health, and as it may affect a considerable proportion of the public it is a preservation of the public health. The fluoridation treatment was necessary or needful owing to the deficiency in the natural water, the high incidence of dental caries, the need for the prevention or reduction thereof in the interest of public health, and the absence of any other satisfactory method of administering fluoride.

p.40,ll.34-38
p.40,ll.39-41
p.40,ll.41-43
p.41,ll. 1-3

p.41,ll.26-30
p.42,ll.11-13

15. The provisions of section 23 of the Health Act 1956, which McGregor J. did not consider to be of direct concern, do not impose upon all local authorities throughout New Zealand a duty to instal fluoridation schemes in respect of water supply.

p.43,ll. 3-4
p.44

16. The injunction sought by the Appellant was accordingly refused, and judgment was entered in favour of the Respondent on the 20th day of September 1963.

p.45

17. The Appellant appealed to the Court of Appeal of New Zealand (North P., Turner and McCarthy JJ.) and on the 13th day of December 1963 judgment was delivered affirming by a majority (Turner J. dissenting) the decision of the Supreme Court and dismissing the appeal with costs.

18. The learned Judges gave the following among other reasons for the judgment:-

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(a) North P. considered that in using the expression 'pure water' in section 240 of the Municipal Corporations Act 1954 the Legislature aimed at the supply of water of good quality containing no foreign or vitiating material, a supply of water which would be beneficial to the health of the community. The definition of 'waterworks' in section 239 of the Municipal Corporations Act 1954 was intended to enlarge, not to restrict, the natural meaning of the word. He considered that the term was wide enough to include plant installed for the purpose of improving the quality of the natural water available in any area if that step is thought desirable in the interests of the inhabitants of the district. On some occasions it may be found that some useful element in the available water supply is lacking and if so nothing in sections 239 and 240 would prohibit a local authority from constructing plant to supply that need. If the necessary authority is not to be found in the express words of the section, at least it may be fairly regarded as being incidental to or consequential upon those things which the Legislature has authorised. After a consideration of the judgments of the various Courts in Village of Forest Hill v. Municipality of Metropolitan Toronto [1955] O.R. 889, [1956] O.R. 367, (1957) 9 D.L.R. (2d) 113, he expressed a preference for the judgment of Mackay J.A. at first instance and for the dissenting judgments of Kerwin C.J. and of Locke J. in the Supreme Court of Canada. If the word 'pure' in the context in which it appears in the Municipal Corporations Act 1954 is a relative term, then there is no reason why a local authority, so long as it acts in good faith, should not be entitled to take any reasonable step it may think proper to improve the quality of its available water supply as water. A local authority must not attempt to introduce a substance which is foreign to the nature of water, for medicinal or other purposes, but short of that it is entitled to change the concentration of the various elements which are in solution in the water available to it if it is advised that that course is desirable.

RECORD
pp.46-54
p.48,ll.15-18
p.48,ll.21-25
p.49,ll. 8-12
p.49,ll.16-19
p.49,ll.21-25
p.49,ll.34-44
pp. 50-51
p.52, ll.1-37
p.52,ll.40-43
p.53,ll.20-32

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p.54,ll.25-32 As to the provisions of section 288 of the Municipal Corporations Act 1954, North P. found difficulty in the way of reaching the conclusion which was favoured by McGregor J. in the Supreme Court, for if that view were right, then the very general provisions in section 288 would entitle a local authority to medicate its water supply by the introduction of foreign substances.

pp.62-70 (b) McCarthy J. considered that by inserting the expression 'pure' in section 240 of the
p.64,ll.29-33 Municipal Corporations Act 1954 the Legislature intended no more than to ensure
p.67,ll.7-22 that it was the supply of water alone, not water and something more, which was being authorised. Fluoride is normally present in New Zealand waters and all that is done, in Lower Hutt at any rate, is to increase the quantity. Fluoridation does not add a substance that is foreign to the nature or the essence of natural waters: it brings about a change in the concentration of fluoride. Although before the addition of fluoride the water is wholesome and potable, after the addition it is still wholesome and potable, and, what is more important, it is still pure water in the sense in which he interpreted that term. Nothing which has been done to it has rendered it impure: it is not water plus some foreign substance in material quantity; it can reasonably be said
p.67,ll.25-29 to be water alone, readjusted no doubt, but still water. Accordingly, the power to fluoridate is one which can reasonably be said to be incidental to the power to supply a water
p.67,ll.34-40 which is suitable to the tasks which water usually discharges in the human body. Because fluoridation results in a water which brings to the inhabitants of the district a required element which is normally and best conveyed to humans through a water supply, it can be seen as an act reasonably and properly performed in the prosecution of the main purpose authorised by section 240
p.69,ll.31-42 of the Municipal Corporations Act 1954. McCarthy J. agreed with North P. in preferring
p.70,ll.1-2 the approach of the two Judges of the Supreme Court of Canada (Kerwin C.J. and Locke J.) who dissented from the judgment of the majority in Village of Forest Hill v.

Municipality of Metropolitan Toronto (1957) 9 D.L.R. (2d) 113.

The learned Judge did not consider it necessary to inquire whether section 288 of the Municipal Corporations Act 1954 or section 23 of the Health Act 1956 also authorised the Respondent's action. p.70,ll.20-23

(c) In his dissenting judgment Turner J. considered that the expression 'waterworks' in section 240 of the Municipal Corporations Act 1954 included not only plant strictly necessary for the collection and conveyance of water, but all plant reasonably ancillary thereto. The expression 'pure water' does not refer to chemically pure water (H_2O) but to ground waters which have been subjected to a reasonable degree of purification. It is not a reasonable construction of the words to read them as meaning 'natural water without anything whatever added to it'. What the section authorises is the collection of ground water reasonably suitable for drinking purposes, and its purification by removing from it deleterious and contaminating substances which it naturally contains. If the removal of those substances involves incidentally the addition of some other harmless or beneficial substance necessarily added in the course of purification, such an incidental addition will not invalidate the procedure, which is still one essentially of purification. But water can never be purified, using any reasonable interpretation of that word, by adding to it a substance not there before, simply by way of additive for the purpose of compulsorily improving the diet of the consumer, and it makes no difference that the additive has been conclusively shown to be wholesome and beneficial in the proportions used. If one substance could be added on that ground, so can another; and it is impossible to see where such a construction of the section would stop, short of authorising any amount of compulsory medication which a local authority might reasonably consider beneficial to the inhabitants of its district. It is not permissible to treat the fluoridation of

pp.55-61
p.55,ll.18-22
p.56,ll.14-17
p.56,ll.27-29
p.57,ll.23-30
p.57,ll.32-43
p.58,ll.1-22

the water supply as a step in purification on the ground that some proportion of the substance is found in all ground waters in nature, and that the addition practised by the Respondent does no more than 'correct a deficiency'. Such an approach implied some norm or standard to which drinking waters are to be compared or made to approximate. No such standard appears in the Municipal Corporations Act 1954, which prescribes only that the water is 'pure'. One cannot increase the purity of water by adding an impurity to it, however beneficial that impurity may be to the diet of the consumer. Although fluoride may be found in natural water, and although it may be unreasonable, having regard to purity and wholesomeness, to insist on the removal of fluoride naturally present in an amount actually beneficial to the consumer, it must be accepted that if the fluoride were removed the water would thereby be rendered purer than before. Conversely it is less pure after the fluoridation than before; and the process by which fluoride is added can never be purification on any usual meaning of that word.

p.58,ll.23-42

p.60,ll.3-31 As to section 288 of the Municipal Corporations Act 1954, he considered that it could not properly be applicable to the permanent or continuous treatment of a water supply. Nor could the evidence justify the conclusion that fluoridation of the Respondent's water supply was necessary for the preservation of the public health. To show that it was desirable for the improvement of the health of the inhabitants of the district is not enough to justify the invocation of the section, which is too general to be of use to the Respondent. If neither section 240 nor section 288 of the Municipal Corporations Act 1954 taken by itself is sufficient to authorise fluoridation, there is no justification for reading each as intended to extend the meaning of the other so that read together they authorise fluoridation.

p.60,ll.32-41
p.61,ll.1-8

p.61,ll.9-12 For reasons similar to those applying to section 288 of the Municipal Corporations Act 1954 Turner J. found it impossible to

read into section 23 of the Health Act 1956 any sufficient authority to empower a municipality to add fluoride to its water supply. Those reasons apply, a fortiori, to section 23 of the Health Act 1956.

19. On the 13th day of April 1964 the Court of Appeal of New Zealand granted the Appellant conditional leave, and on the 4th day of May 1964 final leave, to appeal to Her Majesty in Council against the judgment of the Court of Appeal dated the 13th day of December 1963. p.72

20. The Appellant contends that the Court of Appeal was in error in holding that section 240 of the Municipal Corporations Act 1954 empowered the Respondent to fluoridate its water supply. In the first place the power conferred by section 240 is a power to construct waterworks for the supply of pure water for the use of the inhabitants of the district and from time to time to do all things necessary thereto. The section contemplates that a local authority may construct waterworks for purifying water which is impure at its source, or which may become impure before it reaches the consumer. The fluoridation plant was found by McGregor J. as a question of fact not to fall within the meaning of waterworks as that term is used in the Municipal Corporations Act 1954. It is submitted that McGregor J. was right, and that the fluoridation plant is not a waterworks in the ordinary meaning of that word, it is not part of the equipment for the collecting and conveying of water, and it is not something which it is necessary from time to time for the Respondent to do to ensure the supply of pure water for the use of the inhabitants of the district. p.39,ll.9-15

21. The Appellant further contends that since it was held as a fact by McGregor J. in the Supreme Court that before fluoridation the water in the Respondent's water supply was pure water the fluoridation process was not for the purpose of supplying pure water for the use of the inhabitants of the district. The learned p.37,ll.8-9 p.37,ll.9-11

RECORD

Judge also found that after fluoridation the water was pure. On that basis the Appellant submits that the fluoridation process has no effect on the purity of water.

22. The Appellant accepts that the expression 'pure water' in section 240 of the Municipal Corporations Act 1954 does not mean chemically pure water (H_2O) but submits that it means potable water, that is water which is not unpleasant to drink and in which foreign or noxious substances which are detrimental to the use to which the inhabitants of the district will put it have been eliminated or reduced by means harmless to its consumers. Before fluoridation the water in the Respondent's water supply contained water which was in that sense potable water or pure water. The addition of fluoride removed no chemical or bacteriological impurities: it did not affect the chemical constituency of the water, but simply increased the natural content of the fluoride in the water to the extent of the artificial addition and added hydrofluoric acid and silicon as the result of the breaking down of the sodium silico-fluoride. The Appellant contends that a power to construct waterworks for the supply of pure water cannot, either expressly or by fair implication, authorise the addition to water which is already pure of a substance which does not make that water any more pure.

p.16,ll.9-10
p.17,ll.9,36-40

23. The Appellant further contends that the fluoridation of the Respondent's water supply does not, and was not intended to improve the quality of that water as water, but rather that that process uses the water as a vehicle for carrying to the bodies of those who consume it sodium fluoride which changes the atomic structure of teeth while calcification is taking place.

24. The Appellant further contends that the test adopted by North P. and McCarthy J. to determine the meaning of the expression 'pure water' was the wrong test, and was based upon insufficient evidence. Such a test is inapplicable to New Zealand waters, because it involves resort to some hypothetical standard of the content of

water throughout the world, and because it cannot justify the raising of the content of fluoride in the Respondent's water supply to one part per million, which is based not upon the average or standard content of fluoride throughout the world but upon what is considered on medical grounds to be an effective dosage. The addition of sodium silico-fluoride, with the consequential breaking down into sodium fluoride, hydrofluoric acid, and silicon, is inconsistent with such a test, because, whatever may be the position with sodium fluoride, there was no evidence that hydrofluoric acid and silicon are not foreign to the nature of water.

p.23,ll.28-32
p.25,ll.38-43
p.26,ll.5-9

25. The Appellant contends that section 288 of the Municipal Corporations Act 1954 does not empower the Respondent to fluoridate its water supply. The addition of fluoride to the water supply is a continuous activity and not justified by the expression 'from time to time' in the section. Although the addition of fluoride may be desirable because of the consequential reduction in the incidence of dental caries among at least some of the inhabitants of the district, it is not a necessary act for achieving that consequence. Furthermore, the Appellant contends that the language of section 288 authorises acts for the preservation of a particular state of affairs, and not for the improvement of the dental health of the community. The Appellant further contends that in its ordinary meaning, and in the context both of the Municipal Corporations Act 1954 and of general health legislation in New Zealand the expression 'public health' in section 288 of the Municipal Corporations Act 1954 does not relate to the general dental health, determined statistically, of the whole or part of the community, or to any improvement in the general health of individuals consequential upon the reduced incidence of dental caries.

26. The Appellant contends that the second part of section 288 of the Municipal Corporations Act 1954 (which relates to the

power of a local authority to do all things necessary from time to time for carrying into effect the provisions of the Health Act 1956 so far as they apply to the district) does not empower the Respondent to fluoridate its water supply. For reasons similar to those which are applicable to section 288 of the Municipal Corporations Act 1954 the Appellant contends that section 23 of the Health Act 1956, upon which the Respondent has expressly relied, neither authorises nor requires the Respondent to fluoridate its water supply.

27. The Appellant contends that the judgment of the Court of Appeal of New Zealand is erroneous and ought to be reversed, and that an order should be made for the issue to the Respondent of a writ of injunction perpetually restraining the Respondent, its servants or agents from adding sodium silico-fluoride or any similar substance to the domestic water supplied by it to the Relators and other residents of the City of Lower Hutt, for the following among other

R E A S O N S

(1) BECAUSE the fluoridation plant installed by the Respondent is not a waterworks for the supply of pure water for the use of the inhabitants of the Respondent's district, or a thing necessary thereto.

(2) BECAUSE the addition of sodium silico-fluoride to the Respondent's water supply is not a part of the supply of pure water.

(3) BECAUSE the addition of sodium silico-fluoride to the Respondent's water supply is not a purification of the water.

(4) BECAUSE the addition of sodium silico-fluoride to the Respondent's water supply does not improve the water as water.

(4A) BECAUSE the addition of sodium silico-fluoride to the Respondent's water supply is not authorised by section 240 of the Municipal Corporations Act 1954.

(5) BECAUSE the addition of sodium silicofluoride to the Respondent's water supply is not a thing necessary to be done from time to time for the preservation of the public health and convenience or for carrying into effect the provisions of the Health Act 1956, so far as they apply to the Respondent's district, and is accordingly not authorised by section 288 of the Municipal Corporations Act 1954.

(6) BECAUSE the addition of sodium silicofluoride to the Respondent's water supply is not within the scope of the duty imposed upon the Respondent by section 23 of the Health Act 1956 to promote and conserve the public health within its district.

(7) BECAUSE with regard to section 240 of the Municipal Corporations Act 1954, the judgments of McGregor J. in the Supreme Court and of Turner J. in the Court of Appeal are right.

(8) BECAUSE with regard to section 288 of the Municipal Corporations Act 1954 and section 23 of the Health Act 1956, the judgment of Turner J. and the opinion of North P. are right.

G. P. BARTON

No. 25 of 1964

IN THE PRIVY COUNCIL

ON APPEAL FROM THE COURT OF APPEAL OF NEW ZEALAND

B E T W E E N :-

HER MAJESTY'S ATTORNEY-GENERAL FOR NEW ZEALAND on the relation of ROBERT RICHARD LEWIS and ERIC BERNARD ELLIOTT

Appellant

- and -

THE MAYOR COUNCILLORS AND CITIZENS OF THE CITY OF LOWER HUTT

Respondent

CASE FOR THE APPELLANT

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