Privy Council Appeal No. 55 of 1915.

The Corporation of the Bank of Australasia and others - - - - - - - *Appellants*

v.

The Municipal Council of Sydney - - *Respondents.*

FROM

THE SUPREME COURT OF THE STATE OF NEW SOUTH WALES.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 2ND DECEMBER 1915.

Present at the Hearing.

EARL LOREBURN. VISCOUNT HALDANE.
LORD WRENBURY.

[*Delivered by* LORD WRENBURY.]

By the Sydney Corporation Act, 1879 (43 Vict., No. 3), the assessment of lands, houses, &c. is provided for by section 103, and "every building, whether such building be "vested in the Crown or be in the occupation "of the Crown or not, and all lands, whether "occupied or not, within the said city shall "be deemed to be rateable property." Buildings are defined in section 3. The result is (and it is not disputed that it is) that the Crown is rateable in respect of buildings but is not rateable in respect of lands on which there are no buildings.

By the General Post Office Approaches Improvement Act, 1889 (53 Vict., No. 13), it was provided (section 2) that certain lands (of

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which the land in question in this case forms part) should be resumed for the purposes of the Act and be vested in the Minister for Public Works on behalf of Her Majesty for an absolute estate in fee simple in possession. The purposes of the Act were the formation of a new street to improve the then present approaches to the General Post Office. By section 5 it was provided that the Act should be an absolute statutory authority enabling the Minister for Public Works to enlarge and improve the thoroughfare, and that the lands resumed should be used for (*a*) making a certain public street, and (*b*) the residue of the lands might be sold subject to such terms, &c. as to buildings as the Governor might determine.

By the Moore Street Improvement Act, 1890 (54 Vict., No. 30), the Municipal Corporation of Sydney were (by section 3) authorized to purchase or resume lands for widening Moore Street, and the following sections contained provisions as to the manner in which the cost of the improvements was to be borne. Their effect shortly stated is that the cost of the improvements is to be met in a proportion to be determined as provided by section 5 from two sources, viz. : *first*, a contribution to be made by the owners of property situate within the improvement area (which may be called a betterment charge); and *secondly*, the balance is to be a charge upon and is to be paid out of what the Act calls the Special Street Improvement Rate. The facts that there are two sources and that the latter is to bear the balance after the former has been satisfied, prove that the former is not what the Act calls the Special Street Improvement Rate.

The first question upon this appeal is whether the words "the owners of property "situated within the said improvement area" in section 5 of the Act of 1890 include the Crown, in the case where the Crown is the owner of lands upon which there are no buildings.

The only facts relative to this first question are that at the date when the improvement was carried out and the assessment was made under the provisions of the Act of 1890 the Crown was the owner of lands within the improvement area upon which there were no buildings.

Section 4 of the Act of 1890 provides that a notification shall be made that a plan "showing "the extent and position of the improvement "area within which the owners of property "liable to the City Rate will be contributors "to the special improvement rate hereinafter "mentioned, together with a list of the names "of such owners," has been deposited. Under the Act of 1879 the Crown was not liable to the City Rate in respect of the lands in question, for there were no buildings on them. The Crown was no doubt liable to the City Rate in respect of lands on which there were buildings, and would therefore, under circumstances which were not these circumstances, have been within the words "owners of property liable to the "City Rate." But for these lands the Crown was not within those words. It follows that so far there is nothing to render the Crown liable in respect of the lands here in question.

Moreover, not only are there no words to render the Crown liable, but the language of section 103 of the Act of 1879 shows that for these lands without buildings the Crown is not liable. That section makes the Crown liable

when there are buildings and the absence of similar words when there are no buildings shows plainly (as indeed is not disputed) that in the latter case the Crown is not liable.

The respondents, however, argue that the words of section 4 of the Act of 1890 "owners "of property liable to the City Rate" are to be construed as meaning "owners of property "being property which now is or may here- "after become liable to the City Rate." Their Lordships can find no ground for this contention. This is not construing but adding to the Act. It is moreover in their view impossible having regard to sections 5, 6, 7 of that Act, of which something further will be said presently. They further argue that the words in section 4 "owners of property liable to the "City Rate" are not repeated in section 5, but are replaced by the words "owners of pro- "perty situated within the said improvement "area." The latter words, however, do not enlarge or control the previous definition of the class of persons who are to contribute, but are used only to state the proportion in which the class (whatever is its true definition) is to pay.

The respondents also argue that the "special "improvement rate hereinafter mentioned" in the early part of section 4 is the same as the "Special Street Improvement Rate" mentioned later in that section and in section 5, and as the "Street Improvement Rate" mentioned in section 7 (ii), which two latter expressions are by section 4 of the Moore Street Improvement Act, 1892 (55 Vict., No. 13), to be replaced by the words "City Fund." Their Lordships find this contention inadmissible. The context in which the expression "special improvement "rate" is found is a context which deals with the first of two sources above mentioned in

contrast with the second class. The one is the betterment charge—the other the rate which is to supply the balance after getting in the betterment charge.

So far their Lordships hold that when the assessment was made in 1891 the Crown was not liable in respect of No. 38, the plot in question, which was at that date land of which the Crown was owner on which there were no buildings.

But subsequently, in 1894, 1900, 1901, and 1907, the Crown sold to several purchasers portions of the land which were not wanted for the street and which they were by section 5 (*b*) of the Act of 1889 authorized to sell. Buildings have since been erected on the lands. The respondents contend that assuming that the Crown was not liable, there has arisen in the purchasers a liability under which their vendor, the Crown, did not lie. Their Lordships cannot accept this contention. It is inconsistent with sections 5, 6, and 7 of the Act of 1890. The proportions mentioned in sections 4 and 5 and the assessment in section 6 must be a proportion and an assessment made once for all and according to the facts existing at that time. The appeal mentioned in section 7 must be brought within the time there limited. There is nothing in the Act to justify proportions and assessments to be made from time to time according to altered circumstances.

In the *Municipal Council of Sydney* v. *Terry*, 1907, A.C. 308, the *Municipal Council of Sydney* v. *Fleay*, 1911, A.C. 371, and the *Municipal Council of Sydney* v. *Goodlet*, 12 State Reports (N.S.W.), 355, the construction of the Act of 1879 and of the Act of 1890 has come in question. But those decisions throw no light upon the question now to be decided. If A.

was liable at the time of assessment it was decided that B., a subsequent purchaser, became liable. That is not the question here. This question is whether when A. (*i.e.*, the Crown) was not liable, B., a subsequent purchaser, becomes liable. In their Lordships' opinion he does not.

It results that the questions as to the Statutes of Limitation which were raised below do not arise here.

Their Lordships will humbly advise His Majesty that this appeal should be allowed and the action dismissed with costs including the costs of this appeal.

Confidential.

THE CORPORATION OF THE BANK OF AUSTRALASIA AND OTHERS

v.

THE MUNICIPAL COUNCIL OF SYDNEY.

DELIVERED BY LORD WRENBURY.

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