Privy Council Appeal No. 119 *of* 1926.

The Municipal Council of Sydney - - - - - - *Appellants*

v.

Margaret Alexandra Troy - - - - - - - *Respondent*

FROM

THE SUPREME COURT OF NEW SOUTH WALES.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 20TH JUNE, 1927.

Present at the Hearing:

VISCOUNT HALDANE.
VISCOUNT SUMNER.
LORD SHAW.
LORD MERRIVALE.
LORD WARRINGTON OF CLYFFE.

[*Delivered by* VISCOUNT HALDANE.]

This is an appeal from a judgment of the Supreme Court of New South Wales, delivered in favour of the respondent who was plaintiff in an action. The appellants were defendants and the question decided was raised by a special case.

Before 1924 the respondent was owner in fee simple of a piece of land in the City of Sydney. On June 6th, 1924, the appellants, in accordance with the provisions of the Sydney Corporation Act, 1902 and the amending Acts, caused, for improvement purposes, a notice for the acquisition of the piece of land to be published in the Gazette and other proper newspapers and complied in all respects with the provisions necessary for the acquisition. Thereupon, by virtue of the publication of the notice, the land, under the existing statutory provision, became vested in the appellants for an estate in fee simple, and the respondent became entitled to receive compensation. Within due time from the publication, the respondent served a notice of her claim to compensation. The appellants made a valuation, and the amount payable to the

respondent was agreed at £60,828. The only question that arises is as to the rate of interest properly payable under the circumstances upon the amount so ascertained as due. At one time, under the Public Works Act, 1900, providing for the acquisition of land for public works, the interest payable on the amount of compensation for land resumed thereunder was 6 per cent. The provisions of this Act were incorporated by reference in the Sydney Corporation Acts, the interest rate being lowered to 4 per cent. Subsequently the interest rate under the Public Works Act was similarly reduced. The provisions as to resumption were altered in other respects in 1905 by an Act of that date, under which, in lieu of service of notice, publication in the Gazette and certain newspapers was substituted for it, and the land was to vest on the publication of the notice and description. There was another amending Act of 1916 into the provisions of which it is not necessary to enter. But in 1924 the Sydney Corporation Act of that year enacted that the 1924 Act and the 1902 Act and the Acts amending it should be construed along with the 1924 Act as the principal Act.

The 1924 Act as thus defined also enabled the appellants to acquire land subject to certain reservations in favour of the owner and to effect realignments for the purposes of widening. On these provisions, in the opinion of their Lordships, nothing turns for the purpose of the present question. The only material provision is that contained in s. 17, which is in these terms : —

> " Notwithstanding the provisions of any other Act the rate of interest payable upon compensation for land acquired by the Council by resumption or by the realignment method, or by any compulsory purchase, shall be six per centum per annum."

The Act of 1924 came into operation on September 17th in that year, and, as already stated, the acquisition (called resumption) had taken place under the existing statute on June 6th.

The respondent claims that on the proper construction of s. 17 of the Act of 1924 interest at 4 per cent. was payable on the agreed amount of compensation as from June 6th in that year, the date of the publication of the notice and of consequent vesting in the Corporation, up to September 17th, and thereafter at 6 per cent., notwithstanding that the Act did not become operative until September 17th, when it received the Royal Assent. The appellants contend, on the other hand, that the title to interest at 6 per cent. under s. 17 could not arise in regard to an acquisition before the Act became operative. One reason for this contention is that the Act of 1924 for the first time enabled the " realignment method " to be adopted, and that accordingly s. 17, which extends to interest accruing under that method, must be treated as limited to land acquired after the Royal Assent was given to the Act, inasmuch as the realignment method was established by the Act for the time. The realignment method is thus, according to the argument for the appellants, a key to the scope of this section. But they go further and contend that

even as regards ordinary acquisition or resumption there is a similar indication of intention to be found in the language of s. 17, in that the payment of interest at 6 per cent. is to be limited to cases of acquisition or resumption after the Act of 1924 had become operative. Resumption, they argue, by means of public notification, instead of by service of notice on the owner, was first authorised by the Act of 1905. The compensation was to be ascertained under the provisions of the Public Works Act, 1900, the scheme of which for this purpose is to be incorporated with the Act of 1905. Under the Public Works Act, 1900, by s. 119 (2) if compensation is payable in respect of land taken by notification in the Gazette (the then mode) it is to bear interest as from the date of this notification. As the Act of 1924 is to be read with the Act of 1905 it is argued that the word " acquired " in s. 17 of the Act of 1924 should be read as meaning acquired after that Act came into operation.

The learned Judges of the Supreme Court of New South Wales agreed in rejecting this contention, and held that the respondent was entitled to succeed. The main ground of their reasoning turned on the ambit and scope of s. 17.

> " It cannot be contended," said the Chief Justice, " and it is not contended, that it is retrospective in its operation so as to affect the rate at which interest was payable before it came into operation, but the question is whether the direction that interest thereafter is to be at the rate of 6 per cent. per annum applies only to subsequent acquisition of land, or applies as well to prior acquisitions, the compensation for which was still unpaid when it came into force. The words used are perfectly general. What is spoken of is the rate of interest payable upon compensation for land acquired by the Council. No distinction is made between land acquired before the Act and that acquired after, and to give effect to the contention of the Municipal Council it would be necessary to substitute for the wide and general word ' acquired ' some such words as ' to be acquired,' or ' hereafter acquired.' I can find nothing in the section to justify the imposition of any such limitation, and there is no rule or presumption which requires that the word should be so limited in its meaning."

The learned Chief Justice goes on to say that it is plain that the purpose of the section was to bring up the rate of interest from one which was too low to 6 per cent., the lower rate being inadequate to the ruling rate of interest.

Their Lordships find themselves in full agreement with the conclusion thus expressed. In their opinion this conclusion is neither affected by the well-known rule of construction against retrospective interpretation, nor by anything to be imported from the expressions used in the earlier statutes in the series which has to be read in conjunction. Sec. 17 must in their opinion be read as laying down a principle standing by itself, and to prevail, as the section declares, notwithstanding the provisions of any other Act. The new rate of interest relates to the amount of compensation for land acquired by any of the alternative methods. This provision is a substantive one which is not made to depend on any reference to corresponding provisions in the

earlier statutes, and does not give rise to any question of retrospective operation.

On June 6th, 1924, the entire title to the piece of land in question was acquired by and became vested in the appellants, who became then entitled to compensation. On September 17th, 1924, the new standard rate of interest was declared to be applicable to the compensation for all land acquired. Their Lordships think that these words are unambiguous. They give a title to the higher rate of interest as from September 17th, and apply subsequently to the passing of the Act which contains this fresh provision to compensation for land acquired prior thereto, notwithstanding that the Act was assented to later. Accordingly, between June 6th and September 17th the rate will remain 4 per cent., and after that is 6 per cent.

They will humbly advise His Majesty that the appeal should be dismissed with costs.

In the Privy Council.

THE MUNICIPAL COUNCIL OF SYDNEY

v.

MARGARET ALEXANDRA TROY

DELIVERED BY VISCOUNT HALDANE.

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