Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Municipal Council of Sydney v. *Terry, from the Supreme Court of New South Wales; delivered the* 19*th June* 1907.

Present at the Hearing:

LORD ASHBOURNE.
LORD MACNAGHTEN.
LORD COLLINS.
SIR ARTHUR WILSON.

[*Delivered by Lord Macnaghten.*]

The action which has given rise to this Appeal was brought by the Municipal Council of Sydney against the Respondent, Edward Terry, to enforce payment of 130*l.* 11*s.* 8*d.* The sum in question is the aggregate amount of four yearly instalments (including three years arrears) of a contribution towards the cost of a local improvement in the City of Sydney assessed upon the Respondent's predecessor in title, the Sydney Real Estate Bank, Limited, as owner of certain premises within the Improvement area. The sum which the Bank was required to pay as its "share of aggregate amount of contribution" towards the cost of the Improvement was 800*l.* The amount was to be paid off by annual payments of 32*l.* 12*s.* 11*d.*, extending over a period of 100 years from 1st January 1892. The Sydney Real Estate Bank, Limited, has now ceased to exist. Its property has been sold. The present claim is made against the Respondent as owner in possession of the premises at the time when each of the four several instalments fell due.

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On a Special Case stated by consent the Full Court of New South Wales, holding itself bound by a previous decision, gave judgment in favour of the Respondent and dismissed the action with costs. From that judgment the present Appeal has been brought by special leave.

The question involves the construction of the Special Act under which the improvement was carried out. It turns upon the meaning of the expression "owners of property within the said "improvement area." The Appellants maintain that the word "owners" as used in the Act means and includes owners for the time being of the property in respect of which the contribution was assessed. The Respondent, on the other hand, contends that, according to the true construction of the Act, liability is confined to the persons who were such owners at the time when the assessment was made, and that no charge was imposed upon the property itself, or attached to the ownership of the property.

The Municipal Council of Sydney was constituted by the Sydney Corporation Act of 1879, and authorised to impose rates which are collectively known as "the City Rate" on all rateable property within the City. There were the usual provisions for assessing property, making up rate books, notifying persons liable, and enforcing payment of rates. In the case of occupied property, the rate was to be paid by the tenant of the premises in respect of which the rate was payable, or in case of his default by the owner of such premises. In the case of vacant premises the rate was to be paid "by such "person, who at the time . . . at which "such rate is made payable is the owner of "such premises." The term "owner" is defined in the Act as—

"The landlord or person at the time receiving the rent for "any premises whether on his own account or otherwise, or "who shall claim to be the owner."

Section 118 declares that in case any person liable to pay any rate neglects or refuses to pay the amount thereof for 14 days after a notice in the prescribed form has been "left at the "premises liable for such rate," or after he shall by any such notice have been required to pay such rate, a warrant of distress may be issued. Section 238 further declares that, in addition to other means of enforcing payment of any sum due in respect of any rate, the Council may recover any such sum not exceeding three years' arrears by action or suit against the person liable.

It may be observed that the Act of 1879 contains a provision empowering the Council to carry out local improvements, but the provision is clumsy and imperfect and subject to conditions which apparently deprive it of all practical value. The whole cost was to be thrown indiscriminately upon the ratepayers within the Improvement area, and defrayed by a special rate made and levied "equally on all rateable property situated within "such locality." The first step was a petition signed by not less than two-thirds of the ratepayers in the locality praying that the special rate required might be levied. In the present case a Special Act, called "The Moore Street "Improvement Act of 1890," was obtained in order to carry out the improvement of Moore Street upon a system described in the title of the Act as "an equitable system." The cost was to be divided between the whole body of ratepayers liable to the City Rate, upon whom a rate was to be levied called the Special Street Improvement Rate, and those ratepayers who were owners of property within the Improvement area.

By the Act of 1890 the Council, before commencing to carry out the improvement, was directed to publish in manner therein

prescribed a notification setting forth the nature of the improvement and stating that a plan, shewing the extent and position of the Improvement area within which the owners of property liable to the City Rate would be contributors to the special improvement rate, together with a list of the names of such owners so far as the same could be ascertained had been deposited with the Town Clerk for inspection by any person interested. The notification was to give a detailed estimate of the cost of the improvement, the amounts of, and dates of making, the repayments necessary to defray the whole cost thereof with interest at a rate not exceeding 4*l.* per cent. per annum. The period (not to exceed 100 years and not to be less than 50 years in any case) over which such repayments would be spread and the respective proportions (subject to appeal) in which the owners of property within the Improvement area and the special street improvement rate were to defray such cost were also to be specified in the notification. It was provided by the Act that the proportion in which the owners of property within the Improvement area should (subject to appeal) contribute to the cost of the improvement should not in any case be determined by the Council at less than one-half of such cost and interest. The balance was to be a charge upon and be paid out of the special Street Improvement Rate. The Supreme Court on appeal was, however, empowered to vary within certain limits the proportions prescribed by the Act.

Section 6 provided that within 30 days after the publication of the aforesaid notification the Council should cause to be made and deposited with the Town Clerk an assessment book in which should be specified the amount which every owner of property situate within the said

Improvement area would be required to pay " in " respect of his property " as his share of the aggregate amount of the contributions of all such owners. In determining such share regard was to be had by the Council to the position of every such property and the degree of permanent enhancement in its capital or annual value which the improvement might reasonably be expected to produce.

Then follow provisions for publishing notice of the assessments, provisions for appeal by an owner aggrieved at his assessment, power for the Council to resume lands for the purpose of the improvement, power for the Council to borrow on debentures and power to impose and levy on all property rateable under the Act of 1879 within the City of Sydney a street improvement rate subject to a limitation in amount, and a declaration that every such rate should in all other respects be made, assessed, imposed, levied and enforced under and pursuant to the provisions contained in the Act of 1879 relating to the City Rate.

Section 26 provides that all powers and provisions for enforcing the payment of rates and other sums of money due to the Council contained in the Act of 1879, or in any other Act relating to the Corporation, should be applicable and might be exercised and carried out by the Council and all other persons for the purpose of enforcing payment of any sum payable by way of contribution from any owner of property within an improvement area under the Moore Street Improvement Act.

The question at issue seems to their Lordships to be free from all difficulty.

It will be observed that, at the time when the Moore Street improvement was taken in hand, there was a complete system of rating established in the City. The Act of 1879

contained provisions for executing street improvements, although those provisions appear to have been unworkable. The Special Act for the Moore Street Improvement took the place of those provisions and proceeded on a more equitable system. Instead of throwing the whole cost on the premises within the Improvement area it divided the cost between the owners of premises within that area and a general rate on the City at large. But the Special Act is founded and engrafted upon the general Act of 1879. It is almost inconceivable that the framers of the Special Act should have departed so widely from the principles of the Act of 1879 as to throw part of the cost of the improvement on rateable property within the City, and part as a mere personal charge on the persons who happened to be owners of property within the Improvement area at the time when the assessment was made, especially when it is borne in mind that the contributions of owners within the Improvement area were to be spread over a period which might be 100 years, and in no case was to be less than 50 years, and that some at least of the owners might be limited companies, or trustees, or persons with merely a life interest. The only semblance of argument on the part of the Respondent was founded on the circumstance that the Special Act contains no provisions for recording changes of ownership during the period over which the contribution was to extend. But, in reality, the absence of such a provision affords an argument against the Respondent's contention. It was right and proper that special notice should be given to the owners of property within the Improvement area at the time when the assessment was made, and that every possible means should be taken

to make an accurate record of those persons, with a view to the protection of their property, and in order to ensure a fair assessment. For the protection of the Municipality nothing more was required. Everything else would be supplied by the City rate books if the contribution was to be levied in the same manner as the City rates. And that is the very thing which is provided for by the last section (Section 26) of the Special Act. Taking that Section into consideration as well as the language of Section 6, which speaks of the contribution from an owner of property within the Improvement area as a contribution which "he "will be required to pay in respect of his "property," and so describes it as a charge upon the property, it seems to their Lordships to be quite clear what the intention of the Special Act was. There is nothing in the Act from first to last tending to support the extravagant contention advanced on the part of the Respondent.

Their Lordships therefore will humbly advise His Majesty that the Appeal ought to be allowed, the Order of the Full Court discharged, and Judgment entered up for the Plaintiffs for the sum of 130*l*. 11*s*. 8*d*., together with the costs of the suit.

As to the costs of the Appeal, having regard to the terms of the submission on which special leave to appeal was granted, their Lordships think they ought to be paid as between party and party by the Appellants.