

*Privy Council Appeal No. 51 of 1924.*

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

*v.*

Laura Augusta Georgiana Campbell and Others - - - *Respondents*

Same - - - - - *Appellants*

*v.*

Hughes Motor Service, Limited - - - - - *Respondents*

*(Consolidated Appeals)*

FROM

THE SUPREME COURT OF NEW SOUTH WALES.

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JUDGMENT OF THE LORDS OF JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL DELIVERED THE 5TH DECEMBER, 1924.

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*Present at the Hearing :*

VISCOUNT CAVE.

LORD BLANESBURGH.

MR. JUSTICE DUFF.

SIR ADRIAN KNOX.

*[Delivered by MR. JUSTICE DUFF.]*

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By Section 16 of the Sydney Corporation Amendment Act (1905), the Municipal Council of Sydney is empowered from time to time, with the approval of the Governor, to purchase or "resume" any land required for *carrying out improvements in or remodelling any portion of the city*. By Section 17, the Council is authorized to use the city funds for the purpose of obtaining plans, estimates and reports as to the cost or desirability of purchasing or "resuming" lands; and by Section 18 it is provided that, with the approval of the Governor, the Council may cause a notice of the "resumption" of any land to be published in the Government Gazette and in each of the daily papers: and that a

plan showing the separate parcels may be deposited at the Town Hall, Sydney, and at the Department of Lands, Sydney, for public inspection : and that, on the publication of the notice and description, the land to which it relates is to become vested in the Council in fee simple, while the owner acquires a title to be compensated in the manner provided by the statute. By Section 3 of an amending Act of 1906, the Council is authorized to purchase or " resume " any lands required for the opening of new public ways or for widening, enlarging or extending any public ways in the city, as well as any lands of which those required for such purposes are a part.

On the 12th of March, 1923, the Lord Mayor prepared a Minute relating to the subject of the extension of Martin Place, an important thoroughfare in the centre of Sydney, and in this Minute he recommended the extension of Martin Place to Macquarie Street, and the resumption of a considerable area, which embraced property belonging to the respondents. The proposals of the Lord Mayor's Minute were adopted by a resolution of the Council on the 28th of June, and the resumption provided for by the resolution was approved by the Governor in Council.

On the application of the respondents, injunctions were granted by the Chief Judge in Equity, restraining the Council from proceeding under this resolution ; and subsequently the Lord Mayor presented another Minute, and on the 29th of November another resolution was passed by the Council, authorizing the resumption of the identical area affected by the former resolution. Again proceedings were taken before the Chief Judge in Equity, who granted injunctions restraining the Council from proceeding under the second resolution ; and at the hearing of the actions these injunctions were made permanent. Admittedly, the Council had authority (under Section 3 of the amending Act of 1906) to " resume " lands for the purpose of extending Martin Place. It is also undisputed that the lands of the respondents which the Council proposes to take are not within the limits of any area which could be required for that purpose. The right to resume them is based upon the assertion that they are " required " for the purpose of remodelling and improving the city within the sense of Section 16 of the " Corporation Amendment Act."

The learned Chief Judge in Equity held that in point of fact these lands were not really " required " for any such purpose, but that, as in the case of the other parts of the area affected which were not necessary for the extension of the street, the resumption proceedings were taken with the object of enabling the Council to get the benefit of any increment in the value of them arising from the extension, and thus, in some degree at all events, recouping the municipality the cost of it ; and that, since the resumption of lands for such a purpose alone was indisputably not within the ambit of the authority committed to the Council, the resolutions of June and November were both invalid.

In the first Minute presented to the Council by the Lord Mayor (in June), the proposed resumption was treated as a resumption undertaken for and in relation to the extension of Martin

Place; and the consequential advantages accruing from the possession of the residual lands, which were supposed to recommend the Lord Mayor's proposals, were the financial advantages alone, arising in the manner just suggested. It is quite true that in the Minute of the Governor in Council approving the resolution the proposal approved is described as "a proposal . . . for the improvement and remodelling of the area in the vicinity," as well as for the extension of Martin Place. But these words, it is shown by the evidence, were inserted at the suggestion of the solicitor for the municipality after the resolution had been passed.

The area described in the resolution of November is the identical area affected by the previous resolution; and, indeed, the proposal to which the resolution professes to give effect is identical in all respects with the previous proposal except for the pronouncement by the Lord Mayor and the declaration in the resolution that the land is required not only for the extension of Martin Place, but for improving and remodelling the area in the vicinity.

No plan for improvement or remodelling was at any time decided upon; and, indeed, no such plan was ever considered by or proposed to the Council.

Their Lordships think it not reasonably disputable that at the time of the passing of the resolution in June, the Council conceived it to be within its powers to resume lands not needed for the extension itself but solely for the purpose of appropriating the betterments arising from the extension; and that, as Street, C.J., found, the Council had not at that time applied itself to the consideration of any other object in connection with the resumption of the residual lands. It is not at all inconsistent with this that individual members of the Council may have been actuated by some more or less definite expectation that the lands so "resumed" would be dealt with not by resale to purchasers, but by leasing them, and that one advantage, arising from that mode of dealing with them, would lie in the fact that the Council would thereby retain control over the use to which the resumed lands might be put.

The legal principles governing the execution of such powers as that conferred by Section 16, in so far as presently relevant, are not at all in controversy. A body such as the Municipal Council of Sydney, authorized to take land compulsorily for specified purposes, will not be permitted to exercise its powers for different purposes, and if it attempts to do so, the courts will interfere. As Lord Loreburn said, in *Marquess of Clanricarde v. Congested Districts Board for Ireland*, 79 J.P., 481: "Whether it does so or not is a question of fact." Where the proceedings of the Council are attacked upon this ground, the party impeaching those proceedings must, of course, prove that the Council, though professing to exercise its powers for the statutory purpose, is in fact employing them in furtherance of some ulterior object.

Their Lordships think that the conclusion of the learned Chief Judge in Equity upon this question of fact is fully sustained

by the evidence. As already mentioned, it is admitted that no plan of improvement or remodelling was at any time before the Council; and their Lordships think there is great force in the argument that the course of the oral discussion, as disclosed in the shorthand note produced, shows, when the events leading up to the second Minute of the Lord Mayor are considered, that in November the Council was applying itself to the purpose of giving a new form to a transaction already decided upon, rather than to the consideration and determination of the question whether the lands to be taken were required for the purpose of remodelling or improvement. Their Lordships think the learned Chief Judge was right in his conclusion that upon this question there was no real decision or determination by the Council.

Their Lordships accordingly will humbly advise His Majesty that this appeal should be dismissed with costs.



In the Privy Council.

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THE MUNICIPAL COUNCIL OF SYDNEY

v.

LAURA AUGUSTA GEORGIANA CAMPBELL  
AND OTHERS.

SAME

v.

HUGHES MOTOR SERVICE, LIMITED.  
(*Consolidated Appeals.*)

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DELIVERED BY MR. JUSTICE DUFF.

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