

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of The
Municipal Council of Sydney v. Young, from
the Supreme Court of New South Wales.
delivered 10th March 1898.*

Present :

THE LORD CHANCELLOR.

LORD HERSCHELL.

LORD MACNAGHTEN.

LORD MORRIS.

SIR RICHARD COUCH.

[*Delivered by Lord Morris.*]

IN this case their Lordships feel no difficulty. A local Act (51 Vict., No. 37) enabled the Secretary for Public Works of Sydney, who is called the Constructing Authority, to form a tramway. It became necessary in the making of the tramway to take some 12 perches of a street leading from a particular named place to a public park. The municipal authority of Sydney alleged that by the taking of those 12 perches of this street they were entitled to compensation under the Act, which of course entitles the owner of the property to compensation. That of course depends on whether the municipal authority of Sydney are the owners of the street in any sense that would give them a claim for compensation. The provision by which the property in the street in any respect rests in them is under the Sydney Corporation Act of 1879, the 43rd Victoria, No. 3, which states that "All public ways in the city of Sydney now or hereafter formed shall be vested in the council, who shall have full power," and so on.

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Now it has been settled by repeated authorities which were referred to by the learned Chief Justice that the vesting of a street or public way vests no property in the municipal authority beyond the surface of the street, and such portion as may be absolutely necessarily incidental to the repairing and proper management of the street, but that it does not vest the soil or the land in them as the owners. If that be so the only claim that they could make would be for the surface of the street as being merely property vested in them *qua* street, and not as general property. Their Lordships are of opinion that that is not the subject matter of compensation, but the street being diverted into a tramway is in no way a taking of property within the meaning of the compensation to be assessed under the Public Works Act of Sydney. In point of fact it is rather the opposite, because the municipal authority, by getting rid of the street, *pro tanto* have less expense, and it is in that respect a relief to the ratepayers.

Then it has been said that the construction should not be given to the words "shall be vested in the Council" in the Sydney Corporation Act of 1879, which has been given to similar Acts in England, because there has been an amending Act passed which seems, as is suggested, to widen that interpretation as to what is vested in them. Their Lordships are of opinion that the amending Act does not do so. It provides that "It shall be lawful for the Municipal Council of Sydney, for the purpose of opening, altering, and widening," &c., to purchase land, to exchange land, or to sell land. That must mean to which they are really entitled as land, and which as a matter of law they have acquired, and can sell like any ordinary individual.

Their Lordships are of opinion, therefore, that the judgment of the Supreme Court ought to be affirmed, and they will accordingly humbly advise Her Majesty to that effect. The Appellant must pay the costs of this appeal.

