

[HIGH COURT OF AUSTRALIA.]

THE PERPETUAL TRUSTEE COMPANY }
LIMITED } APPELLANTS;

AND

THE COUNCIL OF THE MUNICIPALITY }
OF STOCKTON } RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF
NEW SOUTH WALES.

H. C. OF A. *Local Government—Subdivision of land for building purposes—Ways of access to*
1913. *rear of buildings—Approval of plans by municipal council—Requirement of*
lanes at rear of allotments—Local Government Act 1906 (N.S. W.) (No. 56 of
SYDNEY, *1906), secs. 109 (xliii.), 187—Ordinance No. 70, Part B.*
Nov. 27.

—
Barton A.C.J.,
Isaacs,
Gavan Duffy,
Powers
and Rich JJ.

Sec. 109 of the *Local Government Act 1906* enables the council of a municipality to acquire the right to exercise the power (*inter alia*) (xliii.) to regulate “the subdivision of land for building purposes so as to secure due ways of access to the rear as well as to the front of buildings erected, or to be erected, thereon.” In order to enable this power to be carried into effect an ordinance, No. 70, was made pursuant to sec. 187 of the same Act, by Part B of which (*inter alia*) any person proposing to subdivide land for building purposes was required first of all to submit to the municipal council a plan of the proposed subdivision “and the means of access proposed to be provided to afford access to the rear as well as to the front of the buildings” to be erected thereon; and authorizing the council to specify the alterations which they considered should be made in the plan “in order to secure due ways of access to the rear as well as to the front of buildings” to be erected thereon before granting their approval.

A plan of subdivision of land for building purposes showed a number of allotments having frontages of 50 feet and upwards to streets and depths of 159 feet, and the only means of access to each of the allotments was from the front of it. The owner undertook that each contract of sale would provide that not more than one main building should be erected on each allotment,

and would also provide that a passage-way not less than 8 feet wide should be provided beside such building and leading to the rear of the building with suitable gates.

H. C. OF A.
1913.

The Supreme Court of New South Wales having decided that the council might properly insist on provision being made for lanes at the rear of the allotments,

PERPETUAL
TRUSTEE CO.
LTD.
v.
STOCKTON
MUNICIPAL
COUNCIL.

Held, that special leave to appeal from the decision should be refused.

Ex parte Bolton, 13 S.R. (N.S.W.), 379, approved.

Special leave to appeal from the decision of the Supreme Court of New South Wales refused.

APPLICATION for special leave to appeal.

The Perpetual Trustee Co. Ltd., in whom as trustees were vested certain lands in the Municipality of Stockton, proposed to subdivide them for the purpose of sale, and for that purpose caused a plan of subdivision to be prepared.

The plan showed allotments having each a frontage of not less than 50 feet to streets with a depth of not less than 159 feet. On 9th May 1913 the plan was sent to the municipal council for their approval. On 14th May the council caused a letter to be sent to the agent of the company, which, so far as is material, was as follows:—"In reply to your communication submitting plan of proposed subdivision . . . (which was considered by my council last evening), I am directed to return the plan to you, so that provision shall be made for lanes to give access to the rear, as well as the front, of the land in the subdivision, as the council will not approve of the plan until such provision has been made."

The council subsequently wrote that they relied upon Ordinance No. 70 in requiring provision for such lanes to be made. On 5th June the company again sent the plan to the council without any alteration, and accompanied by a letter of which the following is the material part:—

"We now beg to re-submit the proposed plan of the subdivision for the approval of your council, and we hereby undertake that, in order to provide access to the rear as well as to the front of the lands in the subdivision, each contract for sale in pursuance of the plan will provide (1) that not more than one main building shall be erected on any allotment, and (2) that a passage-way not

H. C. OF A. less than 8 feet wide shall be provided alongside such main build-
1913. ing and leading to the rear of such building, with proper gates.”
PERPETUAL On 25th June a letter was written by direction of the council
TRUSTEE CO. to the company, stating that “the provision made by you for due
LTD. ways of access to the rear as well as the front, is not in their
v. opinion according to the ordinance, and that they cannot approve
STOCKTON of the plan until lanes are provided for that purpose at the rear
MUNICIPAL of each allotment in the subdivision.”
COUNCIL.

The material portion of Ordinance No. 70 is Part B, which is as follows :—

“8. Where any person proposes to subdivide any land for building purposes, such person shall, before he sells or otherwise disposes of such land, and before he builds or grants permission to any person to build thereon, submit to the council—

“(a) A plan of the land, showing the subdivision proposed, and the means of access proposed to be provided to afford access to the rear as well as to the front of the buildings already erected or to be erected thereon; and

“(b) An application to the council for approval by them of such plans and specifications.

“Such plan so lodged, or a copy thereof furnished by the applicant, shall be filed with the council’s records.

“9. The council may approve such plans and specifications, or specify the alterations which they consider should be made in the same in order to secure due ways of access to the rear as well as to the front of buildings erected or to be erected on such land before they will grant such approval.

“10 (a) No person shall subdivide land for building purposes until the council’s written approval of such subdivision has been given in accordance with this Part of this ordinance.

“(b) No person shall erect any building upon any land hereafter subdivided for building purposes until the council’s approval of such subdivision has been given in accordance with this Part of this ordinance.

“11. When the council have approved any plans and specifications under this Part, the land, if subdivided, shall be subdivided in accordance with such plans and specifications; and no person shall, unless with the consent of the council, sell or

otherwise dispose of any portion of the said land except in accordance with such approved plans and specifications; and no person shall, unless with the consent of the council, build upon any portion of the said land except upon a subdivision which is in accordance with such plans and specifications, or except having a frontage and depth equal to or more than that shown in such plans and specifications, or except it be to add to any other portion of land."

H. C. OF A.
1913.
PERPETUAL
TRUSTEE CO.
LTD.
v.
STOCKTON
MUNICIPAL
COUNCIL.

By the ordinance also a penalty was imposed upon any person offending against, or not complying with, any provision of the ordinance.

On the application of the company an order *nisi* was granted for a mandamus to the council, commanding them to approve of the plan of subdivision submitted to them, or in the alternative to specify the alterations which they considered should be made in the same as to the provision which should be made for securing due ways of access to the rear as well as to the front of the buildings without specifying any other alteration or requirement, or to hear and determine the matter according to law. The grounds of the order *nisi* were, *inter alia*, that the council were not entitled to require ways of access to the rear of each allotment, and that the council determined the matter on the assumption that Ordinance No. 70 required access to the rear of allotments to be provided for in all cases by means of lanes at the rear of each allotment.

The order *nisi* came on for hearing before the Full Court, by whom it was discharged on the authority of *Ex parte Bolton* (1).

The company now applied to the High Court for special leave to appeal from that decision.

R. Windeyer, for the applicants. Where a plan of subdivision shows allotments with such frontages that, having regard to the class of houses that may reasonably be expected to be built on them, access to the rear of the buildings may be had from the fronts of the allotments, a municipal council has no authority under sec. 109 (xliii.) of the *Local Government Act* 1906 and Ordinance No. 70 to require any other means of access to be

H. C. OF A. 1913.
 PERPETUAL TRUSTEE CO. LTD.
 v.
 STOCKTON MUNICIPAL COUNCIL.

provided. The council has never taken up the position that the allotments are too narrow to provide access in that way. Having regard to the undertaking of the company, the council could prevent any building being erected on an allotment unless it were so built as to leave a way by which access might be had to the rear of the building. The council have not the power to compel a person proposing to subdivide his land to carve out of it lanes at the rear of the allotments when ways of access to the rears of the buildings can be secured as is proposed to be done in this case. A "way" of access is not limited to something in the nature of a street, but includes a means of access through the allotment itself. *Ex parte Bolton* (1) was wrongly decided. [He referred to *Waite v. Garston Local Board* (2).]

The judgment of the Court was delivered by

BARTON A.C.J. We do not think this application can be granted. We have given due consideration to the judgment of the Supreme Court in *Ex parte Bolton* (1), and not only do we think that there is no sufficient ground shown for doubting its correctness, but we think that it is clearly right. There can be no foundation for this attempt to have it overruled, and the application fails.

Application for special leave to appeal refused.

Solicitor, for the applicants, *Frank A. Davenport.*

B. L.

(1) 13 S.R. (N.S.W.), 379.

(2) L.R. 3 Q.B., 5.