

[HIGH COURT OF AUSTRALIA.]

CHANTER . . . . . APPELLANT ;  
DEFENDANT,  
  
AND  
  
THE MAYOR, COUNCILLORS AND BUR-  
GESSES OF THE TOWN OF WILLIAMS- } RESPONDENTS.  
TOWN . . . . . }  
COMPLAINANTS,

ON APPEAL FROM THE SUPREME COURT OF  
VICTORIA.

H. C. OF A. *Local Government—Streets on private land—Formation by Council—Recovery of cost*  
1919. *from adjoining owner—Sale of adjoining land by owner—No notice to Council—*  
*Liability of vendor and purchaser—Special leave to appeal—Local Government*  
MELBOURNE, *Act 1915 (Vict.) (No. 2686), secs. 526, 527, 528, 707.*

Oct. 30.

Knox C.J.,  
Barton, Isaacs,  
Gavan Duffy  
and Rich J.J.

Sec. 526 of the *Local Government Act 1915* (Vict.) authorizes the council of a municipality to form, &c., streets set out on private property and to recover the cost of the work from the owners of premises fronting, adjoining or abutting thereon. Sec. 527 requires a council in such a case to prepare specifications and plans, an estimate of the cost, and a scheme of distribution showing the amount chargeable to each person intended to be made liable. Sec. 528 provides that “(1) Only such of the owners of premises fronting adjoining or abutting on any street ” &c. “as by themselves or their tenants have the right to use or commonly do use the same shall be liable to pay any portion of the cost of any works executed by the council of any municipality under the powers contained in this Division with respect to such street ” &c. Sec. 707 provides that “Notwithstanding any sale or conveyance of any property in any municipal district the former owner thereof shall remain answerable to the municipality for all rates moneys and other liabilities which may accrue due by or be imposed upon the owner of such property as such before such former owner has given notice in writing of such sale . . . to the municipal clerk . . . But nothing in this section shall



exonerate from any liability any person becoming the owner of any property." H. C. OF A.

A, who was the owner of land abutting on, and having a right to use, a street set out on private property, sold the land to the defendant, but no notice of change of ownership was given to the council of the municipality in which the land was situated. After the sale of the land the council formed, &c., the street in accordance with secs. 526 and 527. On a complaint by the council seeking to recover from the defendant the sum due in respect of the land in question for the expense of forming, &c., the street, a Court of Petty Sessions made an order for the amount claimed, and an order *nisi* to review the decision was discharged by the Supreme Court.

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On an application by the defendant for special leave to appeal to the High Court, that Court, being under the impression that the decision sought to be appealed from was right, and there being nothing in the nature of merits established,

*Held*, that special leave to appeal should be refused.

Special leave to appeal from the decision of the Supreme Court of Victoria (Hood J.): *Mayor &c. of Williamstown v. Chanter*, (1919) V.L.R., 621; 41 A.L.T., 71, refused.

#### APPLICATION for special leave to appeal.

A complaint was heard before the Court of Petty Sessions, Williamstown, Victoria, whereby the Mayor, Councillors and Burgesses of the Town of Williamstown sought to recover from Oliver Chanter the sum of £34 12s. 6d. as being a sum due for the expense of forming, levelling, draining and macadamizing the roadway and channels in Speight Street in accordance with the *Local Government Act* 1915, Chanter being alleged to be the owner of two blocks of land abutting on Speight Street. It appeared at the hearing that prior to 31st July 1912 one Emily Thompson was the registered proprietor of the land in question with a right of way over Speight Street, and that by a transfer registered on that date the land was transferred to the defendant, who thereafter remained the registered proprietor. On 13th November 1917 the Council of the Town of Williamstown adopted a scheme for the construction of Speight Street, which was a street set out on private property. The scheme contained the name of Emily Thompson as the owner of the land in question, her name appearing in the rate-book as the owner and no notice of change of ownership ever having been given to the Council. As no address of Emily Thompson appeared in the rate-book or was known, notice was, on 28th December 1917, served on her by addressing it to



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her and posting it on the land, which was at that time vacant. The work was then carried out. On 8th June 1918 the defendant paid to the Rate Collector the rates due on the land for the then current year and also for those for the preceding six years, and his name was substituted in the rate-book for that of Emily Thompson as owner. Notice of demand for the sum now sought to be recovered was served on the defendant on 5th March 1919. The Magistrates made an order for the amount claimed.

An order *nisi* to review this decision was obtained by the defendant on the grounds (1) that Emily Thompson was not an owner within secs. 526, 527 and 528 of the *Local Government Act* 1915, and was improperly included in the Council's estimate of cost and scheme of distribution; (2) that the defendant was not included in the estimate of cost and scheme of distribution and was not served with notice in pursuance thereof; and (3) that under the provisions of the *Local Government Act* 1915 no liability was incurred by the defendant. On the return of the order *nisi* Hood J. discharged it on the ground that, it being conceded that the defendant would be liable if Emily Thompson was liable, sec. 707 of the *Local Government Act* 1915 had the effect of making her liable: *Mayor &c. of Williamstown v. Chanter* (1).

The defendant now applied for special leave to appeal from that decision.

*R. G. Menzies*, for the appellant. The appellant was not liable for the expense of carrying out the work unless Emily Thompson was liable. Emily Thompson was not properly included in the scheme. Secs. 526-528 of the *Local Government Act* 1915 only authorize a council to include in such a scheme persons who are owners having a right to use or commonly using the street (*Moorabbin Shire v. Abbott* (2)). Sec. 707 does not impose any liability upon her, for it only imposes upon a former owner liabilities which attach to an owner of property as such, that is, the ordinary liabilities of an owner. It does not impose upon him liability which attaches to an owner having a right to use or commonly using the particular street, who is the only person affected by secs. 526-528.

(1) (1919) V.L.R., 621; 41 A.L.T., 71.

(2) 17 C.L.R., 549.

[KNOX C.J. As at present advised, none of the members of the Court can see anything wrong in the decision of *Hood J.*]

It is an important question of law whether a former owner of land is hit by sec. 707 in respect of liabilities which are imposed only upon persons who have some right other than that of ownership.

[KNOX C.J. On an application for special leave I do not think it enough to show a technical point on which the appellant may succeed. The appellant must also establish something in the nature of merits. Here it does not appear that the appellant was not aware of what was going on. The impression of the Court is that the decision is right.]

The objection that no liability is imposed by the Act on the appellant is not a technical one.

PER CURIAM. Special leave to appeal will be refused.

*Special leave to appeal refused.*

Solicitors for the appellant, *Secomb & Woodfull.*

B. L.

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