

7, 1968

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IN THE PRIVY COUNCIL

No. 22 of 1968

O N A P P E A L

FROM THE SUPREME COURT OF NEW SOUTH WALES
COURT OF APPEAL

B E T W E E N

THE BROKEN HILL PROPRIETARY COMPANY LIMITED
and AUSTRALIAN IRON & STEEL PROPRIETARY
LIMITED Appellants

- and -

THE VALUER-GENERAL
Respondent

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
MAR 1968
25 RUSSIA SQUARE
LONDON, W.C.1.

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C A S E FOR THE RESPONDENT,
THE VALUER-GENERAL

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1. This is an appeal from the order of the Supreme Court of New South Wales, Court of Appeal (Wallace P., Walsh and Holmes JJ.A.) dated the 10th day of April, 1968. The decision of the Court of Appeal was given upon a Case Stated by the Land and Valuation Court (Hardie J.) of its own motion pursuant to Section 17 of the Land and Valuation Court Act, 1921.

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2. The effect of the said order of the Court of Appeal was that the Valuer General in making a valuation under Section 70 of the Valuation of Land Act for the purposes of Section 65 of that Act was not required to take into account the provisions of Section 5(2) of the Valuation of Land Act.

3. Section 5 of the Valuation of Land Act was in the following form:-

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"5(1) The improved value of land is the capital sum which the fee-simple of the land might be expected to realise if offered for sale on such reasonable terms and conditions as a bona-fide seller would require.

(2) In determining the improved value of any land being premises occupied for trade, business, or manufacturing purposes, such value shall not include the value of any plant, machines, tools, or other appliances which are not fixed to the premises or which are only so fixed that they may be removed from the premises without structural damage thereto." 10

4. Section 65 of the Valuation of Land Act provided as follows:-

"65. In every case where under the Stamp Duties Act, 1920, the duty payable is dependent upon the value of land or of any estate or interest therein, such duty shall be paid according to the valuation made under this Act as shown in a certificate of valuation." 20

5. Section 70 of the Valuation of Land Act provided as follows:-

"70.(1) The valuer-general shall, on application made by any person who has or had an estate or interest in the land at the date at which he requires the valuation made and on payment of the prescribed fee, make a fresh valuation to determine the value of any land at a date before or after the date of the making of the last valuation of such land under this Act. 30

This subsection shall apply only to applications made for valuations to be used for any of 40

the purposes mentioned in this Part.

(2) Any such new valuation shall be subject to objection in like manner as in the case of other valuations under this Act.

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(3) Where such new valuation is made as at a date prior to the date of the valuation entered on the roll it shall not be entered on the roll, but the valuer-general may furnish a certificate thereof."

THE FACTS AND CIRCUMSTANCES IN
THE CASE ARE

7. The Appellants are iron and steel masters carrying on business at various places in Australia and operating Steel works at Port Kemble in the State of New South Wales.

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8. The said Steel Works are situated upon land within the valuation District of the City of Greater Wollongong and part thereof consists of an area of approximately five hundred and three acres. This area of land is hereinafter referred to as "the said land."

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9. Prior to the 30th day of May 1960 the said land was owned by the first-named Appellant and by an Agreement dated the 30th day of May 1960 and made between the first-named Appellant and the second-named Appellant it was agreed that the first-named Appellant would transfer to the second-named Appellant the said land for an estate in fee simple.

10. At the date of the said Agreement there were upon the said land

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(a) Objects attached to the said land such as large buildings and objects attached to large buildings such as furnaces, stacks and flues. The said buildings and items such as those exemplified above were so

attached that they could not be removed without structural damage thereto. Such objects passed under the said Agreement being fixtures as between Vendor and Purchaser as forming part of the land.

- (b) Objects attached to such land or buildings but which were so attached that they might have been removed without structural damage thereto such as cranes attached by bolts and weighbridges. Such objects passed under the said Agreement being fixtures as aforesaid. 10
- (c) Objects which were not attached to the said land or buildings such as ladles having a capacity of up to 300 tons used in connection with furnace operations and which by reason, for example, of their weight and size passed under the said Agreement being also fixtures as aforesaid. 20
- (d) Objects which were not attached to the said land or buildings such as fork lift trucks and front and loaders and construction tools, which were not fixtures and did not pass under the said Agreement.

11. At all relevant times the said land was premises occupied for trade, business or manufacturing purposes. 30

12. After the Appellants had lodged the said Agreement for stamping pursuant to the provisions of the Stamp Duties Act, 1920, as amended the Commissioner of Stamp Duties issued to the Appellants a requisition for evidence of value to be supplied and the Appellants made to the valuer-general an application for a valuation which the Appellants stated in their application was required for Stamp Duty purposes. 40

13. On the 22nd February, 1967, the valuer-

general issued to the Appellants a Certificate of Valuation in the sum of One hundred million dollars (\$100,000,000) this valuation including the value of the objects falling within paragraph 10(a), (b) and (c).

10 14. On the 6th March, 1967 the Appellants delivered to the valuer-general a Notice of Objection to the said valuation. This objection, having been disallowed by the valuer-general in the due course of the procedure provided in the Valuation of Land Act, came on for hearing as an appeal under that Act before the Land and Valuation Court.

20 15. Upon the hearing of the Appeal before the Land and Valuation Court it was contended by the Appellants that although the valuer-general was correct in including in the valuation the value of the objects falling within paragraph 10(a) he should not, having regard to the provisions of Section 5(2) of the Valuation of Land Act, have included therein the value of any objects falling within the categories referred to in paragraph 10(b) and (c) above. The valuer-general contended that in making the said valuation and having regard to Section 65 and Section 70 of the Valuation of Land Act he was entitled to include in his valuation the value of all objects within the categories set out in paragraph 10(b) and (c) as well as those falling within category (a) of paragraph 10.

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16. The Land and Valuation Court of its own motion and without deciding the matters raised on the hearing of the appeal thereupon under Section 17 of the Land and Valuation Court Act stated a case for the opinion of the Court of Appeal upon the following question:-

40 "Whether in making the valuation referred to in this case the valuer-general was in error in including in that valuation the value of the objects falling within:

- (i) paragraph 4(b) of this case,
- (ii) paragraph 4(c) of this case."

17. Paragraph 4(b) and (c) of the Case Stated by the Land and Valuation Court are in identical terms with Paragraph 10(b) and (c) of this case.

IN THE COURT OF APPEAL

18. It was submitted by the Appellants that the only charter given to the valuer-general to make valuations under the Valuation of Land Act was that given by Section 14 of that Act.

19. That the valuations required to be made by the valuer-general under the provisions of Section 14 of the Valuation of Land Act invoked the provisions of the statutory formulae contained in Sections 5, 6 and 7 of that Act. 10

20. That the provisions of the statutory formulae together with these of Sections 14 and 16 provided the whole foundation upon which the Valuation of Land Act stood so that all valuations contemplated by that Act were in accordance with such formulae for the whole of the purposes of that Act. 20

21. That the opinions expressed by the Privy Council in Gollan v. Randwick Municipal Council 1961 A.C. 82 in so far as they were contrary to the Appellants' submissions were given merely by way of obiter dictum or if they were not they were clearly distinguishable in their application to the facts of the present case.

22. The Respondent submitted that the facts and circumstances of the case were governed in their entirety by the decision of the Privy Council in Gollan's Case and that the Act did not require that a valuation for all purposes of the Valuation of Land Act should be made on the basis set forth in Sections 5, 6, and 7 of that Act. 30

23. In making its order the Court of Appeal followed the decision of the Privy Council in Gollan's Case although each of their Honours expressed the view that were it not for that decision the Appellants' argument would have succeeded. 40

S U B M I S S I O N S

24. The Respondent submits that Section 5 of the Valuation of Land Act belongs to a set of provisions under that Act which requires a valuation to be made of an hypothetical estate or interest in land irrespective of the actual estate or interest in the land held by the actual owner.

10 25. The Respondent further submits that Sections 65 and 70 are other and distinct sections of the Valuation of Land Act which require the valuer-general to make a valuation of the actual estate or interest held in the land by the owner.

26. It is only when the value of land is to be found according to the provisions of the statutory formulae that the provisions of Section 5(2) are to be applied.

20 27. There is a duality of purpose of valuation which runs throughout the Valuation of Land Act being one which draws a distinction between valuations for rating purposes on the one hand and valuations for other purposes on the other hand.

28. The Respondent respectfully submits that the order of the Court of Appeal was correct and ought to be affirmed for the following (amongst other)

R E A S O N S

30 (1) BECAUSE a valuation made under Section 70 of the Valuation of Land Act for the purposes of Section 65 of that Act is not one which must be made in accordance with the provisions of Section 5 of the said Act.

40 (2) BECAUSE in making his valuation under Section 70 of the said Act the Respondent in considering which objects he should include therein was not governed by the provisions of Section 5(2) of the Valuation of Land Act.

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(3) BECAUSE the statutory formulae set out in the provisions of the Valuation of Land Act have no application to a valuation which the valuer-general is required to make under Section 70 of that Act for the purposes of Section 65 of the Valuation of Land Act.

(4) THAT the decision of the Privy Council in *Gollen v. Randwick Municipal Council* 1961 A.C. 82 is conclusive against the argument of the Appellants.

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FORBES OFFICER, Q.C.

A.C. SAUNDERS

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- and -

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C A S E FOR THE RESPONDENT

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Solicitors for the Respondent

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