

a clear introductory recital explaining what was intended to be done. But, so far as the recitals go, there is no hint that the parties were about to remodel what was treated as the statutory position. The nearest approach to such a hint is the recital of a power of sale in the trustees of Jenkins's will, but it is significant that the conveyance does not purport to be an exercise of the power. If the intention was to extinguish the possibility of reverter, this intention has to be gathered from the operative part of the deed. The words of the conveyance are usual words in New South Wales in an ordinary conveyance operating under sec. 32 of the *Conveyancing and Law of Property Act* 1898.

The words purporting to convey the land to "the Company, its successors and assigns for ever according to the true intent and meaning of the hereinbefore recited Act" are apparently taken from Schedule A to the *Lands Clauses Consolidation Act* 1845, where by virtue of sec. 81 of that Act they have a special statutory force. The words in this deed must be read together. They are not apt words to show an intention to extinguish the possibility of reverter. On the contrary, they are reasonably appropriate words if the conveyance was made for the purpose of confirming the parliamentary title which the parties believed to be vested in the Company, and in pursuance of what we are informed is a usual practice in New South Wales where lands are taken under a parliamentary title for the construction of railways.

These considerations are sufficient to justify the decision of *Street J.*, and to dispose of the appeal.

Appeal dismissed with costs.

Solicitor, for the appellant, *J. V. Tillett*, Crown Solicitor for New South Wales.

Solicitors, for the respondents, *Abbott, Tout & Balcombe*.

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CO. LTD.

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B. L.

[HIGH COURT OF AUSTRALIA.]

MORRISON AND OTHERS APPELLANTS;

AND

THE FEDERAL COMMISSIONER OF }
LAND TAX } RESPONDENT.

H. C. OF A. *Land Tax—Assessment—Unimproved value of land—“ Value of Improvements ”—*
1914. *What are Improvements—Land Tax Assessment Act 1910-1912 (No. 22 of 1910*
—*No. 37 of 1912), sec. 3.*

MELBOURNE,
March 13,
16.
Griffith C.J.,
Barton, Isaacs,
Powers and
Rich JJ.

The term “ value of improvements ” in relation to land, as defined in sec. 3 of the *Land Tax Assessment Act* 1910-1912, includes the present enhancement of the value of the land attributable to the operations of man upon the land effected since the land has ceased to be Crown land, the benefit of which continues at the date of valuation, and also includes the present enhancement of value attributable to those operations of nature which are only effectual by reason of what man has done.

The word “ improvements ” in the definition of the term “ unimproved value ” of land in that section includes such of the above-mentioned operations of man and nature as have contributed to bring about the present enhancement of the value of the land.

CASE stated for the opinion of the Court.

On an appeal by Christina Gordon Morrison, Annie Robertson and Margaret Gordon Buchanan from an assessment of them for the year ending 30th June 1911 by the Commissioner of Land Tax, in respect of land owned by them and known as Killingworth, *Isaacs J.* stated a case, the material part of which was as follows :—

“ 6. Killingworth, which now is, and has for over 40 years been, used as a sheep and cattle station, is situated in the North-Eastern

district of Victoria, and is bounded in part by the river Goulburn. It consists of about 12,700 acres, of which about 2,250 acres are river flats, and the remaining land, about 10,450 acres, is hill country.

"7. In a state of nature the land was more or less heavily timbered, principally with red gum, white gum and grey box, and on part of it were tussocks and thick undergrowth, in parts also the grass was rank and the soil damp and soft and, to a certain extent, unwholesome for sheep. That is the condition in which it would have been on 30th June or 1st July if the undermentioned improvements had not taken place.

"8. The best possible use of the land as a whole is that to which it is, and has for the period mentioned been, put; and the case has been conducted on both sides upon that basis.

"9. The lands of which the property consists were originally taken up in independent parcels by various settlers at different times, which for the purposes of this case I state as from 40 to 50 years ago, under Crown Lands Acts which required the selectors to make improvements.

"10. Various improvements were then made in accordance with the requirements of the law, and the selectors obtained their titles to the land. The improvements so made by them included fencing, ringing timber, burning it, and otherwise clearing the land.

"11. The land by various mesne transfers passed into the hands of subsequent holders, ultimately forming one united property, and was so held in 1876 by Kerr from whom Chrystal purchased in 1883, and the latter in 1898 sold to the appellants, who have since continued to own the lands. Kerr, Chrystal and the appellants used it for pastoral purposes and made many improvements.

"12. The improvements as existing on 30th June and 1st July 1910 included, *inter alia*, fences, residence, station buildings, tanks, wind mills and other constructions having a distinctive existence and positive character.

"13. The land has from time to time been in fact improved in the following manner :—(a) Ringing timber; (b) clearing timber that had fallen in consequence of ringing; (c) clearing timber

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that had fallen through natural decay or storms; (*d*) clearing timber that had been brought there by floods; (*e*) actively burning timber on the ground; (*f*) actively burning tussocks and other grass; (*g*) burning by bush fires which, so far as the owners of Killingworth were concerned, were accidental, and which burned off dead and useless timber, and burned tussocks and rank grass; (*h*) as a result of the above-mentioned operations the land was sweetened and became sounder sheep country; (*i*) the stocking of the land consolidated it to some extent, and otherwise improved its condition.

“14. On 30th June and 1st July 1910 the beneficial effect, or a portion of the beneficial effect, upon the land of each and every of the said improvements in fact still existed and the value of the land was thereby enhanced.

“15. The process of sweetening, sanitation and consolidation necessarily occupied, and must always occupy, some years to complete, the gradual operation of the sun and the air upon the altered condition of the land being an essential factor.

“16. If on the dates mentioned the land had still been left in a natural condition, by which I mean unaltered by the hand of man, it would not have attained its then present condition or value for some years after all the improvements hereinbefore referred to took place, other than the improvements effected by the action of the sun and air and by the actual running of stock upon the land.

“17. The respondent contended that in law the improvements in fact mentioned in par. 13 hereof are not ‘improvements’ within the meaning of the Act, and particularly within the meaning of that word as used in the definition of the term ‘unimproved value’ in sec. 3. These contentions the appellants contested. The respondent relied, among other things, upon the definition of ‘value of improvements’ in sec. 3 of the Act as affecting in his favour the construction to be placed on the definition of ‘unimproved value’ in that section and in sec. 10.

“18. The appellants contended (*a*) that the definition of ‘value of improvements’ did not assist the respondent; and, if it did, they further contended (*b*) that the definition of ‘value of improvements’ in sec. 3 of the Act is not to be regarded in construing the definition of ‘unimproved value’ in the same section or in sec. 10,

on the ground that on the true construction of the Act the definition of 'value of improvements' should be limited to sec. 48, and (c) that if on the true construction of the Act there should not be that limitation, then sec. 48 is invalid as beyond the competency of the Commonwealth Parliament to enact, with the consequence of excluding the definition of 'value of improvements' in sec. 3 from consideration, or of rendering the whole Act invalid. The respondent contested these contentions.

"19. I therefore state this case for the opinion of the High Court upon all the questions of law arising as aforesaid on the hearing of the appeal as set forth in pars. 17 and 18 hereof."

Mitchell K.C. (with him *Starke* and *S. R. Lewis*), for the appellants. "Improvements" include everything which, if the land were in a state of nature, would be necessary to be done in order to bring the land into its present improved condition. They are not limited to existing visible improvements such as fences and buildings, but include the effect of what man has done. Where there is no evidence of the market value of the land in a state of nature, the Court must inquire what matters a hypothetical purchaser of the land in a state of nature would have to consider. He would have to consider not only the outlay required to bring it into its present improved state, but also the interest on his outlay during the time required for that process, and the fact that for a great part of that time the return from the land would be small. He would also have to make an allowance for possible vicissitudes. In that way the value of the improvements would be arrived at. All the matters mentioned in the case are, in that view, improvements. In the case of an accidental bush fire, if its beneficial effect were contributed to by what man has done before or afterwards, to that extent its result is an improvement. The amendment of the definition of "improved value" in sec. 3 made by sec. 2 of the *Land Tax Assessment Act* 1912, does not affect the present case, but the amendment is only for the purposes of sec. 48 of the Act. The case of *Commissioner of Land Tax v. Nathan* (1) does not decide anything to the contrary. It was there decided merely that the proved suitability

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(1) 16 C.L.R., 654.

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McArthur K.C. and *Wanliss*, for the respondent. What this Court said in *Commissioner of Land Tax v. Nathan* (1) seems to indicate that the improvements to be taken into consideration are those which are visible on the land, and do not include the present effect of improvements which have disappeared. The legislature might intend that course to be taken because of the difficulty in ascertaining the value of the effect of past improvements. This view is supported by the words "improvements thereon," not "improvements thereto" or "thereof."

Mitchell K.C., in reply.

[RICH J. referred to *Ex parte Thomas* (2).]

GRIFFITH C.J. The question to be decided in this case, although one of considerable importance to many people in this Commonwealth, does not seem to present any very serious difficulties. The question is as to the interpretation of the provisions of the *Land Tax Assessment Act* relating to the unimproved value of land which is the subject matter of taxation under that Act. The unimproved value of land is the subject matter of taxation in several, if not all, of the States of the Commonwealth, and the definition of unimproved value varies in different States, but we are only concerned in this case with the definition in the Commonwealth Act, which differs materially from that in some, at least, of the State Acts. "Improved value" is defined to mean "the capital sum which the fee-simple of the land might be expected to realize if offered for sale on such reasonable terms and conditions as a *bonâ fide* seller would require." There is no practical difficulty in understanding that definition. Then "unimproved value" is defined as meaning "the capital sum which the fee-simple of the land might be expected to realize if offered for sale on such reasonable terms and conditions as a *bonâ fide* seller would require"—so far repeating the words of the definition of "improved value,"—"assuming that the

(1) 16 C.L.R., 654, at p. 662.

(2) 2 N.S.W.L.R., 39.

improvements (if any) thereon or appertaining thereto and made or acquired by the owner or his predecessor in title had not been made." Then, by way of supplement, the term "value of improvements" is defined to mean "the added value which the improvements give to the land at the date of valuation irrespective of the cost of the improvements." It seems plain enough that that means that the value of improvements is the present enhancement of the value of the land attributable to the operations of man upon the land the benefit of which still continues, including also in some cases improvements not actually effected upon the land itself, to which qualification it is not necessary to refer for present purposes. What operations of man are improvements? When I say "operations of man," I think the term should be limited to what is done by the owner for the time being, that is, after the land has ceased to be Crown land. Any operation of man on land which has the effect of enhancing its value comes within the definition of "improvement." When one considers the nature of land in Australia, and how lately it has passed from its primitive condition, it is obvious that all sorts of operations may tend to enhance its value. Take, for instance, a jungle so dense that it is almost impenetrable by four-footed animals, even the smallest. Compare it with the same land after the lapse of—say—10 years, when it presents the appearance of a meadow clothed with grass and carrying dairy herds. What is the value of the improvements in that case? Surely, the difference between the value of the land as jungle and its value in the condition in which it is when found. That difference clearly comes within the definition of "value of improvements," "the added value which the improvements give to the land at the date of valuation irrespective of the cost of the improvements." In such a case as I have mentioned—and it applies with variation to a great part of Australia—the improvement is effected not merely by the immediate acts of man in cutting down trees, ring-barking, destroying tussocks of grass, and so on, but by all the operations of nature which could not take place without the prior operations of man. It is the combined effect of what man has done and of the operations of nature which are only effectual by reason of what man has done. And it is provided that the cost of doing it

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is not to be the test. The only questions, therefore, are: What would be the value of the land if it had continued in a state of nature, and what is its value now? It follows that the value of the improvements is a "constant," which is to be deducted from the improved value, which is a "variable."

I am, of course, speaking of operations the full effect of which has been obtained, as, for instance, in the case of land which was originally covered with stones and thereby unfit for agriculture, and which by their removal has become fit for it. That operation has been completed and the benefit remains, and so far as the benefit continues the value of the improvement is a "constant." While the improvements or the consequent operations of nature are still going on, the value of the improvements may, of course, increase from year to year, just as, in the case of some improvements, it may be exhausted. It is in that sense that I use the term "a constant."

Applying these principles, the first question we are asked is whether certain operations are improvements. They are: ringing timber; clearing timber that had fallen in consequence of ringing; clearing timber that had fallen through natural decay or storms; clearing timber that had been brought there by floods; actively burning timber on the ground; actively burning tussocks and other grass; burning by bush fires which, so far as the owners of Killingworth were concerned, were accidental, and which burned off dead and useless timber, and burned tussocks and rank grass; as a result of which operations the land was sweetened and became sounder sheep country; the stocking of the land consolidated it to some extent, and otherwise improved it. Anyone familiar with Australia knows that all these operations do improve the value of land, and make it saleable at a higher price. It is also obvious that every one of these operations is only a means to an end. They enable the forces of nature to operate by bringing sunshine and rain to the soil. They sweeten the land and produce as important changes as the draining of a swamp. The only one of the enumerated operations as to which there may be some doubt is the burning off by accidental bush fires. With respect to this it may be that the benefit is divisible. Suppose that £1,000 has been added to the value of the land by an