[HIGH COURT OF AUSTRALIA.]

CAMPBELL . . . . . APPELLANT;

AND

THE DEPUTY FEDERAL COMMISSIONER OF LAND TAX FOR NEW SOUTH WALES . . . . . RESPONDENT.

ON APPEAL FROM A DISTRICT COURT OF NEW SOUTH WALES.

H. C. OF A. 1915.

SYDNEY, *April* 12, 13.

Griffith C.J., Isaacs and Rich JJ.

Land Tax—Assessment—Unimproved value of land—Value of improvements—Land Tax Assessment Act 1910-1912 (*No.* 22 *of* 1910—*No.* 37 *of* 1912), *sec.* 3.

On a land tax assessment appeal the presiding Judge found the unimproved value of the land by comparison with the prices obtained for similar land in the neighbourhood in a state of nature, and he also found the improved value, and by deducting the unimproved from the improved value of the land arrived at the value of the improvements.

Held, that in so doing he did not apply any erroneous principle.

Decision of a District Court of New South Wales affirmed.

APPEAL from a District Court of New South Wales.

Robert Campbell had sent in land tax returns in respect of land in New South Wales for 1910 and 1911 in accordance with the provisions of the *Land Tax Assessment Act* 1910-1912, and had been served with assessment notices. Subsequently notices of amended assessment under sec. 21 of the Act were served upon him, and, being dissatisfied with such assessment, Campbell appealed to the District Court. The appeal was heard by Mr. District Court Judge *Hamilton*, at Lismore, and judgment was given for the respondent with costs.

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From this decision the appellant now appealed to the High Court.

The facts of the case are sufficiently set out in the judgment of the learned Chief Justice hereunder.

Wise K.C. and *Sheridan*, for the appellant.

Knox K.C. and *Alroy Cohen*, for the respondent.

During argument the following cases were referred to:—*Commissioner of Land Tax* v. *Nathan* (1); *Morrison* v. *Federal Commissioner of Land Tax* (2).

GRIFFITH C.J. This is an appeal from the decision of a District Court Judge upon an appeal from an assessment under the *Land Tax Act* 1910. The assessment to which the present appeal is limited relates to two parcels of land situated in the Richmond District of New South Wales, and originally covered with brush, or, as it is called in other parts of Australia, "scrub," that is, dense jungle, which requires considerable expenditure before it can be put to profitable use.

The appeal to this Court has been brought on the ground that the learned Judge decided the case on wrong principles of law, or, as it is said, misdirected himself as to the law. In considering such a question the Court should apply the same principles as when dealing with alleged misdirection by a Judge to a jury; that is to say, the judgment must be considered as a whole, and not by regarding isolated parts of it only.

Assessment for land tax is on the unimproved value of land. As defined by the Act "unimproved value" means "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, assuming that the improvements (if any) thereon or appertaining thereto and made or acquired by the owner or his predecessor in title had not been made." The term "value of improvements" is defined as meaning "the added value which the improvements give to the land at the

(1) 16 C.L.R., 654. (2) 17 C.L.R., 498.

date of valuation irrespective of the cost of the improvements." These two values together, of course, make up the improved value which represents the price which an actual purchaser in fee simple would give for the land. Two values, therefore, come into consideration in determining the unimproved value—namely, the value of the improvements and the improved value. Sometimes it is very difficult to ascertain with any certainty the "value of improvements" as defined; it may, indeed, be so difficult as to be merely a matter of conjecture. So with regard to unimproved value, it is sometimes, as in the case of recent settlement, quite easy to ascertain what was the prairie value; sometimes, as when the land has been in occupation for thirty or forty years, it is almost impossible to discover it.

It was argued that the learned Judge was bound not to take as a starting point the unimproved value of the land, whatever it was, or however certain it was, but the improved value, and should then ascertain the value of improvements to be deducted from that value, and that for this purpose he should add to the actual cost of the improvements some further sum representing interest on expenditure, delay in obtaining a return from the land, and other similar matters.

A witness called for the respondent said that in his opinion the improved value of the land at the times as of which the valuations were made was in one case, from which in principle the other is not distinguishable, £28 5s. per acre. He estimated the cost of the improvements effected by clearing, burning off, and other operations necessary to fit the land for grazing, at £5 per acre, and said that he would add £3 per acre for other contingencies, making in all £8. Deducting this amount he estimated the unimproved value of the land at £20. The learned Judge found the improved value of the land to be £25 per acre, and the value of the improvements to be £5 only, leaving the unimproved value at £20. It is contended that from this coincidence it must be inferred that he acted in part on the evidence of the witness, but altogether rejected from consideration the matters in respect of which the witness allowed £3 per acre. If he did so, he was wrong. The proper rule was laid

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down by this Court in *Morrison's Case* (1). But on examination of the whole of the judgment I do not think that he made any such mistake. He pointed out that in this case it was quite easy to ascertain what was the actual unimproved value of the land at the relevant time apart altogether from the cost of the improvements made upon it. He arrived at that conclusion from the fact that, a few years before, land in the immediate neighbourhood which, in a state of nature, was almost exactly similar in quality, had been sold at prices of about £20 per acre, and proof was given to his satisfaction that the value had not diminished in the interval. He had, therefore, one certain element of the two which are usually uncertain. If the land was worth £20 in a state of nature, and its improved value at the date for assessment was no more than £25, he was at liberty to find that the value added to it by the improvements only amounted to £5. The fact that £5 was equal to the £8, as estimated by the witness, less £3 allowed by him in respect of certain matters, was a mere coincidence. The learned Judge pointed out in another part of his judgment that the present value of the improvements was not as great as it had been at one time since the land had in some parts reverted towards a state of nature. If that were so, part of the value originally added by the improvements no longer existed, but had disappeared or become exhausted. The "value of improvements" is, of course, to be ascertained at the time as of which the assessment is made. We do not know to what extent that deterioration had gone, but the learned Judge was of opinion that the cost of restoring the land to a condition as good as when the original improvements were completed would be quite as great as any additional value that would be added by such expenditure. It followed that, the improved value being £25 and the unimproved value £20, the value of the improvements could not be more than £5. I am quite unable to see that, in arriving at this conclusion, the learned Judge applied any erroneous principle, or failed to take any relevant matter into consideration. He took into consideration the value added to the land by the expenditure upon it in clearing, burning off, ploughing and other operations, and deducted from that value so much

(1) 17 C.L.R., 498.

of it as he thought had since been exhausted. The value of improvements may, of course, be greater or less than the cost of making them. A man may well spend £10 on improvements and produce an added value of £5 only, or *vice versâ*.

The appeal therefore fails.

ISAACS J. I agree.

RICH J. I agree. I think a great many difficulties would disappear from these cases if the Legislature were to amend the definition of "unimproved value" by putting it on a practical instead of a hypothetical basis.

Appeal dismissed.

Solicitors, for the appellant, *McIntosh & Best*, Lismore, by *M. A. H. Fitzhardinge.*

Solicitor, for the respondent, *Gordon H. Castle*, Crown Solicitor for the Commonwealth.

D. G. D.