[HIGH COURT OF AUSTRALIA.]

FISHER . . . . . APPELLANT;

AND

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

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SYDNEY, *Feb.* 18, 19, 22, 23, 24; *March* 26, 27, 28; *May* 7.

Rich J.

Aug. 19, 20, 23, 24; *Sept.* 3.

Isaacs, Gavan Duffy and Powers JJ.

Land Tax—Liability to taxation—Crown lease with option of purchase—Conditional lease—Assessment of unimproved value—Value of improvements—Appeal from assessment—Costs—Payment by successful appellant—Land Tax Assessment Act 1910-1911 (*No.* 22 *of* 1910—*No.* 12 *of* 1911), *secs.* 26, 27, 28, 29, 46—*Land Tax Assessment Act* 1914 (*No.* 29 *of* 1914), *sec.* 3—*Crown Lands Consolidation Act* 1913 (*N.S.W.*) (*No.* 7 *of* 1913), *secs.* 57, 307.

A lessee under the laws of a State of Crown land with a right of purchase under a lease granted before the commencement of the *Land Tax Assessment Act* 1910 is liable to taxation in respect of such land under sec. 28 (2) of the *Land Tax Assessment Act* 1910-1911.

Held, therefore, that the holder of a conditional lease granted before the commencement of the *Land Tax Assessment Act* 1910 under the law of New South Wales, being a Crown lessee with a right of purchase, is taxable in respect thereof under sec. 28 (2) of the *Land Tax Assessment Act* 1910-1911.

The dicta in *Osborne* v. *The Commonwealth*, 12 C.L.R., 321, at pp. 341, 347 and 369, to the effect that the term "a lease with a right of purchase" in sec. 29 refers to the term "the holder of land under . . . . a right of purchase from the Crown" in sec. 26, dissented from.

On an appeal from an assessment of the unimproved value of a pastoral property on the ground that the value assessed was excessive, the primary Judge, applying the principles laid down in *Morrison* v. *Federal Commissioner of Land Tax*, 17 C.L.R., 498, reduced the assessment from £1 3s. to £1 2s. 6d. per acre, the appellant having sought to have it reduced to 14s. 6d. per acre.

Held, (1) that the evidence justified the finding of the primary Judge, and (2) that he had jurisdiction, in the exercise of his discretion, to order the appellant to pay the costs of the appeal.

By *Isaacs* and *Gavan Duffy* JJ. (*Powers* J. dissenting).—In ascertaining the unimproved value of a pastoral property which has been improved and worked for some years, the only practical method in the majority of instances is to begin by finding the fair carrying capacity of the land, taking into consideration all existing improvements.

Decision of *Rich* J. affirmed.

APPEAL from *Rich* J.

John William Fisher appealed to the High Court from an assessment for land tax as of 30th June of the years 1910, 1911, 1912 and 1913, in respect of a station property known as "Merrimba," near Coonamble, in New South Wales. The appeal was heard by *Rich* J.

The material facts are stated in the judgments hereunder.

Campbell K.C. and *Pitt*, for the appellant.

Knox K.C. and *Pike*, for the respondent, the Deputy Federal Commissioner of Land Tax, New South Wales.

Cur. adv. vult.

May 7.

RICH J. read the following judgment:—In this case the appellant disputes the assessment for the years 1910-11, 1911-12, 1912-1913, 1913-14, made on a station property known as "Merrimba," which is thirty-five miles west of Coonamble.

The area of the station is 25,457 acres, and consists of conditional purchases and conditional leases. The taxpayer in his return stated the unimproved value at £1 per acre, while the Deputy Commissioner assessed it at £1 3s. From these figures the statutory deduction of £5,000 has to be made.

In this case a point of law was argued before me that the appellant was not liable to assessment or taxation in respect of the conditional leases. In my opinion a conditional lease is a lease with a right of purchase (see sec. 25 of the *Crown Lands Act of* 1889), and the holder thereof is liable to assessment and taxation under sec. 28 (2) of the *Land Tax Assessment Act* 1910-1911.

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The other point of law, which questions the validity of the *Land Tax Assessment Act*, was not argued before me, and I understood that it was not pressed.

I have adopted the same principles of valuation in this case as in *Keogh* v. *Deputy Federal Commissioner of Land Tax (N.S.W.)* (1).

For the reasons there stated I do not propose to examine the evidence in this case.

I have in every instance of disputed fact adopted the testimony of the witnesses called for the Commissioner.

I find the unimproved value to be £1 2s. 6d. per acre. I have valued the conditional purchases and conditional leases on the same basis.

As the respondent has substantially succeeded, the appellant must pay the costs.

The assessment will be reduced in accordance with this valuation.

From that decision Fisher now appealed to the Full Court.

Campbell K.C. (with him *Pitt*), for the appellant. The holder of a conditional lease is not a holder of land under a right of purchase upon conditions, within the meaning of sec. 26 of the *Land Tax Assessment Act* 1910-1911. He has a right to convert his conditional lease into an additional conditional purchase (see secs. 57 and 307 of the *Crown Lands Consolidation Act* 1913), and only when that right has been exercised can he be said to be the holder of land under a right of purchase. Sec. 26 refers to a holder by virtue of a purchase and a holder by virtue of an absolute right to purchase, but not a holder by virtue of a conditional right to purchase. Even if the holder of a conditional lease is a lessee with a right of purchase, he is not taxable under sec. 26 unless all the conditions other than payment of purchase money have been complied with. The holder of a conditional lease is not taxable under sec. 27 or sec. 28. Those sections only refer to cases in which the lessor is liable to taxation, and therefore do not apply to leases of Crown lands. That is borne out by

(1) 20 C.L.R., 258.

sec. 29, the object of which was to make it clear that leases of Crown lands were not intended to be included in sec. 27 or sec. 28. The exception from the provisions of sec. 29 of a perpetual lease without revaluation and a lease with a right of purchase does not indicate that those leases would otherwise be within sec. 27 or sec. 28. A perpetual lease without revaluation is practically a fee simple, and the lessee would be taxable as an owner. See *Chauntler* v. *Robinson* (1).

[ISAACS J. referred to *Abhiram Goswani* v. *Shyama Charan Nandi* (2).]

A lease with a right of purchase is the same thing as is referred to in sec. 26, in the expression the holder of land under a right of purchase: *Osborne* v. *The Commonwealth* (3). As to the question of costs, although under sec. 46 they are in the discretion of the Court, that discretion must be based on judicial grounds. The learned Judge had no materials before him upon which he could compel the appellant, who succeeded in getting the assessment reduced, to pay the costs of the Commissioner. The appellant could not have got the benefit of any reduction unless he had appealed, and the fact that the evidence of witnesses called by him supported a much greater reduction is not a ground for making him pay the costs: *Civil Service Co-operative Society Ltd.* v. *General Steam Navigation Co.* (4).

[ISAACS J. referred to *Dicks* v. *Yates* (5); *Metropolitan Asylum District* v. *Hill* (6).]

Shand K.C. and *Pike*, for the respondent, were not called upon.

Cur. adv. vult.

Sept. 3.

The judgment of ISAACS and GAVAN DUFFY JJ. was read by

ISAACS J. The validity of the Land Tax Assessment Acts is not challenged on this appeal: that is taken to be settled by the recent case of *Attorney-General for Queensland* v. *Attorney-General for the Commonwealth* (7).

(1) 4 Ex., 163, at p. 170.
(2) 36 Ind. App., 148, at p. 167.
(3) 12 C.L.R., 321, at pp. 341, 347, 369.
(4) (1903) 2 K.B., 756.
(5) 18 Ch. D., 76.
(6) 5 App. Cas., 582.
(7) 20 C.L.R., 148.

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But, as a matter of construction, it is contended for the appellant that Crown lessees with a right of purchase are not taxable in respect of their estates, unless and until all conditions—except actual payment of purchase money—are performed by them requisite to constitute them absolute purchasers of the land in fee simple.

It is said, in the first place, that such is already the declared interpretation of the Act by this Court in *Osborne's Case* (1). Some observations of the Chief Justice (2), *Barton* J. (3) and *Isaacs* J. (4) have been referred to. But the question then before the Court, so far as relevant to this case, was whether sec. 114 of the Constitution had been violated, and so long as the Crown's interest in the land was not taxed, there was no such violation. It was quite immaterial whether the interest held by the subject in the land and taxed by the Act was a fee simple or any lesser estate. In either case there is no contravention of sec. 114 of the Constitution. This is established by *Attorney-General for Queensland* v. *Attorney-General for the Commonwealth* (5).

Whatever dicta point in the direction taken by the argument of Mr. *Campbell* as to the construction of sec. 29, they were dicta only, and were not essential to the decision.

As this is the first time the question has come up squarely for decision, we have to read the enactment for ourselves and say what it really means. And when the various sections are read together, the matter does not seem to be in any doubt.

The *Land Tax Assessment Act* 1910-1911, by sec. 3, defines "owner." Sub-pars. (*a*) and (*b*) repeat well-known statutory formulæ which treat as owners those who actually either legally or equitably are owners at common law of a freehold estate in possession or have the rights of such an owner. It then additionally includes "every person who by virtue of this Act is deemed to be the owner." The land tax is by sec. 11 payable by "the owner of land upon the taxable value of all the land owned by him" and not exempt under the Act.

By secs. 13 and 14, read together, the State's interest in land

(1) 12 C.L.R., 321.
(2) 12 C.L.R., 321, at p. 341.
(3) 12 C.L.R., 321, at pp. 347-348.
(4) 12 C.L.R., 321, at p. 369.
(5) 20 C.L.R., 148.

is exempt, but the estates or interests of other persons in the land are not exempt. Secs. 25 and 29 are portions of a group headed "Liability," and are to be read together. Sec. 25 makes the owner of a freehold estate less than the fee simple liable for the whole value of the fee—that is, if his estate is in possession; and to the exclusion of the reversioner or remainderman. Sec. 26 treats the holder of State land under an actual purchase or a right of purchase as full owner of the land provided no condition remains to be fulfilled by him except payment of the purchase money, but not otherwise. It may have been thought that, in view of the definition of owner extending to equitable ownership, such a provision was necessary in order to exclude the application of the doctrine of *Shaw* v. *Foster* (1). But the point to observe is that sec. 26 deals with the full ownership of the land, and not of some leasehold estate carved out of it; and it matters not whether he obtained his purchase, or right to purchase, before or after the commencement of the Act.

Then secs. 27 and 28 deal with leasehold estates. The first provides that whenever in future, that is, after the commencement of the Act, a person becomes the owner of a leasehold estate in land, he is to be deemed—though not to the exclusion of the real owner—to be the owner of the fee simple. That is, of course, so far as responsibility to the Government is concerned. Provision is made by sec. 27 to adjust his rights with the landlord. And the third sub-section, carefully providing that where the landlord is exempt the lessee is to have the same rights as if he had been lessee before the Act, in other words, to be liable only for his own estate in the land, apparently overlooked the fact that the Crown was not an owner in fee simple, and this has been rectified by sec. 2 of Act No. 29 of 1914. Notice, however, that the third sub-section begins "Notwithstanding anything in this section," which excludes sec. 26. Sec. 28 (1) deals with landlords, but as the Crown has already been exempted the language does not include the Crown. Sub-sec. 2 deals with lessees who became such before the commencement of the Act. These are to be deemed to be, not, as in sec. 26,

(1) L.R. 5 H.L., 321.

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the owners of the land, but owners of land of an unimproved value equal to the unimproved value of his estate.

Now, it is plain, both from the comprehensive and unqualified terms used in secs. 27 and 28, that all lessees, whether from the Crown or otherwise, would be included. This is made certain by secs. 13 and 14 already referred to. Consequently, if any specific Crown lessees were to be excluded from the operation of secs. 27 and 28, it was necessary for Parliament to say so. In sec. 29 Parliament did say so. It is said in 1910: "Notwithstanding anything in the last two preceding sections, the owner of a leasehold estate under the laws of a State relating to the alienation or occupation of Crown lands or relating to mining (not being a perpetual lease without revaluation or a lease with a right of purchase) shall not be liable to assessment or taxation in respect of the estate."

There are several expressions in that section which it is necessary to observe closely. (1) The phrase "notwithstanding anything in the last two preceding sections." The word "notwithstanding" implies that but for what is to follow, the contrary would be the law. The word "two" expressly confines the operation of sec. 29 to secs. 27 and 28, and therefore sec. 29 has no relation to sec. 26. (2) The expression "perpetual lease without revaluation." In the first place, a perpetual lease is in its nature inherently distinct from a fee simple. That distinction is recognized by the Privy Council in *Abhiram Goswani* v. *Shyama Charan Nandi* (1) in adopting the following words of *Jenkins* J. in a Calcutta case:—"'Because at the present day,' says the learned Judge, 'a conveyance in fee simple leaves nothing in the grantor, it does not follow that a lease in perpetuity here has any such result . . . . The law of this country does undoubtedly allow of a lease in perpetuity . . . A man who, being owner of land, grants a lease in perpetuity carves a subordinate interest out of his own, and does not annihilate his own interest. This result is to be inferred by the use of the word lease, which implies an interest still remaining in the lessor.'" The force of this distinction is not lost merely because the Crown is the landlord. As in the case of a subject,

(1) 36 Ind. App., 148, at p. 167.

something less than the full estate of freehold is parted with, and in the Land Tax Acts technical words are, unless controlled by the context, to receive their technical meaning. In the next place, the Crown Lands Acts of Australia provide for leases in perpetuity which are subject to revaluation—as, for instance, in New South Wales, Act No. 7 of 1913, secs. 122 and 123 (formerly No. 6 of 1912, secs. 7 and 9) and secs. 143 and 144 of the Act of 1913 (formerly secs. 23 and 24 of the Act of 1912). In Queensland, see the *Land Act* 1910, secs. 104, 125, 126; in Victoria, the *Land Act* 1901 (No. 1749), secs. 63 and 64, amended in immaterial details by later legislation. (3) The expression "lease with a right of purchase." Observe the omission of holder under a purchase, that is, where the right has been exercised. The expression now dealt with refers to that period, where the lessee has only the "right" to purchase, and not after the right is merged in the new character of actual purchaser, all conditions and obligations or rent and otherwise having ceased. (4) The word "estate," the last word of the section, refers back to "leasehold estate" in the earlier part, and is opposed to the notion that the assessment there mentioned is the assessment of the whole fee simple in sec. 26.

This extended analysis of sec. 29, undertaken in view of the weight of the dicta relied on, shows, in our opinion, very distinctly, that the Legislature intended the general words of sec. 28 (2) to include leases from the Crown; that by sec. 29 it excluded from the operation of sec. 28 (2) all but two classes of Crown leases, namely, perpetual leases without revaluation and a lease with a right of purchase, these being left to the operation of sec. 28 (2). After the latter had ceased to be really a lease by passing to the stage when nothing remained to be done but pay the purchase money, when the lessee ceased to be properly called a lessee and in the language of sec. 26 becomes simply a "holder" of the land, then further liability arises. Such is the conclusion to be derived from the original Act of 1910 itself. But that is much strengthened by later legislation, Act No. 29 of 1914, sec. 3, because of the evident interpretation which the Legislature have attached to their words, unless a most capricious and unreasonable result be aimed at. By that section the ambit

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of liability in respect of Crown lessees has been greatly extended. The earlier policy was to include only such lessees as had either the practical or the potential status of freeholders, but at the same time to abstain from taxing them as full freeholders, until in the case of the potential freeholder his interest matured into actuality. But now lessees with no right even potentially to the freehold are made liable according to the value of their estates. It would be a strange interpretation to place on sec. 29 as last amended, to say that a perpetual lease on which a substantial rent is reserved, and since the Act of 1914 even though revaluation is possible, should be assessable as a fee simple; and that, too, although it is not mentioned at all in sec. 26. It was argued that a perpetual lessee without revaluation was at common law the owner of the land. Besides being technically incorrect, the argument is, from a substantial standpoint, wholly inapplicable to a perpetual lessee who is liable to revaluation, and such, as already observed, is liable to taxation. But, if so, how is he made liable, not being within sec. 26?

Again, it would be extremely strange and wholly anomalous to construe the section as meaning that a lease with a right of purchase should not be taxable at all until the lessee chose to reach the point where he had nothing to do but pay the purchase money, while Crown lessees, including perpetual lessees with a much less valuable interest, were taxable.

The appellant's contention therefore involves so many difficulties of interpretation that it seems to us quite unmaintainable.

The appellant, being a Crown lessee with a right of purchase under a lease granted before the commencement of the Act, comes, in our opinion, under sec. 28 (2), and is taxable thereunder.

Then we have to deal with the facts. A few words are necessary as to the attitude of the Court on appeals of this nature. No doubt the appellant has the right to ask this Court to exercise its functions as a Court of appeal, under sec. 46 (4), and determine for itself so far as it can the truth of the issue. But there are features in a case of this nature which somewhat differentiate it from the ordinary class of suits.

In *Spencer* v. *The Commonwealth* (1), a case of land valuation, there were quoted some words of the Privy Council in *Secretary of State for Foreign Affairs* v. *Charlesworth, Pilling & Co.* (2) which apply very appositely to the present case, and they are repeated :—" It is quite true that in all valuations, judicial or other, there must be room for inferences and inclinations of opinion which, being more or less conjectural, are difficult to reduce to exact reasoning or to explain to others. Everyone who has gone through the process is aware of this lack of demonstrative proof in his own mind, and knows that every expert witness called before him has had his own set of conjectures, of more or less weight according to his experience and personal sagacity. In such an inquiry as the present, relating to subjects abounding with uncertainties and on which there is little experience, there is more than ordinary room for such guesswork ; and it would be very unfair to require an exact exposition of reasons for the conclusions arrived at." It was added, in *Spencer's Case* (3): " Unless some error of principle is established, or the evidence on one side so far preponderates over that on the other by reason of its character, force or quality, as to distinctly outweigh the disadvantages of not seeing and hearing the witnesses, it is almost impossible to disturb a finding of the nature now under consideration." It may be added that on such an appeal it is always a matter of great assistance to the Court when the party attacking the conclusion of the primary tribunal formulates his objections at the outset as clearly as the circumstances permit, and before launching generally into the evidence indicates with reasonable precision the particulars to which attention is to be invited.

Apart from the construction of the Act already dealt with, the appellant's contentions are in effect resolvable into four, which may thus be stated: (1) that the learned primary Judge did not give proper weight to the evidence of Mr. Speight, the expert called for the appellant; (2) that the learned Judge erred in appraising the clearing improvements at simply the cost plus interest in outlay during their progressive effectiveness;

(1) 5 C.L.R., 418, at pp. 442-443. (2) (1901) A.C., 373, at p. 391.
(3) 5 C.L.R., 418, at p. 443.

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(3) objections to admission and reception of evidence; and (4) that the learned Judge had no discretion in the circumstances to make the appellant pay the costs.

(1) As to the first point, it does not appear how far the learned Judge adopted, or did not adopt, Mr. Speight's method of arriving at the unimproved value, but it is clear that he did not accept and act on all his testimony. Mr. Speight, though having a general knowledge of the property for many years, made no close inspection of it until 1913, and when he did so in the appellant's company he was obliged to accept, and did accept, the appellant's estimate of the extent of the separate areas cleared in various parts, and the varied cost of clearing those areas. Mr. Speight does not appear to have tested the estimates of cost in any way, but simply accepted them. The appellant, without saying a word against his honesty of purpose, was manifestly making a very rough guess. He was stating for each area cleared the average during very many years, by various employees in various ways, and without books or records of any kind to help him or to enable anyone to check his estimate. And, though in his own evidence the appellant confirms those estimates, he does so in the most general and haphazard way.

Obviously no tribunal can be bound to accept unreservedly such evidence as final, and it cannot be imputed as error to discount it severely. So much depends, also, on the personality and demeanour of a witness in a matter of that kind that an appellate Court, merely reading the statement, is in a most disadvantageous position to criticize the conclusions come to by the primary tribunal; and on the whole this point fails.

(2) The second point stands thus. When ascertaining the unimproved value of a station property such as this, which has been for years an improved and working concern, the practical, and really the only practical, way, at least in the majority of instances, is to find, first of all, from its present condition and its history, its fair carrying capacity, of course taking into consideration among its characteristics all existing improvements. That is what any practical man desirous of buying it would do. Having got the carrying capacity as a basis—so many sheep or cattle to so many acres—the prospective buyer has fixed the intrinsic

character of the station itself as a money-making machine. But before he can say what price he is willing to give for it, the extrinsic circumstances have to be examined and appraised—as the situation of the property relatively to markets, all taxation, the state of trade, current prices, future probabilities, and so on. So the prospective buyer arrives at a price for the improved property as it stands. Then this has to be reduced to unimproved value. All you have to do is to make an allowance, by way of deduction, for the absence of the internal characteristics of improvements. Imagine they are non-existent in fact, but take care to displace nothing else. How much of the total improved value is to be attributed to the improvements which have been taken into account in fixing that value? As to some of them it is simple to calculate. The present value of a new hut or mile of fencing is unattended with any difficulty. The cost of material and labour in erecting a hut or fencing of that character and stability is enough to allow. If it is not new, then allow such proportionate part of the cost as represents the proportion which the life and usefulness of the existing structure bear to the life and usefulness of a new one. But in the case of clearing, or consolidation of soil, it is different. Time and opportunity are not so easily calculable, but they have a pecuniary value. No doubt the improvement of clearing on a tract of sour country may be very different if recent, or if of long standing, and a practical man has to appraise and would appraise the difference in arriving at his price.

Morrison's Case (1) decided (*inter alia*) that where existing improvements owe anything to the operations of nature extending over a period of time, any deductions from the improved value made for the purpose of arriving at the unimproved value must take the effect of those operations into account, including the time necessary for effecting them.

The decision in *Morrison's Case* is the common starting point in this case, and nothing said at the Bar or in this judgment attempts to depart from that decision. The difficulty here is in the method of working out in figures the principles there laid down as applied to given improvements as to which *Morrison's*

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

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Case (1) is silent, and so the trouble begins here, where that case ends.

The practical man appraising the difference between the improved property and the hypothetically unimproved property would be justified in taking into account the difference in profit-earning capacity between the hypothetical recent clearing and the actual long-standing clearing, and in estimating the gradual advance to the point reached in the actual improved condition. And, having done this, he would reduce the improved price by what he considered a fair business allowance for the net inferiority of the money-making machine that he would start with at the beginning, and that would only gradually attain the position of the superior one for which he is willing to give the improved-value price. We say "net inferiority," because increased capacity may require some additional outlay also. No formula can fit all cases: it is a business question in each case, and dependent in different cases on variable circumstances. The appellant here is entitled to say such an allowance ought to be made.

But has it not been made? The fact that interest has been allowed upon actual outlay may have been an allowance too favourable in the circumstances for the appellant.

From what the learned Judge has expressly said, we do not doubt he made the proper appraisements. He refers to his judgment in *Keogh's Case* (2), where he said:—"I have taken into account the benefit which arises from improvements—the result of the work of man and the operations of nature—amongst others, ringing, picking up and burning off, and the improvement of the pasturage by grassing and other methods, and the consolidation of the land from the judicious running of stock," &c. In the face of that distinct statement, it is impossible to show that this important element has been forgotten.

(3) The objections to the admission and reception of evidence were dealt with during the argument. They were not all strongly pressed, they had no material bearing on the result, and were not sustainable.

(4) As to the costs. The learned Judge reduced the assessment by 6d. per acre, that is, from £1 3s. to £1 2s. 6d. The

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

(2) 20 C.L.R., 258, at p. 259.

appellant claimed to reduce it to 14s. 6d. His Honor said that the appellant substantially failed. On the whole, we think there was jurisdiction in the circumstances to exercise the discretion.

The appeal will be dismissed with costs.

POWERS J. read the following judgment:—I agree with the judgment just delivered by my brother *Isaacs*, for himself and my brother *Gavan Duffy*, and with the reasons given for it, except (1) the statement that the method suggested in the judgment "is really the only practical way, at least in the majority of instances, of ascertaining the unimproved value of a station property," and (2) the method laid down for ascertaining the added value caused by ring-barking and clearing on a sheep station.

The principles upon which the learned primary Judge should have arrived at the unimproved value in this case are, in my opinion, set out in the judgment of the Full Court of this Court, which consisted of five Judges, in *Morrison's Case* (1). The way he arrives at it must depend on the evidence submitted by practical men about the particular property in question—*Morrison's Case*, as stated, only gives the starting point in each case.

From what the learned Judge has expressly said in the judgment in question, he appears to have arrived at the unimproved value of the land on the principles laid down in *Morrison's Case* allowing, if anything, more than need have been allowed for added value, on the evidence submitted to him.

The learned Judge said in *Keogh's Case* (2):—"I have taken into account the benefit which arises from improvements—the result of the work of man and the operations of nature—amongst others, ringing, picking up and burning off, and the improvement of the pasturage by grassing and other methods, and the consolidation of the land from the judicious running of stock. Some of these improvements are progressive: as to ringing, for example, none can state the exact period which must elapse before the full benefit of the work will accrue. The period will vary according to the nature of the land and of the timber, the locality of the land, and whether it is capable of being used as wheat or

(1) 17 C.L.R., 498. (2) 20 C.L.R., 258, at p. 259.

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grazing land, and whether the improvement is maintained, *e.g.*, by suckering. Each case presents different facts, and it is impossible to lay down a rule of universal application."

I regret that I feel bound to differ from my learned brothers on the two points mentioned in the judgment.

After practical experience extending over ten years, I am satisfied that it is impossible to lay down a rule for universal application throughout this great Commonwealth for ascertaining the unimproved value of a sheep station, or any other description of property, or for ascertaining in every case the added value *at the date of the assessment* of clearing or ring-barking. Each case must be determined on the special evidence of practical men, capable of assisting the Court, submitted by the parties to enable the Court to find "the added value which the improvements give to" the unimproved value of "the land at the date of valuation irrespective of the cost of the improvements."

This Court cannot, in my opinion, safely go beyond laying down the principles it has laid down in *Spencer's Case* (1) and in *Morrison's Case* (2), and dealing specially, on appeal, with any objections raised in any particular case to the assessment of the Commissioner, or the valuation of the Crown in resumptions.

It appears to me impossible to correctly state the only practical way, in a majority of cases, to ascertain the improved value of a station property in every part of the Commonwealth. For instance, no one method of valuing will be suitable for sheep stations in Tasmania with its steady rainfall; in the dry areas of Australia, where the rainfall is from five to ten inches a year; in artesian areas and non-artesian areas; on the Darling Downs (Queensland), where the rainfall is from twenty to thirty inches a year, and the land in its natural state is able to carry the ordinary number of sheep to the acre; and in the northern parts of Australia, where the rainfall exceeds, in some parts, sixty inches a year.

I admit that *Morrison's Case* only deals with principles, and is only a starting point in each case; but I do not think it safe for this Court to do more than lay down principles, leaving the primary Judges to apply them to the evidence submitted in the cases in which they have to decide the unimproved value.

(1) 5 C.L.R., 418. (2) 17 C.L.R., 498.

It may be possible in many districts to ascertain the unimproved value from comparable land sales adjoining, or in the vicinity of, the land in question. The carrying capacity of one sheep to the acre near a railway may be the best way to test the improved value; in Central Australia it would not be so, for want of transport.

For the reasons I have mentioned, while I think it right that, in this and in the other cases of appeals against valuations in which judgments are to be delivered in this Court to-day, this Court should deal with the special objections raised in the respective cases, I cannot see my way to concur in the view that the method suggested by my learned brothers is the only practical method, in a majority of cases, of ascertaining the value of sheep stations in all parts of the Commonwealth.

Further, I cannot agree that the method suggested for ascertaining the added value caused by ring-barking and clearing on a sheep station should be fixed by this Court for the guidance of Courts in the future whenever the added value for ring-barking is to be ascertained. There are many ways practical men can suggest of arriving at the added value.

It is the added value at the date of assessment that must be ascertained. Profits caused by such an improvement (or any other improvement) are dependent on management, or mismanagement, understocking for want of means, over-stocking for quick returns, wasteful expenditure, and similar matters.

Ring-barking may be neglected after profits have been received, and the added value at the time of the assessment may be small compared with that of previous years.

The primary Judge should ascertain the added value in each case on the evidence of practical men capable of assisting him to arrive at that value.

I agree that the appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitor, for the appellant, *J. D. Y. Button*, Coonamble, by *L. G. B. Cadden.*

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

B. L.