[HIGH COURT OF AUSTRALIA.]

THE DEPUTY FEDERAL COMMISSIONER OF TAXATION . . . . . } APPELLANT;
RESPONDENT.

AND

GOLD ESTATES OF AUSTRALIA (1903) LIMITED . . . . . } RESPONDENT.
APPELLANT.

ON APPEAL FROM THE SUPREME COURT OF WESTERN AUSTRALIA.

Federal Land Tax—Assessment—Unimproved value of land—Allotments—Subdivision—Method of valuing land—Land Tax Assessment Act 1910-1930 (*No.* 22 *of* 1910—*No.* 8 *of* 1930), *secs.* 10, 11, 18, 44M.

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PERTH, *Sept.* 7, 10, 12, 13, 19.

Rich, Dixon and McTiernan JJ.

Land owned by a company was assessed for land tax for the year beginning 1st July 1930 at a value of £28,478. Against this assessment the company appealed to the Supreme Court of Western Australia (*Draper* J.). At the hearing, the company's assessment for the previous year, which was lower than that in question, was put in evidence, and one of the land valuers called as witnesses gave evidence that since the date of the previous year's assessment land values had declined between ten and twenty per cent. On this evidence *Draper* J. based his decision, which was that the assessable value of the land should be the value assessed for the previous year less fifteen per cent.

Held, that this method of determining the value of the land was unsound, that the correct method was to consider all the evidence on the assumption that there was a person willing to buy the land at a fair price, and a vendor willing to sell on reasonable terms and conditions, and that, applying this method, the assessable value of the land, excluding parcels not the subject of objection and appeal, was £23,958.

Decision of the Supreme Court of Western Australia (*Draper* J.) reversed.

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APPEAL from the Supreme Court of Western Australia.

The appellant, the Deputy Federal Commissioner of Taxation, made an assessment for land tax under the *Land Tax Assessment Act* 1910-1930 of land owned by the respondent, Gold Estates of Australia (1903) Ltd. The assessment was made for the financial year beginning 1st July 1930, and the value of the company's land was assessed at £28,478. On 19th May 1931 the company lodged a notice of objection against this assessment, on the ground that the land had been valued above its fair unimproved value. On 21st March 1932 the Deputy Commissioner disallowed the objection. The company requested the Deputy Commissioner to treat its objection as an appeal, and to forward it to the Supreme Court of Western Australia. At the hearing of the case evidence was given to the effect that the taxable value of the lands as assessed on the 30th June 1930 showed a decided increase as compared with that of the previous year, that land values on 30th June 1930 were substantially less than on 30th June 1929, and that land values between the two dates had fallen by from ten to twenty per cent. This evidence was accepted by *Draper* J., who allowed the appeal, and declared that the total unimproved value of the land was £22,620, this amount being arrived at by deducting fifteen per cent from the value of the land as assessed on the 30th June 1929.

From this decision the Deputy Commissioner now appealed to the High Court.

Downing K.C. (with him *Gibson*), for the appellant. The learned Judge failed to apply the principles which should govern the determination of land values for land tax purposes (sec. 3, *Land Tax Assessment Act* 1910-1930). The relevant date was 30th June 1930, and the inquiry should be directed to ascertain what a person desiring to purchase the land on that date would have had to pay to a bona fide vendor willing to sell for a fair price on reasonable terms and conditions (*Spencer* v. *The Commonwealth* (1); *Federal Commissioner of Land Tax* v. *Duncan* (2); *Toohey's Ltd.* v. *The Valuer General* (3)). The values were based on assessments made

(1) (1907) 5 C.L.R. 418.
(2) (1915) 19 C.L.R. 551.
(3) (1925) A.C. 439.

by the appellant in respect of the year ending 30th June 1929. It was wrongly assumed that these assessments represented the true value, and the fact that certain of them were made in respect of a triennial period, under sec. 20 of the Act, was entirely overlooked. A number of these assessments, therefore, represented values which had been fixed as at 30th June 1927, which could not have been increased until 30th June 1930, but in any event the proper method was not to deduct a percentage all round, but to inquire as to the value of each parcel at the relevant date. The evidence of the departmental valuers was unfairly discredited by the learned Judge; in some cases their values had been arrived at by comparison with the prices obtained for similar unimproved land in the neighbourhood. This method had been approved of in *Campbell* v. *Deputy Federal Commissioner of Land Tax (N.S.W.)* (1). Under all the circumstances the Court should of itself endeavour to ascertain the values from the material available, and not send the matter back for further hearing.

Keall and *Cleland*, for the respondent. The judgment can stand on the ample evidence adduced to support it. The learned Judge assessed the value of the land at a lump sum, as the assessment had done, and there is no objection to its being so dealt with. There was a considerable drop in the value of land from December 1929 to 30th June 1930. Sales of land had dropped off considerably, and, according to expert evidence, had fallen to practically nil. There was no objection to the values as assessed in 1929, and nothing was heard of these objections until now. The triennial valuation under sec. 20 was never mentioned at the hearing in the Supreme Court, and there was no evidence to show that the values of 1927 were the values of 1929. There was no opportunity given to deal with that question. [Counsel referred to *Federal Commissioner of Taxation* v. *Clarke* (2).] The learned Judge did not accept the evidence of the witnesses for the Crown. The burden is on the respondent to show that the assessment is wrong. The valuation which may be taken is that of a hypothetical vendor willing but not anxious to sell, and a hypothetical purchaser not unwilling to buy (*Federal*

(1) (1915) 20 C.L.R. 49.

(2) (1927) 40 C.L.R. 246, at p. 262.

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Commissioner of Land Tax v. *Duncan* (1)). So that what we should do is to consider that we are putting up 30 blocks of land by auction on 30th June 1930, and the sale has to be an unreserved sale, the blocks having to be sold on that day. That is the basis on which valuation should be made for land tax purposes. [Counsel also referred to *Spencer* v. *The Commonwealth* (2).]

Cur. adv. vult.

Sept. 19.

THE COURT delivered the following written judgment :—

RICH, DIXON AND MCTIERNAN JJ. This is an appeal by the Federal Commissioner of Taxation from an order allowing the respondent company's appeal under sec. 44M of the *Land Tax Assessment Act* 1910-1930 from its assessment to land tax for the financial year beginning on 1st July 1930, based upon the value of the land owned by it on 30th June 1930. The total value at which the respondent company was assessed in respect of the parcels of land made the subject of the objection and appeal was £28,478. The order of *Draper* J. reduced this sum to £22,620, a reduction of £5,858. The respondent company, by particulars given under its objection, claimed that the parcels in question should be valued at sums which together amounted to £19,502. There are thirty parcels. Each parcel comprises the unsold lots of subdivisions made by the respondent company at various times over a long period. In some parcels the number of lots remaining in the company's hands is small, and in others very large. The parcels, which were all subdivided for building suburban homes or shops, are situated at varying distances from the city of Perth and in different localities. Within one parcel the lots are of very unequal worth, and the widest variation exists between the values per acre of the parcels. There are no buildings on any of the land, and such improvements as have been made in the process of subdivision have been ignored as unimportant by the parties, who, by common consent, have treated the land as unimproved. At the hearing of the company's appeal before *Draper* J. evidence was called on its behalf of two land valuers who had prepared tables of the values they assigned to the various

(1) (1915) 19 C.L.R. 551.

(2) (1907) 5 C.L.R. 418.

parcels. One of them, Mr. Learmonth, dealt with the parcels lot by lot for the most part, sometimes setting down prices for the lots separately, sometimes noting the nature or the quality of the blocks and giving lump sum values for sections or for the whole parcel. The manager of the company, Mr. Hamer, also gave evidence, but as to the history of some of the subdivisions, as to sales of land and as to general conditions, rather than as to valuation.

The Commissioner called two valuers from his Department. Mr. Steffanoni and Mr. Lovegrove, and two independent valuers, Mr. Campbell and Mr. Trotman. Elaborate plans of each parcel of land were made in the Commissioner's office. They showed the character of the streets, where water, gas and electric supply existed, what blocks had been sold and, if since 1927, in what years and at what prices, and they gave some particulars of the features of the land. These plans were put in evidence. Mr. Steffanoni produced carefully compiled tables showing detailed valuations which he had given to the lots of each parcel based upon the prices he considered they would fetch if sold separately, noting the features of advantage or disadvantage, and describing the situation, character and amenities of the land in the parcel. The total values he reduced to a value for the whole parcel, regarding it for sale as an entirety, that is, wholesale, by making what he regarded as the proper discount. In the parcels which he valued Mr. Lovegrove followed a similar course. The tables prepared by the witnesses were put in evidence.

A detailed and well considered case was thus made by each party. That presented by the Commissioner was supported by material upon which much care and thought had obviously been expended.

Among the documents put in was a list of the values assigned to the various lands of the company in its assessment for the previous year based on the value of land held as at 30th June 1929. The company had not objected to this assessment, which was lower than that in question, notwithstanding the decline which in the meantime had set in. Mr. Campbell said that the fall in values between the two dates was between ten and twenty per cent. *Draper* J. based his judgment upon these two matters. He said "I think that the values assessed by the respondent," the Deputy Commissioner, "on 30th June 1929 should be taken as correct and that for the

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purpose of this appeal a substantial deduction from the assessed value for 30th June 1929 should be made. I assess this deduction at 15 per cent. The assessable value for the year ending 30th June 1930 will be the value assessed for 30th June 1929 by the respondent less 15 per cent."

We think this method of arriving at a value was unsatisfactory. It depended entirely upon the correctness of the Commissioner's assessment for the previous year, and the soundness of the view that land values had fallen uniformly by fifteen per cent. There had been no examination by the witnesses of the correctness of that assessment, and its reliability was presumed only from the fact that it was made and not appealed from.

It is apparent that a valuation made in the ordinary course of routine administration is unlikely to have received the same consideration and care as had been bestowed by the witnesses called at the hearing upon the estimates to which they deposed. Those estimates had been made after thorough inspections and a full examination of all the comparable sales that could be discovered. All the materials upon which they formed their opinions were laid before the Court, and the reasoning upon which they proceeded was explained. We think that to substitute for this material an unexplained office assessment for a previous year and an estimated percentage reduction therefrom was to resort to a quite untrustworthy guide which was almost certain to prove fallacious. In fact, the result produced in the case of five parcels was below the value specified by the taxpayer in his particulars under the objection. In the case of two parcels there was no value for 30th June 1929, because they were not owned by the company at that date. In the case of ten parcels the valuation had stood since 1926 in the company's assessments, and under sec. 20 of the *Land Tax Assessment Act* 1910-1930 it was not open to the Commissioner in 1929 to alter the value of some of these parcels.

His Honor, in the course of his judgment, said that he preferred the independent witnesses Mr. Learmonth and Mr. Hodd on the one side, and Mr. Campbell on the other, to the officers of the department, who, in his Honor's opinion, would find it difficult to be strictly impartial. But the learned Judge did not, so far as we

can see, act upon any oral evidence except that relating to the fall in values between the two dates of valuation. Moreover, the evidence of Mr. Campbell did not support his Honor's conclusion, and, in any case, the evidence of the officers was of such a nature that it could not be dismissed from consideration upon the general ground that they were unlikely to find impartiality easy.

In adopting, as an established basis of value, the estimates expressed by the Commissioner's office in the prior assessment, his Honor necessarily excluded his own personal consideration of the application of the very important principles of valuation prescribed by the statute and the decisions upon it. In the circumstances obtaining in June 1930 these principles had a peculiar significance. The time was early in the financial depression, and it appears probable that owners of such land had not become ready to sell it at an entirely new level of prices in spite of the rapidly diminishing market.

The principle expressed in the definition of "unimproved value," as interpreted by the decisions of this Court, requires the hypothesis that the land is available for sale by a seller who is really willing to sell it, and to do so upon reasonable terms and conditions. The question then to be asked is not whether at a given moment he could actually find some definite buyer at a particular price. The existence of a person desirous of buying the land at a fair price must be assumed. "The all important fact . . . is the opinion regarding the fair price of the land, which a hypothetical prudent purchaser would entertain" (per *Isaacs* J., as he then was, *Spencer* v. *The Commonwealth* (1)). The supposition must be made that a sale is not forced, and that the owner is willing to sell on reasonable terms, and negotiates with a person willing to buy, that the one is not so anxious to sell and the other to buy, as to disregard the effect of any business consideration, and that each is equipped with knowledge of the existing relevant circumstances. But knowledge does not include any uncommon gift of foresight. The question then is what would such a reasonably prudent buyer be prepared to offer to induce such a bona fide seller to part with the land (cf. *Commissioner of Land Tax* v. *Nathan* (2)). It is evident that in times of changing and uncertain conditions the

(1) (1907) 5 C.L.R., at p. 440. (2) (1913) 16 C.L.R. 654, at pp. 660, 661.

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correct use of the criterion may produce an estimate materially different from the application of a method of valuation which looks rather to the availability of buyers than the price which a reasonable seller would demand and the hypothetical buyer would give. In the settled conditions of June 1929, the adoption of the correct method or standard of valuing may have had much less importance.

For these reasons we find ourselves unable to accept the valuation upon which the order of *Draper* J. rests. Even if the same figure as it expresses might be reached independently upon proper principles of assessment, the basis upon which that order proceeds is, in our opinion, unsound.

At the hearing of the appeal we announced that we had reached this conclusion. The parties were at one in requesting us to endeavour upon the materials before us to make a valuation for ourselves. We recognize the difficulty of doing so without the advantage of hearing and seeing the witnesses, a difficulty which is not lessened by the absence of any detailed treatment of the values set out in their tables during their examination and cross-examination at the trial. It would, however, be very unfortunate if we were compelled to order a new trial, and we therefore proceed to the assessment of the value of the various parcels.

The parties have agreed that each parcel should be treated as one subject of assessment. Something may be said for the view that lots and series of lots contained in some of the parcels are the subject of separate and independent enjoyment, and should be valued as separate parcels. But we adhere to the classification of parcels adopted by the parties. Pursuing this course, it is necessary to value each parcel upon the assumption that the seller, willing but not anxious to sell, offers all of it either as a whole or in separate lots as may appear reasonable. (See *Federal Commissioner of Land Tax* v. *Duncan* (1).)

It must also be noticed that, although sales of comparable lands usually supply the most satisfactory guide (cf. *Jowett's Case* (2), per *Rich* J.; *Campbell's Case* (3); *McDonald's Case* (4)), yet in the present case much caution in their use is necessary, because so

(1) (1915) 19 C.L.R., at pp. 555, 556, 558.
(2) (1926) 38 C.L.R. 325, at p. 329.
(3) (1915) 20 C.L.R., at p. 52.
(4) (1915) 20 C.L.R. 231.

many of them took place before the financial depression affected values. There is proved, however, quite a number of sales of land within the parcels which took place after the commencement of the fall in land values, and some even after the full effect of the depression had been felt. With these observations we proceed to give our conclusions as to the value of the various parcels.

[The judgment proceeded to a detailed consideration of the circumstances bearing upon the value of each of the parcels which were the subject of objection and appeal, and, after setting out the matters which had been taken into account in respect of each of those parcels, determined the values as follows:—(1) £4,100; (2) £1,925; (3) £295; (4) £280; (5) and (8) £1,255; (6) £360; (7) £1,700; (11) £50; (12) £110; (13) £760; (16) £70; (18) £75; (19) £4,452; (22) £1,250; (23) £800; (24) £400; (25) £50; (26) £750; (27) £1,650; (28) £3,000; (29) £80; (30) £546. Total, £23,958.]

Appeal allowed with costs. Order of Supreme Court discharged. In lieu thereof order that the appeal to the Supreme Court from the assessment be allowed with costs and that it be declared that the total unimproved value of parcels numbered by the Commissioner 1, 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, 16, 18, 19, 22, 23, 24, 25, 26, 27, 28, 29, *and* 30 *was on* 30*th June* 1930 £23,958 *and that the assessment be remitted to the Commissioner to give effect to the aforesaid declaration. Order that the costs payable to the Commissioner by the respondent company and the costs payable by the Commissioner to the respondent company be set off and the residue be paid to the party entitled under this order.*

Solicitor for the appellant, *A. A. Wolff*, Assistant Crown Solicitor for Western Australia.

Solicitors for the respondent, *Villeneuve Smith & Keall.*