[HIGH COURT OF AUSTRALIA.]

OWEN . . . . . Appellant, } Applicant-Respondent;

AND

WOOLWORTHS PROPERTIES LIMITED . Respondent, } Respondent-Applicant.

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1956.

SYDNEY, *Aug.* 30, 31;

MELBOURNE, *Oct.* 19.

Dixon C.J., Williams, Fullagar, Kitto and Taylor JJ.

Landlord and Tenant—Fair Rent—Commercial premises—Determination—Appeal—Stated case—Point of law—Not taken before magistrate—Necessity to raise point clearly in case stated—Capital value of premises—Land and buildings—Federal land tax—Imposition and abolition—Landlord and Tenant (Amendment) Act 1948-1954 (*N.S.W.*) (*No.* 25 *of* 1948—*No.* 46 *of* 1954), *ss.* 20 (2) (3) (4)*, 21 (1).

Section 21 (1) of the *Landlord and Tenant (Amendment) Act* 1948-1954 provides:—" Subject to section twenty of this Act, in determining the fair rent a Fair Rents Board shall have regard to—

*Section 20 of the *Landlord and Tenant (Amendment) Act* 1948-1954 provides:—

" 20. (1) Where an application has been made for the determination of the fair rent of any prescribed premises other than shared accommodation, the Fair Rents Board may, after making such enquiries and obtaining such reports (if any) as it considers necessary, and after considering any representations made by any persons whose rights may be affected by the determination, determine the fair rent of the prescribed premises.

(2) Subject to sub-sections three and four of this section, the determination shall not increase the fair rent of any dwelling house by such an amount that the annual rental thereof would be increased by more than six per centum of the sum which the Fair Rents Board is satisfied was necessarily expended by the lessor since the prescribed date or since the date of the last determination of the fair rent of the dwelling house, whichever is the later, upon the improvement or structural alteration of the dwelling house (but not including decoration, maintenance or repairs).

(3) Where the Fair Rents Board is of opinion, having regard to the matters specified in section twenty-one of this Act, that the rent as at the prescribed date is insufficient, the determination may increase the fair rent (in addition to any other amount by which it is increased under this section) by an amount not exceeding the amount which, in the opinion of the Fair Rents Board, is the amount of the insufficiency.

(4) The determination may increase the fair rent if the Fair Rents Board is satisfied that, by reason of an error or omission, an injustice has been occasioned by the last determination."

(a) the capital value of the premises at the prescribed date, or, if the premises were not in existence on that date, on the date on which the erection of the premises was completed;

(b) the annual rates and insurance premiums paid in respect of the premises ".

Held, (1) that " the capital value of the premises " in par. (a) means the value of the land and of the buildings erected thereon; (2) although par. (b) does not mention land tax it is a matter which may be taken into account by a fair rents board in reaching its determination of a fair rent of premises, as s. 21 (1) is not an exhaustive statement of outgoings to be considered by such a board in making a determination.

Sub-sections (3) and (4) of s. 20 of the *Landlord and Tenant (Amendment) Act* 1948-1954 being no more than qualifications of s. 20 (2) of such Act which relates to the assessment of the fair rent of dwelling houses are themselves only applicable to dwelling houses.

A tenant in fair rent proceedings brought by her landlord did not contest the view that sub-ss. (3) and (4) of s. 20 of the *Landlord and Tenant (Amendment) Act* 1948-1954 applied to the case although the premises in question were not a dwelling house and the view that such sub-section did so apply was accepted by both parties to the proceedings as common ground. The tenant being dissatisfied with the determination of the board appealed by way of stated case to the Full Court of the Supreme Court and the case stated did not expressly advert to nor was it intended to cover as material the question of the applicability of the sub-sections to the proceedings. On the hearing of the appeal the Full Court perceived the inapplicability of the sub-sections and despite the landlord's objections permitted the tenant to rely thereon as a ground for setting aside the determination and ordered that the matter be remitted to the board for reconsideration.

Held, that the point not having been taken by the magistrate and there being no real ground for thinking that on reconsideration a different result would be reached the Full Court erred in entertaining the point.

A party appealing by way of case stated on a point of law should ensure that the point which he seeks to raise, whether or not it was taken before the magistrate, is stated in such a way as to make it clear exactly what the point is.

Wheeler v. *Cahill* (1943) 61 W.N. (N.S.W.) 1, at p. 2, *per Jordan* C.J., approved.

Decision of the Supreme Court of New South Wales (Full Court): *Owen* v. *Woolworths Properties Ltd.* (1957) S.R. (N.S.W.) 245; 73 W.N. 659, reversed.

APPEAL from the Supreme Court of New South Wales.

Woolworths Properties Limited (hereinafter called the landlord) brought an application before the Fair Rents Board at Sydney for the determination of the fair rent of premises let to one Nancy Owen (hereinafter called the tenant) and being part of a building at the corner of Market Street and Pitt Street Sydney known as

H. C. OF A. 1956.

OWEN v. WOOLWORTHS PROPERTIES LTD.

Woolworths Building. The tenant held the premises under a lease made in 1940 for a term of ten years, such lease containing an option of renewal for a further term of eight years at an increased rental and a further option of renewal for yet a further term of five years at a rental in excess of that payable in the event of the exercise of the first option. At the end of the original term of ten years the first option was duly exercised.

Upon the hearing of the said application the board determined the rent and increased it to a figure higher than that for which the lease had provided during the term of eight years above mentioned.

The tenant being dissatisfied with the determination so made applied to the stipendiary magistrate constituting the board to state and sign a case pursuant to s. 41 (2) of the *Landlord and Tenant (Amendment) Act* 1948-1954. The points of law raised by such case so far as material to this report appear in the judgment of the Court hereunder and need not be here set out.

The case stated came on for hearing before the Full Court of the Supreme Court of New South Wales (*Owen* J., *Roper* C.J. in Eq. and *Maguire* J.), which determined the specific points of law raised against the tenant. However, in view of the fact that the board had proceeded upon the erroneous view that s. 20 (3) of the *Landlord and Tenant (Amendment) Act* 1948-1954 applied to the case the Full Court ordered that the case be remitted to the board for reconsideration: *Owen* v. *Woolworths Properties Ltd.* (1) From this decision both parties applied to the High Court for special leave to appeal. It was agreed between the parties on the hearing of the applications that if the High Court should be of opinion that special leave ought to be granted them the hearing of the applications should be treated as the hearing of the appeals.

The grounds on which the tenant sought special leave to appeal were:—

(i) that the court was in error in holding that the lessee was not entitled to have the relief of the lessor from land tax taken into consideration by the fair rents board.

(ii) that the court was in error in holding that the word "premises" where firstly occurring in the *Landlord and Tenant (Amendment) Act* 1948-1954, s. 21 (1) (a) had a meaning different from that of the word "premises" where secondly and thirdly occurring in the said par. (a).

(iii) that the court was in error in declining to hold that the fair rents board was bound to have regard to the agreement between the parties to the lease as to periodic increases of rent.

(1) (1957) S.R. (N.S.W.) 245; 73 W.N. 659.

(iv) that the court was in error in expressing the opinion for the guidance of the fair rents board that the matter mentioned in ground (iii) hereof should, if taken into consideration, be accorded little weight.

Whilst those on which the landlord sought such leave were :—

(i) that the court was in error in considering whether s. 20 (3) of the *Landlord and Tenant (Amendment) Act* 1948-1954 applied to premises not being a dwelling house.

(ii) that the court was in error in answering the question in the stated case in the affirmative.

(iii) that the court was in error in remitting the matter to the fair rents board.

Further facts and the arguments of counsel are set out in the judgment of the Court hereunder.

Dr. *F. Louat* Q.C. and *O. M. L. Davies*, for the applicant tenant.

Sir *Garfield Barwick* Q.C. and *E. G. Whitlam*, for the applicant landlord.

Cur. adv. vult.

Oct. 19.

THE COURT delivered the following written judgment :—

These are cross applications for leave to appeal which we agreed to treat as the hearing of the substantive appeals, assuming that leave were granted. The order from which both parties seek leave to appeal is an interlocutory order made by the Supreme Court of New South Wales upon an appeal by way of case stated under s. 41 (2) of the *Landlord and Tenant (Amendment) Act* 1948-1954 (N.S.W.). The appeal was that of a tenant from a determination of the fair rent of the leased premises by a fair rents board consisting of a stipendiary magistrate : *Owen* v. *Woolworths Properties Ltd.* (1).

The premises form part of a building at the corner of Market Street and Pitt Street, Sydney, called Woolworths Building. The tenant who trades as the American Bag Store occupies for the purpose of her business a shop, a kiosk and areas on the mezzanine and on the first floor. These premises are held by the tenant as lessee of Woolworths Properties Ltd. under a lease granted on 22nd August 1940 for a term of about ten years ending on 29th May 1950. The lease contained two successive options of renewal each at an increased rent. The first option, which has been exercised, was for a term of eight years and the second option for a further term of five years. As the original term of ten years had not run

(1) (1957) S.R. (N.S.W.) 245 ; 73 W.N. 659.

H. C. OF A. 1956.

OWEN v. WOOLWORTHS PROPERTIES LTD.

Dixon C.J. Williams J. Fullagar J. Kitto J. Taylor J.

out on 1st March 1949, s. 15 operated in the absence of a determination of the fair rents board to fix the rent reserved for that term as the fair rent in excess of which the lessor might not demand or receive any sum as rent from the tenant: s. 35. The lessor appears to have made an application to the fair rents board for the determination of fair rents for the tenant before us and the other tenants of the building and it was as a result of that application that the stipendiary magistrate made the determination now in question. The determination fixed annual sums for the respective parts of the premises occupied by the tenant now before us as fair rents or perhaps more correctly as amounting in total to a fair rent of the whole. The total amount of the fair rent so fixed considerably exceeded the rent reserved by the lease for the second term, that for eight years. There is nothing to prevent the determination of a fair rent in excess of that contractually reserved, according to the decision of this Court in *Belmore Property Co. (Pty.) Ltd.* v. *Allen* (1); though what is the effect of doing so, may perhaps be another matter, particularly since the original s. 23 was replaced by Act No. 46 of 1954, s. 2 (i): cf. *Devon Buildings Pty. Ltd.* v. *Opera House Investments Pty. Ltd.* (2); *Sandhurst & Northern District Trustees Executors & Agency Co. Ltd.* v. *Auldridge* (3); *Strachan & Co. Ltd.* v. *Lyall & Sons Pty. Ltd.* (4). During the hearing before the stipendiary magistrate the tenant made various contentions including some said to raise questions of law and after the determination she applied for the statement of a case by way of appeal in pursuance of s. 41 (2) of the *Landlord and Tenant (Amendment) Act* and ss. 101 et seq. of the *Justices Act* 1902-1955. Unfortunately there is some imprecision about the statement of the case which, moreover, appears to make a number of unexpressed assumptions. We were told, however, that the stipendiary magistrate in arriving at his determination, in accordance with what was said to be in such matters the practice of fair rents boards, first fixed a "basic rent", an expression currently in use but not to be found in the statute. This was fixed by taking the rent payable for the premises on the "prescribed day", 31st August 1939, and adjusting it by applying s. 20 (3) as, according to a statement from the Bar, it has been interpreted. The adjustment was made, so it is said, by inquiring whether the rent actually then payable was as at 31st August 1939 insufficient, and by adding the amount of the insufficiency found to exist as at that date. The result is the "basic rent", a rent relevant in point of time to 1939. In the course

(1) (1950) 80 C.L.R. 191, at p. 197.
(2) (1952) V.L.R. 436, at p. 449.
(3) (1952) V.L.R. 488, at pp. 498, 499.
(4) (1953) V.L.R. 81, at p. 83.

of the reasons given by *Owen* J. for the Supreme Court in the present case there is a parenthetical remark about the words " is insufficient " in s. 20 (3) which shows that his Honour did not so interpret that sub-section. His Honour said : " (that is to say, ' is insufficient' at the time when a new fair rent is determined) " (1). The present applications do not bring the point before this Court for decision and it has not been discussed. All that matters for present purposes is to know what the " basic rent " means from which the stipendiary magistrate went on to build up his " fair rent ".

It appears that the composition of the basic rents for the respective parts of the premises was taken from a report of a named valuer but the document was not annexed as part of the case and we do not know the precise elements that were included. To the basic rents were added apportioned parts of the increased outgoings borne by the lessor in respect of the whole building by way of rates, insurance, cleaning, materials, wages, lift maintenance, light and power repairs and management, together with an additional allowance by way of interest calculated at 0.5% on the capital value of the premises as at 31st August 1939. No doubt in all this the stipendiary magistrate took his guidance from s. 21.

Among the errors which the tenant as appellant to the Supreme Court attributed to the stipendiary magistrate in arriving at his determination are three in which she has persisted as grounds for her application to this Court for leave to appeal.

In the first place she maintains that under s. 21 (1) (a) the capital value adopted for the purposes of the percentage allowance should have been of the building only and not of the land and building. This contention is based on the view that the word " premises " wherever it occurs in s. 21 (1) (a) refers to the building. It is a contention that cannot be sustained. Paragraph (a) of s. 21 (1) is clumsily expressed but its purport is sufficiently clear. The paragraph assumes that there will be a building on prescribed premises and, because the value must be ascertained as at the prescribed date if the building then existed and otherwise when it comes into existence subsequently, it provides for the alternatives of the building existing at that time and of its coming into existence afterwards. The word premises is used as referring to the land complete with building but somewhat illogically the second alternative is described by reference to the erection of the " premises " being completed after the prescribed date. But the subject matter makes the sense clear enough.

(1) (1957) S.R. (N.S.W.) 245, at p. 250 ; 73 W.N. 659, at p. 662.

H. C. OF A. 1956.

OWEN v. WOOLWORTHS PROPERTIES LTD.

Dixon C.J. Williams J. Fullagar J. Kitto J. Taylor J.

In the second place the tenant complains that, although in 1939 there was a federal land tax which must have fallen on the owner of the land on which the building stands, no account was taken by the stipendiary magistrate of the fact that federal land tax ceased to be levied after the financial year ending 30th June 1952 : see *Land Tax Abolition Acts* 1952 (No. 81) and 1953 (No. 2). We do not know whether the valuer's report already mentioned took into consideration the outgoing for land tax or how the landlord in fixing the rent for the first term (that for ten years) regarded it. But in the case stated the stipendiary magistrate says this : " I rejected the submission of counsel for the applicant that I take into account the favourable financial result to the lessor in being relieved by Act of Parliament from the necessity of paying federal land tax on the subject premises, as I consider that land tax is not a matter for consideration by the board under the provisions of the *Landlord and Tenant* (*Amendment*) *Act* 1948-1954." This appears to mean that because s. 21 (1) does not mention land tax, although it does mention rates, land tax could not have been considered as an outgoing and consequently its cessation could not be taken into account in comparing the increased outgoings of 1954 with those of 1939 in order to arrive at a fair rent for 1954. The fallacy of this argument is two-fold. In the first place, s. 21 (1) is not an exhaustive statement of outgoings to be considered in arriving at a fair net return to the landlord. In the second place, whether the cessation of land tax should be considered ought to depend entirely on the place the existence of land tax occupied in ascertaining the " basic rent " of 1939, a matter unfortunately left to guess work.

One may suppose that if ownership of premises necessarily involves liability to land tax, independently of ownership of other land, that fact cannot be left out of consideration in estimating the return for which a landlord might legitimately look. But in spite of the aspect which is given to the matter by the statement, already set out, of the stipendiary magistrate, it is not really a question of law in the present case. It is entirely a question of the proper or logical factual way of estimating a net return on the foundation of a " basic rent " adopted not because it is prescribed by law but because it is a method said to be established by practice, although no doubt under the influence too of s. 21 (2), (3) and (4). We have so little certain information about the " basic rent " that we ought not to treat the point as sufficiently raised as a point of law to entitle the tenant to leave to appeal.

The third point of objection to the determination that is still relied upon relates to the following statement in the case stated,

viz : " I gave due consideration to the lease current at the date of the determination between the respondent and the applicant, which said lease provided for periodic increases in the rental agreed upon, and held that the lease by reason of that provision was contrary to the provisions of the *Landlord and Tenant (Amendment) Act* 1948-1954." Apparently this means that the stipendiary magistrate considered that in view of s. 15 (1) and (4) (a) (i) and s. 35 (1) (b) the covenant to pay the increased rent could have no such operation and further afforded no bar to his fixing a higher rent under the decision in *Belmore Property Co. (Pty.) Ltd.* v. *Allen* (1). So far it would be difficult to challenge the statement, at all events without reviewing the decision in that case. What more it means it would be hard to say. Of course the stipendiary magistrate ought to have taken the existence of the covenant into his consideration in the sense of reflecting on its significance as an indication, for what it was worth, of the notion the parties had of a fair rent. It was a notion entertained in 1940 of a fair rent for a future period of eight years from 1950. But the significance he attached to it was for him a matter of fact, not law. Even if he failed to consider it in this sense, and it does not positively appear that he did, it would not be right for us on such a minor matter to give leave to appeal.

On all these matters the Supreme Court was against the tenant, who appealed to that court.

But it appeared to the Supreme Court that the stipendiary magistrate, in adopting the mode of assessment which he followed, had felt himself to be directly bound by s. 20 (3) and inasmuch as the court doubted the application of that provision to the fair rent of business premises as distinguished from a dwelling house the court obtained further argument of the case upon that point.

In the result the court decided that sub-ss. (3) and (4) of s. 20 applied only to dwelling houses because they were no more than qualifications of sub-s. (2). In adopting this view of the provision there seems no reason to doubt that the Supreme Court was completely right. Not only is the interpretation supported by the form and language of the provisions ; it is borne out by their history. The provisions were taken from reg. 18 (2) (3) and (4) of the *National Security (Landlord and Tenant) Regulations* as they stood in the *Manual of Defence Transitional Legislation* as in force on 1st January 1948. But reg. 18 (2), (3) and (4) in that form were but a redrafting of reg. 9 (7) of the *National Security (Landlord and Tenant) Regulations* as they appeared in the *Manual of National Security Legislation* as in force on 1st August 1944. In this reg. 9 (7) what are

(1) (1950) 80 C.L.R. 191.

H. C. OF A. 1956. OWEN v. WOOLWORTHS PROPERTIES LTD. Dixon C.J. Williams J. Fullagar J. Kitto J. Taylor J.

now sub-ss. (3) and (4) of s. 20 are provisos to what is now sub-s. (2) of that section. But because of the adoption of the interpretation of s. 20 (3), which limits its operation to dwelling houses, the Supreme Court considered that the order of the stipendiary magistrate must be set aside.

It appeared to their Honours that the stipendiary magistrate had believed that he was bound by s. 20 (3) to set about arriving at the fair rent according to the method which he in fact pursued; *non constat* that otherwise he would have followed that method. As in truth he was not so bound their Honours considered that his order was vitiated and must be set aside and the matter remitted to him. No fault could be found in this reasoning, if it were open to the tenant, who was in the position of appellant before the Supreme Court, to complain that the stipendiary magistrate had followed the method of assessment in question. But the lessor objects that it was not open to the tenant so to complain. The fact was that before the stipendiary magistrate the tenant did not contest the view that sub-ss. (3) and (4) of s. 20 applied to the case although the building was not a dwelling house, and that view was accepted by the parties as common ground. No objection was made to the adoption by the stipendiary magistrate of the method of assessment in question. Under sub-s. (1) of s. 20 which, as the Supreme Court held, applied to the case, unqualified by sub-ss. (3) and (4), the stipendiary magistrate, without violating any rule of law, might have pursued the same method of assessment, if he found that it was appropriate to the facts of the case and calculated to give a satisfactory result. But the point that he should not do so was never taken by the tenant nor was the question mentioned in the stated case.

No specific questions were submitted to the Supreme Court in the case stated. It concluded with the general question only which the form in the third schedule as substituted in the *Justices Act* 1902-1955 sanctions, namely the question whether the said determinations were erroneous in point of law. It was the generality of this question which made it possible to regard the point as open to the Court. But the lessor objects that it ought not to have been entertained because it was not a point taken by the party appellant before the fair rents board or for that matter before the Supreme Court; because, had it been taken, it might have been met before the fair rents board on the facts: and because it is not a point which could operate in favour of the tenant. It could not operate in favour of the tenant because it means no more than that a restrictive condition on the power to fix a fair rent does not affect the case.

The restriction in question, if it applied, could not be supposed to lead to the fixing of a higher rent than would be decided upon in its absence. The fact was that the true application of s. 20 (3) was perceived by the court and until then its significance had not been appreciated by the parties.

The jurisdiction of the Supreme Court given by s. 41 (2) is to decide an appeal as to questions of law only. The appeal is to be in the manner provided by ss. 101 to 110 of the *Justices Act* 1902-1955 and those provisions are concerned only with an appeal by way of case stated by a party dissatisfied with a determination as being erroneous in point of law. According to the practice under the sections of the *Justices Act* settled by judicial decision in New South Wales, if the point of law is necessarily involved in the determination of a magistrate, it is not necessary that it should have been actually taken before him. As *Jordan* C.J. expressed it, "An appellant is entitled to appeal on any ground which he is not, for some good legal reason, precluded from taking "—*Booton* v. *Hosking* (1). The decision on which the practice rests seems to be *Ex parte Anderson* (2). But it was stated more fully and defined by *Jordan* C.J. in *Wheeler* v. *Cahill* (3) as follows :—" It is true that any dissatisfied party may by procuring a case to be stated under s. 101 obtain a determination by this Court under s. 106 of any question of law arising on the case. It is true also that the jurisdiction so exercisable is not restricted to questions of law which have been specifically raised before the magistrate. It extends to all questions of law which are necessarily involved in his decision whether his attention was drawn to them or not ; although the Court will not entertain a point of law not raised before the magistrate if, assuming it to have been taken before him, it is possible that it might have been met by calling further evidence : *George Hudson Ltd.* v. *Australian Timber Workers' Union* (4) ; *Knight* v. *Halliwell* (5) ; *Kates* v. *Jeffery* (6) ; *Ex parte Anderson* (7). But a party must necessarily know of some supposed mistake in point of law, with which he is dissatisfied, before he can be in a position to apply for the statement of a special case at all. And whether the point of law which he seeks to raise was taken before the magistrate or not, it should be stated to this Court in such a way as to make it clear exactly what the point of law is " (8).

(1) (1948) 65 W.N. (N.S.W.) 110, at p. 111.
(2) (1920) 20 S.R. (N.S.W.) 207 ; 37 W.N. 58.
(3) (1943) 61 W.N. (N.S.W.) 1.
(4) (1923) 32 C.L.R. 413, at pp. 425-428, 446 ; 12 Austn Digest 484.
(5) (1874) L.R. 9 Q.B. 412.
(6) (1914) 3 K.B. 160.
(7) (1920) 20 S.R. (N.S.W.) 207 ; 37 W.N. 58 ; 12 Austn Digest 484.
(8) (1943) 61 W.N. (N.S.W.), at p. 2.

H. C. OF A. 1956. OWEN v. WOOLWORTHS PROPERTIES LTD. Dixon C.J. Williams J. Fullagar J. Kitto J. Taylor J.

Now in the present case, the ground on which the Supreme Court set aside the determination appeared on the face of the special case only by implication or inference. The implication is founded on the words in the case stated "having regard to the provisions of s. 20 (3)". These words introduce the statement as to the adoption of the rents given in the valuer's report as basic rents and that report is not before us. The implication is, of course, aided by the description of the practice given from the Bar. But what matters is that it is not a subject to which the stated case expressly adverts or which it intended to cover as material. Then not only was the point not made before the magistrate, but it is one the natural tendency of which is against the appellant tenant. Further, it is by no means clear that if it had been taken before him the stipendiary magistrate would have rested his assessment of the fair rent exclusively on the foundation of the basic rent and the increases in the outgoings etc. Lastly, there is no real ground for thinking that on the reconsideration which has been ordered the stipendiary magistrate would arrive at any different result.

In all these circumstances it would have been in accordance with sound practice if the Supreme Court had refused to entertain the ground as one for setting aside the determination. The respondent lessor objected to the court entertaining the point and the objection seems to have been well founded. In the circumstances the appellant tenant was not entitled to obtain an order and the Supreme Court ought so to have held.

The actual order made by the Supreme Court was that the question asked in the stated case be answered in the affirmative and that the matter be remitted to the fair rents board with the expressions of opinion contained in the reasons published in the Supreme Court. It may be remarked that it is uncertain how far, if at all, the reasons are incorporated in the order and it is only from the order and what forms part of it that there can be an appeal. This has formed an embarrassment to the tenant, if not to both parties. For there are some parts of the reasons which it was desired to challenge either on an appeal from the present order or, failing that, possibly from the order which the stipendiary magistrate might make in the rehearing of the matter. It would have been otherwise, if the order had been drawn up, as orders sometimes are, with a recital of the precise opinion or decision of the court on the points of law intended to be covered followed by a direction that the stipendiary magistrate should rehear or reconsider the matter according to law consistently with the opinion or decision so recited.

In the view that has already been expressed in the foregoing reasons concerning the substance of the contentions upon which the tenant relies and as to the correctness of the course taken by the Supreme Court, the embarrassment occasioned by the form of order ceases to be important.

The result of that view is that the application for leave to appeal by the tenant should be refused, and the application for leave to appeal by the lessor should be granted. That application should be treated as the appeal and the appeal should be allowed with costs. The order of the Supreme Court should be discharged and in lieu thereof it should be ordered that the question in the case stated should be answered that the determination is erroneous in no respect of which the party appealing from the determination is entitled to complain.

Application by Nancy Owen for leave to appeal refused. Application by Woolworths Properties Ltd. for leave to appeal granted. The parties having consented, order that the hearing of the application be treated as the hearing of the appeal. Appeal allowed. Order of the Supreme Court discharged. In lieu thereof order that the question in the case stated be answered that the determination is erroneous in no respect of which Nancy Owen the party appealing therefrom is entitled to complain. Order that the applicant Nancy Owen pay the costs of both applications for leave to appeal and of this appeal.

Solicitors for the applicant tenant, *L. B. Feeney Millett & Co.*
Solicitors for the applicant landlord, *Walter Linton & Bennett.*

R. A. H.