

[HIGH COURT OF AUSTRALIA.]

RUSSELL APPELLANT;
 APPELLANT,

AND

THE FEDERAL COMMISSIONER OF TAXATION RESPONDENT.
 RESPONDENT,

ON APPEAL FROM STARKE J.

H. C. OF A. *Land Tax (Cth.)—Assessment—Unimproved value—Station property—Stock included
 1933-1934. in amount—Method of assessing value considered—Residence—Reasonable and
 necessary improvement—Land Tax Assessment Act 1910-1930 (No. 22 of 1910—
 No. 8 of 1930), sec. 3.*

1933.
 MELBOURNE.
 Oct. 30, 31;
 Nov. 1-3, 6,
 8-10; Dec. 14.

Starke J.

1934.
 MELBOURNE,
 March 23, 28.

Gavan Duffy
 C.J., Rich,
 Dixon, Evatt
 and McTiernan
 JJ.

In an appeal by the taxpayer from an assessment under the *Land Tax Assessment Act 1910-1930* Starke J. fixed the sum of £69,000 as the unimproved value of land under the *Land Tax Assessment Act* as at 30th June 1931 of the appellant's pastoral property, which consisted of fully improved land situate in the Western District of Victoria. The appellant appealed from the decision of Starke J. on the ground that the sum of £69,000 so fixed contained an amount of £10,000 attributable to stock including horses, cattle and plant, which ought to be deducted in arriving at the unimproved value of the land.

Held, that the sum of £10,000 attributable to stock should be deducted in arriving at the unimproved value.

Decision of Starke J. reversed.

Method of assessing land to land tax considered.

Per Starke J.: The residence erected upon the land was a reasonable and necessary improvement and the value thereof should be deducted.

APPEAL from Starke J.

Under the *Land Tax Assessment Act 1910-1930*, land tax is levied upon the unimproved value of all lands within the Commonwealth which are owned by taxpayers, and it is charged upon land as owned

at midnight on 30th June immediately preceding the financial year for which the tax is levied. Philip Russell was, at midnight on 30th June 1931, the owner of an improved pastoral property, known as "Carngham," in the Western District of Victoria, consisting of 17,177 acres or thereabouts of freehold land. It was in respect of this land that he was assessed to tax for the financial year 1931-1932. The unimproved value of the land was assessed at £72,152, or £4 4s. per acre, and the improved value at £119,605, or £6 18s. 6d. per acre. Russell objected to this assessment on the ground that it was excessive, and requested that his objection be treated as an appeal and forwarded to the High Court pursuant to sec. 44M of the *Land Tax Assessment Act*. The appeal came on for hearing before *Starke J.* in whose judgment (hereunder) the facts are fully stated.

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Wilbur Ham K.C. and *Russell Martin*, for the appellant.

Gorman K.C. and *Coppel*, for the respondent.

Cur. adv. vult.

STARKE J. delivered the following written judgment :—

Dec. 14, 1933.

Under the *Land Tax Assessment Act* 1910-1930, land tax is levied upon the unimproved value of all lands within the Commonwealth which are owned by taxpayers, and it is charged upon land as owned at midnight on 30th June immediately preceding the financial year for which tax is levied. Philip Russell was, at midnight on 30th June 1931, the owner of an improved pastoral property, known as "Carngham," in the Western District of Victoria, consisting of 17,177 acres or thereabouts, of freehold land. It was in respect of this land that he was assessed to tax for the financial year 1931-1932. The unimproved value of the land was assessed at £72,152, or £4 4s. per acre, and the improved value at £119,605, or £6 18s. 6d. per acre. Russell objected to this assessment on the ground that it was excessive, and requested that his objection be treated as an appeal and forwarded to this Court pursuant to sec. 44M of the Act. The appeal has been so forwarded, and now falls for determination.

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Under the Act the “ ‘ unimproved value,’ in relation to improved land, 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 bona fide seller would require, assuming that, at the time as at which the value is required to be ascertained for the purposes of this Act, the improvements did not exist ” (Act 1930 No. 8, sec. 2). A long definition of improvements is given, but I do not think it necessary to quote more than the opening words— “ ‘ Improvements ’ in relation to land means improvements thereon or appertaining thereto whether visible or invisible and made or acquired by the owner or his predecessor in title.” Under the *Land Tax Assessment Act* 1910-1928 the assumption prescribed in ascertaining the unimproved value of land was 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 Judicial Committee, in *Toohy's Ltd. v. The Valuer-General* (1), said, as to a provision almost identical with that contained in the *Land Tax Assessment Act* 1910-1928 :—“ Words could scarcely be clearer to show that the improvements were to be left entirely out of view. They are to be taken, not only as non-existent, but as if they had never existed. . . . What the Act requires is really quite simple. Here is a plot of land ; assume that there is nothing on it in the way of improvement ; what would it fetch in the market ? . . . The land must be taken as it exists at the date of the valuation.” And in *McGeoch v. Federal Commissioner of Taxation* (2) this Court denied that *Toohy's Case* (3) excluded from the category of improvements everything that was “ not at the relevant date visible as a physical addition to or excrescence upon the land—such as a house or a fence or a dam containing water ” (4). In my opinion the Act No. 8 of 1930 is based upon the same principles. It explicitly provides that improvements in relation to land means improvements thereon or appertaining thereto, whether visible or invisible ; it excludes from the category of improvements the destruction by any person of vegetable growths or pests which are allowed to establish themselves on the land during his ownership,

(1) (1925) A.C. 439, at p. 443.

(2) (1929) 43 C.L.R. 277.

(3) (1925) A.C. 439.

(4) (1929) 43 C.L.R., at p. 285.

subject to some exceptions. But “the result of abstracting from the land . . . existing improvements of a ‘negative’ or ‘destructive’ or ‘invisible’ character, cannot be distinguished from that obtained by supposing that the ‘invisible’ improvements ‘had not been made’” (*Drysdale Bros. & Co. v. Federal Commissioner of Land Tax* (1), per *Evatt J.*). The Act, however, also contains a proviso: “Provided that the unimproved value shall in no case be less than the sum that would be obtained by deducting the value of improvements from the improved value at the time as at which the value is required to be ascertained for the purposes of this Act.” Value of improvements “means the added value which the improvements give to the land at the time as at which the value is required to be ascertained for the purposes of this Act irrespective of the cost of the improvements. . . . Provided that the added value shall in no case exceed the amount that should reasonably be involved in effecting, at the time as at which the value is required to be ascertained . . . improvements of a nature and efficiency equivalent to the existing improvements.” Improved value, in relation to land, “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 bona fide seller would require.”

The Court in this appeal must therefore determine (1) what the land the subject of the assessment would have fetched in the market on 30th June 1931, leaving out of view any improvements thereon or appertaining thereto, whether visible or invisible—they are to be treated not only as non-existent, but as if they had never existed; (2) the improved value of the land on 30th June 1931, less the added value which the improvements thereon or appertaining thereto, whether visible or invisible, gave to the land on that day, but so that the added value shall not exceed the amount reasonably involved in effecting improvements of a nature and efficiency equivalent to the existing improvements.

In *Toohey’s Case* (2) Lord *Dunedin* thought that what the Act required was quite simple. But I am afraid the matter is not so simple as it appeared to the noble and learned Lord. The Western District of Victoria has long been settled, and is well improved;

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(1) (1931) 46 C.L.R. 308, at p. 321. (2) (1925) A.C. 439.

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there is little, if any, unimproved land in the district, and none, I should think, being offered for sale or sold in that condition. It is still possible, however, to determine the capital sum which the fee simple of the land in its unimproved state might be expected to realize if offered for sale on such terms and conditions as a bona fide seller would require, upon the basis of its productiveness. Many factors enter into such a determination, the outgoing upon improvements, stock and plant necessary to obtain all the advantages which the land possesses, the then carrying capacity of the land, and the return that might from year to year be reasonably expected from it. The valuers who have given evidence in this appeal are all more or less agreed upon the factors that must be taken into consideration, but they differ in their opinions and estimates. Thus, as to outgoings upon necessary improvements, stock, plant, &c., the valuers for the appellant estimate a sum of about £54,000, whilst the valuers for the Commissioner estimate sums which vary between £43,000 and £54,000. In my opinion, a sum of £47,000, in round figures, would provide all improvements, stock, plant, &c., necessary to obtain all the advantages the land possesses. The details of this sum, in round figures, are as follows :—A. Improvements.—(1) Buildings, including homestead, woolshed, employees' quarters, £15,000 ; (2) fencing, &c., £8,000 ; (3) water supply, including dams, bores, windmills, £4,000 ; (4) drains, &c., £4,000 ; (5) plantations, &c., £1,000 ; (6) bridges, fords, roads, &c., £1,000 ; (7) sheep yards, sheds, dips, &c., £500 ; (8) cultivations and clearing, including destruction of rabbits and noxious weeds, £2,000 ; (9) miscellaneous incidental and additional expenses, including interest, £1,500 : £37,000. B.—Stock—including horses, cattle and plant, £10,000. The land, with this outlay, would in my opinion carry one sheep to the acre. Actually the appellant since 1929 has averaged 93 per cent or 93 sheep to 100 acres, whilst the valuers' estimates range from 95 per cent to 105 per cent.

The return that might reasonably be expected from the land with the outlay already mentioned depends upon the receipts from wool, sheep and cattle, less the expenditure in producing those receipts. The valuers, with one exception, estimate that the sheep would cut 9 lbs. of wool and the lambs 3 lbs. of wool per head ; and this

estimate I adopt. The shearing analysis shows the actual average weights cut by the appellant were somewhat less, but this may be due—I do not know—to the exceptionally fine wool grown by the appellant. It is near enough, however, to the estimate of the valuers to satisfy me that their estimate is reasonable, and that it may be safely adopted.

The ascertainment of the value of the wool is more difficult. The valuers' prices range from 1s. to 1s. 8d. The price fluctuates with the season and the state of the markets. Since 1928 there has been a disastrous fall in the prices for wool, but the market has recently risen, especially in terms of Australian currency. But despite the sharp rise, the present level is still lower than for the period 1920-1928, in terms of gold or sterling. The price actually realized by the appellant for his wool from 1920 to 1928, both years inclusive, ranged from 20d. to 40d. in the case of wool from sheep, and from 18d. to 34d. in the case of wool from lambs. But these years were exceptional, and the appellant had a flock carefully bred and specially selected. In 1929, 1930, 1931 and 1932, there was a heavy fall and the average prices realized by the appellant for his wool from sheep was 17d., 12d., 14d. and 12d. respectively, and from lambs 20d., 10d., 15d. and 14d. respectively. During the period 1902-1915, both years inclusive, the range of average prices per lb. for greasy merino fleece of average quality was from 9½d. to 12d., and the range of highest prices per lb. realized during the same period for greasy merino fleece superior Western quality was from 16d. to 21d. Wool grown on "Carngham" estate has always been of superior quality, due in large measure to the exertions and skill of the appellant and his predecessors. The land, however, is suited for growing merino wool of superior quality, and, properly and reasonably managed, can and would grow that type of wool. In my opinion, the wool grown upon the land should return an average price of 1s. 3d. per lb. This, I believe, is a safe estimate, having regard to the evidence, to the character of the "Carngham" land, and to the fluctuations in price of a commodity such as wool.

The probable return from the land may now be estimated. Returns:—Wool—14,000 sheep, average 9 lbs. wool per head, at 1s. 3d. per lb. = 11s. 3d. per head, £7,875; 80 rams, 14 lbs. wool

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per head at 1s. per lb. = 14s. per head, £56 ; 3,000 lambs, average 3 lbs. wool per head at 1s. per lb. = 3s. per head, £450 ; Skins, hides, tallow, £70 ; Cattle—250 cattle, profit per head £2, £500 ; Sheep—sale 1,500 aged and cull ewes at 8s., £600 ; 1,500 wethers at 10s., £750 : £10,301. Outgoings :—Management, wages, shearing, transport, selling charges, taxes, insurance, repairs, depreciation and incidentals, £5,000. The probable annual return would therefore, in round figures, be £5,300.

I should mention that the number of sheep and cattle set out above is based upon the estimate prepared by Mr. A. N. Nicholson, who has wide experience as a grazier ; but I think he has underestimated the amount of the returns. The outgoings are not detailed ; the valuers' calculations range between £4,600 and £5,626, and I think £5,000 in round figures is a safe estimate.

The next step is to ascertain the capital value of land which year in and year out would give a net return of £5,300. The hazards of the pastoral industry in Australia are great, but the Western District of Victoria is favourably situated. It has a good climate and a fairly regular rainfall. But I think that any purchaser of a property such as " Carngham " would reasonably require a higher return from his capital laid out in purchase money than he could obtain now on government bonds or similar securities. In my opinion, a prudent and reasonable person would not invest in such a property unless the probable return from his capital would be at least five per centum. The net return of £5,300, capitalized on a 5 per cent basis, gives a capital value to the land of £106,000, which, less £47,000, the cost of necessary improvements, stock and plant already mentioned, gives £59,000 as the unimproved value of the land, or about £3 8s. 9d. per acre. The appellant returned the unimproved value of his land as £60,120, or £3 10s. per acre. The appellant's figure is so close to the estimate I have made of the unimproved value of the land, that I adopt it, and, the more readily, because the appellant is an experienced pastoralist, with an unrivalled knowledge of the capacities and potentialities of his land. It receives support from the actual results of working the land by the appellant. His profit and loss accounts from the year 1905 to and inclusive of the year 1932 are in evidence, and give the net returns from the land

in its improved condition. During the period 1906-1910 the area of the estate was about 22,000 acres, and the net average return was between £7,000 and £8,000 per annum, taxation being fairly steady. During the period 1911-1914 the area was about 19,000 acres and the net average return was between £5,000 and £6,000, taxation being again fairly steady but greatly increased. During the war period 1916-1920, the area was still about 19,000 acres and the net average return about £10,000 per annum. But this was the Bawra period, when the Imperial Government purchased the Australian wool-clip at 15½d. per lb. on the greasy basis—a price higher indeed than was ever before obtained in the wool trade. (See *John Cooke & Co. Pty. Ltd. and Field v. The Commonwealth and the Central Wool Committee* (1).) During the post-war period 1921-1927, the area remained at about 19,000 acres. The prices obtained by the appellant for his wool were abnormally high, but the taxation enormously increased. Still the appellant averaged between £8,000 and £9,000 per annum. During the period 1928-1932 the area had fallen to about 17,000 acres. Wool values collapsed, and during this period the appellant's accounts for the first time disclose a loss. But I note that in 1930 an annuity was brought for the first time against station workings. Further, I should note that the heavy burden of taxation borne by the appellant during this period and other periods was increased by reason of the fact that he had other income. But even in this disastrous period the average annual return from the property, according to the accounts in the books, was nearly £3,500. Doubtless the financial crisis throughout the world during 1929-1932 affected the values of land in Australia, whether improved or unimproved. But land, and the advantages that wool-growing land possesses, cannot disappear, as may other forms of investment, such as bonds, stocks and such like securities. Pastoralists and others soon recognize this fact, and then are ready to lay out their capital again in pastoral property. So soon as this happens, the productiveness and anticipated return from the property determine its value, or the capital sum which the fee simple of the land might be expected to realize.

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(1) (1922) 31 C.L.R. 394, at p. 407

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The sales of the "Stoneleigh" and "Langi Kal Kal" estates have afforded me less assistance than I had hoped. The areas, carrying capacities, and improvements upon the various properties differ. The following table gives the facts, as I find them, as to the Stoneleigh and Langi Kal Kal estates:—

"Stoneleigh."			"Langi Kal Kal."		
Area—nearly 12,000 acres			Area—27,643 acres		
Year of sale—1932			Year of sale—1933		
Price—Land and Stock ..	£98,000		Price—Land and Stock ..	£150,000	
Stock	17,500		Land (about) ..	£120,000	
			(£4 6s. 9d. per acre)		
Land	£80,500				
(£6 14s. 2d. per acre)					
Carrying capacity 125 per cent or 125 sheep to 100 acres			Carrying capacity 84 per cent or 84 sheep to 100 acres		
Improvements—			Improvements—		
Buildings	£15,000		Buildings	£14,375	
Other Improvements ..	16,755		Other improvements ..	11,514	
			Improvements not otherwise mentioned ..	4,111	
Total	£31,755		Total	£30,000	

The improvements on "Stoneleigh" represent nearly £2 13s. per acre, whilst those on "Langi Kal Kal" represent about £1 2s. per acre, which indicates, in the case of "Stoneleigh," that the land without the improvements represented about £4 per acre in the price and in the case of "Langi Kal Kal" about £3 4s. 9d. The carrying capacities of the two properties are not the same, and it may be assumed that if the properties were sheep to the acre country, the prices would be proportionately reduced and increased to about £3 4s. and £3 17s. respectively. This calculation does not result in the unimproved values of the properties in terms of the Land Tax Acts, following the interpretation put upon an almost identical provision in *Toohy's Case* (1). But it affords a check, more or less persuasive according to the view one takes of the contract prices. "Stoneleigh" was, I think, an exceptionally good purchase; whether the same may be said of "Langi Kal Kal" depends upon the view taken of the value (£120,000) attributed to the land and improvements in the contract: that estimate was disputed by the purchaser, but the evidence of Mr. Grice satisfied me that it was

fairly correct. I should add that I rely upon Mr. Barber's evidence for the value of the buildings on "Stoneleigh" and for its carrying capacity, and upon Mr. Dennis' figures in exhibit No. 13 for the value of the other improvements. The carrying capacity of "Langi Kal Kal" I take as 84 per cent, as suggested by the appellant's valuers, supported as it is by the actual figures from the books of the station supplied to me since the hearing (solicitors' letter 15th November 1933).

The foregoing figures do not enable me to say what these estates would have fetched in the market with nothing on them in the way of improvements, or the probable return from them. But they do not, I think, militate against the valuation which I have adopted for "Carngham." In the evidence will be found references to and calculations based upon the sheep area value of land, but I have not found them particularly helpful, for they depend apparently upon averaging returns from land or else upon averaging sales of land minus buildings. The inquiry under the Act must come back to what a particular parcel will fetch in the market, with such advantages as it possesses and viewed as bare land without any improvements. And if no market price can be established, then it appears to me that productiveness will be the only clue to its unimproved value.

Some other sales of land are in evidence. One of the "Woodhouse" estate, but I regard it as an exceptional sale, or, as Mr. Dennis said, a very good bargain, and no guide as to the real value of the land; others of parts of the "Carngham" estate in small lots. In the "Carngham" accounts of 1911, it appears that some 3,347 acres were sold at prices ranging from £4 to £8 5s. per acre. In the 1928 account there is an entry "Proceeds of 1,998 acres £19,690," or about £9 10s. per acre. This entry refers, unless I am mistaken, to the sales of land to Woolard and Greenbanks mentioned in the evidence. There is little or no evidence as to the improvements of any of these lands, but probably they were only some fencing and some invisible improvements. The 1928 sales were at a price, I should think, in excess of the real value of the lands, and the 1911 sales were of comparatively small areas and vary so much in price

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that they give me no assistance in ascertaining the improved value of the "Carngham" estate as a whole.

The Act, as already mentioned, provides that the unimproved value shall in no case be less than the sum that would be obtained by deducting the value of improvements from the improved value of the land as at the time the value is to be ascertained, and a valuation on this basis must now be made for the purposes of the Act.

The appellant has returned the improved value of the "Carngham" estate as £115,950, or about £6 15s. per acre. This figure is supported by the entries in his own books. In 1905, when acquired as I understand under the will of his father, the estate is entered as of a value of £4 5s. per acre, but was raised to £6 per acre in 1922. On 30th June 1931 the entry as to the estate is 17,162 acres £95,302, buildings £15,429, a total of £110,731, or £6 9s. per acre. But this sum of £110,731 is, in my opinion, higher than the probable return from the land warrants. On the basis of the annual return that might reasonably be expected from the land the improved value of the "Carngham" estate is £106,000, or about £6 3s. 6d. per acre.

The nature of the improvements on "Carngham" or appertaining thereto, and whether visible or invisible, and their depreciated value in round figures on 30th June 1931 were, I find in fact, as follows:—Buildings £25,000; fencing £6,000; water supply £3,000; drainage £3,000; plantations £1,000; bridges, fords, roads &c. £500; sheep yards, sheds, dips £500; cultivation, clearing &c. £2,000; miscellaneous, including garden, reservoir, and water supply, and incidentals £1,000: £42,000. But the added value these improvements give to the estate must be estimated. Comments were made about the homestead: it was insisted on the part of the Commissioner that the building, a fine one and surrounded by a beautiful garden, was far beyond the needs of "Carngham," and really a luxury. I do not agree. Regard must be had to the nature of the estate and to its surroundings. The Western District of Victoria has many fine homes, which add much to the amenities of life, and are an attraction, and give an additional value, to the properties on which they are built. Any purchaser of "Carngham" would, if there were no residence upon it, erect a substantial and attractive residence. I venture to think that it would, in that district, be a reasonable and

necessary improvement. The value which the improvements, visible and invisible, on "Carngham" or appertaining thereto on 30th June 1931, gave or added to the land on 30th June 1932, and irrespective of the cost thereof, was, in my opinion, £42,000; and I so find. But the Act provides that "the added value shall in no case exceed the amount that should reasonably be involved in effecting," on that date, "improvements of a nature and efficiency equivalent to the existing improvements." This amount cannot, in my opinion, and I so find, exceed £37,000, that is, the same amount as arrived at in my previous finding as requisite to provide the land with all improvements necessary to obtain all the advantages which the land possesses. Therefore the unimproved value of the "Carngham" estate in terms of the Act, on 30th June 1931, was £106,000, less £37,000, that is, £69,000, or about £4 per acre.

The appeal must be allowed, and the assessment of the appellant reduced accordingly. The assessment is remitted to the Commissioner to make the necessary amendments in accordance with the terms of this judgment. The Commissioner will pay the costs of the appeal, including the costs of the shorthand notes.

From this decision the taxpayer appealed to the Full Court.

Wilbur Ham K.C. and *Tait*, for the appellant.

Gorman K.C. and *Coëppel*, for the respondent.

Cur. adv. vult.

The COURT delivered the following written judgment:—

By the judgment under appeal *Starke J.* fixed the sum of £69,000 as the unimproved value under the *Land Tax Assessment Act* 1910-1930 as at 30th June 1931 of the appellant's pastoral property called "Carngham." The property consists of an area of 17,177 acres of fully improved land situate in the Western District of Victoria. The ground of the appeal is that the sum of £69,000, so fixed, contains an amount of £10,000 attributable to stock, including horses, cattle and plant, which ought to be deducted in arriving at

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the unimproved value of the land. As a consequence of the definitions of "Unimproved value" and "Value of improvements" substituted by the *Land Tax Assessment Act* (No. 2) 1930, two different methods of ascertaining the unimproved value of land are prescribed. The higher of the amounts produced by the two methods must be used in the assessment. In the first, the supposition is required that the improvements on or appertaining to the land do not exist and the sum it might be expected to realize in that supposed condition must be estimated. In the second, the land is to be considered in its actual improved condition and the sum it might in that condition be expected to realize is to be estimated and taken as a base from which the value of the improvements is to be deducted. But again two methods of arriving at the value of the improvements are prescribed and the lower of the amounts produced by them is to be adopted. In the first, the added value is to be assessed which the actual improvements give to the land. In the second, the amount is to be computed that should reasonably be involved in effecting improvements of a nature and efficiency equivalent to the existing improvements. In his judgment *Starke J.* formulated the issues which emerge from these requirements as follows:—"The Court in this appeal must therefore determine (1) what the land the subject of the assessment would have fetched in the market on 30th June 1931, leaving out of view any improvements thereon or appertaining thereto, whether visible or invisible—they are to be treated not only as non-existent, but as if they had never existed; (2) the improved value of the land on 30th June 1931, less the added value which the improvements thereon or appertaining thereto, whether visible or invisible, gave to the land on that day, but so that the added value shall not exceed the amount reasonably involved in effecting improvements of a nature and efficiency equivalent to the existing improvements."

Neither party had any complaint to make of the substantial correctness of this statement. His Honor then proceeded to address himself to the first of the questions thus propounded. Because little or no unimproved land exists in the district, and none is offered for sale or sold in that condition, he was impelled to fall back upon the process which is often used of deducing the unimproved value

from the productiveness of the land when suitably improved. This involves finding what expenditure, if the land were in an unimproved condition, would be required to furnish the improvements, plant and stock necessary to turn to proper account its potential earning capacity, capitalizing the estimated annual income it would then produce, and deducting from the capital value thus obtained of the entire undertaking the expenditure upon improvements, plant and stock, leaving a residue representing the capital contained in the unimproved land. His Honor says :—“ It is still possible, however, to determine the capital sum which the fee simple of the land in its unimproved state might be expected to realize if offered for sale on such terms and conditions as a bona fide seller would require, upon the basis of its productiveness. Many factors enter into such a determination, the outgoing upon improvements, stock and plant necessary to obtain all the advantages which the land possesses, the then carrying capacity of the land, and the return that might from year to year be reasonably expected from it. The valuers who have given evidence in this appeal are all more or less agreed upon the factors that must be taken into consideration, but they differ in their opinions and estimates. Thus, as to outgoings upon necessary improvements, stock, plant, &c., the valuers for the appellant estimate a sum of about £54,000, whilst the valuers for the Commissioner estimate sums which vary between £43,000 and £54,000. In my opinion, a sum of £47,000, in round figures, would provide all improvements, stock, plant, &c., necessary to obtain all the advantages the land possesses.”

The judgment then sets out under two headings the particulars of the expenditure amounting to the sum of £47,000. The first heading “ Improvements ” consists of nine items amounting to £37,000. The second heading, is simply “ Stock—Including horses, cattle and plant, £10,000.”

Next, the learned Judge estimated the probable annual return which the land would produce after it had been improved in the manner supposed by an outlay of £37,000 and supplied with stock and plant at a cost of £10,000. This probable annual return he fixed at £5,300, which he held should be capitalized at five per cent. The judgment proceeds :—“ The net return of £5,300 capitalized on

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a 5 per cent basis, gives a capital value to the land of £106,000, which, less £47,000, the cost of necessary improvements, stock and plant already mentioned, gives £59,000 as the unimproved value of the land, or about £3 8s. 9d. per acre. The appellant returned the unimproved value of his land as £60,120, or £3 10s. per acre. The appellant's figure is so close to the estimate I have made of the unimproved value of the land, that I adopt it, and, the more readily, because the appellant is an experienced pastoralist, with an unrivalled knowledge of the capacities and potentialities of his land. It receives support from the actual results of working the land by the appellant." So far neither party offers any criticism of or objection to the process of estimation followed or the conclusion reached by the learned Judge. During the argument of the appeal, counsel for the respondent Commissioner made no attempt to attack the findings or estimates upon which the sum produced depends, although he did not acquiesce in them. Counsel for the appellant accepted the computation. The sum of £59,000, so produced, having been increased to the taxpayer's figure of £60,120, and adopted as the answer to the first of the two questions which he had propounded, his Honor, after marshalling certain further considerations, which in his view tended to support that result, turned to the determination of the second question. This question required, as a first step, the ascertainment of the improved value of the land on 30th June 1931, and, as a next step, in order to arrive at the deduction to be made on account of the improvements thereon or appertaining thereto, the ascertainment of the added value which the improvements gave to the land on that day but so that the added value should not exceed the amount reasonably involved in effecting improvements of a nature and efficiency equivalent to the existing improvements. His Honor addressed himself to the questions in this order. He said:—"The Act, as already mentioned, provides that the unimproved value shall in no case be less than the sum that would be obtained by deducting the value of improvements from the improved value of the land as at the time the value is to be ascertained, and a valuation on this basis must now be made for the purposes of the Act. The appellant has returned the improved value of the "Carngham" estate as £115,950, or about £6 15s. per

acre. This figure is supported by the entries in his own books. In 1905, when acquired as I understand under the will of his father, the estate is entered as of a value of £4 5s. per acre, but was raised to £6 per acre in 1922. On 30th June 1931 the entry as to the estate is 17,162 acres, £95,302, buildings £15,429, a total of £110,731, or £6 9s. per acre. But this sum of £110,731 is, in my opinion, higher than the probable return from the land warrants. On the basis of the annual return that might reasonably be expected from the land the improved value of the "Carngham" estate is £106,000, or about £6 3s. 6d. per acre."

Now the sum of £106,000 had been arrived at by the learned Judge as a capitalization of the probable annual return obtainable from the entire undertaking or concern comprising land and suitable improvements, plant and stock. The appellant contends that, to obtain from this figure the improved value of the land based upon the probable annual return, the value or cost attributable to the stock and plant must be eliminated. The sum set down for stock including horses, cattle and plant was £10,000. Accordingly, the sum arrived at as the improved value will be £96,000, not £106,000. We are clearly of opinion that this contention is correct. The figure of £106,000 was not computed for the purposes of determining what, in its actual state of improvement, is the value attributable to the land upon the basis of the probable annual return. It was adopted as the value so attributable if the land were in a condition of improvement necessary to obtain all the advantages the land possesses. But, no doubt, the difference in the real and the hypothetical condition of improvement would not be reflected in the return or income from the land in question. In answering the first question which his Honor propounded, the amount which he in fact found as the improved value of the land "on the basis of the annual return that might reasonably be expected from the land" was in truth £96,000, not £106,000. The sum of £96,000 was not given as an express figure because, at that stage, it was unnecessary to give the improved value. But that this figure and not £106,000 was the improved value found, clearly appears from the deduction which the learned Judge made of £10,000 for stock and plant in arriving at the unimproved value. Accordingly, when

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the estimate representing the unimproved value was adopted for the purpose of the second inquiry into unimproved value, it was, we think, an error to take £106,000. Counsel for the respondent Commissioner did not deny that, if that estimate was adopted for the purpose of the second question, and the sum of £106,000 set down as the improved value was that which the learned Judge had already computed in the course of answering the first of the questions he formulated, then it contained the value of stock and plant and consequently must be reduced by £10,000. But counsel contended that it was not the same sum arrived at by that computation, but, notwithstanding its identity in amount, it was an independent sum arrived at by a separate computation which, although not discussed or mentioned in the judgment, represented another estimate of productiveness, an estimate and capitalization made anew but this time of the return which the land would probably give in its present actual improved condition. We think that this is a far-fetched and untenable interpretation of the judgment, which appears to us to be quite clear and explicit. When the learned Judge goes on to determine what, from the sum of £106,000 adopted by him as the improved value, should be deducted as the added value which the improvements give to the land he says :—" This amount cannot, in my opinion, and I so find, exceed £37,000, that is, the same amount as arrived at in my previous finding as requisite to provide the land with all improvements necessary to obtain all the advantages which the land possesses. Therefore the unimproved value of the " Carngham " estate in terms of the Act, on 30th June 1931, was £106,000, less £37,000, that is, £69,000, or about £4 per acre." In his previous calculation, he had deducted also the sum of £10,000 on account of stock and plant, a deduction of £47,000, not £37,000. If his Honor had again deducted the sum of £47,000 and thus eliminated the stock and plant as well as the improvements, the amount produced would have been £59,000 instead of £69,000, the value which he found. In our opinion £59,000 is the correct amount. As this sum is less than the amount found by his Honor in his answer to the first question formulated, namely, £60,120, that sum must be taken as the unimproved value.

In support of his contention that a new computation was responsible for the sum of £106,000 in the second issue, counsel for the Commissioner suggested that the value produced by the deduction of £10,000 for stock from that figure seemed very low. Whether it appears low or not, is not, we think, important. But, in any case, it must be remembered that the hypothetical sale and purchase, which is the basis of the statutory method of ascertaining both the improved and unimproved value of the land, is deemed to have taken place on 30th June 1931. On that day, wool prices were in a collapsed condition and no reasonable purchaser would have acted upon the expectation of an early recovery to a "normal" or "average" price. The sole purpose for which the land, whether improved or considered as unimproved, was fitted was the business of wool production. In these circumstances, there is much to be said for the view that the figure of £60,120 is by no means unreasonable. We think the notice of objection covers a reduction of the unimproved value of the fee simple to this amount.

The appeal should be allowed with costs; the order appealed from should be varied by substituting in the declaration of the unimproved value the sum of £60,120 for the sum of £69,000.

Appeal allowed with costs. Order appealed from varied by substituting in the declaration of the unimproved value, the sum of £60,120 for the sum of £69,000.

Solicitors for the appellant, *Blake & Riggall*.

Solicitor for the respondent, *W. H. Sharwood*, Commonwealth Crown Solicitor.

H. D. W.

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