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conclusion to which his Honor came, and, therefore, we think the appeal must fail.

What we are saying disposes of the question of amendment, because the proposed amendment hinges upon the assumption that there was a final finding.

The appeal must, therefore, be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellants, *Blake & Riggall.*

Solicitor for the respondent, *T. J. McGrath*, Brisbane, by *Snowball & Kaufmann.*

B. L.

Appl *ACT Revenue, Commissioner for v Rosnet Pty Ltd* (1994) 28 ATR 399

[HIGH COURT OF AUSTRALIA.]

LEWIS KIDDLE AND ANOTHER . . . APPELLANTS;

AND

THE DEPUTY FEDERAL COMMISSIONER OF LAND TAX . . . . . RESPONDENT.

H. C. OF A. 1919-1920.

SYDNEY, *Nov.* 25-28, *Dec.* 1-5, 8-10, 1919; *Jan.* 30, *Mar.* 22, 1920.

KNOX C.J.

Land Tax—Assessment—Pastoral property—Unimproved value, method of ascertaining—Portion of property useless—No standard of unimproved value—Carrying capacity—Land Tax Assessment Act 1910-1916 (*No.* 22 *of* 1910—*No.* 33 *of* 1916), *sec.* 3.

A pastoral property consisted partly of land which had been improved to practically its full capacity, and partly of land which was practically useless by reason of the fact that, having once been partially improved by ring-barking the timber, the process of destruction had not been continued and the cost of improving it by destroying the timber would be at least equal to the value of the land when so improved. The subdivision of the property into two portions would not result in any increase in the price which might be expected to be realized on a sale of the property as a whole.

Held, that in assessing the unimproved value of the property for the purposes of the *Land Tax Assessment Act* 1910-1916, the Commissioner was not entitled to ascertain the unimproved value per acre of the improved portion and to attribute the same value per acre to the other portion, but that the unimproved value of the property as a whole should be ascertained; that, in the absence of sales of unimproved land in the neighbourhood which would afford a standard of value of unimproved land, the proper method of ascertaining the unimproved value of the property as a whole was by ascertaining the improved value and deducting therefrom the cost of making the improvements at the relevant date (less a sum representing an allowance for depreciation or partial exhaustion of the improvements) and also a proper allowance for loss of interest on all outlay during the period which must elapse before such outlay became fully productive; and that the proper method of ascertaining the improved value was to base the value on the carrying capacity of the property.

APPEALS from the Deputy Federal Commissioner of Land Tax.

Lewis Kiddle and R. G. Kiddle were the owners of certain lands comprised in Carabost Station in the State of New South Wales, and for the purpose of land tax for the years 1914 to 1918 pursuant to the *Land Tax Assessment Act* 1910-1916, the unimproved value of those lands was assessed by the Deputy Federal Commissioner of Land Tax at the sum of £24,068. From the assessment for each of those years the taxpayers appealed to the High Court.

The appeals were heard together by *Knox* C.J., and the material facts are stated in his judgment hereunder.

Campbell K.C. and *E. A. Barton*, for the appellants.

Shand K.C. and *Pike*, for the respondent.

Cur. adv. vult.

March 22.

KNOX C.J. read the following judgment:—The appellants are the owners of (*inter alia*) certain lands comprised in Carabost Station holding, consisting of 20,057 acres of freehold, conditionally purchased and additional conditionally purchased lands, of which the unimproved capital value has been assessed for the purpose of land tax for the years 1914-1918 at the sum of £24,068, being at the rate of 24s.

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per acre. An appeal was instituted against each year's assessment, and when the appeals came on for hearing it was agreed between the parties that all the appeals should be heard together, and that I should fix one sum as the unimproved value of the lands in question for the five years covered by the appeals, having regard to the fluctuations in the prices of labour and material between 1914 and 1918. Of the total area of 20,057 acres, a portion consisting of 15,366 acres is improved to practically its full capacity, and the balance (4,691 acres) is country which, having once been partially improved by ringing the timber, has been allowed to go back, owing to failure to continue the process of destroying the timber, until it has reached the condition in which it stands at present. In that condition it is useless for any practical purpose, and the cost of improving it by destroying the timber would, in my opinion, be at least equal to the value of the land when so improved. It was contended on the part of the respondent that this "reverted" area should be disregarded in arriving at the value, whether improved or unimproved, of the rest of the subject area, and that when the unimproved value per acre of the improved portion of the estate had been ascertained, the same value per acre should be attributed to the reverted area. In my opinion this contention cannot be maintained. The assessments against which the appeals are brought are assessments of the unimproved value of a parcel of 20,057 acres at £24,068, and the question to be decided is what is the unimproved value of this parcel as a whole, to be ascertained according to the method prescribed by the Act and recognized by the decisions as proper to be applied in determining the unimproved value of land. Moreover, the contention of the Deputy Commissioner involves the proposition that the "unimproved value" of a parcel of land, as defined by the Act, may be greater than its "improved value," as so defined; but I think it is clear from the provisions of the Act that it was never intended that land tax should be payable in respect of a "value" greater than the total amount which could be obtained by a sale of the land in question, in the condition in which it is found at the date of assessment. Moreover, I think it is unsound to regard a parcel of land, the unimproved value of which has to be ascertained, as consisting of a number of parcels, the unimproved value

of each of which may be ascertained separately. It is, of course, permissible in ascertaining the improved value of land to consider whether the land would sell for more in its existing condition, if subdivided, than if sold in one parcel; but in the present case it is clear that the subdivision of the subject area into two portions, as suggested by the respondent, would not result in any increase in the price which might be expected to be realized on a sale of the property as a whole, it being clear that the reverted area could not be sold by itself for more than a nominal amount, if at all. I propose therefore to deal with these appeals by finding the "improved value," as defined by the Act, of the whole area, and deducting from that amount the sum which represents the "value of improvements," as defined by the Act. The result gives the "unimproved value" for the purposes of the Act. I adopt this method as the only one available in this case; for, though evidence has been given of certain sales of land in an unimproved condition in the neighbourhood, I am not satisfied that any of such sales affords a standard of value of unimproved land which it would be proper to apply to the area now under consideration.

The expert witnesses called for the respondent arrived at the unimproved value of the land in question by analysing the result of the sale of an adjoining property known as "Humula," the assumption being that the unimproved value of the land now under consideration was the same as that comprised in Humula. I think the direct method of dealing with the subject land is preferable as being less liable to error. At the request of both parties I inspected the subject land and adjoining country after hearing the evidence, and in arriving at the value of the timber improvements I have applied to the evidence given before me the results of my observation of both improved and unimproved country on this visit.

1. *The Improved Value.*—In my opinion the safest method to adopt in the valuation of a pastoral property is to base the value on the carrying capacity (see *Fisher* v. *Deputy Federal Commissioner (N.S.W.)* (1)). Both parties accept £3 15s. as the value in this

(1) 20 C.L.R., 242.

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locality of country that will carry one sheep. In my opinion, the average carrying capacity expressed in terms of sheep may be taken as 12,800. The improved value on this basis is £48,000.

2. *Value of Improvements.*—The improvements may be divided into four classes: (*a*) fencing, (*b*) other structural improvements, (*c*) improvements due to timber treatment, and (*d*) improvement caused by making ready for the plough land which had undergone timber treatment and by planting willows. With regard to each of these items, it is necessary to find the added value which such improvement gave to the land at the date of valuation irrespective of the cost of the improvement, but not exceeding the amount that should reasonably be involved in bringing the unimproved value of the land to its improved value as at the date of assessment. In the present case the improvements which have to be valued are not, in my opinion, excessive; or, in other words, I think all such improvements were reasonably necessary to develop the property to its full carrying capacity, and to enable it to be used to full advantage and so to acquire its present improved value. The question to be solved in ascertaining the value of improvements for the purpose of arriving at the unimproved value is what part of the improved value of the land is attributable to the improvements to be valued. Presumably, a purchaser of the land, if he considered this question at all, would determine that the amount to be attributed to value of improvements would be equal to the amount which he gained or saved by reason of the improvements having been made, he being thereby relieved from the necessity of making them. This amount would be found by ascertaining the amount which it would cost to make the improvements in question at the relevant date, including a proper allowance for loss of interest on all outlay during the period which must elapse before such outlay became fully productive, and by deducting from the sum so ascertained a proper allowance for depreciation or partial exhaustion of the improvements.

[His Honor then dealt with the value of the improvements in detail and found that it amounted to £27,982. He also found that the proper amount to be allowed for loss of interest was £3,336. Deducting these two amounts from £48,000, he found that the

unimproved value of the property was £16,682, and he ordered the assessments to be amended accordingly.]

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Appeals allowed. Assessments to be amended accordingly. Respondent to pay costs of appeals.

Solicitors for the appellants, *Metcalfe & Dangar*, for *J. Beacham Kiddle*, Melbourne.

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

B. L.

[HIGH COURT OF AUSTRALIA.]

CROPLEY'S LIMITED . . . . . APPELLANT;

AND

VICKERY AND OTHERS . . . . . RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1920.

SYDNEY, *March* 29.

Knox C.J., Isaacs, Gavan Duffy, Rich and Starke JJ.

Bankruptcy—Act of bankruptcy—Notice to creditor that debtor is about to suspend payment of his debts—Evidence—Bankruptcy Act 1898 (*N.S.W.*) (*No.* 25 *of* 1898), *sec.* 4 (1) (*h*).

Sec. 4 (1) of the *Bankruptcy Act* 1898 (N.S.W.) provides that "A debtor commits an act of bankruptcy . . . (*h*) If the debtor gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts."

A debtor, who was being pressed by one of his creditors for payment in full of his debt partly out of goods bought by the debtor from other creditors and not then paid for, made statements to that creditor to the effect that he thought that if such payment was made it was very probable that he would