

(18)

IN THE HIGH COURT OF AUSTRALIA.

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DYMOCK'S BOOK ARCADE

v.

FEDERAL COMMISSIONER OF  
TAXATION of the COMMONWEALTH  
of AUSTRALIA..

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**REASONS FOR JUDGMENT.**

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No 39 and 40 of 1936

Judgment delivered at SYDNEY  
on Friday 18th June 1937  
( Mr Justice McTiernan )

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DYMCK'S BOOK ARCADE V FEDERAL COMMISSIONER OF TAXATION OF THE  
COMMONWEALTH OF AUSTRALIA.

JUDGMENT.

McTIERNAN J.

The taxpayer was assessed for the purposes of Federal Land Tax as the owner at 30th June in the years 1933, 1934, 1935, of two parcels of land in the City of Sydney. The Land Tax Assessment Act 1910-1930 applies to the first of these assessments and the Land Tax Assessment Act 1910-1934 to each of the others. The value at which the Commissioner of Land Tax included parcel 1 of the taxpayer's land in each assessment was £ 70600. The taxpayer had returned the unimproved value of parcel 1 at £ 24750. An objection was lodged against each assessment on the ground that the unimproved value of parcel 1 did not exceed £ 24750. The Commissioner having disallowed the objections they were, at the taxpayer's request, forwarded to the Court to be dealt with as appeals. The three appeals were heard together. The ground of appeal in each case is that the Commissioner's valuation is excessive.

The difference between the taxpayer's valuation as shown by its returns and repeated in its objections, and the Commissioner's valuation as shown by the assessment notices is £ 45850. At the hearing of the appeals the highest valuation given by any of the taxpayer's witnesses was £ 37852, and between that sum and the Commissioner's valuation the difference is £ 32748. It is remarkable that the opinions of witnesses who were called to give evidence as experts in land values should differ so widely.

The subject land is the site of the Sydney Arcade and has an area of roughly 14600 sq. feet. The land has a frontage of 11" 11 $\frac{1}{4}$ " and 11" 9 $\frac{1}{2}$ " respectively to George and King Streets. The frontage in George St. is on the Eastern side and is between Market and King Streets. The frontage in King St. is on the Southern side and is between George and Pitt Streets. The configuration and dimensions of the land are shown on Exhibit 1. The shape of the land is roughly that of an L, the top of which is the George St. entrance, and the end of the horizontal bar of the letter marks the King St. entrance. The major part of the land is an internal area between these two entrances. The land on either side

of the George and King St. entrances is not owned by the taxpayer. The depth of the George St. frontage is 47 feet, that being the depth of each of the adjoining parcels of land, and at that depth the taxpayer's land widens, the approximate width becoming 72 feet. The depth of the King St. frontage is about 32 feet, that also being the depth of the adjoining properties, and at that depth the width of the subject land is about 66 feet.

Described as an arcade the general character of the building on the land is a brick building with a glass roof which covers the passage on the ground floor between two rows of shops, 24 in all, built round the boundaries of the land. On the first floor there are offices or rooms, 27 in number, approached from the ground level by stairways, and above these is a place described as an attic. The ground floor is tiled and there is no basement.

There are two methods to be followed in ascertaining the unimproved value of the subject land for the purposes of Federal Land Tax, and the higher of the amounts produced by these two methods must be adopted. The two methods were outlined by the Court in *Russell v*

Federal Commissioner of Taxation 50 C.L.R. 182 at 194. "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 realise 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 realise 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."

The first enquiry is to ascertain the capital sum which the fee simple might be expected to realise if offered for sale on such reasonable terms and conditions as a bona fide seller would require assuming that at the time at which the value is required to be ascertained for the purposes of taxation the improvements did not exist.

The second enquiry is to ascertain (a) the improved value of the land and (b) the value of the improvements, and then to deduct the value of the improvements from the improved value. The terms " improved value" and " value of improvements" are both defined by the Land Tax Assessments Acts.

Evidence bearing on the subject of the first enquiry was given by H. Thompson and F.W. Baird on behalf of the taxpayer. The former, who is the Managing Director of Raine and Horne, has had a long and wide experience in the real estate business in Sydney and in the valuation of land. The latter is the City Valuer for the City of Sydney and Controller of the Council's property. He has occupied the position for thirteen years and was previously Assistant Valuer for the City.

Mr. Thompson estimated the unimproved value at £ 37852. He valued the parcel as an area consisting of land with a frontage to a private street taking the length of the street as 370 feet. The depth of each strip of land forming the entrances to the Arcade was not included in that length. He said that the value of the subject land could be ascertained by taking the value of land in Rowe St. as a standard. That land was in his opinion double the value of the subject land. But his opinion as to the value of land in Rowe St. was not based on any sale. Without any such guidance he estimated the value of land in Rowe St. at 200 per foot, and deduced the value of the land fronting the passage through the Arcade/<sup>considered</sup> as a street at £ 100 per foot. His valuation of the land was about £ 37000.

Mr. Thomson also endeavoured to compare the subject land with that comprising the Imperial Arcade which runs from Pitt to Castlereagh St. This land is also the site of a shopping arcade but it runs between two parallel streets and carries a very much larger volume of traffic. Again without the assistance of any sales he valued the Imperial Arcade as an ~~area~~<sup>area</sup> with a street running through it and valued the land which on this assumption would have its frontage to that street at £ 300 per foot. He estimated the rental value of the Imperial Arcade to be three times greater than that of the Sydney Arcade and deduced the unimproved value of the available frontage to the street which he assumed to run through the subject land at £100 per foot.

I cannot accept this estimate of Mr. Thompson, based as it is on

his own idea of the value of another property and unsupported by the evidence of any sales.

Another method of valuation employed by the witness was so novel and intricate that the taxpayer's counsel did not in the end rely on it. The attempt to arrive at the unimproved value of the land by such an extraordinary method is explained by its peculiar shape or plottage, which is unique in Sydney.

Mr. Baird said that on 1st January 1934 in the course of his official duties he assessed the subject land as at 30th June 1933 at £ 24750, but that since considering the unimproved value for the purpose of giving evidence he thought his figure should be increased to £ 30640. Mr. Baird's own official valuations as at 30th June 1934 and 1935 remained at £ 24750. However he said that the sum of £ 30640 would be the correct unimproved value for those dates also. He arrived at the higher valuation for the subject land by assuming a total internal frontage of 383 feet to a supposed street and he estimated its value at £ 80 per foot. The depth of the entrances was excluded from the frontages. In arriving at this valuation Mr. Baird said that he took as a basis the value of land in Rowe St, which he estimated at £ 200 per foot. That figure he said was obtained from consideration of a sale which had taken place in Rowe St. in 1912 and the movements up and down since that date. No particulars were elicited as to the sale which the witness made the basis of his calculation. I am not satisfied that the values which the witness placed on the land from year to year were a reflection of the prices obtained on the sale of comparable land. In comparing the value of land in Rowe St. with that in the Sydney Arcade Mr. Baird said that he merely formed an estimate of what the difference in value should be. He did not work it out on any basis of either rentals or sales. These he said he did not take into consideration. The criterion which Mr. Baird said he applied was what the land would bring in the open market if it were free of buildings.

The amounts stated by Messrs Thompson and Baird to be their valuations are not shown to be based on <sup>complete</sup> satisfactory data. Of course I am satisfied that neither refrained from utilising other data which might have produced a higher valuation. It is established that the land is unique because of its peculiar shape and dimensions and the fact that the greater part of the interior land abuts on the back line

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of the properties flanking the entrances. The correctness of any valuation based on the sales of other properties would depend on the allowance which should be made for these peculiarities and there have been no sales from which a valuer could gather data to assist him in forming an opinion as to what the measure of the allowance should be.

The witnesses called on behalf of the Commissioner applied a mechanical rule. Mr. Waldron estimated the unimproved value as at 30th June 1933 at £ 70600 in round figures. He arrived at this valuation by doing a calculation according to the principles of the Somers system. In explaining this system the witness said " Speaking of a foot of land is meaningless unless you know the depth, and a curve has been designed in the form of a parabola showing the curve of value from depths of one foot up to unlimited depths. And that depth table gives the percentage value of a unit foot." Illustrating, Mr. Waldron said " Supposing for the sake of argument you had land 50 feet deep. You could by the Somers curve reduce it to the unit foot of 100 feet deep and then if you had another 20 feet beyond the 100 feet you could determine the value of that extra 20 feet". A text book entitled The Science and Practice of Urban Land Valuation by Pollock and Scholz was put in evidence.

Mr. Waldron carefully analysed a number of sales and arrived at a unit foot value which he applied in making his computation. For this purpose he divided the land into six parts, two parts consisting of the land lying behind the George and King St. frontages as indicated on Exhibit 1, the other four parts being those parts of the internal land abutting on the properties which flank the entrances to George and King Sts. None of these latter parts has an entrance to any street. He calculated the value of each of these six parts separately and he set down the aggregate value as the unimproved value of the area.

Counsel for the taxpayer did not dispute that the unit foot value which the witness deduced from a consideration of the sales was a correct unit of value to apply in making a computation of the value of the land according to the Somers system. But he denied that this system could be applied to ascertain the value of the parts of the land which had no frontage to any street. The system provides for the computation of the value of back or internal land on the basis of a unit foot. I do

not consider it necessary to discuss the system in detail. A perusal of the book shows that this system is designed primarily for the purpose of obtaining uniformity in carrying out a general valuation. The cross-examination of Mr. Waldron and the diagrams Exhibit S and Exhibit 16 show that the system may produce startling results, at least where it is not being used as a general standard of valuation. The witness applied the Somers system rigidly in computing the value of each of the six sections. But it would be quite unsafe to assume that the result which the Legislature intended to be reached by applying its own criterion could be produced by the inflexible application of a mathematical formula constructed after the consideration and adjustment of particular data based on the experience of sales in another country. The admission by the taxpayer's counsel of the correctness of the unit foot value which Mr. Waldron applied, accompanied as it was by an objection to the Somers system as a valid method for determining the unimproved value of the whole area for the purpose of taxation, does not assist the Commissioner's case. Mr. Waldron, it is true, said that in arriving at his valuation of £ 70600 he looked at the available sales, but this data was only used to furnish a unit of value for the application of the Somers system. The witness freely admitted in cross-examination that the departmental valuation declared in each notice of assessment was obtained by means of the Somers system. When it became known that the valuation would be contested in Court Mr. Waldron attempted to check it. He said " After having the value of the land on the assumption that the improvements did not exist I obtained a figure as a value of the whole site. I then tested that by having plans prepared for two types of building which I considered would be suitable for erection on the site. I went into the probable rents and outgoings of those buildings and calculated the net return on the capital invested in each case. From that I came to the conclusion that the figure I arrived at for the vacant land was justified."

He considered that if the land were vacant it might be suitably used as a modern shopping arcade or a chain store. But whether in the result the capital sum computed by the American formula was verified as the price at which the land would be bought by a purchaser contemplating either of these schemes depends on the correctness of Mr.

Waldron's estimate of the cost of the building, the amount of the gross returns and outgoings to be taken into consideration, and also on the soundness of Mr. Waldron's opinion as to the amount of ~~earn~~ return with which the purchaser would be content on the outlay of capital required to obtain the site and build on it.

The cost of erecting an arcade ~~was~~ was set down by Mr. Waldron at £ 30976. That figure was based on the estimate of Mr. Gordon an experienced architect who was called as a witness. Mr. Waldron's ~~fig~~ estimate of the rental was made up by detailing the rental for each room and shop in the proposed arcade built according to Mr. Gordon's plan. The gross <sup>rental</sup> to be obtained from the land thus improved was estimated at £ 9171. He allowed 10% for vacancies which left a net gross return of £ 8254. He estimated the outgoings in detail at £ 2383. Upon these calculations the net return to be expected would be £ 4971. ✓ If Mr. Waldron's valuation of the land is correct and the purchaser would be prepared to spend the amount set down as the cost of erecting the building the total outlay would be £ 101568- £ 70952 ( land), £30976 ( building). The witness said that the net return of £ 4971 per annum was " nearly" 5% on the whole outlay necessary for the venture and he regarded that as a satisfactory return. He added that the ~~rents~~ rents which he fixed were moderate and that the owner would be advised to accept moderate rentals at first to get the proposition going. The witness pointed out that the return from Government Bonds in 1933 was 3<sup>5</sup>/<sub>4</sub>%. It is obvious that if the cost of the proposed building and the net rental as estimated by the witness are correct, the investor who was not satisfied with so small a return as a ~~shade~~ shade less than 5% would not pay £ 70952 for the land. If the hypothetical purchaser desired that the net rental of £ 4971 should represent a return of 5<sup>1</sup>/<sub>2</sub>% per annum the outlay would have to be reduced to £ 903<sup>6</sup>/<sub>5</sub>. Assuming that the cost of the building remained constant ~~the purchaser who sought~~ <sup>2</sup> the purchaser who sought a return of 5<sup>1</sup>/<sub>2</sub>% would not pay more than £ 59<sup>8</sup>/<sub>89</sub> for the vacant land. An investor looking for a return of 6% would be compelled to make £ 82850 the limit of his outlay, and when the cost of the building is deducted there would remain the sum of £ 51874 as the price which the investor would pay for the vacant land.

It is clear therefore that the check which Mr. Waldron applied to



his valuation made according to the "omers system, depends for its reliability not only on the substantial accuracy of the estimates as to the cost of a new arcade, the gross rentals and the outgoings, but also on the soundness of his view as to the amount of return with which the hypothetical purchaser with the idea of building a shopping arcade in mind would be content. A variation of even  $\frac{1}{2}\%$  between his and Mr. Waldron's estimate would be reflected in a considerable difference of opinion as to the capital sum to be expended in acquiring the land, and it should be noted that ~~there~~ is a difference of something more than 1% between the rate which Mr. Waldron considered to be satisfactory and that which Mr. Morris said would be expected from the venture. Mr. Morris is a business man who is in touch with investors in real estate and his difference with Mr. Waldron in this matter cannot but produce the impression that the return of "nearly" 5% which was a factor in checking the valuation made by the formula would have been below the return which a purchaser desirous of erecting a shopping arcade would have sought.

Mr. Waldron also assumed that the land might be used as a site for a chain store, and made similar estimates. The total, assuming his valuation of the land to be that at which it could be bought for the purpose of this venture, would be £ 110335 and the net return £ 7323. That represents a net return of 6.6% per annum.

Mr. Waldron applied the same method of valuation and the same tests to determine the value of the land as at 30th June 1934 and 1935. His data and estimates varied from year to year. In the result his valuation as at 30th June 1934 was 5% higher than that for 1933. The sum was £ 74122. In 1934 however his figures showed a return of 5.4% on the arcade and  $6\frac{3}{4}\%$  on the chain store.

For 1935 his valuation of the land was £ 77828. The return on the arcade was equivalent to  $5\frac{3}{4}\%$  and on the chain store  $6\frac{3}{4}\%$ .

The reliance to be placed on the test which the witness made to verify the valuation by the formula also depended on whether his estimate of the net amount of the rental which the land so improved would yield was substantially accurate. I have come to the conclusion that Mr. Waldron took too favourable a view of the location of the subject land in comparison with other sites in King St. and other

shopping arcades the rentals of which he took into consideration in arriving at the rentals which the tenants would pay for the rooms and shops in the proposed arcade. It is demonstrated by the evidence that the conditions governing the flow of traffic operate somewhat to the disadvantage of the subject land as compared with the Imperial and the Strand Arcades. I visited these two arcades at the request of the parties and on that occasion there were many more people in the Imperial and Strand Arcades than in the Sydney Arcade.

But although Mr. Waldron's figures are not accepted it must not be understood that the care and consideration which he obviously ~~devoted~~ devoted to the preparation of the Commissioner's case are in any way disparaged. The preparation of the case on the line which he took was very well done and these remarks also apply to the work of Mr. Copeland another departmental witness.

Two other witnesses, H. Hibble and R. Morris, gave evidence relating to the value of the land on the assumption that it was unimproved. The former sought to ascertain the value per square foot of the land, the latter applied the Somers curve but dissected the land into areas different from those utilised by Mr. Waldron to arrive at his aggregate valuation.

Counsel for the Commissioner in the end repudiated Mr. Hibble's evidence. Deriving a price per sq. foot from the sum realised in the sale of other land Mr. Hibble sought to arrive at a valuation by making adjustments to suit the idiosyncrasies of the subject land. This witness in the course of his evidence assumed an attitude of scorn towards the Somers principles. If his valuation approximates to that of Mr. Waldron that could happen only by accident and not because two sound, though different, methods have been adopted to ascertain the unimproved value as required by the section.

Apparently the Commissioner was at first content to rely on the evidence of Mr. Waldron and Mr. Hibble to establish the value of the land as declared in the assessments. But the cross-examination of ~~Mr.~~ Mr. Waldron elicited the fact that Mr. Morris had been consulted on behalf of the Commissioner, and at the eleventh hour he was called as a witness.

Mr. Morris expressed the same opinion as Mr. Thompson that the land was unique in formation, being mostly interior land with access to

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George and King Sts. He admitted that there were difficulties in valuing it because of its location. He stressed that a dominant factor to be considered in estimating the value of the land was its position relative to King and George streets. In making his valuation the witness took into consideration sales of land in the City in order to arrive at a unit foot value. The manner in which he divided the land for the purpose of making his valuation is shown by Exhibit 15 and his evidence. He excluded the land forming the entrances from George and King Sts. He valued only the interior land. By the Somers Tables he computed the area shown by Exhibit 15 on the King St. side at £ 35750, and on the George St. side at £ 25560, making a total of £ 61310. To this sum he added 10% for the advantage which the interior land had because of the double entrance to both streets, making a grand total of £ 67500. It will be observed that Mr. Waldron did not exclude the land forming the entrances to the interior land and relied upon the operation of the formula to give him the true valuation of the whole area, whereas Mr. Morris applied the formula to the interior land and treated the entrances as appendages which enhanced the value of the interior land. But like Mr. Waldron he did not value the land in one parcel. It would seem somewhat contradictory to treat the double entrance to the area as a factor enhancing the value of the whole area while at the same time to split the area into parts each of which has only one entrance in order to value it.

Mr. Morris also purported to check the sum arrived at by these calculations by investigating what the land would yield if, being unimproved, it was put to its most appropriate uses. These he considered to be a shopping arcade with shops upstairs and on the ground floor, or a chain store. He accepted Mr. Gordon's estimate of the cost of erecting an arcade, namely £ 20300. This sum did not include carrying costs. The witness formed his own estimate of the rentals which the proposed arcade would produce. But his check would not have worked out at the same figure as that which he obtained by applying the Somers Tables and adding 10%, unless a shopping or bargain basement were put in, at an estimated cost of £ 7200. The addition of a basement no doubt commended itself to Mr. Morris as a method of inflating the return, but no other witness suggested it. I am not satisfied that the introduction of a basement would be part of a scheme for utilising the land as a site for a new

shopping arcade. Mr. Morris estimated the net annual return from the proposed arcade with a basement at £ 5840. He considered that a person embarking his capital in that venture would look for a return of 6%. Hence the total amount, including the purchase price of the land, which the purchaser would be prepared to outlay, would be the capital sum obtained by capitalising £ 5840 at 6%. That sum is £ 97250. If the estimated cost of the arcade and the basement is deducted from this sum, the price which the hypothetical purchaser with this scheme in mind would pay for the vacant land would be £ 69750. This is only £ 2200 more than the valuation which Mr. Morris arrived at for the whole parcel of land. It is obvious that such a valuation as he made by the Somers system would not be even approximately confirmed if he had not hit on the idea of putting in a basement, and this he is the only witness to suggest. Moreover if the witness had added carrying costs to the estimate of the cost of construction his check would have failed to verify the valuation which he computed with the aid of the Somers curve.

The witness also purported to check his valuation of the interior land by assuming that the parcel would be purchased for the erection of a chain store. Unlike Mr. Waldron who considered that the purchaser would be the business organisation using it for their own purposes this witness thought that the purchaser would erect such a building with a view to letting it as a branch of a chain store.

Mr. Morris made a former rough valuation for the Department for the purpose of the case without the aid of the Somers Curve which amounted to £ 65000.

There is no evidence of a sale of comparable land. There is evidence of many sales of land which like the subject land has the advantage of being situated in the heart of the city. But because of the unique character of the subject land which is in the main back land, none of the Commissioner's witnesses, apart from Mr. Hibble, applied the evidence of other sales in any other manner than by the Somers Curve. Mr. Hibble's evidence is disclaimed by the Commissioner.

The proper principle to apply in this case to determine the value of the unimproved land is that by Starke J. in *Russell v Federal Commissioner of Taxation* 50 C.L.R. 182. "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 to turn to proper account its potential earning capacity, capitalising 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." ( pp. 194-195).

Before working out the value according to this method I should observe that I find myself unable to adopt the figure arrived at by any of the witnesses as to at which the land should be valued. Their methods are open to criticism, but it is realised that their task was a difficult one.

As far as possible regard has been had to what these experienced people have done as matters to be taken into consideration in checking and comparing the result produced by the method adopted by the Court. I have considered too the result thus produced in relation to sales of land which would be comparable with the subject land but for its configuration and location. The figures stated later in the judgment which are so produced are I think supported by these considerations although not by the witnesses considered individually. I propose to adhere to these figures rather than to those which I might have arrived at by making a rough estimate, with some allowance for the peculiar shape of the land, based solely on the prices realised on the sale of city lands which, as has been observed, would be comparable with the subject land but for its shape.

The potential uses of the land are limited. Because of its narrow frontages it is not suitable as a site for an ordinary department store or a theatre. The evidence as to sales shows that there was a fairly active market and that owners of land in the city bought land adjoining theirs when needed for the purposes of the purchaser's business on terms apparently favourable to the vendors. But there is nothing in the evidence to ~~suggest~~ warrant even a conjecture that any adjoining owner would have bought this area in order to enlarge his existing holding. I do not think that any owner of the subject land would be ready to sell it except as an entirety because of the great detriment which severance would bring to the residue left on his hands. It is quite impossible to suppose that sales could have been negotiated simultaneously with all the adjoining owners on terms which would have been acceptable to the vendor.

I reach the conclusion that the most valuable and productive use for which the land might have been bought was for building a shopping arcade and for that purpose it would have been sold in its entirety. I reject the suggestion that if the subject land were vacant it would be practical to consider it as a site for a chain store. The field to which the investor would have to resort for tenants, the expense of adapting a building erected as a chain store for other purposes if its use as such were discontinued, and the evidence as to the number of such

businesses already established, are considerations which lead to the conclusion that it would be unsafe to base a valuation on the potential use of the land for such a purpose. The use of data obtained on the supposition that the land was being put to that use is in my opinion not a satisfactory check on the valuation arrived at by the use of the artificial formula.

I find that in 1933 the cost of erecting a suitable building for the purpose of using the land to its best advantage as a shopping arcade would have been about £ 30000. I think the Mr. Waldron regarded too favourably the rental capacity of the area and that his estimate of rents is too high. I reach the conclusion that an arcade erected at that cost could have been let to yield £ 4650 per annum as a net rental and that the purchaser would have sought a return of 5<sup>3</sup>/<sub>4</sub>% on his outlay. Intaking this rate of return I have endeavoured to weigh the disadvantages resulting from the peculiar plotage of the land, which limits its potential uses, and from its situation in relation to the flow of traffic while at the same time giving due attention to the important fact that the land is in one of the most valuable blocks in the city. On these assumptions the total outlay of the purchaser would be £ 80870. Deducting £ 30000, the cost of the building, it appears that he would pay £ 50870 for the land in its vacant state.

Applying the same considerations for ascertaining the unimproved value as at 30th June 1934, but taking into account the rise in values and rentals and the variation in costs, and allowing 5% increase in value over 1933 I find that the capital sum which the land would have been <sup>about</sup> £ 53400.

Applying the relevant material in the same way to determine the unimproved value as at 30th June 1935, I find that value also at £ 53400.

There were admitted in evidence a proposal for mortgage of the subject land and also an instrument of mortgage. The proposal which is dated 11th January 1930 contained a declaration by the taxpayer that in its opinion the value of the land alone was £ 100000. The parties to the mortgage were the taxpayer, its Managing Director and his wife. The amount of the mortgage was £ 65000 and it was given on 20th February 1930. It was not put by counsel for the Commissioner that

either the declaration made for the purposes of the mortgage or the mortgage should be taken as a starting point from which to value the land, taking into consideration the fluctuations in the value of real estate in the city since the date of these documents. I am unable to derive any assistance from this evidence to determine the unimproved value according to the statutory criterion.

I turn now to the second enquiry to be made under the Act, that is, the estimation of the improved value of the subject property and the deduction from that sum of the value of the existing improvements.

I have arrived at the improved value by investigating the rents and outgoings of the arcade and capitalising the net return which I think should be obtained, at an appropriate rate.

For the years 1933, 1934 and 1935 the actual rents received by the appellant were considerably less than the rents which various witnesses, including the taxpayer's own witnesses, thought should be obtained. The actual amounts received in those years were £ 6145, £ 6514 and £ 6620 respectively. Corresponding outgoings were £ 3482, £ 3226 and £ 3400, and the net rentals were £ 2663, £ 3288 and £ 3220. But the extent of the increase over the actual rents which might be reasonably expected differed considerably in the opinions of the taxpayer's experts and those of the Commissioner.

Mr. Thompson estimated the gross rental which should be obtained from the present arcade at £ 7878 and put the outgoings at £ 3792. His estimated net return was £ 4086.

Mr. Cross computed the gross rental which the property should yield at £ 7650, the outgoings at £ 3747 and estimated the net return at £ 3903.

Both Mr. Thompson and Mr. Cross are men of the widest experience in rental values in the city.

Mr. Waldron thought that the rents actually received were unduly low and that the property was capable of producing a much larger rental. His method of computing the true rental capacity of the property was to take as a starting point the actual gross receipts of the peak year, 1929, namely £ 17617, and to reduce this figure in accordance with what he considered to be the percentage drop in rental values in that area from 1929 to 1933. He arrived at this percentage from a consideration of the rents which were being obtained in all the central parts

of the city and allowed a drop in rental values for the subject property of 55%. His gross annual rental for 1933 thus worked out at £ 7933 and his estimated net return was £ 4519.

Mr. Morris estimated the gross rental at £ 8050, the outgoings at £ 3100, and his estimated net return was £ 4950.

The main cause of the difference between the net returns of these witnesses is to be found in their estimate of the outgoings. In this regard it should be observed that the actual outgoings for 1935 were roughly £ 3400. I do not think that I can fairly adopt a lower figure. The outgoings for the year 1933 were also about £ 3400. The appellant is not to be presumed to throw money away in useless expenditure for the purpose of reducing Land Tax, nor is there any satisfactory evidence that the property is being badly managed. It was shown that as the rentals increase so do the outgoings, and I think that an increase in the outgoings proportionate to the increase in the estimated rental over the actual receipts would make a fair estimate of the outgoings for this property about £ 3700.

Mr. Morris's estimate of the gross rental obtainable is £200 higher than that of Mr. Thompson. I am the more inclined to follow that of Mr. Thompson for this reason that Mr. Morris admitted that the rents obtainable in his opinion from a new shopping arcade identical with the present one would be only £ 300 more a year than his estimate of the rental value of the arcade in its present condition. To my mind this suggests that Mr. Morris has not taken sufficiently into account the effect of the age and obsolescence of the building on its rent-earning capacity. His figures are also dependent to an extent on an advertising campaign as to which I can only say that the results are conjectural.

There is not a great deal of difference between the estimated gross rental of Messrs. Thompson, Cross and Waldron, and after consideration of the actual rents obtained both at the relevant period and before, and guided by the authority of Mr. Thompson and Mr. Cross, I have come to the conclusion that the true rental of the subject property at the relevant period was about £ 7900.

Various rates were suggested at which the estimated net return (which I put at £ 4200 ) should be capitalised. Mr. Morris was of opinion that 6½% was a satisfactory return, while Mr. Thompson and Mr. Cross estimated



the appropriate return at 8% and 7% respectively. The age and obsolescence of the building and the shape and position of the land were stressed as factors which should increase the rate of return, and I have given due attention to these considerations. But the fact remains that the property is in one of the most valuable portions of the city. A continuation of its present letting capacity seems assured, and though the trend of the traffic is not to its advantage it has entrances from two streets. I am not forgetting that the return on certain sales referred to in evidence was less than 5%. But those properties were bought for special purposes and not primarily for investment, and it seems to be recognised that this property would not be bought otherwise than for investment.

In my opinion  $6\frac{1}{2}\%$  is the rate which should be adopted for the relevant years.

Capitalisation on £ 4200 at the rate of  $6\frac{1}{2}\%$  gives an improved value of £ 64615.

The appellant was prepared to accept Mr. Copeland's figure for the value of the existing building in a new condition but would not admit his rate of depreciation. The extent to which the present building has depreciated is necessarily a matter on which opinions may differ widely, but certain factors incline me in favour of a rate of 50%. Although there is comparatively little physical deterioration in the building itself it is old-fashioned instyle, and if a new building were to be erected no part of the present structure, not even the foundations, which are in excellent condition from a physical point of view, could be used. The first floor is definitely obsolete. And it must be remembered that the building will depreciate considerably in the last twenty years of its life than it has hitherto. In 1933 it was 52 years old.

Mr. Copeland's figure for the value of the <sup>present</sup> building in a new condition, exclusive of the shop fronts is £ 24465. If this is depreciated 50% we arrive at the value of the building in its present condition, £ 10732. To this amount must be added the value of the shop fronts which are quite modern and were put in in 1928. They are in my opinion worth about £4000.

I estimate therefore the improved value of the property at £64615 and the value of the improvements at roughly £ 15000. The unimproved value of the land according to this calculation is therefore £ 49615.

The calculation of the unimproved value of the land by this method

gives a lower value for each year than the valuation of the land upon the assumption that it was vacant as at 30th June of each year.

Accordingly I determine the unimproved value of the subject property as follows :- as at 30th June 1933, £ 50870, as at 30th June 1934 £ 53400, as at 30th June 1935, £ 53400.

The appeal<sup>are</sup> is allowed with costs, costs to include any reserved costs and the costs of the shorthand writer. *The assessments are remitted to the Commissioners to give effect to these declarations of the unimproved value respectively.*

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