

IN THE HIGH COURT OF AUSTRALIA

EMANUEL AND ANOTHER

V.

THE COMMISSIONER OF TAXATION OF THE
COMMONWEALTH OF AUSTRALIA

ORIGINAL

L2.2-0

REASONS FOR JUDGMENT

Judgment delivered at MELBOURNE

on MONDAY, 21ST OCTOBER, 1957.

SYDNEY FRANCIS EMANUEL AND
RONALD GUY EMANUEL

v.

THE COMMISSIONER OF TAXATION

ORDER

Appeal allowed. Amended assessment of the 28th March 1957 set aside, liberty to the respondent to reassess the appellants on the basis that the shares in the undermentioned companies held by the deceased at the time of his death were of the values specified hereunder:-

Margaret Downs Pty. Limited	16s. 3d. each
Cherrabun Pty. Limited	19s. 6d. each
Christmas Creek Pty. Limited	14s. 5d. each
Emanuel Brothers Pty. Limited	9s. 2d. each.

Respondent to pay the appellant's costs of the appeal.

SYDNEY FRANCIS EMANUEL AND
RONALD GUY EMANUEL

v.

THE COMMISSIONER OF TAXATION.

JUDGMENT

TAYLOR J.

SYDNEY FRANCIS EMANUEL AND
RONALD GUY EMANUEL

v.

THE COMMISSIONER OF TAXATION.

The appellants are the executors of Isidore Samuel Emanuel, deceased, and this appeal, which comes to this Court pursuant to section 24 of the Estate Duty Assessment Act, 1914-1953, is concerned with the value of certain shares of which the deceased was the holder until his death on the 5th January 1954. The shares in question were shares in four companies, three of which were pastoral companies incorporated in the State of Western Australia and known respectively as Margaret Downs Proprietary Limited, Cherrabun Proprietary Limited and Christmas Creek Proprietary Limited. At the date of the death of the deceased the share capital of these companies consisted of fully paid shares of one pound each. In Margaret Downs Proprietary Limited, the number of issued shares was 68,640, in Cherrabun Proprietary Limited, 53,040 and Christmas Creek Proprietary Limited, 49,920. Of these shares the deceased held respectively 19,642, 15,177 and 14,285. The fourth company is Emanuel Bros. Proprietary Limited and the deceased's holding in its capital was 5,900 fully paid shares of £1 each.

The pastoral properties controlled by the pastoral three/companies abovementioned are held under pastoral leases from the Crown and are known as Margaret Downs, Cherrabun and Christmas Creek. Each is situated in the Kimberley region of the north-western portion of Western Australia. The total area of Margaret Downs is nearly 900,000 acres and this property is bounded on the north and north-west by the Margaret and Fitzroy Rivers respectively. For some ten or twelve miles back from these rivers the property consists of what are called "river frontages" and these constitute, or, at least in normal times constituted, the best part of the property. Extending for another ten miles, or thereabouts,

from the river frontages are large areas of what is classed in the Kimberley region as second grade land. It consists mainly of soft spinifex country but it includes some portions of flat land capable of growing native grasses. Beyond these areas the only remaining grazing land is that upon which "buck spinifex" and wire grass grows and this is said to be the last resort for cattle in times of drought. Cherrabun is bounded on the north by the Fitzroy River and a stream known as Christmas Creek forms a substantial part of its north-eastern boundary where it adjoins the south-western corner of Margaret Downs. On the east, Cherrabun adjoins the western boundary of the property known as Christmas Creek. Cherrabun exceeds 900,000 acres in area and apart from an extensive area of salt marsh which it contains its general composition is much the same as Margaret Downs. Christmas Creek is traversed by the stream of that name and is nearly a million acres in area. According to the evidence this property has no "river frontages" and the stock depastured upon it were, at the relevant time, dependent for water upon four artesian and six sub-artesian bores. Each of the three companies referred to has for a long time been engaged in the business of raising and marketing beef cattle and over many years substantial quantities of cattle, varying with seasonal conditions, have been disposed of. Cattle which are sold are, in general, driven to Broome or Derby, these ports being distant respectively 220 and 300 miles from Margaret Downs and somewhat further from the other properties.

It appears from the evidence that the Kimberley region is dependent for its prosperity upon monsoonal rains which may generally be expected each year in the months of January and February. The average annual rainfall on Margaret Downs for a period of fourteen years from the 1st July 1942 to the 30th June 1956 was 1,653 points and a very substantial portion of the total rainfall during this period fell each year in the months of January and February. The

average rainfall in those two months in the ten years from the 1st July 1942 to 30th June 1952 was 940 points but in those months in the year ended 30th June 1953 only 419 points fell out of a total for the year of 596 points. The records of the rainfall at Margaret Downs covering a period of twenty-six years show that only in two other years during that period were there less than ten inches of rain; in the year ended 30th June 1935 the figure was 668 points and in the year ended 30th June 1940, 970 points. In the months of January and February in the year 1954 the rainfall was even less than during the same months in the previous year, the records showing that only 360 points fell during those two months. Moreover extreme heat was experienced for sustained periods during those months. Temperatures were said to have ranged, at times, between 116 degrees and 127 degrees and the result of the prevailing conditions was that the river frontages, which had not recovered after the previous dry year, became denuded of grasses and the cattle, already in a comparatively poor state were existing, in the main, on buck spinifex and wire grass. The adjoining properties of Cherrabun and Christmas Creek, it is sufficient to say, were affected in much the same way by the adverse conditions which prevailed during these two years.

It is apparent that, at least, by the middle of February 1954 there was cause for considerable anxiety on the part of those interested in the management of these properties but in April 1954 927 points of rain fell at Margaret Downs. At Cherrabun 1075 points fell in that month and at Christmas Creek 720 points. The rainfall records which were tendered in evidence indicate that this rainfall was most unusual; in the previous eleven years a total of approximately 700 points fell in the month of April at Margaret Downs whilst no rain at all fell at Cherrabun in those years during that month. The total rainfall in April for the same period at Christmas Creek was 642 points. The rain

which fell in April 1954 was, of course, beneficial but there can be no doubt that the condition of the properties had, by then, deteriorated to such an extent that their complete recovery was bound to be a long process. Such has proved to be the case and substantial expenditure has been incurred - so far without a great deal of success - in endeavouring to restore the natural grasses to the river frontages of Margaret Downs and Cherrabun.

Naturally enough seasonal conditions have been reflected in the returns from each of the properties and in the years ended 30th June 1953 and 30th June 1954, losses of £2,606 and £17,284, respectively, were made at Margaret Downs. The operations at Cherrabun in those years showed, respectively, a profit of £1,527 and a loss of £9,144 whilst the figures relating to Christmas Creek indicate losses of £2,565 and £10,172 respectively. The operations in the previous post-war years produced profits as follows:-

	<u>Margaret Downs</u>	<u>Cherrabun</u>	<u>Christmas Creek</u>
	£	£	£
30th June, 1945	2262	3722	837
" " 1946	8168	7590	1055
" " 1947	4216	7694	3336
" " 1948	10547	12217	5481
" " 1949	19442	17827	13203
" " 1950	27635	16818	14619
" " 1951	28562	29177	25034
" " 1952	30301	20291	20225

These brief observations are intended to give some indication of the state of the three properties at the date of the deceased's death but it will be observed that they deal with events which occurred both before and after that date and, upon the hearing of the appeal, this circumstance was not overlooked by the respondent. In particular it was pointed out that, although a prospective purchaser of the deceased's shares would, on the 5th January 1954, have taken into account the results of the failure of

the monsoonal rains in 1953, he could not have contemplated a further failure during the months of January ^{and} / February of 1954. On the contrary it was said that he would undoubtedly have expected rain during those months for failure of the monsoonal rains in successive years was quite exceptional. There is, I think, much to be said for the respondent's contention. No doubt it may be proper to have regard to those matters which, on the 5th January 1954, were known or could have been contemplated by an informed and willing purchaser, but it is difficult to see how consideration of unusual and unexpected events after that date can assist in an attempt to ascertain the value of the shares on that date. It could not, of course, have been known then that the monsoonal rains would fail to arrive in January and February of that year and still less could it have been known that heavy rains would occur in April. But, upon an analysis of the evidence, precise considerations of this kind appear to have played but little, if any, part in influencing the opinion of those witnesses who attempted to place a value upon the shares and it is unnecessary to elaborate them. What did appear clearly enough, however, was that an informed purchaser, in January 1954, would have been confronted with the fact that the previous eighteen months had been the driest period in the history of the properties for a great many years, that the condition of the properties and of the cattle depastured thereon was comparatively poor, that the operations during the previous financial year had resulted in losses on two of the properties and a very small profit on the other and, if adequate investigation had been made, that losses in respect of the operations of all three during the current financial year were inevitable. How far these considerations would have influenced either a prospective seller or a prospective purchaser of the shares at that time is a matter of speculation for the shares were marketable primarily, and probably

exclusively, as a long term investment and dry and drought conditions from time to time were an inescapable incident of the business of each company. Yet 1953 had been an exceptionally bad year and the conditions prevailing on the properties were, on the 5th January 1954, such as to create a market at least more favourable to a purchaser than to a seller.

In the return made pursuant to the Estate Duty Assessment Act, 1914-1953 the value of the deceased's shares in Margaret Downs was specified at 9/3d. each whilst those in Cherrabun and Christmas Creek were valued at 11/3d. and 10/5d. each respectively. These valuations were not acceptable to the respondent who for the purposes of his assessment and a subsequent amended assessment valued the shares in the three companies at 19/1d. each, 22/4d. each, and 17/4d. each respectively.

The values assigned to the shares in the return were supported upon the appeal by the evidence of Mr. Morrison who is a chartered accountant and who was a director of the companies at the time of the deceased's death. He arrived at his valuation by taking the annual average of the profits of each company for three successive calendar years to the 31st December 1953 and by applying to each average sum, after appropriate deductions for income tax, a capitalization rate of 20%. Mr. Morrison's valuation was made in June 1954 and it is, I think, apparent from his evidence that he was unduly affected by the fact, then known, that the rains had come too late in 1954 to re-establish the river frontages on Margaret Downs and Cherrabun. Moreover, the period he selected for averaging purposes included, as one-half of its components, a period of eighteen months which appears to have been the worst period in the history of the properties and, in spite of the fact that the first half of the period selected was a period of unusual prosperity, reflected net average figures which cannot be regarded as truly representative

of the capacity of the properties. Again the capitalization rate employed by him - namely 20% - was too high. The selection of this rate was no doubt induced by his knowledge of conditions on the properties in June 1954 but a sale of the shares on the 5th January 1954 would not, as he was inclined to suggest, have been conducted on the basis that the properties were not only drought stricken but had no future or, at the best, only a remote future. The capitalization rate selected by him appears to me to be much too high and when applied to average annual profits which appear to ^{the capacity of the properties} underestimate/ produces valuations which must be regarded as quite unacceptable.

Two other witnesses gave evidence concerning the value of the shares in question. Mr. Parkes gave evidence in the respondent's case and his valuation attributes to the shares the following values as at the date of the deceased's death - Margaret Downs 19/7d. each, Cherrabun £1.2.10d. each and Christmas Creek 17/3d. each. Mr. Merry, on the other hand, valued these shares respectively at 13/3d. each, 16/2d. each and 11/10d. each. Each arrived at his conclusion by a process of capitalization after attempting to ascertain the maintainable annual profit of each company. Examination of their valuations shows that they had much in common and the differences in their final conclusions resulted mainly from three factors; they disagreed, firstly, concerning the maintainable annual profits of each company, secondly, concerning the extent to which it was appropriate for companies of this character to hold profits in reserve and, finally, concerning the degree to which the value of the shares ought to be regarded as affected by the fact that they constituted minority holdings in each of the companies and were of such a character that they were not readily realizable.

The difference on the first of these matters ^{of different periods for averaging purposes} resulted from the selection/ Mr. Parkes' valuation was based

upon the profits of the nine financial years between the 1st July 1944 and the 30th June 1953. The average of the profits of these years was, Margaret Downs, £14,654, Cherrabun £13,121 and Christmas Creek £9,143. After appropriate allowances for income tax these figures were reduced to £10,758, £9,685 and £6,900 respectively. To these net figures Mr. Parkes then applied a capitalization rate of 16% with the results already referred to. The rate of 16%, it may be added, was selected by him to provide for annual reserves at the rate of 20% and annual dividends of approximately 12½%. The dividend rate for which this gross rate of capitalization provides after the creation of reserves at the rate of 20% is 12.8%, or, after the creation of reserves at the rate of 25%, 12%.

Mr. Merry based his conclusions upon the average profits over a period of ten years. The commencing point of this period was the same as that selected by Mr. Parkes but he included the loss made in the year ended 30th June 1954. This, it will be observed, was omitted by Mr. Parkes and the result was that the averages struck by Mr. Merry were considerably lower. In the case of Margaret Downs the gross average was £11,708, in the case of Cherrabun, £10,957, and Christmas Creek, £7,319. The net figures after provision for income tax and other minor adjustments were respectively £8,696, £8,170 and £5,623. An analysis of the valuations made by these two witnesses disclosed other but minor differences but it is clear that if Mr. Parkes had taken into account the trading results for the year ended the 30th June 1954 his estimate of the net maintainable profits of each company would have been somewhat below that of Mr. Merry. It, perhaps, remains to be said that they were in substantial agreement concerning the annual return which a purchaser of the shares would expect from an investment of this type, namely, approximately 12½%.

The first problem, it appears to me, is to

determine whether it is proper to take into account the trading results for the year ended 30th June 1954. Mr. Parkes considered that it was not because in that year trading was carried on under abnormal conditions which he thought probably would not recur. But if averages over a lengthy period are to be relied upon to found an estimate of the profits likely to be earned by each company I see no reason why both good and bad years should not be included. It may have been thought probable that the events of the successive years of 1952/53 and 1953/54 would not be repeated in the foreseeable future but it was by no means certain that they would not be and I feel that if the figures for the latter year could have been available to an ordinarily prudent purchaser he would certainly have taken them into account. The strongest objection to the inclusion of the losses made in that year is that the relevant accounting period did not conclude until nearly six months after the death of the deceased but the accounts show that, in the case of Margaret Downs and Christmas Creek, practically the whole of the losses for the year ended the 30th June 1954 were incurred prior to the 31st December 1953 and that, in the case of Cherrabun, the loss for the six monthly period which ended on 31st December 1953 exceeded the loss for the full year which ended on 30th June 1954. It is apparent that if Mr. Parkes had taken the period of nine and one-half years ending on the 31st December 1953 as his averaging period, the average annual profits would not have been substantially more than those arrived at by Mr. Merry and his ultimate valuations would have approximated the values which, it will be found, I have attributed to the shares. To a prospective purchaser early in 1954 the trading operations of the past six months would, in my view, have been of prime importance and I can see no reason why they should not be taken into account or why the figures for the completed year, which give a more comprehensive picture of the companies' trading activities, should not be included for averaging purposes. And even if, as Mr. Parkes thought, that year was abnormal and unlikely to be repeated the fact remains that, by the time of the deceased's death, the properties and the cattle

depastured thereon had been so affected by the prevailing conditions as to create a market favourable to a purchaser and the inclusion of the results of that year's trading would, at the most, reflect that

situation. The result is that I think the averages struck by Mr. Parkes are too high and that those of Mr. Merry are to be preferred. Complete acceptance of the averages struck by Mr. Merry should, ^{however,} be regarded as subject to a minor qualification which will subsequently appear.

The next problem is to make some assessment of the extent to which prudent management of the affairs of the three companies might be thought to require some annual reservation of income. Mr. Parkes thought 20% was an appropriate rate and Mr. Merry initially expressed the opinion that 25% was reasonable though, after hearing Mr. Millard's evidence, he advanced this figure to 30%. ^{Contemplation of the} / creation of reserves of that magnitude would, on Mr. Merry's figures, result in a reduction in his valuation of the shares in Margaret Downs to 11/10d., Cherrabun 14/4d., and Christmas Creek 10/6. But I think that Mr. Merry's amended view was influenced by consideration of factors which could not have been known or contemplated on the 5th January 1954. I refer, of course, to the failure of the monsoonal rains during that and the following month and to the failure of the river frontages to recover after the April rains. On the other hand he pointed out that appropriate retention allowances under Div. 7 of the Income Tax and Social Services Contribution Assessment Act would exceed 30% of each companies' net income and further, that since 1949 each company had, in fact, retained, annually, more than 25% of its net profits. I think little assistance on this point is derived from a consideration of the provisions of Div. 7 for the problem in this case is to determine what reserves might have been thought appropriate having regard to the particular character of the business carried on by each company and the conditions under which they operated. Nor do I receive much assistance from an examination of the policy of the companies with respect to reserves after 1949. Before that year, it appears,

it was their practice to distribute annually the whole of the available profits and it is possible that when it was decided that reserves should be created it was thought prudent, for a time at least, to accumulate^{them}/at a comparatively high rate. Moreover the years from 1949 to 1952 were prosperous years and it was possible for each company to carry large sums to reserve in those years and still pay substantial dividends. In 1951 and 1952, it may be noted, Margaret Downs Proprietary Limited paid dividends of 4/9d. and 4/1d. per share and Cherrabun Proprietary Limited and Christmas Creek Proprietary Limited paid dividends respectively of 3/9d and 5/9d. per share and 3/6d. and 4/10d. per share. Consideration of the trading history of each company and of the seasonal conditions encountered over many years satisfies me that annual reserves to the extent of 30% of the net profits could not, in January 1954, have been thought to be necessary for an indefinite period and, on the whole, I am satisfied that a prospective purchaser would not, on a long range view, have contemplated the accumulation of reserves at a rate in excess of that selected by Mr. Parkes, namely, 20% of the net income. I may add that I entertain this view notwithstanding the fact that Mr. Parkes contemplated the necessity of creating reserves out of annual profits considerably in excess of those estimated by Mr. Merry.

So far I have accepted substantially Mr. Merry's view of the maintainable profits of each company and Mr. Parkes' view of the appropriate rate for the creation of reserves and, as already mentioned, both witness were, for all practical purposes, in agreement concerning the rate of profit which investors in shares of this type might reasonably expect, that is, approximately 12½%. The result of applying this rate to the net maintainable profits which I think might have been expected to become available for dividend purposes is to indicate that, at the relevant time, the shares in Margaret Downs were worth 16/3 each, in Cherrabun 19/6 each and in Christmas Creek, 14/5 each.

There are, however, other factors to be taken into consideration. Practically all of the shares in each company, other than those of the deceased, were held by eight other interests and it appears that the respective businesses of the three companies were subject to a measure of joint control and management. To some extent, it was said, the business of each company was organized as part and parcel of a larger undertaking constituted by the activities of all three. As a consequence, it was probable that the deceased's holdings would have held more attraction for a purchaser if offered for sale together and not separately. But since they could be regarded only as a long term investment and their purchase would have required the outlay of a substantial sum of money they would have been of interest to a limited class of investor only. Moreover, in spite of the fact that the deceased's holdings were large they were minority holdings and, though the articles of each company contained no provisions restricting the transfer of fully paid shares, it is clear that they were not of such a character as to be readily realizable. All in all, these circumstances would, I think, have tended to depress the price which might otherwise have been obtained for them. In the course of his evidence Mr. Merry said that in valuing shares it had become "customary to allow for lack of negotiability and the disadvantages of minority interests", by providing an ultimate special discount of the order of 10% or 20%. The rate which he selected in the present case for the purpose of allowing for this factor was 12 $\frac{1}{2}$ %. But I find it impossible to justify the selection of this figure. Indeed I do not think that it is possible to specify any precise measure of the extent to which the circumstances to which I have referred would have operated

to depress the value of the deceased's shares. Yet I entertain no doubt that the special character of the deceased's holdings would have presented distinct disadvantages to a prospective purchaser which would, inevitably have operated to depress their market value to some extent. The case is, however, concerned with shares which, on any view, represent a long term and highly special form of investment and I do not think that the special character of the deceased's holdings would have affected a prospective purchaser to the extent suggested by Mr. Merry. However, if there were nothing else in the case I should have thought it reasonable to conclude that the values previously specified should be subject to some reasonable reduction though not to that extent.

There is, however, a counterbalancing factor. The period selected by both Mr. Parkes and Mr. Merry for the purpose of ascertaining the maintainable annual profits commenced with the year ending 30th June 1945 and the evidence shows that an inflationary trend in the prices obtainable for cattle became apparent at least by the end of 1948. The average prices per head obtained in the early years of the periods selected rarely exceeded £10 before the middle of 1948, but in the first six months of 1949 the average price per head rose to £23 for cattle from Margaret Downs and, for those from Cherrabun and Christmas Creek, to £18.14.0 and £20.17.0 per head respectively. The disparity in the prices obtained in the early years led Mr. Parkes to doubt whether the first two years of the selected period should be taken into account at all for averaging purposes but he appeared to think that, on the whole, it was not unreasonable to commence the averaging process with the first post-war year since some of the later years of the period selected by him, might be ^{some measure,} to regarded as being of exceptional prosperity and might tend, in /

counterbalance the early years. I have already expressed the view that, in the particular circumstances of the case, it is reasonable to take the trading results of each company up to the 30th June 1954 into account for averaging purposes but I am conscious of the fact that the marked increases in prices obtainable for cattle which became evident during the relevant period creates an unusual situation and one for which it would be proper to make some allowance. The evidence does not permit one to say what the trading results for the early years would have been if cattle prices had been comparable with those obtainable in the latter years for it is impossible to say to what extent labour and other costs on the properties were also affected from time to time. But by 1954 it had, I think, become apparent that the productive capacity of the properties had, in terms of money, risen substantially and that prices in the vicinity of those then being obtained would prevail, at least, for a very long time. The consequence is that the average profits for the ten years from 1st July 1944 to the 30th June 1954 tend, to some extent, to under-estimate the earning capacity of the properties. This is, I think, a feature which would have been as apparent to a prospective purchaser as it is to me and in my view it, at least, offsets any special discount which might be thought necessary on account of the disadvantages which the special character of the deceased's holdings entailed. Accordingly, I am of the opinion that no special allowance should be made in respect of this factor and that for the purpose of assessing estate duty on the deceased's estate the shares in Margaret Downs Proprietary Limited should be valued at 16/3d. each, and that those in Cherrabun Proprietary Limited and Christmas Creek Proprietary Limited should be valued at 19/6d. each, and 14/5d. each respectively.

The final question in the case is the value to be attributed to the deceased's shareholding in the

capital of the fourth company referred to, namely Emanuel Bros. Pty. Limited. This company, at the relevant time, carried on the business of stock and station agent but its activities were more or less confined to the management of the affairs of the pastoral companies already referred to and one other in which the Emanuel family was substantially interested. In the main it supervised the operations of the pastoral companies, arranged cattle shipments and sales, attended to the purchase of station requirements, provided accountancy services and generally acted as managing agent. These services had, for a number of years, been provided at cost, or less than cost, any deficiency being made up from a share of the commissions payable by the pastoral companies on sales of cattle. No dividends had been paid for many years and in 1954 it was abundantly clear that the shares could not be regarded as potential income producing assets. Nor was there any prospect of a purchaser of the shares participating in any distribution of the company's assets within the foreseeable future. In these circumstances Mr. Merry and Mr. Parkes felt considerable difficulty in valuing the shares as assets existing independently of the pastoral properties which the company's activities were designed to serve. In the end both approached the problem in much the same way. Each treated the prospect of dividends from the company as too remote for consideration and then proceeded to base his valuation upon the capital position of the company. But there was no reason for expecting a distribution of the company's assets in the immediate future and Mr. Merry, for want of a better basis, assumed the possibility of a winding-up in ten years and discounted the current asset value of the shares by five per cent per annum over that period. Mr. Parkes on the other hand merely discounted the current asset value of the shares by one-third to compensate for the lack of a prospective income return.

Both Mr. Merry and Mr. Parkes would, I think, be the first to agree that neither method appeals as a method calculated to produce a precise valuation but their efforts represent an attempt to solve the problem on some reasonable basis. The result was that Mr. Merry valued the shares at 9/2d. and Mr. Parkes at 12/9d. The difference between these two figures resulted, not from the respective methods employed by them, but from a difference of opinion concerning the asset position of the company at the relevant time. Mr. Merry took the company's balance sheet as at the 31st May 1954 and from it ascertained that the surplus of tangible assets over liabilities at that time was £7,453. Applying the method previously described this gave to the shares a value of 9/2d. each. It is worthy of note that if Mr. Parkes had commenced with this initial figure his valuation would have been ^{approximately} 9/11d. per share. But Mr. Parkes took the balance sheet of the company as at 31st November 1953 when the tangible assets of the company exceeded its liabilities by £9,968 and on this basis the asset value of each share was 19/11d. He then proceeded to adjust this figure because the subsequent accounts showed that between November 1953 and May 1954 the assets of the company were depleted by the equivalent of 5/0d. per share. The adjustment he made was a deduction of one-sixth of this sum, namely, 10d. and he based the quantum of this adjustment upon the circumstance that, approximately, one-sixth of the half yearly accounting period which ended on 31st May 1954 elapsed between the close of the previous accounting period and the death of the deceased. The result, 19/1d. he then reduced by one-third and arrived at his valuation of 12/9d. per share.

As already indicated the problem of valuing these shares introduces elements of artificiality but Mr. Parkes' valuation, it seems to me, introduces a further such element which in my view should be avoided. It must have been quite evident from the diminished cattle sales in 1953

that the returns to Emanuel Bros. Pty. Limited in the first half of 1954 would be down to a minimum and no purchaser would, in my opinion, have treated for the purchase of the shares on 5th January, 1954, on the basis that the asset position of the company had worsened only slightly since the 30th November 1953 and that it had then become stable. It was, I should think, apparent that within the next six months the assets of the company would be further depleted. If this, as I think, was so then the allowance of the proportionate amount selected by Mr. Parkes for depletions during the month of December 1953 would introduce a further air of unreality into a problem of valuation which is otherwise sufficiently invested with intangible factors. In the result I am of the opinion that Mr. Merry's valuation is to be preferred and I value the shares in the company at 9/2d. each.

For the reasons given I am of the opinion that the appeal should be allowed, that the amended assessment of the 28th March 1957 should be set aside and that the respondent should have liberty to reassess the appellants in conformity with this decision.