

IN THE HIGH COURT OF AUSTRALIA
QUEENSLAND REGISTRY

Appeal No. 2 1942.

IN THE MATTER of the Land Tax Assessment Act 1910-1940

-and-

IN THE MATTER of an Appeal thereunder against the Assessment of the Deputy Commissioner of Taxes for the financial year 1940-1941

BETWEEN:-

DAANDINE PASTORAL COMPANY PROPRIETARY LIMITED

Appellant

-and-

THE COMMISSIONER OF LAND TAX OF THE COMMONWEALTH OF AUSTRALIA

Respondent

J U D G M E N T

H.F.E. WHITLAM,
Commonwealth Crown Solicitor,
Inns of Court,
21 Adelaide Street,
BRISBANE.

IN THE HIGH COURT OF AUSTRALIA
QUEENSLAND REGISTRY.

Appeal No. 1 of 1942.

IN THE MATTER of The Land Tax Assessment Act
1910-1940

-and-

IN THE MATTER of an Appeal thereunder against
the Assessment of the Deputy Commissioner of
Taxes for the financial year 1939-1940

BETWEEN:-

DAANDINE PASTORAL COMPANY PROPRIETARY
LIMITED

Appellant

-and-

THE COMMISSIONER OF LAND TAX OF THE
COMMONWEALTH OF AUSTRALIA

Respondent

The twenty-sixth day of August 1943.

This Appeal coming on for hearing before His
Honour Mr Justice Williams at Brisbane on the twenty-
seventh twenty-eighth twenty-ninth and thirtieth days
of July 1943, AND UPON HEARING evidence and upon
hearing Mr Fahey of Counsel for the Appellant and Mr
Hart of Counsel for the Respondent and the Court
having ordered that the said Appeal stand for Judgment
and the same standing for Judgment this day in the
paper THIS COURT DOTH ORDER that the Appeal be dis-
missed and this Court doth further order that the
Appellant pay to the Respondent his costs of this
Appeal to be taxed AND THIS COURT DOTH ORDER AND
ADJUDGE accordingly.



Office of the Court

DISTRICT REGISTRAR.

DAANDINE PASTORAL COMPANY PROPRIETARY LTD

COMMISSIONER OF LAND TAX

OF THE COMMONWEALTH OF AUSTRALIA

Judgment

Williams J

These are three appeals by the Daandine Pastoral Company Proprietary Limited against amended assessments for land tax under the provisions of the Federal Land Tax Assessment Act 1910-1940 made by the Deputy Commissioner of Taxes of Brisbane in respect of the years ending 30th June 1939, 1940 and 1941 upon 36737 acres of freehold land at present used for grazing and fattening cattle owned by the appellant and situated near Dalby in the State of Queensland. For each of these years the respondent assessed the appellant upon an unimproved value of £38,574 or in round figures 21/- per acre. The appellant contends that this value is excessive and that the true unimproved value is in round figures 15/- per acre.

Daandine Station was purchased by the appellant on 25th May 1926 for the sum of £55,000. From the date of the purchase until 1934 the appellant used the station to fatten wethers and grow wool. In 1934 the appellant ceased to run sheep on the station and commenced to use it to graze and fatten cattle. The station is still being used for this purpose. It is common ground that the country is unsuitable for breeding.

For the years previous to those under appeal the Department assessed the appellant upon the following unimproved values:- for the years ending 30th June 1926, 1927 and 1928, 16/4 per acre; for the year ending 30th June 1929, 13/6 per acre; for the years ending 30th June 1930, 1931 and 1932, 12/3 per acre; and for the years ending 30th June 1933, 1934, 1935, 1936, 1937 and 1938, 15/- per acre. It will be seen therefore that prior to the year ending 30th June

~~Since~~ 1939 the highest unimproved value placed upon the land by the Department was 16/4 per acre, and that during the two preceding triennial periods the unimproved value ^{remained} ~~was~~ ~~fixed~~ at 15/- per acre. The value of ^{three of the principal} ~~primary~~ products during the three years of the immediately preceding triennial period which ended on 30th June 1938 and for the year ending 30th June 1939 were as follows:- Wool. Year ended 30th June 1936, price per lb. greasy 13.93d; 30th June 1937 16.51d; 30th June 1938 11.98d; 30th June 1939 10.57d. Beef. Year ended 30th June 1936 price per 100lbs. 25/-; 30th June 1937 28/-; 30th June 1938 31/-; 30th June 1939 30/-. Wheat. Year ended 30th June 1936 from 2/11d. to 3/11d. per bushel according to classification; 30th June 1937 from 4/5½ to 5/5½ per bushel according to classification; 30th June 1938 from 2/9½ to 4/0½ per bushel according to classification; 30th June 1939 from 1/5 ¹¹/₁₆ d. to 1/11 ¹¹/₁₆ d. per bushel according to classification. During the ^{last mentioned} ~~a~~ season growers also received a distribution from a grant by the Commonwealth Government at the rate of 4 ⁶⁵⁵/₁₂₀₀ths pence per bushel.

The following general circumstances must be taken into account as affecting the valuation since the appellant became the owners of the station, namely, (1) that at the date of the purchase the station was subject to infestation by prickly pear but that since 1933 or 1934 the cactoblastis insect has for all practical purposes eradicated this pest, and (2) that in recent years the district of Dalby has become one of the greatest wheat growing centres in Queensland, resulting in a considerable influx of population and in consequence the sub-division of several stations in the vicinity into small areas of 1,000 to 2,000 acres suitable for mixed farming. In 1929-1930 the total yield of wheat in the Dalby district was 64,806 bushels which was equal to 1.5 per cent of the total yield in Queensland, whereas in 1940-1941 it had increased to 2,320,815 bushels, which was equal to 41.5 per cent of the total yield for Queensland. No fertiliser is required to grow wheat in the district. Up to a few years ago the industry carried on in the ~~Dalby~~ district was mainly

grazing dry sheep and cattle, but, aided by the advent of the tractor, the district has developed into one where wheat and other crops are grown generally, and dairying with its usual concomitants and lamb and veal raising ^{as well as} ~~and~~ fattening sheep and cattle are carried on.

The homestead of Daandine station is situated about 20 miles and the nearest point of the boundary about 14 miles from Dalby. The approach to Dalby is by the Condamine Highway, an all weather road made by the Main Roads Board of Queensland, which runs right through the station dividing it into two portions. There is also a railway station at ^{on the Western Railway} Macalister which is situated about 11 miles from the homestead and two miles from the boundary. But the bridge across the Condamine River has been destroyed by flood, so that, while stock can be trucked at Macalister, the road is not suitable for wheeled traffic. Daandine station is situated about 180 miles from Brisbane. The average annual rainfall in the district is 26 inches.

The respondent claims that as at 30th June 1939 the best use to which the station could have been put would have been to sub-divide it and sell it for mixed farms of 1,000 to 2,000 acres and that the land should be valued on this basis. No accurate survey of the property has been made for this purpose, but Mr Edmonds, the senior valuer attached to the Department, tendered a rough plan providing for a sub-division into twenty lots including a homestead block of 4,350 acres. The appellant ^{best} contends that on that date the land was being put to its ~~best~~ use as a run to graze and fatten cattle, the ^{only} ~~best~~ alternative ~~potential~~ use being its former use as a run to fatten ~~wethers~~ ^{wethers} and grow wool.

The station is bounded on the east by the Condamine River and on the west by Wilkie's Creek. There are no permanent waterholes in the Condamine River, the waters of which become mineralised and scour stock, so that stock must be mainly watered from bores, some of which also become mineralised in the course of time and thereby rendered useless so that they have to be replaced by new bores. Of the

fourteen bores which have been put down, only nine are now in use. Mr J C Clark, the present Managing Director of the appellant, who has had considerable experience in managing pastoral properties, has known Daandine since it was purchased by the appellant in 1926. He said that a large portion of the station is submerged land lying in a depression between the Condamine River and Wilkie's Creek; that he has seen 24,000 acres under water in a high flood; that stock have been washed away in some instances during floods; that floods introduce fresh seeds of trees which cause seedlings continually to grow in the place of those removed; and that floods also deposit Noogoora burr and Bathurst burr on the property. He said that a separate flood in the Condamine River or in Wilkie's Creek would not do much harm, but that when they both flood the confluence of the two streams causes the water to bank up and produce a high flood which lasts a fortnight. He said that since 1926 he had seen such floods on four or five occasions. He admits that a small part of Daandine, which Mr Allen fixed at about 20 per cent, is suitable for agriculture, but claims that the agricultural areas are small and detached from one another by swamps so that it would be difficult to get farm blocks of reasonable size without swamp areas through them. When pressed for details of stock which had been carried away by flood he was only able to mention the loss of 1100 sheep on one occasion and the loss altogether of about 100 bullocks. He said that, except for about 1500 acres which had either never been timbered or had been very lightly timbered, Daandine had previously been heavily timbered country, and that about 70 per cent of the timber that had been ringbarked and had fallen to the ground had been burnt off or carried away by floods leaving only 30 per cent of the original timber standing or lying on the ground. He estimated the cost of bringing Daandine from its virgin to its present state in regard to timber eradication at 25/- per acre. I accept Mr Clark as an honest witness, but I have formed the impression that he has a deep rooted objection to Daandine being sub-divided and that this objection has made him somewhat prone, however unconsciously,

to magnify its disadvantages for agricultural purposes on account of floods and swamps, and that he has over-estimated the original amount of timber on the station and therefore over-valued the timber improvement that had been effected prior to the purchase of Daandine by the appellant. He estimated the safe average carrying capacity of Daandine at about 3,500 dry cattle and about 25,000 dry sheep. The station has on an average carried considerably more sheep and cattle than this since it was purchased by the appellant, and on the whole I would estimate that its safe average carrying capacity is about 3,800 dry cattle and about eight times that number of dry sheep. But no definite evidence was given of the profits, gross or nett, that could be reasonably expected from year to year from a station of that carrying capacity; either from the appellant's books or any other source; There is only some evidence, as trifling as it is vague, that on account of the cost of store bullocks and high overhead charges, the nett profit was so small that the station had to be over-stocked to make it pay, so that I am unable to find what the nett annual return from the land should be and place any value upon ^{the station} ~~it~~ on that basis. The appellant's case is founded more on a broad assumption that on 30th June 1939 the station was still being put to the same use to which it had been put in the previous triennial period, and that, if the unimproved value during that period was 15/- per acre, the price of primary products and particularly meat and the other general business conditions prevailing in June 1939 when compared with ^{this} ~~the preceding~~ period were sufficient to show that this value could not have increased. Mr Allen, an experienced pastoral inspector and valuer, called on ~~behalf~~ behalf of the appellant, said that the unimproved value of Daandine as grazing land was at most 15/- per acre. If I were satisfied that this was the best use to which Daandine could have been put in June 1939, I would be prepared to accept this estimate subject to some adjustment of the values which Mr Allen placed

on timber improvements. But for reasons which will herein-
after appear, and particularly in the light of ^{the} evidence of
sales of other land in the vicinity, I am not satisfied that
this is the best use to which the property could have been
put. Mr Clark described the country as containing the
pick in the north, where about 3,000 acres

would be topping up paddocks, while the balance gradually declined from first grade fattening country to very poor country in the south. Mr Clark does not appear to have known Daandine prior to the date of its purchase, but Mr Allen has known it since 1910, and Mr Deacon, who has been a valuer for the Department since 1914, has known it since about that time. Neither Mr Allen nor Mr Deacon suggested that timber improvement to anything like the value of 25/- had been done on the property. Mr Allen estimated the value of timber improvement at £16,811, or slightly over 9/- per acre. Mr Deacon, with the whole of whose estimates Mr Edmonds agreed, estimated it at £10,332 or about 5/7 per acre. In October 1935 the Department allowed £11,314 for timber treatment or about 6/- per acre. In his valuation Mr Allen estimated that there were 480 acres heavily timbered box country cleared and stumps grubbed out at £6- per acre, £2,880; 7,500 acres of thick box and carbeen saplings rung, fallen, suckered, and seedlings destroyed and large proportion of timber burnt off at 10/- per acre, £3,581; 2,200 acres in mixed patches of box saplings, brigalow wilga, iron bark killed and cleaned up at 15/- per acre, £1,650, and the balance of 26,000 acres of box country rung, suckered, seedlings destroyed and the greater part of ^{the} lighter timber burned off at 6/6 per acre. This is a total of 36,180 acres so that Mr Allen appears to have included some country as ^{highly} ~~lightly~~ improved in respect of timber treatment which Mr Clark said originally had little or no timber on it at all. I am not satisfied that particular parts of the station have received the special treatment described by Mr Allen. He never saw any of the work being done and no one has been called who took part in it. All that Mr Allen can say is that there was a great deal more timber on Daandine when he first saw it in 1910 than there is now. All that Mr Clark can say is that the appellant has spent about £,000 in eradicating the regrowth of saplings brought down by floods and that work ^{of this sort remains to be done which} ~~that~~ will cost about £1000 ^{remains to be done}. The only bush worker engaged in ringbarking and destroying suckers and seedlings called by either side was

Mr. Flannery, a witness for the Department. On his figures Mr Deacon's estimates would be generous, but I consider Mr. Flannery's figures to be too low, and Mr Deacon has allowed nothing for trees that have fallen and have been burnt off or carried away by floods. I am satisfied some of the timber that has been ringbarked and fallen has disappeared in these ways but not to the extent claimed by Mr Clark. On the whole I am satisfied that if I allow 6/6 per acre (which I shall increase to 6/8 per acre for arithmetical simplicity) for the whole run I shall be placing a reasonable value on the timber improvements.

The appellant does not claim, and the respondent does not allow any amount in respect ^{of} ~~the~~ previous expenditure on the eradication of prickly pear, so that it may be taken to be common ground that since the advent of the cactoblastis this expenditure has become valueless.

The other improvements can be classified into buildings and structures, fencing and water supply. As to buildings and structures, Mr Allen's estimate of their value is £10,132; that of Mr Deacon £7,061. The Department's estimate in October 1935 was £8,268. The appellant's books show that £1,652 have been spent on buildings between the date of the purchase and 30th June 1939. In the circumstances Mr Deacon's valuation appears to be somewhat parsimonious and I prefer to accept that of Mr Allen. Mr Allen's estimate of the value of fencing is £4,371 as opposed to that of Mr Deacon, £3,788. The Department's estimate in October 1935 (subject to depreciation) was £4,579. The appellant's books show ~~that~~ an expenditure on fencing of £2,726. I consider that I should accept Mr Allen's figures. Mr Allen's estimate of the value of expenditure on water supply was £3,840 as opposed to that of Mr Deacon, £3,639. There is little difference in these values and I shall again accept Mr Allen's figures.

^{sec. 3}
The Act provides that:- "Unimproved value", in relation to improved land, means the capital sum which the fee simple of the land 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 as at which the value is required to be ascertained for the purposes of the Act, the improvements did not exist:

Provided that the unimproved value shall in no sense 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", in relation to land 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, including in such added value the value of any hotel, licence or other similar interest the value of which has been included in the improved value;

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 for the purposes of this Act, improvements of a nature and efficiency equivalent to the existing improvements.

In Russell v. Federal Commissioner of Taxation 50 C.L.R. 182 at p.185 my brother Starke pointed out that the Court must determine (1) what the land the subject of the assessment would have fetched in the market on the material date, 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 the material date, 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. The Act provides that the higher of the two unimproved values determined in this way is the unimproved value for the purposes of the Act.

On the present appeals the method adopted by the valuers has been to arrive at the unimproved value by deducting the value of the existing improvements from the improved value. There is no evidence on which I can arrive at a higher unimproved value than the unimproved value determined in this manner.

To adopt the words of Knox C.J. in Kiddle v. Deputy Federal Commissioner of Land Tax 27 C.L.R. 316 at p. 319 "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".

The valuers agree that a period of five years would be required to improve a property like Daandine from its virgin state to full productive capacity and that during this five years an

owner would get two and a half years of full productivity, so that, taking a reasonable rate of interest in 1939 to be five per cent per annum, it would be reasonable to allow two and a half years at five per cent or in other words twelve and a half per cent interest on the unimproved value. With regard to improvements I accept Mr Allen's evidence that the outlay would be progressive over the period of five years and that an owner would get an equivalent of three and a half years productivity out of five years, so that it would be reasonable to allow one and a half years' interest on the value of the improvements or in other words seven and a half per cent.

As at 30th June 1939 Mr Allen valued Daandine unimproved at 15/- per acre and improved at £1/17/- per acre. Mr Deacon's figures were unimproved value £1/8/10 per acre, improved value £2/6/0 per acre: Mr Edmonds' figures were unimproved value £1/10/6, improved value £2/8/0 per acre, and Mr Clark's figures were unimproved value £1/13/8, improved value £2/5/- per acre. For the whole station Mr Allen's improved value totalled £68,400, Mr Deacon's £84,406, Mr Edmonds' £88,169 and Mr Clark's £82,630.

As I have already said the ~~main~~ difference between the improved and unimproved values reached by Mr Allen and the expert witnesses for the respondent depends mainly on the difference of opinion as to the best use to which the land could have put on 30th June 1939. It also depends ^{in the case of the} ~~to a lesser~~ ^{unimproved value} ~~degree~~ upon the smaller sum to be allowed for the value of improvements reached by the witnesses for the respondent in comparison with Mr Allen. In determining whether the best use to which the land could have been put on 30th June 1939 would have been to sub-divide it, I feel that I must reject the suggestion that world conditions in 1939 were such that purchasers would be disinclined to buy land in the Dalby district, and that willing purchasers would have been unable to obtain finance. The sales show that land in the district was selling readily in sub-division in small blocks suitable for mixed farming at enhanced prices in spite of a downward trend in the price of wheat and wool. In ^{the} case of wheat

a tax on flour had to be introduced in 1938 to raise moneys with which to subsidise the price of wheat (for details of the scheme see W R Moran Pty Ltd v. Deputy Commissioner of Taxation 1940 A C 838) but Mr Allen said that land suitable for growing wheat is worth three times as much as land suitable for fattening cattle. By June 1939 the district to the north east and south of Daandine had become closely settled; Daandine was the last large property in the locality that had not been cut up, so that, unless Daandine was unsuitable for sub-division, it must have had a potential value for sale in this way. On this question it is necessary to decide whether I should accept the evidence of the appellant's or of the respondent's witnesses with respect to the existence of what the appellant's witnesses called swamps on Daandine. The appellant's witnesses said that after floods the black soil contains damp patches which grow swamp grasses and remain moist for a considerable period. Mr Allen said that these patches could not be ploughed because the plough would sink into them. The respondent's witnesses said that floods would get away quickly, ~~and~~ that any moist patches would soon dry and ^{that they} could then be ploughed without difficulty. Neither party called a practical farmer to give evidence on this question which is important because it is the main reason why the appellant has claimed that the areas of Daandine suitable for agriculture are small and scattered. I find it difficult to believe that these swamps could exist for any considerable time in the Queensland climate, or that occasional floods would not, generally speaking, benefit the country. I think I must accept the evidence of the respondent's witnesses on this question.

I shall proceed briefly to discuss the sales of properties which appear to afford some assistance in arriving at the value of Daandine on 30th June 1939.

~~London.~~ This property which comprises 11,691 acres, ^{on the Condamine River} is situated between Daandine and Dalby. It was sold on

4th. August 1938 in three lots for £29,141, or in other words at an improved value of approximately £2/10/- per acre. It was resold in eight lots between 31st August 1938 and 30th September 1940 for £33,846 or in other words at approximately £2/18/- per acre. Mr Allen estimated the unimproved value on the original sales on 4th August 1938 to be 17/- per acre, whereas Mr Deacon and Mr Edmonds estimated it to be £1/12/- per acre. In arriving at his estimate Mr Allen allowed the full amount claimed for timber improvements in the notice of alienation of approximately £1 per acre. The evidence shows that about the same amount of timber improvements had been done on Loudon as on Daandine, so that an amount of £1 per acre would be excessive. If I substitute the amount, 6/8 per acre, which I have stated should be allowed for Daandine for this amount, this would have the effect of increasing the unimproved value of Loudon as estimated by Mr Allen to approximately 30/- per acre. I am satisfied that for the purposes of comparison I should attribute to Loudon an improved value of about £2/10/- per acre, and an unimproved value of about £1/10/- per acre. Mr Allen said that according to stock returns for the three years previous to the sale of Loudon on 4th August 1938, Loudon was carrying one bullock to 5½ acres, as opposed to the stock returns for Daandine, which worked out at one bullock to 8½ acres. But this evidence standing alone is not sufficient to enable me to place a reliable estimate on the comparative carrying capacity of the two stations. There could be several explanations of the disparity between the two returns. No witness was called who had worked on Loudon while it was being used to fatten cattle to testify to its carrying capacity. The impression I have gathered from the whole of the evidence is that there was little difference in the carrying capacity of the two stations, but that Loudon though of the same class is somewhat better country than Daandine in that it is higher and possibly contains more

agricultural land. Loudon has established itself as wheat growing country and this tends to show that the respondent's witnesses are right when they say that Daandine is suitable for growing wheat.

Other sales which were referred to in the evidence are not as comparable as Loudon, but, as their general tendency is to confirm the view that the amended assessments are not excessive, I shall discuss them briefly.

Logie, 5,745 acres, is situated on the north-western boundary of Daandine. It was sold in December 1939 for £13,155, or in other words for £2/5/9 per acre improved which works out on Mr Deacon's calculations at £1/16/9 per acre unimproved. 500 acres at the back of this property are very poor country, but the balance, which has a frontage to Daandine, compares favourably with Daandine.

Kennington, 2,640 acres, is situated on the south-eastern boundary of Daandine and is similar to the south-eastern country of Daandine. It was sold in 1937 for £7,078, or in other words for a price of £2/13/7 per acre improved which works out on Mr Deacon's calculations at £1/15/- per acre unimproved.

On 20th March 1940 Portions 302 and 310 in the parish of Greenbank, situated between Kennington and Daandine, comprising 950 acres were sold for £2,850 or in other words at an ~~unimproved~~ value of £3 per acre which works out on Mr Deacon's calculations at an unimproved value of £1/13/9 per acre. These portions were originally part of Daandine.

As Mr Deacon is inclined to place a figure that somewhat low on the value of improvements, it may well be that the unimproved value of the three last mentioned properties should be less than he has calculated. It must also be remembered that these properties were much smaller in area than Daandine and therefore more readily saleable, but the prices obtained on the sales would appear to show that there is not a disparity in the quality of the land between the ~~value of the~~ north and south of Daandine as claimed by the appellant.

Sales of other properties were analysed. They do not afford me much assistance, but I shall refer to some of them briefly.

Bindango, 20.487 acres, is situated in a different locality and is a different type of country. Its unimproved

value would appear to be about 15/- per acre. There is no evidence that closer settlement is taking place in the locality, or that it has a potential value for sub-division into small areas, suitable for mixed farms.

Bon Accord, 11,226 acres, which is situated on the Condamine River, lies to the south-east of Daandine, but a considerable portion of this property consists of timberless land. This timberless land, which it would cost nothing to clear for agriculture, would on this account have a considerably higher sale value than country like Loudon and Daandine which it would cost £1 per acre to clear for this purpose, but the fact that it was sub-divided and sold in nine lots between December 1936 and June 1940, eight of the sales taking place in December 1936 and January 1937, and that the homestead block was resold in ten lots between February 1938 and June 1940 is evidence of the demand in the locality for small blocks of land.

It is unfortunate that Mr Allen believed that he could not take into account any sales made after 30th June 1939. Values must be calculated in the light of circumstances which existed on the material date, in this case 30th June 1939, but subsequent events can be taken into account in order to determine the proper weight to attach to such circumstances. Subsequent sales are just as admissible in evidence as prior sales provided that in all the circumstances they are comparable. If between the material date and the date of the subsequent sale, supervening events occur which alter the conditions previously existing, the subsequent sales would not be comparable and would be useless. But if on the material date there was a tendency in a district to closer settlement and for prices to rise, subsequent sales of property in sub-division at rising prices would be evidence in support of the view that it was correct to value land in the district suitable for sub-division which was being applied for some other purpose in the light of this potential value. The whole tendency of the Courts is to admit evidence of any events prior to the date of trial which will throw any real light on the issues. See the

authorities referred to in the judgment of my brother Rich in *Tonking v. Australian Apple & Pear Marketing Board* 66 C.L.R. at p.108: see also *In re Bradberry* 167 L.T. 396 at p. 400. In *Federal Commissioner of Land Tax v. Duncan* 19 C.L.R. 551 the whole contention of the Commissioner was that sales of the subject land subsequent in date to that upon which it had been valued showed that the original valuation was too low and ought to be increased.

I am satisfied on the whole of the evidence that if I reduce what I believe to have been the improved value of Loudon, namely £2/10/- by 15 per cent to allow for Loudon being somewhat better country than Daandine, for its closer situation to Dalby, and for it being smaller in area and therefore more readily saleable in sub-division, I will arrive at a reasonable figure for the approximate improved value of Daandine. This figure is £2/2/6 per acre or in other words, a total sum of £78,066. I am also satisfied that in order to arrive at the unimproved value I should deduct the following amounts for the value of improvements as defined by the Act and for interest on improvements. Timber improvements £12,246; buildings £10,132; fencing £4,371; water improvements £3,480; and interest £2,230, totalling £32,509. Deducting £32,509 from £78,066 leaves a balance of £45,557. This sum of £45,557 includes a sum of 12½ per cent interest, namely £5,062. Deducting £5,062 from £45,557 leaves an unimproved value of £40,495, which is approximately £1/2/- per acre. I may add that the figure for the improved value at which I have arrived corresponds closely to the figure which Mr Edmonds reached in Exhibit 9 on the basis that Daandine would have sold in June 1939 in sub-division at £3 per acre and that a purchaser who would be willing to buy Daandine for resale in this way would require, what I believe to be reasonable, namely a gross profit of 40 per cent on his purchase money. In this exhibit Mr Edmonds worked out the unimproved value at £1/6/1 per acre, but in doing so he did not in my opinion allow a sufficient sum for the value of improvements. The unimproved value of 21/- per acre placed upon Daandine by the Department on 30th June 1939 cannot therefore be said to be excessive. In fact, I believe that it fairly represents the

price in ^{respect} ~~result~~ of the unimproved value at which a seller really willing to sell Daandine upon reasonable terms and conditions having regard to its potential value in sub-division would have been willing to sell the property, and for which a hypothetical prudent purchaser would have been willing to purchase it: Deputy Federal Commissioner of Taxation v. Gold Estates of Australia (1903) Limited 51 C L R 509: see also Raja Vyricherla Narayana Gajapatiraju v. The Revenue Divisional Officer Vizagapatam 1939 A C 302.

At the close of the evidence Mr Hart asked me to increase the assessment. The Act, sec. 44M(5) empowers the Court to do so, but this is not, ^{in my opinion,} a proper case in which to exercise the power. The respondent assessed the appellant for 25/3 per acre for the year ending 30th June 1939. in the first instance, but on objection reduced the assessment to 21/- per acre. Before I would be prepared to increase the ~~assessment~~ assessment under these circumstances I would require more details with respect to any proposed sub-division. There is no proper plan of sub-division in evidence, and no evidence as to the costs of survey. There are apparently sufficient surveyed Government roads on the station to provide for a sub-division and under the law of Queensland the public authority is bound to construct these roads. But there is no evidence as to the period which would probably elapse before the roads were built and this would be material in estimating the time it would take to sell the lots in sub-division. Moreover I cannot accept as satisfactory the method used by Mr Deacon in applying the sales he considered to be comparable. He took the sales of five properties, Bon Accord, Loudon, Kennington, Woodlands and Bindango, and, after analysing the sales, found that they had an average sheep area value of £3/14/8 per acre with improvements new excluding buildings. A sheep area is an area which will maintain one sheep. Mr Deacon evidently considered that if he had averaged the sales ~~other~~ of the properties other than Bindango he would have arrived at too high a figure, because he threw in Bindango which he said was a forced sale and not really comparable for other reasons, to

reduce the average. He then arrived at a figure of £3/5/- per sheep area for Daandine by reducing the £3/14/8 to this amount because of the size of Daandine. This method of averaging is to my mind unsound. The prices obtained at comparable sales should not be aggregated and averaged, especially when the prices obtained on sales of small areas are dealt with in this way in order to obtain the value per acre of a large area. The only safe course is to compare each sale with the subject land separately. For instance if three sales considered to be comparable of £3, £2/10/- and £2 per acre are averaged, the average value would be £2/10/- per acre. But if the subject land was closer in value to the land sold at £2 per acre than to the other lands, the average value would cause the subject land to be seriously over-valued. When such a method is applied to a large station in order to arrive at the proper value upon which to calculate a progressive land tax it can lead to a grave injustice. This error on the part of Mr Deacon has also infected Mr Edmonds' evidence to some extent because he also has placed some reliance upon the result of this averaging.

The appellant contended that some allowance should be made for the higher rates of land taxes, Federal and State, payable on a larger area like Daandine in comparison with the smaller areas comprised in the comparable sales. A difference in the incidence of taxation is no doubt a factor to be taken into account in comparing the valuations: see Fisher v. Deputy Federal Commissioner of Land Tax for N S W, 20 C.L.R. 242 at p.253: 'but, where a larger area has a potential value for sale in sub-division, the effect of the sub-division and sale would be to eliminate this factor. As it is a temporary factor no case has been made for capitalising any additional rates of land taxes payable on Daandine in comparison with the smaller areas. I have reached an unimproved value of approximately 22/- per acre for Daandine, so that, if I refuse to increase the assessment beyond an unimproved value of 21/- per acre, I consider that I shall have made a sufficient allowance

for any additional rates of land taxes payable on Daandine due to its larger area during this temporary period. The onus is on the appellant to satisfy me that an unimproved value of 21/- is excessive, but the onus is on the respondent to satisfy me that the unimproved value is more than 21/-. Neither party has discharged these respective onuses to my satisfaction.

The only order I make, therefore, is that the three appeals be dismissed with costs.

