GDTLG6 32, 1960

IN THE PRIVY COUNCIL No. 7 of 1960

ON APPEAL FROM THE FULL COURT OF THE SUPREME COURT OF NEW SOUTH WALES

B E T W E E N :

THE HONOURABLE WILLIAM McCULLOCH GOLLAN and MAURICE VICTORIAN POINT

Appellants

- and -

THE COUNCIL OF THE MUNICIPALITY OF RANDWICK

Respondent

CASE FOR THE RESPONDENT

THE COUNCIL OF THE MUNICIPALITY OF RANDWICK

INTRODUCTORY

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1. This is an appeal from the decision of the Full Court of the Supreme Court of New South Wales (Roper, C.J. in Eq., Maguire and Hardie, JJ.) delivered on the 25th October, 1957. The decision of the Full Court was given upon a Case Stated by the Land and Valuation Court (Sugerman, J.) of its own motion pursuant to Section 17 of the Land and Valuation Court Act 1921. The case was stated upon objections by the Appellants and the Respondent to the value assigned by the Valuer General under the Valuation of Land Act 1916 to land upon which the Randwick Race Course is situated. The effect of the Full Court's decision was that the principle enunciated by the High Court of Australia in Royal Sydney Golf Club v. Federal Commissioner of Taxation (1955) 91 C.L.R. 610, that is to say, that in assessing the unimproved value of land an estate in fee simple must be taken as the hypothesis unencumbered and subject to no condition restricting the use or enjoyment of the land, was to be applied in the construction of Sections 5 and 6 of the Valuation of Land Act 1916. The present appeal impugns the correctness of the decision of the High Court in Royal Sydney Golf Club v. Federal Commissioner of Taxation and the decision of the Land and Valuation

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p.1.

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p.37 l.32

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p.36 l.9 p.52 Court in Sydney City Council v. The Valuer General (1956) 1 L.G.R.A. 229. Leave to appeal from its decision was granted by the Full Court on the seventeenth day of December, 1959.

2. The Appellants were at all material times two of the three registered proprietors under the provisions of the Real Property Act 1900 of certain land having an area of approximately 198 acres 2 roods and 35½ perches and comprised in Certificate of Title Registered Volume 2579 Folio 66 and Crown Grant Registered Volume 4673 Folio 38. The third registered proprietor died between the date on which the Full Court delivered its decision and the date on which the Court granted leave to appeal.

p.3 l.30

3. The lands have at all material times been used and still are used by the Australian Jockey Club as a racecourse and upon the lands are erected the usual improvements appropriate for that purpose.

4. The Respondent is the Council of the Municipality of Randwick constituted a corporate body by virtue of the provisions of Section 12 of the Local Government Act 1919 and the lands hereinbefore referred to are situated within the area of the said Council.

5. The title of the Appellants is derived from a Deed of Grant bearing date the Fifteenth day of June 1863 and from a Deed of Grant bearing date the eleventh day of February 1935.

p.8 p.13

p.8 6. By the first Deed of Grant Queen Victoria with the advice of the Executive Council granted the land therein described to the persons therein mentioned "upon the trusts with the powers and subject to the conditions hereinafter mentioned."

p.9 l.39 The Deed of Grant went on to stipulate that in consideration of the quit rent thereinafter reserved Her Majesty had granted for herself her heirs and successors the land thereby granted to the nominated persons "to hold unto" the persons nominated "their heirs and assigns for ever yielding and paying therefor to us our heirs and successors yearly and every year the quit rent of one peppercorn on demand Subject to the

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conditions reservations and provisoes hereinafter mentioned AND upon and for the trusts intents and purposes hereinafter declared of and concerning the said lands that is to say UPON TRUST in their discretion to permit and suffer the said land or any part thereof to be used by such persons clubs or associations at such times and upon such terms and conditions as the said Edward Deas Thomson Richard Jones and William Bede Dalley or any other Trustees of the said land appointed as hereinafter provided shall think fit and proper for any of the purposes hereinafter described that is to say FIRSTLY: As a Race-course upon which horse races may be run under the direction of THE AUSTRALIAN JOCKEY CLUB or of any other club or Association now existing or which may hereafter be founded for the purpose of horse racing - SECONDLY: as a training ground for the purpose of training horses intended to race and also for the erection of training stables and temporary dwelling for the use of persons engaged in training race horses - THIRDLY: As a Cricket ground or place at and upon which the game of cricket may be played. FOURTHLY: For the erection of Butts or Targets for rifle shooting - FIFTHLY: And for any other public amusement or purpose for which His Excellency The Governor of Our said Colony for the time being with the advice of the Executive Council thereof may from time to time declare to be a public amusement or purpose for which the said lands or any part thereof shall or may be used PROVIDED ALWAYS and it is HEREBY DECLARED that it shall or may be lawful for the Trustees for the time being of the said lands for any of the purposes aforesaid to make all any or every such rules and regulations for the use of the said land or any part thereof and to vary or alter the same from time to time as they may think fit for any of the purposes aforesaid AND ALSO by writing under their hands to grant upon such terms and conditions as to them shall seem expedient to the AUSTRALIAN JOCKEY CLUB or to any other Club or Association now formed or which shall or may hereafter be formed for the purposes of horse racing or for the purposes of promoting or engaging in any other public amusement or purpose for which it is intended that the lands shall or may be used as aforesaid the exclusive right to use and occupy

p.9 l.46
p.10 l.4
p.10 l.8
p.10 l.12
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p.10 l.16
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p.10 l.31

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the said lands or any part or parts thereof as the said Trustees shall in their discretion think fit
p.10 l.41 for any number of years not exceeding SEVEN YEARS commencing from the time of the signing the writing by which the right of using the said lands shall be granted to any such Club or association as aforesaid".

p.14 7. The second Deed of Grant mentioned in paragraph 5 related to an area of 3 roods 39 perches and was in all material terms identical with the first Deed of Grant.

p.20 8. In the year 1873 a Private Act was passed entitled "The Australian Jockey Club Act" Section three of which was as follows:-

p.23 l.33 "3. It shall and may be lawful for the said Honourable Edward Deas Thomson Alfred Cheeke and William Bede Dalley as such Trustees or other the Trustees for the time being of the said Grant of the fifteenth day of June One thousand eight hundred and sixty three and they are hereby authorised by writing under their hands to grant upon such terms and conditions as to them shall seem expedient to the said Australian Jockey Club or to any other Club or association now formed or which may hereafter be formed for the purposes of horse racing or for the purpose of promoting or engaging in any other public amusement or purpose for which it is intended the said land should or might be used as aforesaid the exclusive right to use and occupy the said lands or any part or parts thereof as the said Trustees should in their discretion think fit for any number of years not exceeding twenty-one years commencing from the time of signing the writing by which the said lands shall be granted with power also for the said Trustees or the Trustees for the time being of the said Grant from time to time to renew any such lease for any further term not exceeding twenty-one years from the granting thereof and with power also in any such lease or any renewal thereof to make such stipulations with reference to any buildings to be erected on the said land as they may think proper".

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9. Section 8 of the Act was in the following terms:-

"8. It shall be lawful for such Chairman and his successors in office from time to time to purchase any lands on behalf of the said club or to accept a lease of and to hold by demise from the said Trustees for the purpose of this Act the said lands so granted as aforesaid or from any other persons any other lands it may be thought desirable to lease." p.25 l.46.

10. Section 23 of the Act was in the following terms:-

"23. The Committee may by any by-law to be made and come into operation as hereinbefore provided from time to time prescribe and vary at pleasure the scale of tolls and charges to be levied or taken for admission to any land for the time being vested in the Chairman or to any building standing or being thereon and may demand recover and receive such tolls and charges from any person coming upon such land or any part thereof or into or upon any such building". p.29 l.33.

11. Pursuant to the powers of leasing contained in the said Crown Grants as enlarged by Section 3 of the Private Act the Trustees from time to time of the land have since 1873 leased the lands to the Chairman of the Australian Jockey Club for successive terms, the lease now current being for a term of twenty-one years expiring in 1968. p.22 l.33

12. On the twenty-third day of September, 1954 the Valuer General acting under the provisions of the Valuation of Land Act 1916 valued the lands as being of the unimproved value of £385,400 and as being of the improved value of £1,250,000 and as having the assessed annual value of £62,500. The Municipal rates for the year 1955 payable by the Appellants to the Respondent and assessed upon the unimproved capital value of £385,400 amounted to £8,631.7.1. p.4 l.9

13. The Appellants in accordance with Section 29 (3) of the Valuation of Land Act 1916 objected to the valuation and the Respondent in accordance p.4 l.29.

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p.4 l.37 with Section 31 (1) of the same Act also objected to the valuation, the Appellants claiming that the values were too high and should be nil or a nominal figure and the Respondent claiming that the values were too low and should be as to unimproved capital value £574,246, as to improved capital value £1,250,000 and as to the assessed annual value £93,027.

p.5 l.12. 14. In assessing the improved and unimproved capital values and in assessing the annual value of the land the Valuer General had taken into consideration the restrictions appearing in the Crown Grants by assuming a sale of the fee simple of the lands to a purchaser who would take and hold the lands subject to those restrictions.

15. Section 132 (1) of the Local Government Act 1919 provides that all land in a municipality or shire (whether the property of the Crown or not) shall be rateable except lands answering the descriptions set out in paragraphs (a) to (j) inclusive of the sub-section which are exempt, The lands in question are not exempt. (Municipality of Randwick v. Routledge and Ors. (1960) Argus L.R. 66.

16. Section 117 of the Local Government Act was in the following terms:-

> "117. Rates levied by a council may be of four kinds, namely:-
>
> General rates
> Special rates
> Local rates
> Loan rates."

17. Section 118 (1) of the Local Government Act was in the following terms:-

> "118(1) The Council of a municipality or shire shall in each year make and levy a general rate of not less than one penny in the pound on the unimproved capital value of all rateable land in the area:
> Provided that if the Council shows that a general rate of one penny in the pound is more than sufficient to meet the requirements

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of the area the Governor may allow the council to levy any lower rate approved by the Governor".

18. Section 120(1) of the Local Government Act was in the following terms:-

"120(1) Special rates may be made and levied by the Council of a municipality or shire on the unimproved capital value or on the improved capital value of all rateable land in the area for any purpose which may lawfully be undertaken by the Council."

19. Section 121(1) of the Local Government Act was in the following terms:-

"121(1) For or towards defraying the expenses of executing any work or service or for or towards repaying with interest any advance made by the Minister or debt incurred or loan raised in connection with the execution of any work or service in the opinion of the Council would be of special benefit to a portion of its area to be defined as prescribed, the council of a municipality or shire may make and levy a local rate on the unimproved capital value or on the improved capital value of rateable land within such portion".

20. Section 122(1) of the Local Government Act was in the following terms:-

"122(1) The Council shall, if required so to do in accordance with this section, make and levy a local rate on the unimproved capital value or improved capital value of all rateable land in a particular ward or riding."

21. Section 124(1) of the Local Government Act was in the following terms:-

"124(1) A council may make and levy a loan rate on the unimproved capital value, or on the improved capital value of all rateable land in its area".

22. Section 128(1) of the Local Government Act was in the following terms:-

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"128(1) Where, under any special Act, the Council of a municipality is empowered to levy a rate on the annual value for a special purpose the Council may, in lieu thereof, and for the same purpose, levy a special or local rate under this Act on the unimproved capital value or on the improved capital value of rateable land in its area."

23. Section 134(1) of the Local Government Act provided for the purposes and subject to the provisions of the Act

(a) The unimproved capital value, and

(b) the improved capital value, and

(c) the assessed annual value

of rateable land shall respectovely be the unimproved value, the improved value and the assessed annual value of the land as determined in accordance with Part V of the Valuation of Land Act 1916.

By subsection (2) of the same section, the section was to be deemed to extend to all rateable land, including land owned by the Crown and land held under lease from the Crown; and by subsection (3) any parcel of land separately valued under the Valuation of Land Act 1916 was to be a separate parcel for the purposes of the Local Government Act.

24. Section 136 of the Local Government Act provided that the valuation book of the Council should be constituted by a valuation list, or by a valuation list together with any supplementary list, as the case may be, furnished or supplied to the Council by the Valuer General in accordance with the provisions of the Valuation of Land Act 1916.

25. By Section 137(3) of the Local Government Act it was provided that upon being satisfied that a valuation list had been furnished to the Council by the Valuer General in accordance with the Valuation of Land Act 1916, in respect of the whole or any part of the land within its area, the Governor should proclaim that a valuation list had been so furnished and thereupon the provisions of

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Schedule Three to the Local Government Act should cease to be in force in respect of the land within the area included in the valuation list.

26. By section 137(1) of the Local Government Act the provisions in Schedule Three to the Act should come into force at the commencement of the Act and shall be in force temporarily as provided by Section 137(3).

27. Clause (2) (i) of Schedule Three with the exception of the proviso hereinafter set out was identical in terms with Section 6 of the Valuation of Land Act 1916. The proviso to clause 3 of Schedule Three was as follows:-

> "Provided that there shall be a reasonable deduction for profitable expenditure by the owner or occupier on visible and effective improvements (if any) which although not upon the land have been constructed for its drainage, for its protection from inundation or otherwise for its more beneficial use".

28. Clause 3 of Schedule Three of the Local Government Act was in the following terms:-

> "(3) The improved capital value of land shall be 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"

29. Clause 4 of Schedule Three of the Local Government Act was in the following terms:-

> "(4)(1) The assessed annual value of land shall be nine-tenths of the fair average annual value of the land, with the improvements (if any) thereon:
>
> Provided that such assessed annual value shall not be less than five per centum of the improved capital value of the land".

30. By Part V of the Valuation of Land Act 1916 the Valuer General was required to furnish to the rating and taxing authorities mentioned in Section 47 (which include the council of a shire or of a

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municipality) a list giving the particulars within his knowledge of the ownership, occupation, value, title and description of all land within the area of such authority except such lands of the Crown as are not rateable and have not been valued under the Act. The Valuer General is required by Section 49 at such time in each year after the furnishing of the valuation list as arranged between him and any such authority (and in default of arrangement, at such time as the Valuer General might decide) to supply to such authority a supplementary list containing information as to all changes of ownership, occupation and values which had been made in the District Valuation Roll of its area since the last list was furnished to such authority.

31. By Section 53 which appeared in Part V of the Valuation of Land Act a valuation list, together with any supplementary list, was to be the valuation roll or valuation book or assessment book of such authority until superseded by a fresh complete list. The Section contained a proviso in the following terms:-

> "Provided that with regard to the land tax assessment book under the Land and Income Tax Assessment Act of 1895 the valuation roll under the said Act shall be prepared as prescribed from the valuation list under this Act together with any supplementary list."

32. Section 58(1) of the Valuation of Land Act which appeared in Part V of the Act provided that the unimproved value determined under this Act should be deemed to be

> (a) The unimproved capital value for the purposes of the Local Government Act 1919.

33. Section 5 of the Valuation of Land Act 1916 was in the following terms:-

> "5.(1) The improved value of land is 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.
>
> (2) In determining the improved value of any

land being premises occupied for trade, business or manufacturing purposes, such value shall not include the value of any plant, machines, tools or other appliances which are not fixed to the premises or which are only so fixed that they may be removed from the premises without structural damage thereto."

34. Section 6 of the Valuation of Land Act 1916 was in the following terms:-

"6. The unimproved value of land is 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 the improvements, if any, thereon, or appertaining thereto, and made or acquired by the owner or his predecessor in title had not been made".

35. Section 7 of the Valuation of Land Act 1916 was in the following terms:-

"7 (1) The Assessed annual value of land is nine-tenths of the fair average annual value of the land, with the improvements (if any) thereon: Provided that such assessed annual value shall not be less than five per centum of the improved value of the land.

(2) In determining the assessed annual value of any land being premises occupied for trade, business or manufacturing purposes such value, shall not include the value of any plant, machines, tools or other appliances which are not fixed to the premises or which are only so fixed that they may be removed from the premises without structural damage thereto".

36. Before the year 1930 the view prevailing in the State of New South Wales was that the subject matter of the sale envisaged by Sections 5 and 6 of the Valuation of Land Act 1916 and similar legislative provisions was a hypothetical fee simple and that valuation under such provisions was unaffected by restrictions amounting to nothing but encumbrances or conditions or restrictive obligations

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affecting the titles to specific parcels of land.

37. Reported illustrations of the view held prior to 1930 are to be found in Moran v. Commissioner of Taxation (1898) 19 L.R. (N.S.W.) 189; Armidale Racecourse v. Armidale Municipal Council (1923) 6 L.G.R. 151; and Goulston v. Valuer General (1924) 7 L.G.R. 17.

38. In 1930 the High Court of Australia (Isaacs, C.J. and Starke J., Rich and Dixon, JJ dissenting,) decided that the fee simple referred to in the definition of "unimproved value" in Section 3 of the Land Tax Assessment Act 1910 (Commonwealth) meant the fee simple subject to the conditions and restrictions contained in the Grant; Stephen v. Federal Commissioner of Land Tax (1930) 45 C.L.R. 122.

39. The conclusion of Isaacs, C.J. and Rich, J. in Stephen v. Federal Commissioner of Land Tax was thereafter applied in the construction of Sections 5 and 6 of the Valuation of Land Act until the year 1956.

40. Illustrations of its application are to be found in Trustees of Beecroft School of Arts v. Valuer General (1940) 14 L.G.R. 199; Metropolitan Golf Pty. Ltd. v. Valuer General (1950) 17 L.G.R. 223; Trustees of Gunnedah School of Arts v. Valuer General (1952) 18 L.G.R. 134; Sydney Exchange Company v. Valuer General (1953) 19 L.G.R. 111, and Board of Fire Commissioners v. Valuer General (1953) 19 L.G.R. 115.

41. In the year 1955 the High Court of Australia in Royal Sydney Golf Club v. Federal Commissioner of Taxation (1955) 91 C.L.R. 610 unanimously preferred the view taken by Rich J. and Dixon, J. (as he then was) in Stephen v. Federal Commissioner of Land Tax to that taken by Isaacs, C.J. and Starke, J. The decision in the Royal Sydney Golf Club v. Federal Commissioner of Taxation was given upon the same section of the Land Tax Assessment Act 1910 as the decision in Stephen v. Federal Commissioner of Land Tax.

42. Thereafter the view was taken in the State of New South Wales that Sections 5 and 6 of the

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Valuation of Land Act should be so interpreted that in assessing the unimproved value an estate in fee simple must be taken as the hypothesis unencumbered and subject to no conditions affecting the title to any specific parcel of land

43. An illustration of the application of this view to the Valuation of Land Act may be found in Sydney City Council v. The Valuer General (1956) 1 L.G.R.A. 229. p.5 l.41

10 44. The objections of the Appellants and Respondent were heard together. At the hearing the Appellants submitted that as a matter of law the unimproved value, the improved value and the assessed annual value of the lands should be determined on the footing that the lands in question were subject to the trusts, restrictions, conditions and provisos appearing in the Grants and the values were as a matter of law only nominal; that the decision in the Royal Sydney Golf Club v. Federal Commissioner 20 of Taxation was wrong; that that decision was distinguishable; that the decision in the Council of the City of Sydney v. Valuer General was wrong, and alternatively to the submission that the values were only nominal, that the basis of valuation on which the Valuer General had proceeded was correct, although the quantum of his valuation was disputed. p.5 l.11 p.5 l.35 p.5 l.41

45. The Respondent submitted that the unimproved value of the land should be determined in accordance with the decision in The Council of the City of 30 Sydney v. The Valuer General, that the trusts, restrictions and conditions contained in the Grants should be ignored in determining the unimproved value and that the submissions of the Appellants were wrong. p.6 l.20

46. Without hearing evidence the Land and Valuation Court thereupon of its own motion stated a case for the opinion of the Full Court of the Supreme Court of New South Wales as referred to in paragraph (1) hereof.

40 47. The essential problem raised by the case stated was whether the decision of the High Court in the Royal Sydney Golf Club v. Federal Commissioner of Taxation was correct and applicable to Sections 5 and 6 of the Valuation of Land Act 1916. p.5 l.35

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p.7 48. The questions submitted for the decision of the Supreme Court were:-

"1. Whether, in valuing the said lands under Sections 5 and 6 of the Valuation of Land Act 1916-1951, the trusts, restrictions, conditions and provisos contained in the said Grants and in the said Act of 1873, or any of them, should be taken into consideration, and if so, in what manner and to what extent.

2. This question is not material to the present appeal.

3. Whether the valuation required by Sections 5 and 6 of the said Valuation of Land Act to be made by the Valuer General is:-

(a) on the basis that such lands were held by the objectors for an estate in fee simple which could be alienated but only under circumstances in which the alienee would then hold such lands on the trusts and for the purposes and subject to the restrictions, conditions and provisos set forth in the said grants and in the said Act of 1873; or

(b) on the basis that such lands were held by an owner for an estate in fee simple free from any such trusts, restrictions, conditions or provisos and could accordingly be alienated to an alienee who would hold such lands free from any such trusts, restrictions, conditions and provisos; or

(c) on some other, and if so what, basis.

4. Whether the Valuer General was bound in law to assign to the said lands only a nil or nominal value.

CONTENTIONS BEFORE THE FULL COURT OF THE SUPREME COURT OF NEW SOUTH WALES

49. The Appellants submitted:-

(a) That the decision of the High Court in

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Royal Sydney Golf Club v. Federal Commissioner of Taxation was distinguishable because it was a decision upon a taxing Act and was in any event wrongly decided unless its application was confined to a taxing Act. p.5 l.35

(b) That the reasoning of Isaacs, C.J. and Starke, J. in Stephen v. The Commissioner of Land Tax was to be preferred to that of Rich and Dixon, JJ.

(c) That Sydney City Council v. The Valuer General was wrongly decided because, firstly, it was unnecessary in that case to consider the relationship of the Valuation of Land Act to rating legislation for the reason that Sugerman, J. in that case had applied the decision in Royal Sydney Golf Club v. Federal Commissioner of Taxation, and secondly, because the restrictions arising from Section 8 of the Public Parks Act were restrictions affecting the titles of specific parcels of land and thus to be disregarded in accordance with the decision in Royal Sydney Golf Club v. Federal Commissioner of Taxation. p.5 l.41 p.5 l.35 p.5 l.35

(d) That because the unimproved capital value of land as defined in the Valuation of Land Act must be taken into consideration for certain resumption purposes Section 6 of the Act should be construed as if the fee simple referred to was the actual fee simple with all restrictions of a detrimental nature the actual title might contain. The Public Roads Act 1902-1923 was cited as illustrative of the working of the provisions relating to compensation in the Valuation of Land Act.

(e) That the submission contained in (d) above was unaffected by the decision of this Board in Minister for Public Works v. Thistlethwayte (1954) A.C. 475 either in the terms of that decision or because the Land and Valuation Court Act 1921 was passed five years after the enactment of the Valuation of Land Act. p.6 l.6

(f) That because the Australian Jockey Club Act 1873 recited in its preamble most of the p.20

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terms of the Crown Grant of 1863 and by Section 3 empowered the Trustees to grant leases for twenty-one years, the Crown Grant was incorporated into the Act and given the force of a Statute and for that reason the restrictive provisions of the Crown Grant should be regarded as a State law operating in part of the State or in a defined area as that

p.5 l.35 concept is understood in Royal Sydney Golf Club v. Federal Commissioner of Taxation. 10

50. The Respondent submitted:-

p.5 l.35 (a) That Royal Sydney Golf Club v. Federal Commissioner of Taxation was correctly decided and was applicable to Section 6 of the Valuation of Land Act. In any event in one of its applications the Valuation of Land Act was a taxing Act in the sense that valuations assessed in accordance with its terms were used for taxing purposes. In this connection Section 58 (1)(b) of the Valuation 20 of Land Act was referred to.

p.5 l.41 (b) That Sydney City Council v. The Valuer General was correctly decided.

p.7 l.8
p.36 l.18
p.37 l.24
p.43 l.15 (c) That Section 6 of the Valuation of Land Act referred to a hypothetical fee simple. The Section demanded for its operation that the land to be valued should be notionally stripped of its improvements and notionally sold. It disregarded any restriction on alienation contained in the title. 30 Additionally, Section 14 required that Section 6 should apply to lands of the Crown. The satisfaction of the requirement of Section 6 of a notional sale demanded where lands of the Crown are to be valued that there should be an assumed or hypothetical grant in fee. To deny the necessity for such an assumption where Crown lands are in question would be to deny the application of Section 6 to the valuation of such lands; contrary to Section 40 14.

(d) That the Valuation of Land Act could only properly be construed when it was understood as part of a legislative scheme. Its function

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in that scheme was to provide a uniform standard for assessing the capital value of land as improved, unimproved and as having an assessed annual value upon which values other enactments imposed rates, duties and taxes as well as providing in defined instances for exemption from such impositions. The reasoning in Sydney City Council v. The Valuer General at pp.233-236 was relied on in support of this argument. To construe Section 6 as referring to the actual fee simple would result in exemption by indirection and frustrate the legislative intention expressed for example in Section 132 of the Local Government Act. p.5 l.41

The reasoning in Sydney City Council v. The Valuer General at 234-5 and in the Board of Fire Commissioners v. The Valuer General 19 L.G.R. at p. 116 was cited in support of this proposition. p.5 l.41

(e) That the fact that Section 68 of the Valuation of Land Act was concerned in a limited way with the value for resumption purposes could not alter the proper construction of Section 6. Indeed, Section 68 applied solely to the improved value of land. The observations in Sydney City Council v. The Valuer General at p.235 were relied on in support of this argument. Further support for this view is to be found by reference to Section 70 (3) of the Valuation of Land Act, Section 124 of the Public Works Act, Section 536C of the Local Government Act, Section 12 of the Public Roads Act, Minister for Public Works v. Thistlethwayte (1954) A.C. 475, Section 9 of the Land and Valuation Act and Turner v. The Minister for Public Instruction (1956) 95 C.L.R. at p.245. In construing the Valuation of Land Act at the relevant date the fact that Section 9 of the Land and Valuation Court Act was then in force could not be ignored. p.5 l.41

(f) That the restrictions in the Crown Grants could only be taken into consideration if the actual fee simple was considered. Such a consideration was forbidden by the terms of Section 6 and the authorities above referred

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to. These restrictions did not form part of the hypothetical fee which alone was the subject matter of Section 6.

(g) That on a proper view of the restrictions contained in the Grants, the Trustees might lease on conditions requiring the lessee to expend moneys in improvements which improvements should at the end of the lease belong to the Trustees and might impose obligations on the lessees to pay rates, insure and the like. The reservation in the Grants of the power to resume was not on its true construction a power to resume without compensation and, even if it were, would entail only the consequence that the Trustees would be in the same position as other owners of land under State law.

(h) That the Private Act of 1873 did not give the restrictions in the Crown Grants statutory force or operation. It did no more than give statutory recognition to the trusts of the Crown Grant without altering their meaning or effect. Even if the Private Act gave statutory operation to the restrictions in the Crown Grant such an Act would not be a general law as that expression is understood
p.37 l.33 in Royal Sydney Golf Club v. The Federal Commissioner of Taxation.

(i) That whether or not the restrictions in the Crown Grants were to be considered the nil value contended for by the Appellants was incapable of justification.

DECISION OF THE FULL COURT

51. The Full Court held that the decision in Royal
p.37 l.32 Sydney Golf Club v. Federal Commissioner of Taxation was applicable to the provisions of Sections 5 and 6 of the Valuation of Land Act and agreed with the conclusions arrived at by Sugerman, J. in Sydney City Council v. The Valuer General and with his reasons in arriving at that conclusion. Their Honours additionally referred to the decision of the Full Court in Commissioner for Railways v.
p.37 l.49 Andreas 55 S.R. (N.S.W.) 323 at 327 and 332. The

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Full Court was of opinion that the first question should, so far as it related to the Crown Grants, be answered in the negative. Their Honours saw nothing in the Private Act of 1873 to justify the conclusion that the restrictions on the trustees' powers of using and alienating the lands flowed from a public law affecting the enjoyment of the land rather than a restriction relating to the particular title. p.38 l.21

10. The Full Court was further of opinion that the Act of 1873 did not create the restriction and that all it did by its recital was to recognise that the restrictions already existed. The Court took the view that, having regard to the decision in Royal Sydney Golf Club v. Federal Commissioner of Taxation the restriction must be ignored because the provisions of the Valuation of Land Act required the assumption to be made of a hypothetical fee simple unencumbered and subject to no condition restricting
20 enjoyment or use other than restrictive conditions imposed by a public law of the State affecting the enjoyment of land. The Full Court was further of opinion that even if the correct view were that the restrictions should as from the date of the Act of 1873 be treated as created by the statute such source would not be a public law and the result would thus be the same. Their Honours accordingly came to the conclusion that the first question should be answered in the negative. Their Honours
30 thought that the third question was only a modified form of the first and need not be answered and that the fourth question would only arise if the first question were answered affirmatively and that therefore that question should be answered also in the negative. p.41 l.42 p.42 l.6

52. The Respondent relies upon the decision of the Full Court and the reasons given by it.

SUBMISSION

53. The Respondent respectfully submits that the
40 appeal should be dismissed with costs for the following amongst other

REASONS

(1) Because the decision appealed from is right.

RECORDS

(2) Because the decision of the High Court of Australia in Royal Sydney Golf Club v. Federal Commissioner of Taxation (1955) 91 C.L.R. 610 is right and is applicable to Section 6 of the Valuation of Land Act.

(3) Because the decision of the Land and Valuation Court in Sydney City Council v. Valuer General (1956) 1 L.G.R.A. 229 is right.

(4) Because the views of Rich and Dixon, JJ. in Stephen v. Federal Commissioner of Land Tax (1930) 45 C.L.R. 122 are to be preferred to those of Isaacs, C.J. and Starke, J.

(5) Because the fee simple contemplated by Section 6 of the Valuation of Land Act is a hypothetical fee simple unencumbered and subject to no condition arising out of the particular title restricting the use or enjoyment of the land.

(6) Because to regard the fee simple contemplated by Section 6 of the Valuation of Land Act as the actual fee simple would involve difficulties and uncertainties in the interpretation and administration of the Act.

(7) Because the Valuation of Land Act constitutes part of a legislative scheme for the levying of rates, duties and taxes, serving the function of providing a uniform standard by reference to which the value of land is assessed, other enactments imposing rates, duties and taxes upon that value and providing for exemptions from such impositions. This legislative scheme is such that it demands for its proper working that the fee simple the unimproved capital value of which it is the purpose of Section 6 of the Valuation of Land Act to assess, shall be hypothetical as opposed to actual.

(8) Because whether or not the restrictions contained in the Crown Grands and/or the Private Act be considered in assessing the

unimproved capital value of the land, the contention that such value is, as a matter of law, nominal only is incapable of justification.

N.H. BOWEN

M.H. BYERS

Counsel for the Respondent

No. 7 of 1960

IN THE PRIVY COUNCIL

ON APPEAL
FROM THE FULL COURT OF THE
SUPREME COURT OF NEW SOUTH WALES

B E T W E E N :

THE HONOURABLE WILLIAM McCULLOCH GOLLAN and MAURICE VICTORIAN POINT
Appellants

——— and ———

THE COUNCIL OF THE MUNICIPALITY OF RANDWICK
Respondent

C A S E FOR THE RESPONDENT

THE COUNCIL OF THE MUNICIPALITY OF RANDWICK

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