

GD: P. 1. 6. 6.

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 RANDWICK MUNICIPAL COUNCIL Respondent

R E C O R D    O F    P R O C E E D I N G S

BELL BRODRICK & GRAY,  
The Rectory,  
29 Martin Lane,  
Cannon Street,  
London, E.C.4.  
Solicitors for the Appellants

RANKEN FORD & CHESTER,  
8 Gray's Inn Square,  
London, W.C.1.  
Solicitors for the Respondents

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UNIVERSITY OF LONDON  
W.C.1.

- 7 FEB 1961

INSTITUTE OF ADVANCED  
LEGAL STUDIES

- and -

THE RANDWICK MUNICIPAL COUNCIL Respondent

50975

RECORD OF PROCEEDINGS

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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 RANDWICK MUNICIPAL COUNCIL  
Respondent

10

RECORD OF PROCEEDINGS

No. 1

CASE STATED BY MR. JUSTICE SUGERMAN

In the Land  
and Valuation  
Court

No. 1

IN THE MATTER of the objection by THOMAS LLOYD  
FORSTER RUTLEDGE, THE HONOURABLE WILLIAM  
McCULLOCH GOLLAN and MAURICE VICTORIAN POINT  
to the valuation by the VALUER GENERAL of  
certain lands situated in the Municipality  
of Randwick.

Case Stated by  
Mr. Justice  
Sugerman.

20

AND IN THE MATTER of the objection by THE  
RANDWICK MUNICIPAL COUNCIL to the said  
valuation.

14th December  
1956.

AND IN THE MATTER of the Valuation of Land Act  
1916-1951

CASE STATED BY THE LAND AND VALUATION COURT FOR THE  
DECISION OF THE SUPREME COURT THEREON IN PURSUANCE  
OF SECTION 17 OF THE LAND AND VALUATION COURT ACT,  
1921-1955.

30

I DO OF MY OWN MOTION state the following case for  
the decision of the Supreme Court on the questions  
of law hereinafter set forth:

In the Land  
and Valuation  
Court

No. 1

Case Stated by  
Mr. Justice  
Sugerman.

14th December  
1956 -  
continued.

1. By Deed of Grant bearing date the 15th day of June 1863 Her Majesty Queen Victoria granted unto the Honourable Edward Deas Thomson, C.B. Richard Jones and William Bede Dalley their heirs and assigns certain lands in the Parish of Alexandria to be held on the trusts and with the powers and subject to the conditions and provisos therein appearing. 10
2. Hereunto annexed and marked with the letter "A" is a true copy of the said Deed. 10
3. By Deed of Grant bearing date the 11th day of February 1935 His Majesty King George V granted adjoining lands to the persons then holding the land referred to in paragraph 1 hereof and annexed hereto and marked with the letter "B" is a true copy of such additional grant. 10
4. By a Private Act of the Legislature of New South Wales entitled the Australian Jockey Club Act, 1873, after reciting the trust provisions of the Deed referred to in paragraph 1 hereof it was provided that the trustees for the time being of the lands referred to in paragraph 1 hereof were authorised by writing under their hands to grant upon such terms and conditions as to them should seem expedient to the Australian Jockey Club or to any other club or association then formed or which might thereafter be formed for the purpose of horse racing or for the purpose of promoting or engaging in any other public amusement or purpose for which it was intended the said lands should or might be used the exclusive right to use and occupy the said lands or any part or parts thereof for any number of years not exceeding twenty one years and for the trustees for the time being of the said lands from time to time to renew any such lease for any further term not exceeding twenty one years. A true copy of the said Private Act is hereunto annexed and marked with the letter "C". 30
5. The trustees from time to time have since 1873 leased the said lands to The Chairman of the Australian Jockey Club which is an unincorporated Club and a "non-proprietary Association" within the meaning of The Gaming and Betting Act, 1912, as amended, for successive terms. The lease now current is for a term of twenty one years 40

expiring in 1968. The said lands have at all material times been used, and are still used, by the said Australian Jockey Club as a race course, and erected thereon are the usual improvements appropriate for that purpose.

In the Land  
and Valuation  
Court

                      
No. 1

Case Stated by  
Mr. Justice  
Sugerman.

14th December  
1956 -  
continued.

6. There has not in terms of the grants referred to in paragraphs 1 and 3 hereof been any cesser of the said trusts and the said lands have not been forfeited nor have they reverted to the Crown nor has there been any declaration of any public amusement or purpose for which the said lands may be used other than those specified in the said grants.
7. The lands referred to in paragraphs 1 and 3 hereof were, with the exception of a small part which has been resumed for public purposes, at the date of the objections hereinafter referred to and still remain vested in the above-named objectors Thomas Lloyd Forster Rutledge, the Honourable William McCulloch Gollan and Maurice Victorian Point, the trustees for the time being of the trusts of the said grants, upon the trusts and for the purposes and with the powers and subject to the conditions and provisos in the said grants set forth. The said lands now comprise an area of approximately 198 acres 2 roods and 35½ perches and are the lands comprised in Certificate of Title under the provisions of the Real Property Act 1900, registered Volume 2579 Folio 66 and Crown Grant registered Volume 4673 Folio 38. The said lands constitute a licensed racecourse under the provisions of The Gaming and Betting Act, 1912, as amended.
8. The said lands are within the area for rating purposes of the abovenamed objector, the Randwick Municipal Council.
9. Prior to the notification hereinafter referred to the said lands were coloured dark green on the Scheme Map referred to in the County of Cumberland Planning Scheme Ordinance which is set forth in the Schedule to the Local Government (Amendment) Act, 1951.
10. On 24th of October 1952 the Minister for Local Government acting in pursuance of Section 342Y

In the Land  
and Valuation  
Court

No. 1

Case Stated by  
Mr. Justice  
Sugerman.

14th December  
1956 -  
continued.

- of the Local Government Act 1919 as amended duly notified the suspension in relation to the said lands of the provisions of the prescribed scheme embodied in the said Ordinance, and the provisions of Division 7 of Part XIIA of the said Act and of Ordinance 105 made under the said Act thereupon applied and still apply to the said lands.
11. The said lands were on the 23rd of September 1954 valued by the Valuer General under the provisions of the Valuation of Land Act, 1916-1951 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 payable by the objectors Thomas Lloyd Forster Rutledge, the Honourable William McCulloch Gollan and Maurice Victorian Point unto the objector the Randwick Municipal Council assessed upon the said unimproved value of £385,400 were, in the year 1955, £8,631.7.1. 10
  12. The Valuer General pursuant to the provisions of the said Act duly gave notice of the said valuation to the said Thomas Lloyd Forster Rutledge, The Honourable William McCulloch Gollan and Maurice Victorian Point and also pursuant to the said Act duly furnished to the said Council a valuation list containing the said valuation. 20
  13. The said Thomas Lloyd Forster Rutledge, the Honourable William McCulloch Gollan and Maurice Victorian Point on the third day of August 1955, and pursuant to the provisions of the said Act, made objection to the said valuation and in its notice of objection contended that the values assigned were too high and should in each case be reduced to nil or to a nominal figure. 30
  14. On the 12th day of December 1955, and pursuant to the provisions of the said Act, the said Randwick Municipal Council duly made objection to the said valuation and in its notice of objection the Council claimed that the values should be: Unimproved Value £574,246.0.0. Improved Value £1,250,000.0.0. and Assessed Annual Value £93,027.0.0. 40
  15. The Valuer General upon receipt of such objec-

tions did not in pursuance of the said Act see fit to alter the valuation referred to in paragraph 11 hereof and forwarded a list showing particulars of the said objections to the Registrar of the Land and Valuation Court for the hearing and determination by the Court of such objections as appeared therein.

In the Land  
and Valuation  
Court

No. 1

Case Stated by  
Mr. Justice  
Sugerman.

14th December  
1956 -  
continued

- 10 16. The said objections came on for hearing before the Court and a direction was given by the Court that they should be heard together.
- 20 17. Upon the objections coming on for hearing Mr. Saunders of Counsel for the Valuer General informed the Court that in making the said valuation the Valuer General had taken into consideration the said trusts, restrictions, conditions and provisos appearing in the said grants by assuming a sale of the fee simple of the said lands to a purchaser who would take and hold the said lands subject thereto. He also informed the Court that the said valuation was not affected in any way by the provisions of Division 7 of Part XIIIA of the Local Government Act 1919 as amended and Ordinance 105 made under the said Act.
- 30 18. Mr. Wallace of Queen's Counsel for the objectors the said Thomas Lloyd Forster Rutledge, The Honourable William McCulloch Gollan and Maurice Victorian Point submitted that as a matter of law the unimproved value, the improved value and the assessed annual value of the said lands should be determined on the footing that the said lands were subject to all the trusts, restrictions, conditions and provisos appearing in the said grants and were respectively only nominal amounts; that the decision in Royal Sydney Golf Club v. Federal Commissioner of Taxation (91 C.L.R. 610) insofar as it held the contrary was wrong; that in the event the present case was distinguishable from that case; and that the recent decision of this Court in Council of the City of Sydney v. Valuer General (13th September, 1956 . as yet unreported) was wrong. Mr. Wallace also submitted that the submission by Mr. Bower of Queen's Counsel regarding the correctness and applicability of the decision in Council of the City of Sydney v. Valuer General was wrong; Mr. Wallace also
- 40



In the Land  
and Valuation  
Court

No. 1

Case Stated by  
Mr. Justice  
Sugerman.

14th December  
1956 -  
continued.

submitted that whether or not the trusts, restrictions, conditions and provisos aforesaid were to be taken into consideration, the provisions of the said Division 7 and of the said Ordinance were to be taken into account and that in this regard the decision of this Court in Thistlethwayte v. The Minister (19 L.G.R. 87) was wrong and he also made the submission, alternatively to his submission that as a matter of law the said values were respectively only nominal amounts, that the basis of valuation on which the Valuer General had proceeded was correct although he disputed the correctness of the values assessed by the Valuer General on that basis.

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19. Mr. Bowen of Queen's Council for the objector The Randwick Municipal Council submitted that the unimproved value of the said lands should be determined on the footing laid down in the said recent decision of this court in Council of the City of Sydney v. Valuer General, namely that the said trusts, restrictions, conditions and provisos be ignored in determining such unimproved value. Mr. Bowen also submitted that the submissions by Mr. Wallace hereinbefore stated were wrong.

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20. Mr. Saunders of Counsel then informed the Court that the Valuer General was not concerned to debate the questions of principle referred to by Mr. Wallace and Mr. Bowen but is content to abide by the decision thereon which might be given by this Court or by any Court on appeal therefrom. Mr. Saunders informed the Court that, if the correct basis for valuation of the said lands was in accordance with the submissions of Mr. Bowen, the value determined by the Valuer General would have been in excess of £385,400 for the unimproved value of such lands.

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21. No ground or reason appeared for distinguishing in the present case the decision in Council of the City of Sydney v. Valuer General or why this Court should depart therefrom in the present case, and Mr. Wallace having informed the Court that his clients desire to test its correctness on appeal and would, for that purpose, appeal from a determination of this Court founded thereon, I decided that before proceeding to a

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lengthy and costly enquiry into values, which might prove abortive, I should of my own motion state this case for the opinion of the Supreme Court.

In the Land  
and Valuation  
Court

No. 1

The questions of law stated as aforesaid for the decision of the Supreme Court are:-

Case Stated by  
Mr. Justice  
Sugerman.

14th December  
1956 -  
continued.

- 10 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. Whether, in valuing the said lands as aforesaid, the restrictions arising from the said notification by the Minister for Local Government under Section 342Y of the Local Government Act should be taken into consideration, and if so in what manner and to what extent.
- 20 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 30 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.
- 40 4. Whether the Valuer General was bound in law to assign to the said lands only a nil or nominal

In the Land  
and Valuation  
Court

value.

DATED this fourteenth day of December One  
thousand nine hundred and fifty six.

No. 1

(Sgd.) B. Sugerman,  
Judge.

Case Stated by  
Mr. Justice  
Sugerman.

14th December  
1956 -  
continued.

No.1A

No. 1A

Crown Grant  
Vol. 1 Fo.46.

CROWN GRANT, VOL. 1 FOLIO 46

15th June 1863.

"A"

NEW SOUTH WALES

LAND GRANT 10

REGISTER BOOK

GRANT

Vol. 1 Folio 46

for the purposes of

PUBLIC RECREATION

VICTORIA by the Grace of God of the United  
Kingdom of Great Britain and Ireland Queen  
Defender of the Faith and so forth.

TO ALL TO WHOM THESE PRESENTS SHALL COME

GREETING:

WHEREAS Our Right trusty and well beloved Council- 20  
lor Sir John Young Baronet Knight Commander of Our  
Most Honourable Order of the Bath Knight Grand Cross  
of Our most distinguished Order of St. Michael and  
St. George Our Captain General and Governor in  
Chief of Our Colony of New South Wales with the ad-  
vice of Our Executive Council of Our said Colony  
hath determined that it is desirable for the Public  
Interest that the land hereinafter described shall  
be dedicated for purposes of public recreation and  
shall be granted unto the Honourable Edward Deas 30

In the Land  
and Valuation  
Court

No.1A

Crown Grant  
Vol.1 Fo.46.

15th June  
1863 -  
continued.

Thomson C.B. Richard Jones of Sydney, Esquire, and  
William Bede Dalley of Sydney Esquire their heirs  
and assigns upon the trusts with the powers and  
subject to the conditions hereinafter mentioned  
NOW KNOW YE THAT WE of Our Special Grace with the  
advice of Our Executive Council of Our said Colony  
and in consideration of the quit rent hereinafter  
reserved HAVE GRANTED and for Us Our Heirs and  
successors do hereby grant unto the said Edward  
10 Deas Thomson Richard Jones and William Bede Dalley  
All that Piece or parcel of Land in Our said Colony  
containing by admeasurement Two hundred and two  
acres be the same more or less situate in the  
County of Cumberland Parish of Alexandria at Rand-  
wick commencing at a point on the southern side of  
the road leading from the Old Botany Road to the  
Village of Coogee bearing East one degree North and  
distant forty five chains and South twenty two  
chains and seventy links from the North Eastern  
20 corner of S. Terry's five hundred and seventy acres  
and bounded thence on the East by a line bearing  
South one degree East twenty eight chains and twelve  
links on the South by a line bearing West one degree  
South forty two chains and sixty links to the eas-  
tern side of the Old Botany Road on the West by that  
Road NORTH WESTERLY to its intersection with the  
East boundary of S. Terry's Grant of five hundred  
and seventy acres aforesaid and thence by part of  
that boundary bearing North one degree West forty  
30 one chains and fifty links to the North Eastern  
corner of that land, on the North by part of the  
South boundary fence of the Water Reserve bearing  
East one degree North sixteen chains and fifty links  
to the above-mentioned road leading from the Old  
Botany Road and on the North East by that road,  
bearing South Easterly to the point of commencement  
With all the rights and appurtenances thereto be-  
longing TO HOLD unto the said Edward Deas Thomson,  
Richard Jones and William Bede Dalley their heirs  
40 and assigns for ever Yielding and paying yearly  
therefor to Us Our Heirs and Successors yearly and  
every year the quit rent of one peppercorn on demand  
Subject to the conditions reservations and provisos  
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

In the Land  
and Valuation  
Court

No.1A

Crown Grant  
Vol.1 FO.46.

15th June  
1863 -  
continued.

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 dwellings for the use of the 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 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 purpose 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 the said lands or any part or parts thereof as the said Trustees shall in their discretion think fit 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 PROVIDED ALWAYS AND WE do hereby declare that when and so often as the said Edward Deas Thomson Richard Jones and William Bede Dalley or any trustee or trustees to be appointed by virtue hereof shall die resign or cease to reside in the Colony of New South Wales or become incapable of acting in the trusts hereby created it

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shall be lawful for The Governor for the time being of Our said Colony with the advice of the Executive Council thereof from time to time by writing under his hand to name and appoint a new trustee or trustees in the place and stead of any trustee or trustees so dying resigning ceasing to reside in Our said Colony of New South Wales or becoming incapable of acting in the said trusts and thereupon the said lands shall be conveyed and assured by the surviving continuing trustees or trustee or by the heirs of the last surviving trustee their or his heirs or assigns UPON the trusts and for the intents and purposes hereinbefore created and declared of and concerning the said lands AND WE do hereby reserve unto Us Our Heirs and successors all such parts and so much of the said land as may hereafter be required for public roads or ways in over and through the same to be set out by The Governor for the time being of Our said Colony or some person by him authorized in that respect AND ALSO all stone and gravel all indigenous timber and all other materials the produce of the said lands which may be required at any time or times hereafter for the construction and repair of roads ways and bridges for naval purposes and for public works TOGETHER with the right of taking and removing the same AND ALSO all minerals with full and free liberty and power to search for dig and take away the same AND ALSO the right of full and free ingress egress and regress into out of and upon the said land for the several purposes aforesaid AND WE do further reserve unto us Our heirs and successors full power for Us or them or for the Governor for the time being of Our said Colony to resume and take possession of all or any part of the said land not hereinbefore reserved which may be required at any time or times hereafter for any public purposes whatsoever PROVIDED ALWAYS and these presents are upon the express condition that if the said land hereinbefore described or any part thereof shall be used for any other purpose than is hereinbefore provided or declared in and by the said trusts the said trusts shall cease and the said land shall be forfeited and revert unto Us Our heirs and successors and these presents and every matter and thing herein contained shall cease and determine and become absolutely void to all intents and purposes and it shall be lawful for Us Our heirs and successors by Our Governor for the time being of Our said Colony or some person by him authorized in that behalf to

In the Land  
and Valuation  
Court

No.1A

Crown Grant  
Vol.1 Fo.46.

15th June  
1863 -  
continued.

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In the Land  
and Valuation  
Court

No.1A

Crown Grant  
Vol.1 Fo.46.

15th June  
1863 -  
continued.

re-enter upon the said land or any part thereof and  
the said grantees their heirs and assigns and all  
occupiers thereof therefrom wholly to remove IN  
TESTIMONY WHEREOF We have caused this Our Grant to  
be sealed with the Seal of Our said Colony.

L. S. { WITNESS Our Right Trusty and Well be-  
          { loved Councillor Sir John Young Baronet  
          { Knight Commander of Our Most Honourable  
          { Order of the Bath Knight Grand Cross of  
          { Our Most Distinguished Order of St.           10  
          { Michael and St. George Our Captain  
JOHN YOUNG { General and Governor-in-Chief of Our  
          { Colony of New South Wales at Government  
G 256376 { House Sydney in New South Wales afore-  
          { said this fifteenth day of June in the  
          { twenty sixth year of Our Reign and in  
          { the year of Our Lord one thousand eight  
          { hundred and sixty three.

RECORDED and ENROLLED in the General Registry Office  
at Sydney New South Wales this Twenty sixth day of   20  
June 1863.

Registrar General

Dated 26th  
March 1883

NO. 91835

TRANSFER

from the within named William Bede Dalley and  
Richard Jones (surviving trustees) To William Bede  
Dalley, Henry Cary Dangar and Frederick Close  
Griffiths, all of Sydney, of the land within  
described.

Produced and entered                   11th April 1883  
at                                       one o'clock in the afternoon           30

HY. NEWCOMBE           Registrar General  
Registrar General   New South Wales

NO. 148903

TRANSFER

from the abovenamed Henry Cary Dangar and Frederick Close Griffiths to Henry Cary Dangar, Frederick Close Griffiths and John Lackey of the land above described.

Produced and entered 1st April 1889  
at  $\frac{1}{2}$  past 2 o'clock in the afternoon

HY. NEWCOMBE Registrar General  
Registrar General New South Wales

In the Land  
and Valuation  
Court

No.1A

Crown Grant  
Vol.1 Fo.46.

15th June  
1863 -  
continued.

10

This Deed is Cancelled and Certificate of Title  
issued  
Volume 1525 Folio 146

E.S. DEANE. Registrar General  
Deputy Registrar General New South Wales

No. 1B

CROWN GRANT, VOL. 4673 FOLIO 38

Commissioner of Stamp Duties (Land Grant)  
New South Wales Register Book  
NOT LIABLE TO STAMP DUTY Vol.4673 Fo.38

20

M 15 2 35 Y

NO.1934/3839

No.1B

Crown Grant  
Vol.4673 Fo.38

11th February  
1935.

STATE OF NEW SOUTH WALES

GRANT

-- For the purposes of Public Recreation --

GEORGE V by the Grace of God of  
Great Britain, Ireland and the  
British Dominions beyond the  
Seas, King, Defender of the  
Faith, Emperor of India.

T O A L L T O W H O M these Presents shall  
come Greeting:



In the Land  
and Valuation  
Court

No. 1B

Crown Grant  
Vol. 4673 Fo. 38.

1th February  
1935 -  
continued.

WHEREAS by the Centenary Celebration (Amendment) Act 1934 it was provided (inter alia) that the land hereinafter described and intended to be hereby granted should from the commencement of the said Act be deemed to be Crown Lands and to be dedicated under the Crown Lands Consolidation Act 1913 for the like purposes for which the land comprised in a certain Crown Grant dated the fifteenth day of June one thousand eight hundred and sixty three and registered in the Office of the Registrar General as Volume one Folio forty six was dedicated and Our Governor of our State of New South Wales was by the said Act authorised to grant the land hereinafter described to SIR SAMUEL HORDERN, Knight Bachelor, RICHARD HALIFAX DANGAR, Esquire, and LIEUTENANT-COLONEL THOMAS LLOYD FORSTER RUTLEDGE the present trustees of the land formerly comprised in the said Crown Grant and now comprised in Certificate of Title registered Volume two thousand five hundred and seventy nine Folio sixty six their heirs and assigns to be held by them upon the like trusts and subject to the like conditions and provisions as the land formerly comprised in the said Crown Grant and now comprised in the said Certificate of Title is held and with the like powers authorities and duties as were conferred or imposed by the said Crown Grant as varied by the Australian Jockey Club Act 1873 NOW KNOW YE that in pursuance of the Centenary Celebration (Amendment) Act 1934 and in consideration of the quit rent hereinafter reserved WE HAVE GRANTED and for Us Our Heirs and Successors DO HEREBY GRANT unto the said SAMUEL HORDERN, RICHARD HALIFAX DANGER and THOMAS LLOYD FORSTER RUTLEDGE ALL THAT piece or parcel of land containing an area of Three roods thirty nine perches or thereabouts situated in the Municipality of Randwick Parish of Alexandria County of Cumberland being part of the land described in the Schedule to the Centenary Park Sale Act 1904 COMMENCING at the North Eastern corner of an area of four acres one rood three perches and one half of a perch of land resumed for tramway purposes on the eleventh day of October one thousand nine hundred and eleven and now comprised in Certificate of Title registered Volume 2299 Folio 129 and bounded thence on the South by part of the Northern boundary of Randwick Racecourse being a line bearing eighty nine degrees five minutes for eight hundred and thirty eight links and twenty one one hundredths of a link to the South Western side of Alison Road on the North East by

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10 that side of that road being lines successively  
bearing two hundred and eighty five degrees fifty  
five minutes for eight hundred and forty eight  
links and eighty six one hundredths of a link and  
two hundred and eighty seven degrees fifty five  
minutes for one link and eight tenths of a link on  
the West by lines successively bearing one hundred  
and sixty six degrees nine minutes for fifty four  
links and sixty three one hundredths of a link and  
one hundred and seventy nine degrees nineteen  
minutes thirty seconds for one hundred and ninety  
five links and forty five one hundredths of a link  
to the point of commencement AS per plan hereon  
WITH all the rights and appurtenances thereto be-  
longing TO HOLD unto the said SAMUEL HORDERN,  
RICHARD HALIFAX DANGER and THOMAS LLOYD FORSTER  
RUTLEDGE their heirs and assigns for ever YIELDING  
AND PAYING yearly therefor to Us Our Heirs and  
20 Successors yearly and every year the quit rent of  
one peppercorn on demand SUBJECT to the conditions  
reservations and provisoes hereinafter mentioned  
AND upon and for the trusts intents and purposes  
hereinafter declared of and concerning the said  
land 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 associ-  
ations at such times and upon such terms and condi-  
tions as the said Samuel Hordern, Richard Halifax  
Danger and Thomas Lloyd Forster Rutledge or any  
30 other Trustees of the said land appointed as here-  
inafter provided shall think fit and proper for any  
of the purposes hereinafter described that is to  
say FIRSTLY as a Racecourse 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  
40 stables and temporary dwellings for the use of the  
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 pur-  
pose which Our Governor of Our said State 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 land or any  
part thereof shall or may be used PROVIDED ALWAYS

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and it is hereby declared that it shall or may be lawful for the Trustees for the time being of the said land 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 purpose of promoting or engaging in any other public amusement or purpose for which it is intended that the land shall or may be used as aforesaid the exclusive right to use and occupy the said land or any part or parts thereof as the said Trustees shall in their discretion think fit for any number of years not exceeding twenty one years commencing from the time of the signing the writing by which the right of using the said land shall be granted to any such club or association as aforesaid AND ALSO to renew any such lease for any further term not exceeding twenty one years from the granting thereof AND 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 PROVIDED ALWAYS and We do hereby declare that when and so often as the said Samuel Hordern, Richard Halifax Dangar and Thomas Lloyd Forster Rutledge or any trustee or trustees to be appointed by virtue hereof shall die resign cease to reside in the said State of New South Wales or become incapable of acting in the trusts hereby created it shall be lawful for Our Governor for the time being of Our said State with the advice of the Executive Council thereof from time to time by writing under his hand to name and appoint a new trustee or trustees in the place and stead of any trustee or trustees so dying resigning ceasing to reside in Our said State of New South Wales or becoming incapable of acting in the said trusts and thereupon the said land shall be conveyed and assured by the surviving continuing trustees or trustee or by the executors or administrators of the last surviving trustee their or his executors or administrators upon the trusts and for the intents and purposes hereinbefore created and declared of and concerning the said land AND WE DO HEREBY RESERVE unto Us Our Heirs and Successors all such parts and so much of the said land as may hereafter be required

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for public roads or ways in over and through the same to be set out by Our Governor for the time being of Our said State or some person by him authorised in that respect AND ALSO all stone and gravel all indigenous timber and all other materials the produce of the said land which may be required at any time or times hereafter for the construction and repair of roads ways and bridges for naval purposes and for public works TOGETHER with the right of taking and removing the same AND ALSO all minerals with full and free liberty and power to search for dig and take away the same AND ALSO the right of full and free ingress and egress into out of and upon the said land for the several purposes aforesaid AND WE do further reserve unto Us Our Heirs and Successors full power for Us or Them or for Our Governor for the time being of Our said State to resume and take possession of all or any part of the said land not hereinbefore reserved which may be required at any time or times hereafter for any public purposes whatsoever PROVIDED ALWAYS and these presents are upon the express condition that if the said land hereinbefore described or any part thereof shall be used for any other purpose than is hereinbefore provided or declared in and by the said trusts the said trusts shall cease and the said land shall be forfeited and revert unto Us Our Heirs and Successors and these presents and every matter and thing herein contained shall cease and determine and become absolutely void to all intents and purposes and it shall be lawful for Us Our Heirs and Successors by Our Governor for the time being of Our said State or some person by him authorised in that behalf to re-enter upon the said land or any part thereof and the said grantees their executors administrators and assigns and all occupiers thereof therefrom wholly to remove IN TESTIMONY whereof We have caused this Our Grant to be Sealed with the Seal of Our said State

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continued.

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(WITNESS Our Trusty and Well-beloved The  
(Honourable Sir Philip Whistler Street,  
(Knight Commander of Our Most Distinguished Order of Saint Michael and Saint  
L.S. (George, Our Lieutenant-Governor of Our  
R. LEWIS (State of New South Wales and its Dependencies in the Commonwealth of Australia,  
(at Sydney, in Our said State, this  
(eleventh day of February in the twenty  
(fifth year of Our Reign, and in the year  
(of Our Lord one thousand nine hundred  
(and thirty five.

P.W. STREET.  
Lieutenant-Governor.

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RECORDED and ENROLLED in the Registrar General's  
Office at Sydney in New South Wales this 15th day  
of February 1935.

No.1B

ROY W. WILLIS,  
Registrar General.

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continued.

NO. C 354264 Lease dated 5th July 1935  
from the said Sir Samuel Hordern, Richard Halifax  
Dangar and Thomas Lloyd Forster Rutledge to The  
Chairman of the Committee of the Australian Jockey  
Club and his successors in office

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Produced 17th July 1935 and  
entered 23rd August 1935  
at 3 o'clock in the afternoon.

ROY W. WILLIS Registrar  
General  
Registrar General New South Wales

NO D 1445 NOTICE OF DEATH

Proof having been furnished to me of the death of  
the said Richard Halifax Dangar the surviving Joint  
Tenants Samuel Hordern and Thomas Lloyd Forster  
Rutledge are now registered proprietors of the land  
within-described

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Produced and entered 28th March 1941  
at 2 ints pt 10 o'clock in the forenoon.

ROY W. WILLIS Registrar General  
Registrar General New South Wales

NO D 1446 TRANSFER dated 13th March 1941

from the said Samuel Hordern and Thomas Lloyd For-  
ster Rutledge to the said Samuel Hordern and Thomas  
Lloyd Forster Rutledge and George Main of Illabo  
Grazier as Joint Tenants of the land within described

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Produced and entered 28th March 1941  
at 2 ints pt 10 o'clock in the forenoon.

ROY W. WILLIS Registrar General  
Registrar General New South Wales

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Surrender in Law of the within Lease No. C 354264  
by reason of fresh Lease dated 12th July 1948 No.  
D 871614

Dated 28th September 1948 T. WELLS Registrar  
Vide D 871613 Registrar General  
General New South Wales

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NO. D 871614 Lease dated 12th July 1948  
from the said Sir Samuel Hordern, Thomas Lloyd For-  
ster Rutledge and George Main to The Chairman of  
the Committee of the Australian Jockey Club

11th February  
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continued.

Produced 4th August 1948 and entered 28th Septem-  
ber 1948 at 12 o'clock noon.

T. WELLS Registrar General  
Registrar General New South Wales

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NO. G 332502 NOTICE OF DEATH

Proof having been furnished to me of the death of  
the said George Main the surviving joint tenants  
Sir Samuel Hordern, Thomas Lloyd Forster Rutledge  
are now registered proprietors of the land within  
described

Produced 15th July 1955 and entered 12th September  
1955 at 12 o'clock noon.

T. WELLS Registrar General  
Registrar General New South Wales

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NO. G 332503 TRANSFER dated 4th July 1955

from the said Sir Samuel Hordern and Thomas Lloyd  
Forster Rutledge to the said Thomas Lloyd Forster  
Rutledge, the Honourable William McCulloch Gollan of  
Darling Point, Member of the Legislative Assembly  
and Maurice Victorian Point of Scone, Grazier as  
joint tenants of the land within described

Produced 15th July 1955 and entered 12th  
September 1955

T. WELLS Registrar General  
Registrar General New South Wales

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No. 1C

AUSTRALIAN JOCKEY CLUB ACT 1873

No.1C

Australian  
Jockey Club  
Act 1873.

NEW SOUTH WALES  
ANNO TRICESIMO SEPTIMO  
VICTORIAE REGINAE

Australian Jockey Club Act, 1873

An Act to extend the period for which the Trustees  
of the Randwick Racecourse are enabled to grant  
leases thereof and to enable the Members of the  
"Australian Jockey Club" to sue and be sued in  
the name of the Chairman for the time being of  
the Committee of the said Club and for other  
purposes. 10

WHEREAS by deed poll or grant from the Crown bearing  
date the fifteenth day of June in the year of Our  
Lord one thousand eight hundred and sixty-three under  
the hand of His Excellency Sir John Young then  
Governor-in-Chief of the colony of New South Wales  
and under the seal of the said colony ALL that piece  
or parcel of land in the said colony containing by  
admeasurement two hundred and two acres be the same  
more or less situate in the county of Cumberland  
parish of Alexandria at Randwick commencing at a  
point on the southern side of the road leading from  
the old Botany Road to the village of Coogee bearing  
east one degree north and distant forty-five chains  
and south twenty-two chains and seventeen links from  
the north-eastern corner of S. Terry's five hundred  
and seventy acres and bounded thence on the east by  
a line bearing south-west one degree east twenty-  
eight chains and twelve links on the south by a line  
bearing west one degree south forty-two chains and  
sixty links to the eastern side of the old Botany  
Road on the west by that road north-westerly to its  
intersection with the east boundary of S. Terry's  
grant of five hundred and seventy acres aforesaid and  
thence by part of that boundary bearing north one  
degree west forty-one chains and fifty links to the  
north eastern corner of that land on the north by  
part of the south boundary fence of the Water Reserve  
bearing east one degree north sixteen chains and  
fifty links to the above-mentioned road leading from 20  
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continued.

the old Botany Road and on the north-east by that road bearing south-casterly to the point of commencement. With all the rights and appurtenances thereto belonging was granted unto the Honorable Edward Deas Thomson Companion of the Bath Richard Jones of Sydney in the said colony Esquire and William Bede Dalley of same place Esquire. 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 thereafter provided should think fit and proper for any of the purposes thereafter described that is to say Firstly As a racecourse upon which horse races may be run under the direction of the Australian Jockey Club or of any other club or association then existing or which may hereafter be founded for the purposes 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 dwellings for the use of the 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 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 was thereby declared that it should or might 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 might 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 should seem expedient to the Australian Jockey Club or to any other club or association then formed or which should or might thereafter 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 was intended that the lands should or might be used as aforesaid the exclusive right to use and



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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 seven years commencing from the time of the signing in writing by which the right of using the said lands should be granted to any such club or association as aforesaid provided always and it was thereby declared that when and so often as the said Edward Deas Thomson Richard Jones and William Bede Dalley or any Trustee or Trustees to be appointed by virtue hereof should die resign cease to reside in the colony of New South Wales or become incapable of acting in the Trusts thereby created it should be lawful for the Governor for the time being of the said colony with the advice of the Executive Council thereof from time to time by writing under his hand to name and appoint a new Trustee or Trustees in the place and stead of any Trustees or Trustee so dying resigning ceasing to reside in the said colony of New South Wales or becoming incapable of acting in the said Trusts and thereupon the said lands should be conveyed and assured by the surviving continuing Trustees or Trustee or by the heirs of the last surviving Trustee their or his heirs or assigns upon the trusts and for the intents and purposes thereinbefore created and declared of and concerning the said land and whereas the said Richard Jones having resigned his said office of Trustee Alfred Cheeke of Sydney aforesaid Esquire was duly appointed a Trustee in his place and stead and whereas the said Trustees have for some years past permitted the Members of the Australian Jockey Club to have the use and enjoyment of the said land for the purpose of horse racing and the said Australian Jockey Club have expended large sums of money in making forming and improving a course for horses to race on and a tan gallop for horses to train on and in erecting fences stands and other buildings on the said land in connection with horse racing and whereas the said Australian Jockey Club are desirous of erecting a new Grand Stand on the said land and of forming a training gallop inside the course so formed as aforesaid and of erecting other permanent improvements on the said land and whereas in order to enable them to raise money for such improvements they have applied to the said Trustees for a lease of the said land which the said Trustees are willing to grant AND WHEREAS the term of Seven years for which the said Trustees have power to grant such lease being insufficient to enable the said Club to obtain the

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money for such improvements it is desirable that power should be given to the said Trustees to grant a longer lease in manner hereinafter mentioned AND WHEREAS the Members of the said Club are desirous of obtaining authority to borrow money for the purpose of improving the said lands and of obtaining the power and privileges hereinafter granted BE it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in this present Parliament assembled and by the authority of the same as follows:-

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continued.

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1. This Act may be cited for all purposes as the "Australian Jockey Club Act 1873".

2. In this Act

The term "Club" means the Australian Jockey Club.

The term "Committee" means the Committee for the time being of the Club.

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The term "Chairman" means the person who is the Chairman for the time being of the Committee.

The term "Justice" means a Justice of the Peace acting in and for the Colony of New South Wales.

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The term "Building" means any house out-house stand booth stable shed tent fence or other building edifice or erection of any description whatsoever for the time being standing or being upon any land for the time being vested under or by virtue of this Act in the Chairman.

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3. It shall and may be lawful for the said Honorable 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 authorized 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

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continued.

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 said land as they may think proper.

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4. All actions suits and proceedings at law or in equity for any cause matter or thing happening after this act to be commenced instituted prosecuted or carried on by or on behalf of the said Club or wherein the said Club is or shall be in any way concerned against any person or persons body or bodies politic or corporate whether a member or members of the Club or otherwise and may be lawfully commenced instituted and prosecuted or carried on in the name of the Chairman at the time any such action suit or proceedings shall be commenced or instituted as the nominal plaintiff complainant or petitioner for and on behalf of the Club and all actions suits and proceedings as aforesaid to be commenced instituted and prosecuted against the Club or any of the members thereof as such shall be commenced instituted and prosecuted against the Chairman as the nominal defendant for and on behalf of the Club or members and in all indictments and informations it shall be lawful to state the property of the Club to be the property of such Chairman and any offence committed with intent to injure or defraud the Club shall and lawfully may in any prosecution for the same be stated or laid to have been committed with intent to injure or defraud the said Chairman and any offender or offenders may thereupon be lawfully convicted of any such offence in all other allegations or indictments informations or other proceedings it shall and may be lawful and sufficient to state the name of such Chairman and the death resignation or removal or other act of such Chairman shall not abate any such action suit or prosecution but the same may be continued where it left off and prosecuted and

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concluded in the name of any person who may be or may become Chairman.

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5. A memorial of the names of the Chairman and of each of the members of the Committee respectively in the form or to the effect set forth in the Schedule to this Act signed by such Chairman and by a majority of the Committee shall be recorded upon oath in the Supreme Court of the Colony of New South Wales within one calendar month after the passing of this Act and when and so often as any Chairman or member of Committee shall be newly elected a memorial of the name of such newly elected Chairman or member in the same form and to the same effect as the above mentioned memorial signed by such newly elected Chairman or member and by a majority of the Committee at the time of such election shall in like manner be recorded upon oath in the said Supreme Court within one calendar month next after every such Chairman or member shall be elected and for all purposes whatsoever the production of the memorial recorded as by this Act directed or of any office or examined copy thereof shall be received as sufficient and conclusive evidence in all courts of justice or before any person having by law or by consent of parties authority to receive evidence of all the matters contained or set forth in such memorial and that the members of Committee who sign such memorial formed a majority of the Committee at the respective times aforesaid nor shall any proof be required of the authority of the person before whom the oath verifying the said memorial shall appear to have been sworn to administer such oath.

6. Until such memorial as hereinbefore first mentioned shall be recorded in the manner herein directed no action suit or other proceeding shall be brought by the Club or any of the members thereof in the name of the Chairman of the Committee of the Club under the authority of this Act.

7. Every judgment and every decree or order which shall be at any time after the passing of this Act obtained against the Chairman on behalf of the Club shall and may take effect and be enforced and execution thereon be issued against the property and effects of the Club.

8. It shall be lawful for such Chairman and his

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continued.

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 purposes 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.

9. All lands tenements and hereditaments real and personal and all personal chattels and effects which are now vested in or held by any person or persons whomsoever in trust for or for the benefit of the Club or the members thereof shall immediately upon the passing of this act become and be vested in and be held by the Chairman and his successors in such office in trust for the Club and in the like manner as if such Chairman and his respective successors in such office were in law a corporation sole and as if the personalty were real estate and all lands tenements and hereditaments real and personal and all personal chattels and effects which may hereafter be contracted for or be acquired by or belong to the Club or the members thereof collectively may be conveyed assigned and assured to and shall therefrom become vested in the Chairman and his successors in such office in trust for the Club and in the like manner as if such Chairman and his respective successors in such office were in law a corporation sole and as if the personalty were real estate.

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10. The lands by this Act authorised to be demised to the Chairman shall be held by the Chairman and his successors in office only for the purpose of being maintained and used for a public racecourse or for one or other of the purposes in the said Deed of Grant mentioned under and subject to the provisions of this Act and any by-laws to be made under and by virtue hereof.

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11. The Committee may maintain any building now standing and being upon the said land so to be vested in the Chairman or any part thereof and may also from time to time build or erect upon the said land or any other land for the time being vested in the Chairman either in addition to or substitution for the buildings now standing thereon all such other buildings as may in the opinion of the Committee be necessary or expedient for or in connection with the use of the said land as a public racecourse.

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12. The Committee or an absolute majority in number

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10 of such Committee present at any meeting duly summoned for that purpose may from time to time subject to the special provisions of this Act make such by-laws as they may think fit for regulating all matters concerning or connected with any lands authorised by this Act to be leased to the said Chairman on behalf of the Club or any lands which may hereafter be vested in the Chairman of the said Committee and the admission thereto and expulsion therefrom of members of the Club or any persons respectively and the rates or charges to be paid for such admission and for the general management of the said racecourse and may from time to time by any other by-laws alter or repeal any such by-laws. Provided that no such by-laws be repugnant to the laws for the time being in force in New South Wales and every by-law shall be reduced into writing and shall be signed by the Chairman.

20 13. No by-law made under the authority of this Act shall be of any force or effect until the expiration of one month after the same or a copy thereof signed by the Chairman shall have been sent to the Chief Secretary of New South Wales for the time being and until publication as hereinafter mentioned and at any time within the said period of one month the Governor in Council may disallow any such by-law and after such disallowance such by-law shall not come into operation.

30 14. Every by-law shall forthwith on the expiration of one month after the same shall have been sent as aforesaid if not disallowed within that time be published in the Government Gazette together with a notice stating that when such by-law was sent to the Chief Secretary and that such by-law has not been disallowed and such by-law shall come into operation upon such publication.

40 15. The production of a copy of the Government Gazette containing any such by-law and notice as aforesaid shall be conclusive evidence that such by-law was duly made and not disallowed.

16. The Governor in Council may at any time by Order in Council declare that from a time to be named in such order and not less than six months from the date of the publication of such order in the Government Gazette any by-law made under this Act shall be repealed and from and after the times

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named in such order such by-law shall unless previously repealed under the provisions herein contained be absolutely repealed and of no effect. Provided always that such repeal shall not interfere with or affect any action suit prosecution or other proceeding commenced before the time of such repeal but the same shall be continued as if no such repeal had taken place.

17. A copy of all by-laws made under this Act for the time being in force shall be painted on boards or printed on paper and pasted on boards and hung up and affixed and continued in some conspicuous place at or near the principal entrance to the said racecourse and also on the front or other conspicuous part of the grand stand on the said racecourse so as to give public notice thereof to the parties interested therein or affected thereby and such boards shall from time to time be renewed as often as the by-laws thereon or any part thereof shall be obliterated or destroyed and no penalty imposed by any such by-law shall be recoverable unless the same shall have been published and kept published in manner aforesaid.

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18. Such by-laws when so published and affixed shall be binding upon and be observed by all parties and shall be sufficient to justify all persons acting under the same and for proof of the publication of any such by-laws it shall be sufficient to prove that a printed paper or painted board containing a copy of such by-laws was affixed and continued in manner by this Act directed and in case of its being afterwards displaced or damaged then that such paper or board was replaced as soon as conveniently might be.

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19. Any person offending against any by-law made under this Act shall forfeit for every such offence any sum not exceeding Five Pounds to be imposed by such by-law as a penalty for any such offence and to be recovered by information or complaint before any Justice and if the infraction or non-observance of any of such by-laws be attended with danger or annoyance to the public or hindrance to the Committee or any of the officers of the said Club or the public in the lawful use of the said racecourse it shall be lawful for the Committee or any member officer or servant thereof summarily to interfere to obviate or remove such danger annoyance or hindrance

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and that without prejudice to any penalty incurred by the infraction of any such by-law.

In the Land  
and Valuation  
Court

                      
No.10

Australian  
Jockey Club  
Act 1873 -  
continued.

10 20. Whosoever shall wilfully obstruct or impede any officer servant or agent of the Committee in the execution of his duty upon any land for the time being vested in the Chairman or upon or in any building or premises connected therewith or wilfully trespass upon any such land building or premises or remove or wilfully injure any building enclosure post tree or shrub upon any such land shall on conviction thereof before a Justice forfeit and pay for every such offence over and above the amount of the injury done any sum not exceeding Ten Pounds.

20 21. Any member officer or servant of the Committee and all persons called by him to his assistance may seize and detain any person who shall have committed any offence against the provisions of this Act or of the by-laws made under this Act and whose name and residence shall not be given to such member officer or servant upon his requiring the same to be given and give such offender in charge to a police constable who shall convey him with all convenient despatch before some justice without any warrant or other authority than this Act and such justice shall proceed with all convenient despatch to the hearing of the complaint against the offender.

30 22. Notwithstanding the liability of any person to any penalty under the provisions of this Act or of the by-laws made under this Act he shall not be relieved from any other liability to which he would have been subject if this Act had not been passed.

40 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.

24. The Chairman may demise for any particular race meeting or meetings or for any other amusement or sport any portion of the land for the time being



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Australian  
Jockey Club  
Act 1873 -  
continued.

vested in the Chairman or any buildings erected thereon or all or any of the tolls or charges. demandable under and by virtue of this Act and the lessee his collectors servants and agents shall have the same power of demanding recovering and receiving the said tolls and charges as are hereby given to the Committee.

25. It shall be lawful for the said Committee in the name of the Chairman from time to time as they shall see fit on behalf of the said Club for any purpose connected with the said Club to procure advances and to borrow money by way of cash credit bond mortgage debentures or otherwise howsoever and to pay off and discharge such advances in such manner as may be agreed on.

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26. The Minister for Works may when he thinks fit authorise any proper person to inspect the whole or any part of the land for the time being vested in the Chairman and all or any buildings thereon and the person so authorised on producing (if required) to any member officer or servant of the Committee requiring the same his authority may at all reasonable times enter upon and examine the said lands and the buildings erected and being thereon and may exercise all such powers and authority as may be required for the purpose of such inspection.

20

27. If the person so as aforesaid authorised to inspect the said land premises and buildings certify under his hand to the Minister for Works that in his opinion the surface of the said land or any part thereof is imperfectly kept in order for the purpose of a public racecourse or that any building thereon is in want of repair or is unsafe to the public or in any other respect improper or unfit for use and which said certificate shall contain a detailed statement of all such defects and want of repair the Minister may by notice in writing under his seal addressed to the Chairman require the Committee within a reasonable time after receipt of such notice well and sufficiently to repair and make good all or any of such defects and want of repair.

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28. Every such notice with a true copy of such certificate as aforesaid shall be personally served upon the Committee and a true copy of such notice shall be fixed upon some part of the land or buildings the subject of such notice and every such

notice so served as aforesaid and a copy of which shall have been so fixed as aforesaid shall be deemed to have been duly served.

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Australian  
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continued.

29. The Committee shall within a reasonable time after service of such notice in manner aforesaid well and sufficiently repair and make good all such defects and want of repair mentioned in the said certificate as by the said notice they shall be required to do.

- 10 30. Nothing herein contained shall extend or be deemed taken or construed to extend to incorporate the Club or the members thereof or to relieve or to discharge them or any of them from any responsibility duties contracts or obligations whatsoever which they would be subject or liable to either between the Club and others or between the individual members in the Club or any of them if this Act had not been passed.

SCHEDULE

20 Australian Jockey Club

Memorial of the name of the chairman of the committee of the "Australian Jockey Club" to be recorded in the Supreme Court of the State of New South Wales pursuant to an Act of Parliament of New South Wales passed in the thirty-seventh year of the reign of Her Majesty Queen Victoria.

A.B. Chairman

C.D. }  
E.F. } Committee  
&c. }

30

(Signed) A.B. Chairman

C.D. }  
E.F. } Members of Committee of  
&c. } said Club and being a  
majority of such Committee.

I.G.H. of \_\_\_\_\_ make oath and say that I was present and did see the foregoing memorial signed by the above-named Chairman and also by the

In the Land  
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respective members of the committee whose names  
appear thereto and that the members of committee  
signing form a majority of the committee of the  
"Australian Jockey Club".

No. 1C

Australian  
Jockey Club  
Act 1873 -  
continued.

Sworn this            day of  
One thousand eight hundred and  
Before me

No. 2

Map referred  
to in the  
County of  
Cumberland  
Planning  
Scheme Ordi-  
nance 1951.

MAP REFERRED TO IN THE COUNTY OF CUMBERLAND  
PLANNING SCHEME ORDINANCE 1951

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(Separate document)

Transmitted by Consent of the Parties to  
Assist the Board

No. 3

Proclamation  
by Minister  
of Local  
Government.

24th October  
1952.

PROCLAMATION BY MINISTER OF LOCAL GOVERNMENT

EXTRACT FROM GOVERNMENT GAZETTE OF NEW SOUTH  
WALES DATED 24th OCTOBER, 1952

LOCAL GOVERNMENT ACT, 1919

SUSPENSION OF CERTAIN PROVISIONS OF  
COUNTY OF CUMBERLAND PLANNING SCHEME

20

WHEREAS a resolution of the Cumberland County  
Council for the preparation of a town and country  
planning scheme under Part XIIIA of the Local Gov-  
ernment Act, 1919, varying the County of Cumberland  
Planning Scheme with respect to the lands referred  
to in Schedule "A" hereto, took effect on 17th Octo-  
ber, 1952, the date on which the notice of the

Minister's approval of such resolution was published in the Government Gazette, and WHEREAS after consideration of a report of the Town and Country Planning Advisory Committee, it appeared to me, as Minister, expedient so to do for securing that development prohibited by the County of Cumberland Planning Scheme may be carried out notwithstanding the provisions of that scheme: Now I, the Minister aforesaid, in pursuance of the provisions of section 342Y of the Local Government Act, hereby notify the suspension of the provisions of the County of Cumberland Planning Scheme as respects all development on the parts of the aforesaid lands referred to in Schedule "B" hereto. The provisions of Division 7 of Part XIIIA of the Local Government Act with respect to the control of interim development shall apply to development on the lands referred to in Schedule "B" hereto as from to-day's date

In the Land  
and Valuation  
Court

          
No. 3

Proclamation  
by Minister  
of Local  
Government.

24th October  
1952 -  
continued.

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J.B. Renshaw, for Minister  
for Local Government.

Department of Local Government, Sydney, 24th  
October, 1952.

SCHEDULE "A"

The lands shown edged red on Resolution Maps Nos. 1 to 49 inclusive prepared by the Cumberland County Council and referred to in the Minister's notice approving of the Council's resolution published in the Government Gazette of 17th October, 1952.

30

SCHEDULE "B"

The lands shown edged blue on Resolution Maps Nos. 1 to 11, inclusive, 13, 14, 17 to 40 inclusive, 42 to 47 inclusive and 49 prepared by the Cumberland County Council and referred to in the Minister's notice approving of the Council's resolution published in the Government Gazette of 17th October, 1952, and being generally described as follows:-

General description and Municipality or Shire

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Avalon Golf Links - Warringah; Bayview Country  
Golf Links - Warringah; Elanora Golf Links -

In the Land  
and Valuation  
Court

No. 3

Proclamation  
by Minister  
of Local  
Government.

24th October  
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continued.

Warringah; Cromer Country Golf Links - Warringah;  
Manly Golf Links - Manly; Sydney Church of England  
Grammar School Playing Fields - Willoughby; River-  
view College Sportsground - Lane Cove; Roselands  
Golf Links - Canterbury; Royal Sydney Golf Links -  
Woollahra; Cranbrook Playing Fields - Woollahra;  
Rose Bay Bowling & Recreation Club - Woollahra;  
Weigall Sports Ground - City of Sydney; White City  
- City of Sydney; Rushcutter's Bay Stadium - City  
of Sydney; Harold Park - City of Sydney; Randwick  
Racecourse - Randwick; Kensington Golf Links -  
Randwick; Western Suburbs Church Union and Hord-  
ernian Recreation Ground - Canterbury; Moorefields  
Racecourse - Rockdale; Canterbury Racecourse -  
Canterbury; Cronulla Golf Links - Sutherland;  
Asquith Golf Links - Hornsby; Pymble Golf Links -  
Ku-ring-gai; Arondale Golf Links - Ku-ring-gai;  
Killara Golf Links - Ku-ring-gai; Roseville Golf  
Links - Ku-ring-gai; Castlecove Golf Links -  
Willoughby; North Ryde Golf Links - Ryde; Chats-  
wood Golf Links - Willoughby; Concord Golf Links -  
Concord; Strathfield Golf Links - Strathfield;  
Bankstown Golf Links - Bankstown; Riverwood Golf  
Links - Bankstown; Hawkesbury Race Club's Course -  
Windsor; Pennant Hills District Golf Links -  
Hornsby; Blacktown Golf Links - Blacktown; Cumber-  
land Country Golf Links - Holroyd; Oatlands Country  
Golf Links - City of Parramatta; Rydalmere Public  
Golf Links - City of Parramatta; Ryde - Parramatta  
Golf Links - Ryde; Rosehill Racecourse - City of  
Parramatta; Warick Farm Racecourse - Liverpool;  
Liverpool Agricultura, Horticultural and Industrial  
Society Grounds - Liverpool; Liverpool Golf Links  
- Liverpool; Glenmore Country Golf Links - Penrith;  
Narellan Golf Links; Camden; Campbelltown Golf  
Links - Campbelltown; Rosebery Racecourse - Botany.

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JUDGMENT OF ROPER C.J., MAGUIRE J.  
and HARDIE J.

In the  
Supreme Court  
of New South  
Wales

No.4

IN THE SUPREME COURT }  
OF NEW SOUTH WALES }

CORAM: ROPER, C.J. in Eq.  
MAGUIRE, J.  
HARDIE, J.

Judgment of  
Roper C.J.,  
Maguire J.  
and Hardie J.

Friday, 25th October 1957.

25th October  
1957.

10 RE OBJECTIONS BY RUTLEDGE & ORS. TO VALUATION BY  
THE VALUER-GENERAL IN THE MUNICIPALITY OF  
RANDWICK

JUDGMENT

ROPER, C.J. in Eq. )  
MAGUIRE, J. )  
HARDIE, J. )

20 ): The Valuer-General acting  
under the provisions of the Valuation of Land Act,  
1916-1951, valued certain lands situated in the  
Municipality of Randwick as at 23rd September 1954,  
assigning to them an unimproved, improved and  
assessed annual value. The lands in question  
comprise, and are generally referred to as, the  
Randwick Race-course.

30 Objections against the valuations were duly  
lodged by the persons in whom the fee simple of  
the subject lands are vested (hereinafter referred  
to as the Trustees) their objection being upon the  
ground that the values assigned were too high, and  
also by the council of the Municipality of Rand-  
wick, its objection being upon the ground that the  
values assigned were too low. The Valuer-General,  
upon receiving the objections and not seeing fit to  
alter his valuations, duly forwarded them to the  
Land and Valuation Court pursuant to section 37 of  
the Valuation of Land Act for determination. On  
the objections coming on for hearing before the  
Court, it was directed that they should be heard  
together; in course of that hearing certain pre-  
liminary questions arose and were argued on behalf  
40 of the parties as to the proper bases in law for  
making the valuations, in particular of the unim-  
proved and improved values. The Valuer-General

In the  
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continued.

adopted an attitude of neutrality or submission to the Court's order as to the proper legal bases for these valuations, and the questions were debated upon the rival contentions for the Trustees on the one hand and the Council on the other.

The questions raised involve, amongst other things, a consideration of the recent decision of the Land and Valuation Court, in the case of *The City of Sydney v. The Valuer-General*, 1956 L.G.R., 229, the correctness of which was disputed by counsel for the Trustees; rather than enter upon "a lengthy and costly inquiry as to values which might prove abortive" the Judge of that Court, of his own motion, stated this case for the opinion of this Court under the power conferred upon him by s.17 of the Land and Valuation Court Act, 1916-1955.

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The first question in the case is "whether in valuing the said lands under ss. 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.

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The lands in question are held by the Trustees as successors in title to the grantees under two Crown Grants made respectively on 15th June, 1863 and on 11th February, 1935. The earlier grant, which comprises the whole of the subject lands except an area of less than one acre, was made to the grantees upon certain trusts and contains certain restrictions as to the user of the land and certain powers and obligations on the part of the grantees and certain reservations in favour of the Crown. One of the powers expressly conferred upon the Trustees under the terms of the grant is a power to grant leases to, inter alia, an association called the Australian Jockey Club for a term not exceeding seven years.

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In 1873 a private Act of Parliament called the Australian Jockey Club Act 1873 was passed. It is entitled "an Act to extend the period for which the Trustees of the Randwick Race-course are enabled to grant leases thereof and to enable the members of the Australian Jockey Club to sue and be sued in the name of the Chairman for the time being of the Committee of the said Club and for other purposes." In this Act the Crown Grant of 15th June 1863 is

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recited in full, but the enacting provisions follow closely the long title which we have quoted and only alter the terms of the Crown Grant by extending from 7 years to 21 years the period for which leases might be granted to the particular body or bodies mentioned in the Crown Grant. The Crown Grant of 11th February 1935, which dealt with a small area of less than one acre, was in the same terms as those contained in the earlier Crown Grant, except that the Trustees were authorised to grant a lease for a term of years not exceeding twentyone years, i.e. for the period authorised by the earlier Crown Grant as varied by the Act of 1873.

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If considerations arising from the enactment and terms of the 1873 Act are omitted, the first question in the case raises one short point, namely, whether the recently expressed view of the High Court as to the proper construction of the expression "the fee simple of the land", where it is used in the Land Tax Assessment Act 1910-1950 in the definitions of "improved" and "unimproved" value, should be applied also in the construction of those words, where used in ss. 5 and 6 of the Valuation of Land Act. The opinion in question is expressed as follows: "The interpretation of the Act which seems best to accord with the policy appearing from its provisions and also to flow from its language is that in assessing the unimproved value 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" (Royal Sydney Golf Club v. Federal Commissioner of Taxation, 91 C.L.R., 610 at 623). The question whether this interpretation should be applied to the provisions of ss. 5 and 6 of the Valuation of Land Act was examined in detail by Sugerman J. in his decision in Sydney City Council v. The Valuer-General (supra); he held that it should be applied and that consequently what had to be valued in ascertaining the improved or unimproved value of land under the Valuation of Land Act was a hypothetical fee simple freed from conditions and restrictions upon the use or enjoyment of the land as well as from encumbrances. We agree with the conclusion arrived at by Sugerman J. in that case and with the reasons advanced by him in favour of it, and think it unnecessary to traverse the same ground as he did (Cf. Commissioner for Railways v. Andreas

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continued.



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continued.

55 S.R. 323 at 327 & 332). The first question should then, so far as it relates to the Crown Grants, be answered in the negative.

An alternative argument has been submitted on behalf of the Trustees to the effect that the first question should be answered in the affirmative by reason of the provisions of the Australian Jockey Club Act, 1873. It is claimed that as that Act recites all the provisions of the Crown Grant of the 15th June, 1863, and in particular, those imposing restrictions on the use of the subject lands and on their alienation, those restrictions form part of the general statutory law of the state, and accordingly should be taken into account in determining value under ss. 5 and 6 of the Valuation of Land Act. As already stated, the Act is a private one, its main provisions are summarised in the short title quoted earlier, and it only varies the Crown Grant in one respect, i.e. by enlarging the power of the Trustees to grant leases.

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We see nothing in the Act to justify the conclusion that the restrictions on the Trustees' power of using and alienating the subject lands flow from "a Public law affecting the enjoyment of land" rather than "a restriction of title". The Crown Grant creates the "restriction of title". The Act of 1873 does not create the restriction; all it does, by recitals, is to recognise the restriction already created, which must, having regard to the decision in *Royal Sydney Golf Club v. Federal Commissioner of Taxation* (supra at 624) be ignored because the provisions of the Valuation of Land Act require the assumption to be made of "a hypothetical fee simple unencumbered and subject to no condition restricting enjoyment or use", other than restrictive conditions imposed by "a public law of the State affecting the enjoyment of land". Even if, contrary to the view we have taken, the restrictions should, as from the date of the enactment of the Act of 1873, be treated as created by that Statute, the source, being a private Act of Parliament, would not be "a public law" and the result would thus be the same.

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For the reasons indicated above the submissions made on behalf of the Trustees on the first question in the case stated must be rejected, and the question answered in the negative.

The second question submitted in the stated case is, "Whether in valuing the said land as aforesaid the restrictions arising from the said notification by the Minister for Local Government under s.342Y of the Local Government Act should be taken into consideration.

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10 It appears from the stated case that the sub-  
ject lands were colored dark green on the scheme  
map referred to in the County of Cumberland  
Planning Scheme Ordinance; in other words, they  
were for a period subject to the provisions of  
Part II of the Ordinance, being reserved as "parks  
and recreation areas" and thus subject to the same  
restrictions on user under the Ordinance as were  
at the respective material dates applicable to the  
Golf Course dealt with by the High Court in the  
Royal Sydney Golf Club case (supra), and to Trumper  
Park, the land considered by the Land and Valuation  
Court in Sydney City Council v. Valuer-General  
20 (supra). It also appears from the stated case  
that on 24th October 1952, the Minister for Local  
Government notified, pursuant to s.342Y of the Act,  
the suspension in relation to the subject lands of  
the provisions of the prescribed scheme embodied  
in the Ordinance, and that thereupon the provisions  
of Division 7 of Part XIIA of the Act and of Ordinance  
105 applied and still apply to the said  
lands. Under Division 7 of Part XIIA "develop-  
ment", as defined in s.342T, was forbidden except  
30 to the extent to which it was permitted by Ordinance  
or by a decision of the Council under the  
authority of an Ordinance (Sect.342U). The  
relevant Ordinance, namely Ordinance 105, permitted  
specified types of development to take place in certain  
special cases, but in general required the consent  
of the Council to any change of user. The terms  
of the notification of suspension under Sect. 342Y  
of the Local Government Act affecting the subject  
lands is not set out in the stated case; however,  
40 a copy was tendered in these proceedings and the  
parties have invited the Court to look at its  
provisions, notwithstanding the fact that it was  
not incorporated in the case. A schedule to the  
notification identified the lands to which it  
applied as "the lands shown edged blue" on a  
number of maps stated to have been "prepared by  
the Cumberland County Council" and referred to by  
distinguishing serial numbers. The schedule also  
contained a short general description

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of the lands, as well as stating the municipality or shire in which they were situated. The subject land was described as "Randwick Race-course" and the description of the other lands, some forty-eight parcels in all, indicates that they are in the main Golf Courses, Race-courses, Sports Grounds, and the like.

The relevant statutory provisions applicable to the subject lands from and after the date of the notification under S. 342Y of the Local Government Act, like those applicable whilst they were subject to the provisions of Part II of the Ordinance, prohibited the lands from being used for any purpose other than that for which they had previously been used, unless with the consent of the appropriate authority. Whilst the provisions of Part II of the Ordinance applied, the Cumberland County Council was the authority with power to grant such a consent, with a right of appeal to the Land and Valuation Court against any refusal to grant it. After the land reverted to interim development control, i.e. by reason of the notification, the authority having power to grant consent to a change of user was the local Council, with a right of appeal to the Minister.

The issue for determination on this branch of the case is whether the restrictions on user of the subject lands are imposed by "a public law affecting the enjoyment of land", or, in other words, by "a law operating over an area of country within the State, which, though not large, is chosen independently of all questions of title or ownership and controlling the use to which owners in fee simple or for any less estate or interest . . . . may put the land"; or whether they arise from a "restriction of title", or, in other words, "an encumbrance or condition or restrictive obligation affecting the titles to specific parcels of land." (See Royal Sydney Golf Club case, supra at 624).

The subject land was taken out of the operation of the Town Planning Ordinance of 1951 and made subject to the provisions of Division 7 of Part XIII A of the Local Government Act by a Ministerial decision and not by legislation. However, the fact that a Ministerial act brought about that change in the statutory planning provisions applicable to the subject land does not alter the fact

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that the restrictions affecting the land at the relevant date were imposed by "a public law affecting the enjoyment of land" and not by "a restriction of title". The Ministerial decision embodied in the notification under s. 342Y was not, in any relevant sense, the source of the restrictions. It was merely the event upon the happening of which the restrictions on use and enjoyment of land contained in the relevant provisions of Division 7 of Part XIIIA of the Local Government Act became applicable to the subject land. It has not been suggested, nor in our view could it be seriously contended, that the interim or temporary nature of the restrictions imposed by Division 7 of Part XIIIA of the Act has any material bearing on the question of principle involved in this point.

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continued.

As we are of opinion that the restrictions upon user imposed by the provisions of Division 7 of Part XIIIA of the Local Government Act should be taken into consideration in the valuation of the subject lands under the Valuation of Land Act, we answer Question 2 as follows: Yes, the restrictions being those contained in Division 7 of Part XIIIA of the Local Government Act.

The question as appearing in the stated case proceeds to ask, "and if so, in what manner and to what extent?" Neither party has addressed any argument to the Court on this branch of the question and accordingly we do not propose to deal with it except to the limited extent indicated by the answer set out above.

Paragraph 18 of the stated case summarises the submissions of counsel for the Trustees on the point raised by the second question in the case, from which it appears that one of the contentions on behalf of the Trustees before the Land and Valuation Court was that the decision of that Court in *Thistlethwayte v. The Minister* (19 L.G.R.87) was wrong. That contention was not developed, nor even put in this Court; accordingly we need not advert further to it.

The third question in the stated case, being only a modified form of the first question, need not be answered. The fourth question asks, "Whether the Valuer-General was bound in law to assign to the said lands only a nil or nominal

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continued.

value". It appears from what has been put to us by counsel for the Trustees that this question would only have arisen had the first question been answered in the affirmative. Having answered that question in the negative, it follows that the answer to the fourth question must also be in the negative.

As each party has been successful in one and unsuccessful in the other of the two main questions we are of opinion that there should be no order as to costs of the stated case. The case will be remitted to the Land and Valuation Court for further consideration, with Questions 1, 2 and 4 answered as indicated above.

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I certify that this and the ten preceding pages are a true copy of the reasons for Judgment herein of His Honour Mr. Justice Roper, Chief Judge in Equity.

(Signed)  
ASSOCIATE

DATE 25th Oct. 1957.

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No.5

Rule of Court  
on Stated  
Case.

25th October  
1957.

No. 5

RULE OF COURT ON STATED CASE

IN THE SUPREME COURT }  
OF NEW SOUTH WALES

IN THE MATTER of the objection by THOMAS LLOYD FORSTER RUTLEDGE, THE HONOURABLE WILLIAM McCULLOCH GOLLAN and MAURICE VICTORIAN POINT to the valuation by the VALUER GENERAL of certain lands situated in the Municipality of Randwick.

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AND IN THE MATTER of the objection by THE RANDWICK MUNICIPAL COUNCIL to the said valuation.

AND IN THE MATTER of the Valuation of Land Act 1916 - 1951.

The 25th day of October 1957.

This matter coming on for hearing on the Twenty-

ninth and Thirtieth days of July One thousand nine hundred and fifty seven WHEREUPON AND UPON READING the case stated by His Honour Mr. Justice Sugerman and filed herein dated the Fourteenth day of December One thousand nine hundred and fifty six and UPON HEARING Mr. Gordon Wallace of Queen's Counsel with whom was Mr. Forbes Officer of Counsel for the Appellants and Mr. N.H. Bowen of Queen's Counsel with whom was Mr. M. Byers of Counsel for the Respondent IT WAS ORDERED that the matter stand for judgment and the matter standing in the list this day for judgment accordingly IT IS ORDERED that the questions set out therein namely:-

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Supreme Court  
of New South  
Wales

No.5

Rule of Court  
on Stated  
Case.

25th October  
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continued.

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. Whether, in valuing the said lands as aforesaid, the restrictions arising from the said notification by the Minister for Local Government under Section 342Y of the Local Government Act should be taken into consideration, and if so in what manner and to what extent.

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

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of New South  
Wales

No.5

Rule of Court  
on Stated  
Case.

25th October  
1957 -  
continued.

(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.

be answered as follows:-

- 1. No.
- 2. Yes - the restrictions being those contained in Division 7 of Part XIIIA of the Local Government Act.
- 3. Not answered, it being unnecessary to answer this question.
- 4. No.

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AND IT IS FURTHER ORDERED that this case be remitted, with these answers, to the Land and Valuation Court, and IT IS FURTHER ORDERED that there be no order as to the costs of and incidental to this stated case.

By the Court,

For the Prothonotary,

E.T. SENNOR

(L.S.)

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CHIEF CLERK.

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IN THE SUPREME COURT  
OF NEW SOUTH WALES

In the  
Supreme Court  
of New South  
Wales

No. 6

Notice of  
Motion for  
Conditional  
Leave to  
Appeal.

7th November  
1957.

IN THE MATTER of the objection by THOMAS  
LLOYD FORSTER RUTLEDGE, THE HONOURABLE  
WILLIAM McCULLOCH GOLLAN and MAURICE  
VICTORIAN POINT to the valuation by the  
VALUER GENERAL of certain lands situated  
in the Municipality of Randwick.

10      AND IN THE MATTER of the objection by  
THE RANDWICK MUNICIPAL COUNCIL to the  
said Valuation.

AND IN THE MATTER of the Valuation of  
Land Act 1916-1951.

20      TAKE NOTICE that on the first day on which the  
business of the Court permits after the expiration  
of sixteen (16) days from this date the abovementioned THOMAS LLOYD FORSTER RUTLEDGE, THE HONOURABLE WILLIAM McCULLOCH GOLLAN and MAURICE VICTORIAN POINT will move for an order granting leave to  
30      appeal to Her Majesty in Council from that part of  
the Judgment and Order of the Full Court of the  
Supreme Court of New South Wales given and made  
herein on the twenty fifth day of October One  
thousand nine hundred and fifty seven as declared  
that in valuing the lands referred to in the Stated  
Case herein under Sections 5 and 6 of the Valua-  
tion of Land Act, 1916-1951 the trusts restrictions  
conditions and provisos contained in the said grants  
and in the said Act of 1873 should not be taken  
into consideration and as declared that it was un-  
necessary to answer the question submitted by the  
said Stated Case as to whether the valuation re-  
quired by Sections 5 and 6 of the said Valuation  
of Land Act to be made by the Valuer General was -

40      (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 circum-  
stances 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



In the  
Supreme Court  
of New South  
Wales

No.6

Notice of  
Motion for  
Conditional  
Leave to  
Appeal.

7th November  
1957 -  
continued.

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.

AND as declared that the Valuer General was not bound in law to assign to the said lands only a nil or nominal value AND as declared and ordered that there should be no order as to the costs of the said Stated Case UPON THE GROUNDS that the said Full Court of the Supreme Court of New South Wales should have declared that in valuing the said land 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 should all be taken into consideration AND should have declared that the valuation required by Sections 5 and 6 of the said Valuation of Land Act to be made by the Valuer General was 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 AND should have declared that the Valuer General was bound in law to assign to the said lands only a nil or nominal value AND should have ordered that the respondent to the said Stated Case the Randwick Municipal Council pay the costs of the Stated Case of the objectors the said order to be conditional -

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(a) Upon the objectors within two months hereof giving to the satisfaction of the Prothonotary security in the amount of £300 for the due prosecution of the said appeal and the payment of all such costs as may become payable to the respondent to the said Stated Case;

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(b) upon condition that the objectors do within fourteen (14) days from the date hereof deposit with the Prothonotary the sum of £25 as security for and towards the costs of the preparation of the transcript record for purposes of the said appeal;

(c) upon condition that the objectors do within two months hereof take out and proceed upon all such appointments and take all other such steps necessary for the settling of the Index of the said Transcript record;

(d) upon condition that the objectors do obtain a final order of this Honourable Court granting them leave to appeal

10 AND for an order that the costs of all parties of this application and of the preparation of the said Transcript record and of all other proceedings hereunder and of the said final order do follow the decision of Her Majesty's Privy Council with respect to the costs of the said appeal or do abide the result of the said appeal in case the same shall stand or be dismissed for non-prosecution AND FURTHER TAKE NOTICE that it is intended to use upon the hearing of this application the affidavit  
20 (inter alia) of Gordon Alfred Fosbery Jaques intended to be sworn and filed herein.

DATED this seventh day of November One thousand nine hundred and fifty seven.

(sgd.) FORBES OFFICER.

It is intended to serve this notice of motion upon the Municipal Council of Randwick.

This notice of motion is taken out by STEPHEN JAQUES & STEPHEN Solicitors for the objectors whose address for service is 66 Pitt Street Sydney.

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In the  
Supreme Court  
of New South  
Wales

\_\_\_\_\_  
No.6

Notice of  
Motion for  
Conditional  
Leave to  
Appeal.

7th November  
1957 -  
continued.

In the  
Supreme Court  
of New South  
Wales

No. 7

AFFIDAVIT OF G.A.F. JAQUES

IN THE SUPREME COURT  
OF NEW SOUTH WALES

No.7

Affidavit of  
G.A.F. Jaques.

6th November  
1957.

IN THE MATTER of the objection by THOMAS  
LLOYD FORSTER RUTLEDGE, THE HONOURABLE  
WILLIAM McCULLOCH GOLLAN and MAURICE  
VICTORIAN POINT to the valuation by the  
VALUER GENERAL of certain lands situated  
in the Municipality of Randwick.

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AND IN THE MATTER of the objection by  
THE RANDWICK MUNICIPAL COUNCIL to the  
said valuation.

AND IN THE MATTER of the Valuation of  
Land Act 1916-1951.

ON the sixth day of November One thousand nine hun-  
dred and fifty seven GORDON ALFRED FOSBERY JAQUES  
of 66 Pitt Street Sydney Solicitor being duly sworn  
makes oath and says as follows:

1. I am the Solicitor for Thomas Lloyd Forster  
Rutledge, the Honourable William McCulloch Gollan  
and Maurice Victorian Point.

20

2. The said Thomas Lloyd Forster Rutledge, The  
Honourable William McCulloch Gollan and Maurice  
Victorian Point are the Trustees of certain lands  
comprised in Certificate of Title under the provi-  
sions of the Real Property Act 1900, registered  
Volume 2579 Folio 66 and Crown Grant registered  
Volume 4673 Folio 38 known as Randwick Racecourse.

3. The said lands are within the area for rating  
purposes of the Randwick Municipal Council.

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4. The said lands were on the twenty third day of  
September One thousand nine hundred and fifty four  
valued by the Valuer General under the provisions  
of the Valuation of Land Act 1916-1951.

5. The said Thomas Lloyd Forster Rutledge, the

Honourable William McCulloch Gollan and Maurice Victorian Point duly made objection to the said valuation.

In the  
Supreme Court  
of New South  
Wales

\_\_\_\_\_  
No.7

Affidavit of  
G.A.F. Jaques.

6th November  
1957 -  
continued.

6. The said objection together with an objection by Randwick Municipal Council came on for hearing by the Land and Valuation Court and the Judge thereof stated a case for the opinion of the Full Court to which I crave leave to refer.

10 7. By Judgment delivered on the twenty fifth day of October One thousand nine hundred and fifty seven the questions of law stated for the decision of the Supreme Court in the Stated Case were answered as follows:

1. No.
2. Yes.
3. Not answered.
4. No.

AND the Court ordered as to costs that there be no order thereon.

20 8. The present Unimproved Capital Value of Randwick Racecourse against which the objection was made is £385,400. The current rates for the year 1957 are £10,036.9.2. and arrears of rates for the past years are £17,262.14.2. together with extra charges the total amount due by the Trustees for rates is £28,376.0.10.

30 9. The Randwick Racecourse is the largest and best patronised racecourse in the State of New South Wales and considering the trusts upon which the said land is held the Trustees consider it is in the public interest that the amount expended by them for rates be as small as possible.

10. The Trustees consider the question is of great general and public importance and having been advised by Senior Counsel consider that the question as to whether the Valuer General was bound in law to assign to the said lands only a nil or nominal value submitted in the Stated Case ought now to be submitted to Her Majesty in Council for decision.

40 SWORN by the deponent on  
the day first abovementioned } (sgd.) GORDON JAQUES  
in Sydney }

Before me:

(sgd.) (illegible) J.P.

A Justice of the Peace

In the  
Supreme Court  
of New South  
Wales

AFFIDAVIT OF R.T. LATHAM

No.8

IN THE SUPREME COURT )  
OF NEW SOUTH WALES )

Affidavit of  
R.T. Latham.

2nd December  
1957.

IN THE MATTER of the objection by THOMAS  
LLOYD FORSTER RUTLEDGE, THE HONOURABLE  
WILLIAM McCULLOCH GOLLAN and MAURICE  
VICTORIAN POINT to the valuation by the  
VALUER GENERAL of certain lands situated  
in the Municipality of Randwick. 10

AND IN THE MATTER of the objection by THE  
RANDWICK MUNICIPAL COUNCIL to the said  
valuation.

AND IN THE MATTER of the Valuation of  
Land Act 1916-1951.

On this second day of December One thousand nine  
hundred and fifty seven RICHARD THOMAS LATHAM of  
Randwick in the State of New South Wales, Town  
Clerk being duly sworn makes oath and says as  
follows:- 20

1. I am the Town Clerk of the Council of the  
Municipality of Randwick the respondent herein.
2. I have read what purports to be a copy of the  
affidavit of Gordon Alfred Fosbery Jaques sworn on  
the sixth day of November instant and filed herein.
3. The Randwick Racecourse is situate upon land  
within the boundaries of the Municipality of Rand-  
wick which land comprises approximately 198 acres  
2 roods and 35½ perches.
4. The land upon which the Racecourse is situate 30  
is bounded on the north by Alison Road, on the west  
by Doncaster Avenue on the south west by Anzac Par-  
ade on the south by High Street and on the East by  
Wansey Road.
5. The principal entrances to the Racecourse are  
situate at Alison Road and Doncaster Avenue and  
High Street.

In the  
Supreme Court  
of New South  
Wales

\_\_\_\_\_  
No.8

Affidavit of  
R.T. Latham.

2nd December  
1957 -  
continued.

6. Large numbers of people attend the said race-  
course on each of the occasions when a race meet-  
ing is held on the Course which to the best of my  
knowledge information and belief occurs on an  
average of twenty six times per annum. The  
majority of the people attending the Course on  
such occasions use all the said roads and streets  
for the purpose of access to the Course and on  
each day when a meeting is held other roads in the  
municipality nearby are used by the public for the  
parking of cars.

7. On occasions when the Course is not being  
used for the purpose of a race meeting access to  
it by horse trainers and the like is had along  
Doncaster Avenue, High Street and Wansey Road and  
during the summer months horses are exercised on  
certain of the tracks on the said Course from 5  
a.m. to 12 noon and again in the afternoon and  
during the winter months from 6 a.m. and 6.30 a.m.  
until 12 noon and again in the afternoon.

8. On the 12th July 1948 the Trustees for the  
time being of the land upon which the said race-  
course is situated leased to the Chairman for the  
time being of the Australian Jockey Club the land  
on which the said Racecourse is situate for a term  
of twenty one years computed from the 21st day of  
November 1947 at a yearly rental of One peppercorn  
(if demanded). A copy of the said lease has been  
exhibited to me at the time of swearing this my  
affidavit and marked with the letter "A".

9. Exhibited to me at the time of swearing this  
my affidavit and marked with the letter "B" is a  
copy of the balance sheet of the Australian Jockey  
Club for the year ended the 30th day of June One  
thousand nine hundred and fifty seven.

SWORN by the deponent on the }  
day first abovementioned at } R. T. LATHAM  
Sydney }

Before me:

40 R.T. GATE J.P.

A Justice of the Peace.

In the  
Supreme Court  
of New South  
Wales

No. 9

RULE GRANTING CONDITIONAL LEAVE TO APPEAL

IN THE SUPREME COURT  
OF NEW SOUTH WALES

Term No.37 of 1957

No.9

Rule granting  
Conditional  
Leave to  
Appeal.

17th December  
1959.

IN THE MATTER of the objection by THOMAS  
LLOYD FORSTER RUTLEDGE, THE HONOURABLE  
WILLIAM McCULLOCH GOLLAN and MAURICE  
VICTORIAN POINT to the valuation by the  
VALUER GENERAL of certain lands situated  
in the Municipality of Randwick.

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AND IN THE MATTER of the objection by THE  
RANDWICK MUNICIPAL COUNCIL to the said  
Valuation.

AND IN THE MATTER of the Valuation of  
Land Act 1916-1951.

The Seventeenth day of December 1959

UPON MOTION made this day on behalf of THE HONOUR-  
ABLE WILLIAM McCULLOCH GOLLAN and MAURICE VICTORIAN  
POINT WHEREUPON AND UPON READING the Notice of  
Motion herein dated the Seventh day of November  
1957, and the affidavit of GORDON ALFRED FOSBERY  
JAQUES sworn the Sixth day of November 1957, and  
the affidavit of RICHARD THOMAS LATHAM sworn the  
second day of December 1957 and UPON HEARING Mr.  
Forbes Officer of Counsel for the objectors and Mr.  
M. Byers of Counsel for the respondent IT IS ORDERED  
that leave to appeal to Her Majesty in Council from  
the Judgment of this Court be and the same is  
hereby granted to the Honourable William McCulloch  
Gollan and Maurice Victorian Point hereinafter  
called the Objectors UPON CONDITION that the Objec-  
tors do, within two months from the date hereof,  
give security to the satisfaction of the Prothono-  
tary in the amount of Three hundred pounds (£300.0.0)  
for the due prosecution of the said appeal and the  
payment of all such costs as may become payable to  
the Respondent to the said Stated Case, AND UPON  
FURTHER CONDITION that the Objectors do within four-  
teen (14) days from the date hereof deposit with the  
Prothonotary the sum of Twenty-five pounds (£25.0.0)  
as security for and towards the costs of the prepar-  
ation of the transcript record for the purposes of

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the said appeal AND UPON FURTHER CONDITION that the Objectors do within two months of the date hereof take out and proceed upon all such appointments and take all other such steps as may be necessary for the settling of the index of the said transcript record AND UPON FURTHER CONDITION that the Objectors do obtain a final order of this Court granting them leave to appeal as aforesaid AND UPON FURTHER CONDITION that an affidavit be filed within fourteen days from the date hereof stating that THOMAS LLOYD FORSTER RUTLEDGE is deceased and that no new trustee has been appointed in his stead AND THIS COURT DOETH FURTHER ORDER that the costs of all parties of this application and of the preparation of the said transcript record and of all other proceedings hereunder and of the said final order do follow the decision of Her Majesty's Privy Council with respect to the costs of the said appeal or do abide the result of the said appeal in case the same shall stand or be dismissed for non-prosecution.

By the Court,

For the Prothonotary,

E.F. LENNON (L.S.)

Chief Clerk

In the  
Supreme Court  
of New South  
Wales

No.9

Rule granting  
Conditional  
Leave to  
Appeal.

17th December  
1959 -  
continued.

No. 10

NOTICE OF MOTION FOR FINAL LEAVE TO APPEAL

IN THE SUPREME COURT  
OF NEW SOUTH WALES

Term NO.37 of 1957

Notice of  
Motion for  
Final Leave  
to Appeal.

4th February  
1960.

IN THE MATTER of the objection by THE HONOURABLE WILLIAM McCULLOCH GOLLAN and MAURICE VICTORIAN POINT to the valuation by the VALUER GENERAL of certain lands situated in the Municipality of Randwick.  
AND IN THE MATTER of the objection by THE RANDWICK MUNICIPAL COUNCIL to the said valuation.  
AND IN THE MATTER of the Valuation of Land Act 1916-1951.

TAKE NOTICE that the Full Court will be moved on the first day on which its business permits after



In the  
Supreme Court  
of New South  
Wales

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No. 10

Notice of  
Motion for  
Final Leave  
to Appeal.

4th February  
1960 -  
continued.

the expiration of three days from the date hereof for an order that final leave to appeal to Her Majesty in Council from the judgment of the Full Court of the Supreme Court of New South Wales given and made herein on the twenty fifth day of October 1957 be granted to the Objectors AND for an order that upon payment by the Objectors of the costs of preparation of the Transcript Record and despatch thereof to England or upon forty copies of the Record printed in accordance with the Judicial Committee Rules, 1957, being lodged with the Prothonotary and the payment by the Objectors of all fees for the despatch thereof to England the sum of Twenty five pounds (£25.0.0) deposited in Court by the Objectors as security for and towards the costs thereof be paid out of Court to the Objectors.

10

AND FURTHER TAKE NOTICE that it is intended to rely on the hearing of this application upon, inter alia, the Certificate of Compliance of the Prothonotary dated the third day of February 1960.

20

Dated this Fourth day of February 1960.

(sgd.) GORDON JAQUES

Solicitor for the Objectors

This notice of motion is taken out by STEPHEN JAQUES & STEPHEN Solicitors for the Objectors whose address for service is 66 Pitt Street Sydney.

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No. 11

CERTIFICATE OF COMPLIANCEIN THE SUPREME COURT  
OF NEW SOUTH WALES

Term No. 37 of 1957

In the  
Supreme Court  
of New South  
WalesNo. 11Certificate of  
Compliance.3rd February  
1960.

IN THE MATTER of the objection by THE HONOURABLE WILLIAM McCULLOCH GOLLAN and MAURICE VICTORIAN POINT to the valuation by the VALUER GENERAL of certain lands situated in the Municipality of Randwick.

10 AND IN THE MATTER of the objection by THE RANDWICK MUNICIPAL COUNCIL to the said Valuation.

AND IN THE MATTER of the Valuation of Land Act 1916-1951.

20 IN PURSUANCE of the Conditional Order for leave to appeal to the Privy Council made herein on the Seventeenth day of December, 1959, I have been attended by the Solicitors for the Objectors and the Respondent herein AND I FIND AND CERTIFY as follows:-

1. The Objectors did within two (2) months from the date of the said Order pay into Court to the Credit of this action the sum of Three hundred pounds (£300) as security for the due prosecution of the appeal herein to Her Majesty in Council from the judgment made herein on the twenty-fifth day of October, 1957, and for the payment of all such costs as may become payable to the Respondent to the Case stated herein.

30 2. The said Objectors did within fourteen (14) days of the date of the said order of the seventeenth day of December 1959, pay into Court to the credit of this action the sum of Twenty-five pounds (£25.0.0) as security for and towards the costs of the preparation of the transcript record on the said appeal.

3. The said Objectors have up to the date hereof taken out all necessary appointments and done all other things for the purpose of settling the said

In the  
Supreme Court  
of New South  
Wales

No. 11

Certificate of  
Compliance.

3rd February  
1960 -  
continued.

transcript record and of enabling me to certify that the said transcript record has been settled and the provisions of the said order have been duly complied with on the part of the Objectors and that the index to the said transcript record has been duly settled.

4. The Objectors did within 14 days of the date of the said order cause an affidavit to be filed stating that THOMAS LLOYD FORSTER RUTLEDGE is deceased and that no new trustee has been appointed in his stead.

10

Dated this third day of February, 1960.

(Sgd.) R.E. WALKER  
Prothonotary.

No. 12

No. 12

Rule granting  
Final Leave  
to Appeal.

11th February  
1960.

RULE GRANTING FINAL LEAVE TO APPEAL

IN THE SUPREME COURT  
OF NEW SOUTH WALES

Term No. 37 of 1957

IN THE MATTER of the objection by THE HONOURABLE WILLIAM McCULLOCH GOLLAN and MAURICE VICTORIAN POINT to the valuation by the VALUER GENERAL of certain lands situated in the Municipality of Randwick.

20

AND IN THE MATTER of the objection by THE RANDWICK MUNICIPAL COUNCIL to the said valuation.

AND IN THE MATTER of the Valuation of Land Act 1916-1951.

The eleventh day of February 1960.

UPON MOTION made this day pursuant to the Notice of Motion filed herein on the fourth day of February 1960 WHEREUPON AND UPON READING the said Notice of Motion and the Prothonotary's Certificate of Compliance, AND UPON HEARING what was alleged by Mr.

30

10 Forbes Officer of Counsel for the Objectors and Mr. M. Byers of Counsel with whom was Mr. Dunford of Counsel for the Respondent IT IS ORDERED that final leave to appeal to Her Majesty in Council from the judgment of the Full Court of the Supreme Court of New South Wales given and made herein on the twenty fifth day of October 1957 be and the same is hereby granted to the Objectors AND IT IS FURTHER ORDERED that upon payment by the Objectors of the costs of preparation of the Transcript Record and despatch thereof to England or upon forty copies of the Record printed in accordance with the Judicial Committee Rules, 1957, being lodged with the Prothonotary and the payment by the Objectors of all fees for the despatch thereof to England the sum of Twenty five pounds (£25.0.0) deposited in Court by the Objectors as security for and towards the costs thereof be paid out of Court to the objectors.

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By the Court,

For the Prothonotary,

E.F. LENNON (L.S.)

Chief Clerk.

In the  
Supreme Court  
of New South  
Wales

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No. 12

Rule granting  
Final Leave  
to Appeal.

11th February  
1960 -  
continued.