

PC
~~C.D.C.~~

(5), 1959

IN THE PRIVY COUNCIL

No. 38 of 1958

ON APPEAL
FROM THE HIGH COURT OF AUSTRALIA

B E T W E E N:-

THE COUNCIL OF THE CITY OF NEWCASTLE
(PLAINTIFF) APPELLANT

- and -

ROYAL NEWCASTLE HOSPITAL
(DEFENDANT) RESPONDENT

RECORD OF PROCEEDINGS

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Solicitors for the Respondent.

ON APPEAL
FROM THE HIGH COURT OF AUSTRALIA

B E T W E E N:-

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E X H I B I T S

Exhibit Mark	Description of Document	Date	Page
A.	Plan showing land acquired by Hospital		Original Document
B.	Contour Plan of Locality	18th February 1946	Original Document
C.	Aerial Photographs (2) of Locality Nos. 01493, 09414.		Original Documents
D(1)	Copy of Proclamation	30th May 1924	169

Exhibit Mark	Description of Document	Date	Page
D(2)	Plan showing Zoning of Locality		Original Document
* 1.	Aerial Photographs (8) of Hospital and Environs		Original Documents
* 2.	Plan of Undeveloped Estates 25th June 1943		Original Document
3.	Extract from Government Gazette dated 18th April, 1946 as to acquisition	10th April 1946	171
<p>(It is not intended to reproduce in the Record any of the above Exhibits except Exhibit D(1) and Exhibit 3; of the remainder scale plans or photographs as the case may be, will be supplied).</p> <p>* (The Appellant objects to the inclusion of the Respondent's Exhibits 1 and 2 in the Record).</p>			

LIST OF DOCUMENTS TRANSMITTED TO THE
PRIVY COUNCIL BUT NOT REPRODUCED

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1.

IN THE PRIVY COUNCIL

No.38 of 1958

ON APPEAL FROM THE HIGH COURT OF AUSTRALIA

B E T W E E N:-

THE COUNCIL OF THE CITY OF NEWCASTLE
(PLAINTIFF) APPELLANT

- and -

ROYAL NEWCASTLE HOSPITAL
(DEFENDANT) RESPONDENT

RECORD OF PROCEEDINGS

No. 1.

ISSUES FOR TRIAL

IN THE SUPREME COURT
OF NEW SOUTH WALES

No.994 of 1953

BETWEEN; THE COUNCIL OF THE CITY OF
NEWCASTLE

Plaintiff

- and -

THE ROYAL NEWCASTLE HOSPITAL

Defendant

ISSUES FOR TRIAL

WRIT ISSUED 12th February, 1953.

In the
Supreme Court
of New South
Wales.

No. 1.

Issues for Trial.

5th February,
1954.

10

20

SPECIAL ENDORSEMENT

PARTICULARS OF CLAIM

To rates due and payable in respect of rateable
land of the Defendant at New Lambton less land not
rated originally valued at £10,800:-

Date	Asst.		
Year	Service	No.	
1946	23rd October	1350	Being 6 ³ / ₄ d. in £ on Unimproved Capital value of £12,900
	1946		£ 362.16. 3
1947	22nd April	1350	Being 7d. in £ on Unimproved Capital Value on £12,900
	1947		376. 5. 0
			Plus Extra Charges at a rate of 5%
			29. 2. 4

30

In the Supreme Court of New South Wales.	Date Year Service	Asst. No.				
No. 1. Issues for Trial. 5th February, 1954 - continued.	1948	16th July 1948	1524	Being 8d. in £1 on Unimproved Capital Value of £12,900 Plus Extra Charges at a rate of 5%	£ 430. 0. 0 44. 2. 4	
	1949	12th April 1949	1524	Being 8d. in £1 on Unimproved Capital Value of £12,900 Plus Extra Charges at a rate of 5%	430. 0. 0 71. 0. 0	10
	1950	4th April 1950	1524	Being 9d. in £1 on Unimproved Capital Value of £12,900 Plus Extra Charges at a rate of 5%	483.15. 0 94. 1. 3	
	1951	3rd April 1951	1740	Being 9½d. in £1 on Unimproved Capital Value of £16,950 Plus Extra Charges at a rate of 5%	670.18. 9 123.14. 3	20
	1952	28th March 1952	1740	Being 10½d. in £1 on Unimproved Capital Value of £16,950 Plus Extra Charges at a rate of 5%	723.18. 1 161.16. 5	
					<u>£ 4001. 9. 8</u>	

The Plaintiff also claims interest on £4001.9.8.
the above sum from the date of Writ until Judgment
at the rate of £5 per centum per annum. 30

The above are the Particulars of Claim referred to
in the annexed Writ of Summons.

APPEARANCE ENTERED 19th February, 1953.

DECLARATION dated 26th February, 1953.

NEWCASTLE) THE COUNCIL OF THE CITY OF NEWCASTLE
TO WIT) a statutory corporation and entitled
to sue in and by its said corporate name and style
by HENRY VINCENT HARRIS its Attorney sues THE
ROYAL NEWCASTLE HOSPITAL a statutory corporation 40
and liable to be sued in and by its said corporate name

and style for that the Defendant was at one time the Newcastle Hospital and the Defendant was and is possessed of certain rateable land within the City of Newcastle and the Plaintiff duly made and levied upon the Defendant rates in respect of the said land for the years 1946, 1947, 1948, 1949, 1950, 1951 and 1952, yet the Defendant did not pay the same.

AMENDED PLEAS dated 23rd December, 1953.

10 The Defendant by DONALD NEIL RANKIN its Attorney says that it is and was at all material times a public hospital within the meaning of paragraph (d) of sub-section one of Section One hundred and thirty two of the Local Government Act 1919 as amended and that within the meaning of the said paragraph of the sub-section of the said Act the said land belongs and at all material times belonged to the Defendant being such public hospital and is
20 and was at all material times used or occupied by the Defendant being such public hospital for the purposes thereof.

2. And for a second plea the Defendant says as to so much of the Plaintiff's declaration as alleges that the Defendant was and is possessed of certain rateable land within the City of Newcastle and the Plaintiff duly made and levied upon the Defendant rates in respect of the said land for years 1946, 1947, 1948, 1949, 1950, 1951 and 1952 denies the said allegations and each and every of them.

30 3. And for a third plea the Defendant says that it never was indebted as alleged.

AMENDED REPLICATION dated 27th January, 1954.

The Plaintiff joins issue upon the Defendant's pleas herein.

DATED this fifth day of February, 1954.

H. V. HARRIS,
Attorney for the Plaintiff,
Lyndhurst Chambers,
Bolton and King Streets,
NEWCASTLE.

In the
Supreme Court
of New South
Wales.

No. 1.
Issues for
Trial.
5th February,
1954
- continued.

In the
Supreme Court
of New South
Wales.

No. 2.

TRANSCRIPT OF THE EVIDENCE TAKEN BEFORE HIS HONOUR
MR. JUSTICE RICHARDSON

No. 2.
Transcript of
the Evidence
taken before
His Honour Mr.
Justice
Richardson.
14th, 15th and
16th March,
1955.

IN THE SUPREME COURT)
OF NEW SOUTH WALES)
HOLDEN AT NEWCASTLE)
IN CAUSES.)

CORAM: RICHARDSON, J.

Newcastle, Monday 14th March, 1955.

COUNCIL OF THE CITY OF NEWCASTLE

10

v.

ROYAL NEWCASTLE HOSPITAL

MR.MACFARLAN, Q.C., with MR.MOFFITT appeared for
the Plaintiff.

MR.WALLACE, Q.C., with MR. WILLIAMS appeared for
the Defendant.

(Plan tendered and marked Exhibit A)

(Mr. Macfarlan. and Mr. Wallace opened to His
Honor).

(At 2.00 p.m. His Honor proceeded on a view)

20

IN CAUSES

CORAM: RICHARDSON, J.

COUNCIL OF THE CITY OF NEWCASTLE

v.

ROYAL NEWCASTLE HOSPITAL

Second Day: Tuesday, 15th March, 1955.

MR.WALLACE: I would like to have two or three of
the doctors remain in Court.

HIS HONOR: Whatever you arrange with regard to
that will be suitable to me.

MR.MACFARLAN: The Superintendent is to some ex-
tent a witness to the facts but I am content to
leave it to my friend's discretion.

30

WILLIAM CHARLES BURGES

Sworn, examined, deposed.

TO MR.MACFARLAN: My full name is William Charles Burges. I reside at 23 Chalmers Road, Jesmond. I am the Town Clerk of the City of Newcastle and I have been the Town Clerk for 5 years.

In the
Supreme Court
of New South
Wales.

Plaintiff's
Evidence.

No. 3.
W.C. Burges.
Examination.

10

Q. Prior to becoming the Town Clerk were you an officer of the Council of the City of Newcastle?
A. Yes.

Q. For how long had you been an officer of that Council?

A. Since the amalgamation of the constituent councils in 1938, and prior to that I was employed by the Waratah Municipal Council from 1934.

Q. That was one of the Councils that came in under the amalgamation that constituted the Council of the City of Newcastle? A. Yes.

20

Q. Of course you are familiar with the chest hospital at New Lambton facing Lookout Road and Croudice Street?

A. I am familiar with the location of it.

Q. And the address which you have given as being the address of your home, is that anywhere close to this chest hospital?

A. It would be approximately one mile north-west.

Q. Are you able to indicate on that copy of Exhibit A which you have, by describing in words, the position where your home is on Exhibit A?

30

A. My home is situated beyond the scope of this actual map. It would be in this vicinity, north-westerly from the hospital building.

Q. And beyond the scope of the map? A. Yes.

Q. How long have you lived in that home?

A. 14 years.

Q. Have you, apart from any official occasions, ever been on the hospital grounds, the grounds delineated on that Exhibit A?

A. Yes, on many occasions.

In the
Supreme Court
of New South
Wales.

Plaintiff's
Evidence.

No. 3.

W.C. Burges.
Examination
- continued.

Q. Can you tell His Honor how much of that land you have traversed on the whole of the various occasions you have been over it and to what parts you have been?

A. I have traversed most of it with the exception of the gullies which are very rough and rocky and sometimes impassable. It is not necessary to go down into those gullies to view the land because it can be viewed from the ridges in general.

Q. Your answer is really that you have traversed at one time or another most of this land? A. Yes. 10

Q. Have you been doing that within recent times or within 1953 and 1954?

A. Yes, I have been traversing it from time to time since the time we went to live at Jesmond which would be in 1941.

Q. As you go to work daily in the City you travel by car do you? A. Yes.

Q. Can you see any portion of the hospital lands shown in Exhibit A on the route which you ordinarily take to work? 20

A. Yes, but not in detail of course. The subject land is part of a big stretch of bushland and to anybody unfamiliar with the area he would not know where the boundaries were but there are familiar landmarks of course which do indicate the position of the hospital.

Q. Are there any fences round this land which is shown edged red on Exhibit A, the large area? 30

A. Yes, there are some fences. In Croudace Street from the small subdivided area northerly from Russell Road on the Western side of Croudace Street there is an angle iron fence with strand barbed wire. The barbed wire is the top wire and that extends up to the gates of the old Croudace home entrance and from there it would be approximately opposite Curzon Road and there is a paling or a picket fence from there to a point approximately at the point of Lookout Road and Carrington Parade and from there southerly there is an angle iron post fence with the wire strand up to a point to the extremity of the property edged red: that is in Lookout Road and that is - no, to a point slightly northerly from Ridgeway Road, that is facing just adjacent to the nurses' quarters, and 40

then the fence goes around the back of the nurses' quarters to a point approximately say 500 to 600 feet from the back of the Nurses' Home in a northerly direction and it just fades out at that stage.

In the
Supreme Court
of New South
Wales.

Q. Does that plan Exhibit A show that fencing that goes around at the back of the Nurses' Home?

Plaintiff's
Evidence.

A. Yes, it is shown in broken lines on this plan.

Q. Apart from these fences you have described are there any other fences on this property which you have seen?

No. 3.
W.C. Burges.

10

A. Do you mean outside the 36 acres delineated here?

Examination
- continued.

Q. I want to draw your attention particularly to the area edged red lying to the west of the plan?

A. No, there are no other fences.

Q. And the area edged red to the north of Exhibit A?

A. No, no fence in that position either.

Q. Or the area to the south of Exhibit A.

A. No.

Q. You have referred to a number of occasions when you have visited these lands. Have those occasions been when you have visited them in company with any other persons?

20

A. Yes I have walked through with my wife and children on many occasions and also with friends from time to time.

Q. Is that the kind of occasion that you say you have visited this land many times?

A. Yes, and also officially.

Q. Can you by reference to Exhibit A and leaving out the immediate area where the buildings are situated at Lookout Road could you describe the nature of the land which is comprised in the hospital property and what is on it and what is growing on it and the amount of vegetation and so on?

30

A. Yes, the land itself comprises ridges and gullies with very little flat land, if any. It is fairly heavily timbered with different types of trees - gum and bloodwood, stringy bark and there is a quantity of small growth comprising wattle and undergrowth generally. It is poor country as far as the sustenance of stock, for example. In my opinion, there would not be sufficient herbage to

40

In the
Supreme Court
of New South
Wales.

Plaintiff's
Evidence.

No. 3.

W.C. Burges.
Examination
- continued.

support the pasturage of stock. As I indicated before the ridges are reasonably graded but the gullies are fairly steep and rocky at the bottom and very rough.

Q. Rough with rocks and so on? A. Yes.

Q. Looking at Exhibit A again, do these broken lines running in a westerly direction and also one running in the northerly direction do they indicate the position of the ridges as you understand them?

A. Yes, I would say that that would be generally correct, in my opinion.

10

Q. What about the size of the trees on this property? Can you give His Honor any indication of the general size?

A. They vary, of course, from small trees up to trees, I would say, 50 feet high.

Q. And the shrubs and the undergrowth which you have spoken of, are they dense?

A. Well I would not say that it is real dense but it is difficult to get through some of it.

20

Q. Have you seen any tracks in any part of this land?

A. Yes, there are tracks, not many. There is one main track running from the back of the Nurses' Home in a North-westerly direction which is the main track. There is another one running off that track in a south-westerly direction. That is not so clearly delineated as the one in the north-westerly direction. Round the hospital of course there are well defined and in some cases graded tracks.

30

Q. I am not asking you anything about in the immediate vicinity of the buildings at this point. I am asking you about the big area at the back?

A. Those tracks are just bush tracks. I would not say they had ever been formed in the normal sense of the word. They have just been made by usage over past years, many years ago.

Q. That track that is shown or that you have described as running along the back of the Nurses' Home, where does that come out?

A. It begins at the back of the Nurses' Home, apart

40

from the track that I mentioned which branches from it in a south westerly direction, it goes in the general direction of Jesmond and Wallsend. There are many tracks branching off from it as you get into the bush farther.

In the
Supreme Court
of New South
Wales.

Q. Does that track run up to Lookout Road? A. Yes.

Plaintiff's
Evidence.

Q. Marshall Street is the street at the extreme west?

10 A. Just before that there is another track in this area which runs - you will notice a sub-divided area on the southern end of the holding fronting Lookout Road. There is a track fairly recently formed. I would say it was graded, which runs off northerly from the subdivided area down into what appears to be adjoining gardens but those gardens appear to be outside the area owned by the hospital.

No. 3.
W.C. Burges.
Examination
- continued.

Q. Do you mean by that beyond Marshall Street?

20 A. Well, yes it would be the other side of Marshall Street but southerly from the red line dividing the two properties.

Q. Is Marshall Street formed?

A. No, not in the customary sense of the word, not at all - not in the section shown in this plan.

Q. Is there any boundary marking that you have observed marking off the hospital grounds at the western end from the grounds on the western side of Marshall Street?

30 A. Adjoining the hospital property itself I would say there is no marking-off at all; you would not know where you were in the hospital property whether you were on Marshall Street or on the adjoining land westerly from the hospital property.

Q. On those occasions when you have been going through this area of land have you ever seen any other persons there?

A. Yes, I have on very rare occasions.

Q. What sort of persons were they?

40 A. The only two persons I can remember seeing were young lads on push bikes.

In the
Supreme Court
of New South
Wales.

Plaintiff's
Evidence.

No. 3.
W.C. Burges.
Examination
- continued.

Q. At this point of time have you any recollection when it was you saw them and whereabouts on this property?

A. Yes, it would be on that main track that I indicated which runs from the back of the Nurses' Home in a north westerly direction but as to the exact date I could not say.

Q. As far as your recollection goes is this the position that those are the only persons you can recall having seen on this area of land? 10

A. They are the only persons I can recall seeing on this area of land outside the immediate scope of the hospital grounds.

Q. When you say, outside the immediate scope of the hospital grounds you have already described the fence running around immediately behind the nurses' quarters, haven't you? A. Yes.

Q. When you say "outside the scope of the hospital grounds" - to the west of that fence?

A. I mean the developed area of land around the hospital buildings. 20

Q. I am now continuing to ask you about the area to the west and excluding what you have called the developed area. Are there any buildings of any kind on this land that you have been describing to His Honor?

A. No, not that I am aware; I have not seen any. The only development outside or in that area you referred to is the land which runs from a point near the intersection of Croudace Street and Russell Road. That runs in a direct westerly direction. 30

Q. As far as you have seen in respect of this same area has there been any clearing done, have you seen any results of any clearing, timber felling or scrub clearing?

A. No, not during the 14 years I have known the area. I take it you mean organised clearing?

Q. Well, any form of actual clearing have you seen? 40

A. Yes, I have seen some dead trees felled by persons of whom I am not aware; I would not know them, but the trees - there are some there now which have obviously been sawn down. I would just like to

qualify that statement. The trees I refer to would be so close to the boundary of the hospital land and the adjoining coal company land that the actual trees I refer to could be on Marshall Street. There is nothing to delineate the area to show where Marshall Street starts and these lands finish.

HIS HONOR: Q. Could you point out on the plan the position you refer to? A. Yes.

In the
Supreme Court
of New South
Wales.

Plaintiff's
Evidence.

No. 3.

W.C. Burges.
Examination
- continued.

10 MR.MACFARLAN: Q. Would you take a pen in your hand and mark this area as best you can judge it with an "X"?
A. Yes, I would say it would be approximately in this area generally.

20 HIS HONOR: Q. Mark with an "X" and inscribe it with a circle?
A. Yes. What I would like to point out is there is nothing to indicate where Marshall Street is. This would be only an approximate position. There are two trees down in that vicinity at the present time, but apart from that I have not noticed any tree felling of any description. I would like to indicate that these trees were not sawn down during the relevant period, that is from 1946 to 1952. They have been sawn down since then.

30 MR.MACFARLAN: Q. The description which you have given has been, as you have said, from what you have seen walking down among those lands, and I think you have also seen the hospital lands about which I have asked you from the property of Alderman Richley, in Grandview Road?
A. That is correct.

Q. You have spoken too of rocky gullies and ridges and so on. Is there any general slope apparent on this land?

A. The land generally slopes from Lookout Road westerly. (Contour map prepared by the Council Surveyor tendered and marked Exhibit B).

Q. Would you look at what you have described as the developed area on plan, Exhibit A.

40 HIS HONOR: By "the developed area" do you mean the area of 36 acres or the area which is marked in pink?

MR.MACFARLAN: I think the witness referred to the area coloured pink when he spoke.

In the
Supreme Court
of New South
Wales.

Plaintiff's
Evidence.

No. 3.
W.C. Burges.
Examination
- continued.

HIS HONOR: That is something less than 36 acres.

MR. MACFARLAN: Yes. I propose to have the witness describe that in detail.

Q. You have also said, it is obvious, of course, there are some buildings situated on that portion of land fronting Lookout Road? A. Yes.

Q. As you face Exhibit A with the west at the top of the plan, you see an outline of a building there on the left of the pink area where the word "brick" is written? A. Yes.

10

Q. That is a two-storey brick building, rectangular in shape? A. Yes.

Q. And that is the Nurses' Home; is that your understanding? A. Yes.

MR. WALLACE: At this stage I would like to tender some aerial photographs in my case.

(Photographs marked Exhibit 1, A to H inclusive).

MR. MACFARLAN: Q. (Approaches witness) I show you Exhibit 1A. That is a photograph of the built-on area of the hospital grounds? A. Yes.

20

Q. Look at the building marked 1. Is that the Nurses' Home? A. Yes.

Q. And look at the building marked 2?
A. That is the Chest Hospital.

Q. Look at the building marked 3?
A. That is a new building which I understand is to be used for post natal care. At present I understand it is used by the nurses.

Q. And building 4?
A. That is generally known as the convalescent home or the Old Croudace Home.

30

Q. Would you mark on this No. A of Exhibit 1 with a "Five" in a circle, the position on Grandview Road from which you are able to see this property which you said you have seen it from Alderman Richley's home?

A. I would say the photograph is too indistinct to mark it correctly. I could generally indicate the position.

Q. Is that one any more distinct for the purpose?

A. No, I think that is worse.

Q. If you would mark on that first one, Exhibit 1A, with a red circle, which will comprise the approximation in your opinion, of the position?

A. It would be in this position approximately. (Witness marks plan).

Q. You have placed a five within a circle. The track which you have described as being behind the Nurses' Home, is that visible as a portion of this point which I indicate to you on Exhibit 1A?

A. Yes, I would say that is the track.

Q. Mark that with a "six" in a circle. Is this point here where the track comes out on the road?

A. Yes.

Q. Mark that with a "seven" in a circle.

MR.WALLACE? Which Road?

MR.MACFARLAN: Lookout Road.

Q. These buildings as shown on Exhibit 1A are built on a high area of land known as New Lambton; that is the position? A. New Lambton Heights.

Q. There is development in the sense of gardens and lawns that have been made around parts of those buildings? A. Yes.

MR.WALLACE: Perhaps you will be kind enough not to lead at this stage.

MR.MACFARLAN: Q. (Approaching witness) I show you Exhibit 1A. That shows the amount of development in the sense of gardens and paths around those buildings as you understand the position? A. Yes.

Q. I show you Exhibit 1B which shows an amount of development in this case in front of the Nurses' Home and the Chest Hospital? A. Yes.

Q. I show you Exhibit 1C which shows you the amount of development from another angle in front of the four buildings which you have described? A. Yes.

Q. You see on Exhibit 1C on what is the easterly side of Lookout Road a number of buildings? A. Yes.

In the
Supreme Court
of New South
Wales.

Plaintiff's
Evidence.

No. 3.
W.C. Burges.
Examination
- continued.

In the
Supreme Court
of New South
Wales.

Plaintiff's
Evidence.

No. 3.

W.C. Burges.
Examination
- continued.

Q. What are those buildings, do you know?

A. They would be all residences.

HIS HONOR: Q. They are, are they?

A. I said they are all residences.

MR.MACFARLAN: Q. The photograph Exhibit 1B which shows the area in front of the Chest Hospital itself and other buildings on the easterly side of Lookout Road, I take it also shows residences there; is that right?

A. Yes. It is a residential district.

10

Q. Lookout Road is a continuation, is it not, of Croudace Street?

A. No, it angles off from Croudace Street just opposite Carrington Parade.

Q. As Lookout Road travels south along the plan, in what direction does it run? to what places does it run?

A. It runs to a point where the Cardiff Road and Charlestown Road break off from Lookout Road.

Q. How do you describe Cardiff, as a suburb of Newcastle or --

20

A. It is a township in the Shire of Lake Macquarie.

Q. Does this Lookout Road travel towards the Lake District to towns and places along the Lake?

A. It travels to the point where Cardiff Road and Charlestown Road runs off from it. Cardiff Road is the road that generally goes towards the Lake, or you can go along Charlestown Road on the Pacific Highway around the Warner's Bay turnoff to the Lake as well.

30

HIS HONOR: You are on your former oath.

MR.MACFARLAN: Q. This road we have been asking you about, is that a main road? A. Yes.

Q. Does it carry ordinarily, much traffic?

A. Yes, it is very heavily trafficked.

Q. You told His Honor that road leaves Cardiff, is Cardiff a big or a small settled or populated area?

A. I am not aware of the population figures for that particular town.

Q. Can you use any adjective to describe its

40

population; is it a densely populated area or a thinly populated area?

A. From comparable towns I would say it would have a population of about 3,000 to 3,500 people.

Q. The road goes through Cardiff and passes through towns on the side of the Lake?

A. The road goes through Cardiff, across to Argenton and again it branches off. There are cross-roads and it goes to West Wallsend. These main roads branch into two, one going to Cardiff and the other going to Charlestown at a point just beyond the New Lambton Reservoir.

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Q. I want to bring you back to the buildings on the various photographs Exhibit 1: have you walked round behind the Nurses' Home, being a building marked "1" on Exhibit "1A"? A. Yes.

Q. What is the nature of the land at the back, immediately at the back of that building?

A. Immediately at the back the ground is very level. It has the roadway in it which services a cyclone gate and from that road to the edge of the bank in a westerly direction the lawn is fairly well kept.

Q. Are you able to say what is the nature of it, is it worn?

A. In the immediate vicinity of the back of the Nurses' Home there is a gravel track or roadway and beyond that lawn.

Q. You mean towards the west? A. Yes.

Q. And to that little iron fence you have described?

A. From my observation it does not reach the iron fence. There is a bank that drops down fairly steeply.

Q. When the bank drops down steeply, what is the nature of the bank, has it any vegetation on it?

A. Well, fairly short undergrowth generally, and there are trees immediately beyond the bank.

Q. Are they ornamental trees?

A. No, natural bush trees.

Q. As you pass along I think north, along the back of the Nurses' Home, marked "1", and come round

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to the building marked "2", you see there that there is vegetation shown on this photograph, Exhibit "1A"? A. Yes.

Q. What sort of vegetation is that, ornamental or natural bush, or what?

A. That is natural bush. You mean this direction just here? (Indicating)

Q. Yes, I am pointing to the vegetation immediately to the north-west and behind building "1" and building "2"?

10

A. Yes, natural trees beyond the fringe of the developed area.

Q. Can you say from your observation of the place whether the iron fence you speak of, whether it runs in relation to that vegetation you pointed out, between buildings "1" and "2"?

A. The steel post fence?

Q. Yes? A. Yes, runs through the natural vegetation at that place.

Q. Come to the vegetation shown on this same Exhibit, between buildings "2" and "3", that is between the hospital and the new building, the Nurses' Home; what kind of vegetation is that?

20

A. Within the grounds proper there is quite a growth of lantana and also natural trees - natural vegetation.

Q. When you say within the grounds proper, do you mean by that on the east side of the fence?

A. Well, there is slight development on the western side. I am sorry the eastern side of which fence?

30

Q. The iron post fence?

A. The iron post fence does not go right down. It stops at a point approximately at the end, from the nearest end of the Chest Hospital.

Q. That is the building marked "2" on Exhibit "1A"?

A. Yes.

Q. Then, behind building No. "3"; I think it is apparent from this photograph "1A", that there is a tennis court there? A. Yes.

40

Q. What is the condition of the land immediately

behind that new building numbered "3"?

A. Do you mean on the western side?

Q. Yes, on the western side?

A. Very rough and almost impassable.

Q. Have you seen anywhere, where apparently from the Hospital kitchens ashes have been dumped in any place? A. Yes.

Q. Whereabouts in relation to any of these buildings is that?

10 A. The filling is being dumped at the rear generally of the area between the Chest Hospital itself, in a northerly direction.

Q. And is that within the post - the iron post fence? A. Well, within that.

Q. That is to say to the east of that fence.?

A. Yes.

Q. What difference would there be between the filling which it has now reached, and the iron rail fence; have you formed any estimation of that?

20 A. I would say it ranged between - approximately it would average 250 feet.

Q. Would you look at Exhibit "A" again; that shows, as the plan indicates, "White stakes viewed". They are the white stakes which were viewed by His Honor yesterday on the occasion of the view which was taken? A. Yes.

Q. Can you describe in a matter of words - it is described accurately on the plan - but in a matter of words can you describe where those posts are in relation to the iron fence that runs round the west of the developed land of the Hospital and the kind of country that is round those posts?

30 A. Well, commencing at a point at the rear of the nurses' quarters again, the iron post fence is the boundary, and immediately west of the back portion, or the tail of the "Y" portion of the hospital proper, that is the Chest Hospital, the line runs in a direct northerly direction as compared with the fence which runs in a north-easterly direction and the line made by the positioning of the white post would radiate out to an extent, from zero to approximately as I said before, about 250 feet from the edge of the existing filling and that line

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runs through fairly heavily timbered country with a slope from the bank, and the slope is in a westerly direction; and the ground itself is fairly rough to walk through. At the point adjacent to the - or the look-out adjacent to the tennis court, the distance narrows down to about 130 feet and sweeps round through the same type of country to a point opposite Russell Road, in Croudace Street and the distance between the developed, or the back area to which I referred to, would be approximately 500 feet.

10

Q. I think you spoke of the look-out near the tennis court: I take it by that you mean - ?

A. It is a small elevated area at the front - (interrupted).

Q. Of the nearest end of the tennis court? A. Yes.

Q. Or the northern end of what is now used as the Nurses Home? A. Yes.

Q. In this action the Council claims £4,001 and some shillings, and that amount remains unpaid?

20

A. Yes.

(Two aerial photographs of area tendered and marked Exhibit "C").

Cross-
Examination.

Cross-Examination

MR.WALLACE: Q. May I take it then that you are the gentleman responsible for the siting of those white posts? A. In a way, yes.

Q. You go to work every day do you not?

A. Yes. Not every day - working days.

Q. So the only time you would have to roam with your wife, children and friends through this land, that would be at week-ends I presume?

30

A. Yes, and holidays.

Q. And I suppose you would know enough about hospital life to know that week-ends are especially given over to visiting hours for relatives of the patients; is that the usual run of things?

A. Well, I understand that visiting hours vary according to different hospitals and I understand too that you can go to most hospitals at times other than week-ends.

40

Q. Would you not agree that week-ends are periods specially given to visiting hours for patients, especially where the patients have to come from distances and that sort of thing?

A. I think that would be reasonable, yes.

Q. I suppose if you were as close as 200 yards away from fairly densely timbered country like this you could not tell whether anybody was in amongst the trees or not, could you? A. Yes you could.

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10 Q. You are quite clear on that answer; I put it as close as 200 yards, say 300 yards. You could not tell what was taking place down amongst the trees, what people were walking through the trees?

A. Which area are you referring to?

Q. The whole area - any portion of it?

A. I would suggest if the patients got off the tracks they would probably lose themselves.

20 Q. I am questioning you about your statement in your evidence that you have not seen anybody etc., etc., All that I am putting to you is that you could not see anybody if you were as far away as 300 or 400 yards, could you?

A. Well, I do not quite understand your question.

Q. I suppose if you had a bare paddock you could see somebody on it from a distance of a mile or more, could you? A. Yes, that is possible.

30 Q. And if the paddocks were heavily timbered with 50 foot high trees and undergrowth, and so on, you could not see anybody moving about perhaps as close as 100 yards away from you, Could you: there is no catch about this. Let us get on with it. Isn't that so?

A. I think it is a matter of degree of intensity of the timber.

Q. If you were walking at a point 300 yards away from some particular part of this country, you could not see what was happening in the way of pedestrian life 300 yards away, could you?

A. Your first question was 200 yards.

40 Q. I am going up to 300 yards now?

A. It is possible in some parts of that country to see a person 300 yards away.

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Q. You live a mile off the country? A. Yes.

Q. Going to work in the morning, driving, with your mind full of the responsibilities of your very important office, you are not suggesting you could see whether anybody was walking in the trees a mile away? A. That was never suggested.

Q. If you come to Newcastle, it is undoubtedly a highly industrialised city isn't it? A. Yes.

Q. Would I be correct in assuming that it is growing at a record rate, and has been so growing in the past few years? A. Yes. 10

Q. Would I be correct in further suggesting to you that increase in buildings is largely directed towards new factories and all buildings all types and descriptions?

A. Well, more so perhaps to commercial buildings at the present time.

Q. Over the last few years you have had a record number of applications for erection of factory buildings, haven't you? A. Yes. 20

Q. Would it be correct to say that the prevailing winds, at least in the summer time, is the north-easter? A. Yes.

Q. And generally speaking this lies to the south-west of the B.H.P. doesn't it? A. That is so, yes.

Q. In other words fairly directly in line, having regard to the prevailing wind, to the smoke which is emitted from the B.H.P.?

A. I would not think so. 30

Q. Fairly directly I said?

A. Well, it is a matter of relativity. I think the hospital would miss most of the B.H.P. smoke when a north-easter was blowing.

Q. Would not it be within your knowledge that there is a tendency for that smoke to be channelled up from the rear entrance of that land leading up to the hospital and for the smoke to be lying about in those re-entrances, in the vicinity of the Hospital? A. I am not qualified to answer that. 40

Q. The B.H.P. works three shifts day and night seven days a week throughout the whole year?

A. Yes.

Q. Do you agree there are many other factories lying to the north - generally in a north-easterly direction from this land which also emit smoke for large periods of the day?

A. Nothing like the B.H.P.

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Cross-
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10 Q. But there are many other factories which do emit smoke lying generally to the north-east of the hospital? A. There would be some, yes.

Q. I think you know that your City Council has been very active in recent years in regard to taking steps towards the minimising of this smoke nuisance that exists in this important industrial city?

A. Yes, that is correct.

Q. You have a special committee established for the purpose of recommending to and advising the Council thereon? A. Yes.

20 Q. I suppose you will agree that the city is one which having regard to its highly industrialised nature, would never be free from the nuisance of smoke, would it?

A. I do not think I am qualified to answer that question.

Q. Was the procedure this, that you delineated to a surveyor where you would like pegs put in and the surveyor put the pegs in under your instructions? A. No, that is not the case.

30 Q. I think you said that you were the person who defined where the boundaries of the 36 acres had to go (Objected to).

Q. I assume that you, as Town Clerk, were the person who was responsible for the delineation of the area?

A. No, the surveyor was responsible for the delineation of the area.

Q. Would he not be briefed or given general guidance from a gentleman in your official position?

40 A. No, not entirely.

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Q. To some extent?

A. No. I would not say that; not in a technical sense.

Q. I was not going on the technicalities. We all know that we must have a surveyor to lay out the land and to survey it and that sort of thing, but in a job of this sort would he not get your directions as to what area it was required that he should enclose or demark? A. Yes.

Q. Did he get those instructions from you? 10

A. Yes, in a sense. The surveyor was asked to delineate 36 acres which had been valued separately by the Valuer General and he was asked to delineate the 36 acres. It was the best part of the land.

Q. Who asked him to do that?

A. I will take the responsibility for that.

Q. I do not want anybody to take the responsibility. I am asking who did it. It was you? A. Yes.

Q. Was the concept or conception that the surveyor should be asked to delineate the area of about 36 acres and the Valuer-General should be asked to value such an area, was that conception one which emanated from you? 20

A. The Valuer-General valued 36 acres for many years separately.

Q. Leave out the Valuer-General. When did the surveyor do this pegging out?

A. From memory it would be about 18 months to 2 years ago. 30

Q. He did it on your instructions? A. Yes.

Q. Was the conception that he should be instructed to mark out 36 acres was that a conception which came from you?

A. To mark the 36 acres out, yes. But I did not originate the 36 acres.

Q. Do you know who did?

A. Yes, I would just have to indicate from hearsay in some respects.

Q. You do not know but you have some hearsay idea: 40

that is what you mean? A. It extends for -

Q. You do not know but you have some idea based on hearsay. Is that what you mean by your answer.?

A. I will put it this way, I was not in the employ of the Council when it originally came to pass.

Q. You have been with the Council since 1941, do you say? A. 1938 with the Greater Council.

Q. Your evidence is that the 36 acre area and in the idea of delineating it, the procedure came in- to being before you were a member of the staff of the Council - Before 1938?

A. I understand that is the position.

10

Re-Examination

MR.MACFARLAN: Q. You have said that these rates which are now claimed are unpaid. From the plan before the Court it is apparent that the Council owned land before 1946 - that the hospital owned land before 1946 up in that vicinity? A. Yes.

20

Q. Was there any part of that land rateable before 1946 - (Objected to: pressed, discussion ensued; admitted)? A. Yes.

Q. Before 1946 in respect of land claimed by the Council to be rateable did the hospital pay rates? A. Yes.

Q. In respect of the land, the total land owned by the Council before 1946 - by the hospital before 1946 - was any portion conceded by the Council to be exempt from rates? A. Yes.

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Q. What was the area that it is conceded to be exempt from rates?

MR.WALLACE: I object to all this.

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WITNESS: It operated from 1924 when the first purchase was effected by the hospital, that concerned the old Croudace Home known now as the Convalescent Home - the full 24 acres were exempt. Subsequently that exemption followed further classification by the hospital was extended to approximately 32 acres. When the hospital later converted an area of 4 acres, that would be in 1934, the area exempt was increased to 36 acres.

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Cross-Examination - continued.

Re-Examination.

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Re-Examination
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MR.MACFARLAN: Q. Prior to 1946 in respect of all land owned by the hospital, it paid rates on all land except the 36 acres or the lesser you have described in earlier years? A. Yes.

Q. You were asked some questions on this question of smoke and smog and so on. On Exhibit 1A, this building which you have said is ultimately designed for the post natal care of women and their children, are you able to say, from your own knowledge, when that was built?

10

A. I am not at all sure it is finished yet. It was not finished last year.

Q. Can you say from your own knowledge approximately in which year it was commenced?

A. It would only be approximate. It would be about, say, 3 years ago.

Q. Approximately 1952 - early 1952?

A. 1952-1953 perhaps.

Q. Exhibit 1A shows this building which has No.3 on it. Do you agree that that building is facing to the north-east?

20

A. It has a north-easterly aspect and also it has four aspects really.

Q. It appears from this photograph that it has verandahs facing to the north east?

A. I would say it would generally have a north-easterly aspect, yes.

Q. Do you know whether it has any verandahs facing to the west?

A. No, there are no verandahs facing to the west.

30

Q. So far as this hospital is concerned, this building No.2 on Exhibit 1A, do you know when that building was built; approximately in what year?

Q. The chest hospital building. The building No. 2 on Exhibit 1A?

A. No. I could not answer that question with any degree of accuracy.

Q. Your answer to that is that you cannot say with any degree of accuracy?

A. Yes. It is quite a while back.

40

Q. Of course I suppose the prevailing winds in Newcastle have been north-easterly as long as you have known in the summer afternoon? A. Yes.

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Q. And the B.H.P. Factory Works have been there for some considerable time? A. Since 1915.

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Q. Stewart and Lloyds and Comcox and other factories in the same class of factory area down near the city? A. Yes.

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10 Q. My friend has asked you some questions about the increase of factory buildings in Newcastle in recent years. Your answer included some reference to commercial buildings. What is the position in that regard? (Withdrawn).

W.C. Burges. Re-Examination - continued.

Q. Is the development of commercial buildings in recent years greater or less than the development of factory buildings?

20 A. I think the development of commercial building would be greater at the present time and in more recent years would be greater than factory buildings.

(Witness retired)

No. 4.

No. 4.

IDRIS MORGAN

I. Morgan. Examination.

Sworn, Examined, Deposed:

TO MR.MACFARLAN: I live at New Lambton and I am legally qualified medical practitioner, practising in Newcastle. I am the Senior Honorary Physician of the Defendant.

30 Q. I think until recently you were the sole Repatriation Doctor here in Newcastle? A. Yes.

Q. And now I think you are one of a panel? A. Yes.

Q. You have been in private practice in Newcastle since when? A. 1919.

Q. And prior to that you served with the 19th Battalion as Regimental Officer in France? A. Yes.

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Q. And you have been the Repatriation Officer here since 1919? A. Yes.

Q. How long have you been the Senior Honorary Physician of that hospital? A. I do not know exactly.

Q. How long have you been on the honorary staff? A. Since 1919.

Q. I think your practice is a general practice. You have had considerable experience with T.B. cases? A. Yes.

Q. You know the Chest Hospital at New Lambton? 10
A. Yes.

Q. And you frequently visit it in your capacity as Repatriation Doctor? A. Yes.

Q. In fact, it is right that all the T.B. patients under the care of the Repatriation Department or under the sponsorship of the Repatriation Department, at New Lambton, are under your care? A. Not while they are in hospital. I merely make reports for the Department so that it can be kept aware of what is going on. They are under the care of the hospital until they are discharged and then they come under my care. 20

Q. Do you frequently visit the hospital at New Lambton? A. Yes.

Q. Are you familiar with the forms of treatment? A. Yes.

Q. That is given to them at the hospital? A. Yes.

Q. And after they leave the hospital? A. Yes.

Q. In this way as the Repatriation Doctor, have you been treating T.B. cases really since 1919? 30
A. Yes, and in private work up till the opening of the chest hospital. A number of cases were under my care in the Royal Newcastle Hospital and also as patients outside the hospital.

Q. That is private patients apart from your obligation as Repatriation Doctor? A. Yes.

Q. His Honor has a photograph before him and I

think you can assume that His Honor is familiar with the lay-out of the buildings? A. Yes.

Q. Take the chest hospital. You know that it consists of a boomerang shaped building with a projection at the rear? A. Yes, with a flat Y.

Q. As you face the building from Lookout Road, take the left hand wing. What function does that wing perform?

10 A. On the easterly area, slightly south easterly aspect, there is a verandah on both ways and behind that there are a number of small open wards containing four beds each. On the other side of the corridor facing west or slightly north-west are the toilets and the other rooms of that character and that applies to both wings of the flat "Y".

Q. Are there any wards on the westerly side of that building? A. No.

20 Q. Is it correct to say that on the westerly side they are chiefly toilets?

A. Yes, there are no wards or verandahs on that side.

Q. Take the column of the "Y". Do you know what that is used for?

A. No, I have not been in them. There are no verandahs or wards facing south. What is on the side facing north I do not know.

30 Q. When you go there to treat or inspect these patients who are there, you visit them in this hospital? A. Yes.

Q. At the present time what is the form of treatment which the patients undergo?

40 A. When an acute case is brought into the hospital bed rest is instituted. The patient is kept in bed entirely. He is then given a course of treatment with certain drugs which depends on the discretion of the physician and upon certain clinical conditions. The drugs commonly used are streptomycin, and another one which is called P.A.S. and the other one, also a long one, is known as I.W.H. These are the three drugs which are mainly used in the treatment. Streptomycin is given by injection and the other two by mouth and the

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patient is kept in bed for a period of time averaging from 6 months to 12 months, depending upon the degree of severity and activity and the degree of response. After a time if the clinical signs indicate that bed rest is no longer necessary the patient is allowed to walk about. Usually the men walk about in the verandahs attached to the wards. I rarely see them in the grounds. After a period of that treatment the patient is then discharged to his own home.

10

Q. Before that, does the treatment given him at the Chest Hospital comprise any surgery?

A. Not at the Chest Hospital. The few cases that require surgery I understand are taken to the main block for any surgery that is done. In all cases I have had there and the cases I have had in Concord, I do not think surgery has been used in more than three out of 150 odd.

Q. You had reached the stage where the patient had been discharged from the hospital? A. Yes.

20

Q. Before you go on to tell us of that treatment, would you be able to tell His Honor whether at that stage the disease has been arrested?

A. Yes. That is a term that is applied. It is not active and not spreading - the disease is now said to be arrested.

Q. Up to that stage, is there any actual curative result achieved?

A. One never achieves a cure with T.B.

Q. We know. I think that the ravage of T.B. involves the destruction of some part of the lung?

30

A. There is a certain amount of scar tissue in the lung which causes some permanent incapacity. It varies in different cases. In many cases there is no recurrence of any active process. In some cases it does recur and is generally quickly brought under control by means of chemo therapy.

Q. And chemo therapy is what?

A. The three drugs I have mentioned.

Q. The administration of the three drugs? A. Yes.

40

Q. Does the treatment up to the stage you have described so far, at any time bring about a healing

of the -- A. It does to an extent. I have a number of patients who have been back to work doing their ordinary jobs or light work for a period up to 6 or 8 years.

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Q. After these patients leave the hospital, can you tell His Honor what the treatment is then?

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A. Usually when the patients leave hospital they are not. They can be still taking these drugs. If they are they are kept in drugs for a period. Their chest is x-rayed every three months or every six months. Later on as they become more settled down they live at home in their own home. They are encouraged to do light duties around the place. After a period - it, of course, again must be decided by the clinical condition of the patient - they are encouraged to rehabilitate themselves by getting back to work. That is the aim and object of modern treatment of T.B. It is to arrest the disease and rehabilitate the man by putting him back in his home and getting him back to his own job.

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- continued.

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Q. What you have been telling His Honor is the result of your experience and observations and treatment of these Repatriation people and also of private patients? A. Yes.

Q. Can you tell His Honor whether you find going back to work when the time is adjudged to be proper, whether it is beneficial form of treatment?

30

A. Yes. These men are not happy in hospital; most people are not. Their continual cry when you speak to them is "When am I getting out? When can I go home?" They are not ungrateful for the very good attention and skilful treatment they receive at the hospital but that of course is just a natural attitude. They want to get home to their homes and families as soon as they can. When they get home they are not satisfied with the pensions they receive, which are enough to keep them going, but they want to get back to work. They get bored. The great majority are only too anxious to get out working. The Repatriation Department's policy is that as soon as these men are adjudged by a panel of medical men, who examine them in Sydney when I recommend it, they reduce their pensions from the special pension to a 100% pension. They then continue here and report once a month for observation and every three months for a complete overhaul and x-ray.

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- continued.

Q. Has there been, in recent years, any change in the form of treatment that the medical profession provides for T.B. patients (Objected to; pressed)

Q. The years we are concerned with in this case comprise the years 1946 to 1952, both of those years inclusive. Now in that period of time has there been any change in the kind of treatment which the Medical profession provides for T.B. patients?

A. Yes. (Objected to: discussion ensued).

10

HIS HONOR: I take it this question is directed to the use of the land?

MR. MACFARLAN: Yes.

(Further argument ensued: question allowed).

Q. The question was whether between 1946 and 1952 there had been a change in the form of treatment given - (Objected to), whether there was a change between those years, a change of treatment which the medical profession used for T.B. patients?

A. Yes.

20

Q. Can you tell His Honor when that change came into force?

A. In 1946 the first injections of streptomycin were given to 32 patients in the United States of America. Within 2 years streptomycin was given fairly widely. Later on the other drugs were discovered and were used in conjunction with it till now all cases receive treatment by this drug, or most cases, I should say.

Q. At the present time does climate play a part in the treatment - I withdraw that question. When did the Chest Hospital here at New Lambton commence to operate as a chest hospital?

30

A. I do not know exactly but after the war. It was built during the war but they were not able to start it and I think they opened it some time after the finish of the war. I would not be absolutely sure but it was after the cessation of hostilities.

Q. After 1946 as far as you are able to say?

40

A. Yes, I think so.

Q. In the form of treatment that is now given to T.B. patients does climate play any particular part at all in the treatment? A. I do not think so.

Q. What is the significance, if anything, in the present form of treatment of rest?

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- continued.

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A. Prior to the introduction of chemo therapy the usual nature of treatment was rest. What usually happened was that these patients were put to bed and they were rested, sometimes for quite long periods and in some cases the rest was not sufficient; in other cases they would recover and get up but relapses were frequent and the general impression and attitudes towards tuberculosis and the institution of this treatment was that it was a slightly retrogressive disease in the majority of patients the inevitable end being fatal. That was only a certain percentage of cases. There were certain cases which became chronic and the patients lived a life of chronic invalidism and there was a certain number who recovered under their own steam, if I might use that expression. When chemo-therapy became available the number of cases which were able to be arrested and the time in which they arrested, the percentage was greater and the time was shorter, so that the whole outlook on the after treatment of tuberculosis patients changed. At the same time the public became more conscious minded and now with compulsory radiation these cases are found very much earlier and treated at an earlier stage. Therefore, the early institution of treatment by these most efficient methods renders the possibility of a large percentage of cases becoming totally incapacitated smaller and smaller. The number of cases which are arrested and people become rehabilitated in their own homes and do their own jobs has increased and with the methods of early diagnosis and proper treatment that are being evolved by means of compulsory radiation one must expect that percentage to rise even higher.

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40

Q. Can you say whether in the form of treatment carried out in the chest hospital between the date when it was opened after the war and the present time, the existence of that wooded area to the west of the hospital played any part in the treatment? A. In the treatment, no.

Cross-Examination

MR.WALLACE: Q. How did you come to give evidence in this case? A. I was asked.

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Cross-
Examination
- continued.

Q. Who asked you? A. Mr. Wheeler.

Q. Do you know what the case is about?
A. Vaguely.

Q. That your hospital of which you are an Honorary
is claiming that it does not have to pay rates in
respect of this land at New Lambton.

A. That does not concern me. I am here as a wit-
ness.

Q. You know that is what it is about?

A. No, I do not know that.

10

Q. Did you get a subpoena to come here? A. Yes.

Q. When did you get that? A. This morning.

Q. Did you volunteer to come here?

A. No, I was asked to come and I said I would.

Q. When were you first asked to come?

A. Friday or Saturday night, I think it was.

Q. When were you asked on Friday or Saturday you
said you would come? A. No, I did not.

Q. When did you say you would come? A. Last night.

Q. Does that mean that prior to last night you had
not intimated to any person that you were going to
be a witness? A. That is correct.

20

Q. So if anyone said yesterday morning that you
were going to be a witness, that would be without
your authority? A. Exactly.

MR.MACFARLAN: He was going to be called just the
same.

MR.WALLACE: Q. If you were going to be called just
the same, had you had a conference with anybody?

A. No.

30

Q. On Friday or Saturday when you were asked did
you say you would or you would not give evidence?

A. I said I would not volunteer or state that I
would give any evidence until I knew what evidence
was required of me.

Q. You are one who has expressed considerable

difference of opinion to the Superintendent and his policy, haven't you? A. Yes.

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Q. In fact you are, if I may use a fairly temperate word, very strongly opposed to the Superintendent's policy in the matter of honorary doctors?

A. No, I am not particularly interested. I am about to retire, so it does not matter.

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Q. I am not interested in you retiring -

10 A. I said I was not particularly interested and I am not.

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Q. Is it not the fact that you have spoken strongly against Dr. McCaffrey's views in the way he administers the hospital? A. No.

Cross-
Examination
- continued.

Q. Particularly in relation to consultants?

A. With regard to consultants I have, but not in regard to the way he administers the hospital.

Q. You have a personal dislike for Dr. McCaffrey?

20 A. On the contrary, Dr. McCaffrey and I are very good friends and have always been so. If there is any dislike it is not on my part.

Q. Do you tell us that you did not know until I told you a moment ago what this case was about?

A. No, I did not ask for the details and I had a very vague idea what it was about.

Q. I want to know how vague it was?

A. I heard it had something to do with the payment of rates and beyond that I knew nothing.

Q. Did you know that the City Council was suing the Newcastle Hospital for rates?

30 A. I was told that last night.

Q. Did you know the rates were in respect of the land at this Chest Institution at New Lambton?

A. I was also told that.

Q. And you know that the hospital and the Board were claiming that they were exempt from rates?

A. I was also told that.

Q. You are a gentleman, are you not, who has claimed on many occasions in the Courts to be a specialist in practically every branch of medical science? A. That is not true.

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Cross-
Examination
- continued.

Q. Have you given evidence as a specialist on psy-
chiatrical matters? A. No.

Q. Have you given evidence on psychiatric matters?
A. Yes.

Q. And had opposed to you specialists in that field?
A. Correct.

Q. I suppose you have given evidence in numerous
courts on all branches of surgery? A. No.

Q. Do you claim to be a specialist? A. No.

Q. You have given evidence of matters relating to
the heart? A. I have. 10

Q. Do you claim to be a specialist?
A. I am a consultant physician and senior honorary.

Q. Do you claim to be a specialist in the heart?
A. Yes.

Q. You have given evidence on the nervous system?
A. Yes.

Q. The brain? A. Yes.

Q. All branches of physicians' work? A. Yes.

Q. And all branches of the surgeons' work? A.No. 20

Q. And I may add that this would be true, do you
always give your evidence with very great confi-
dence? A. Yes.

Q. And if any doctor is opposed to you your atti-
tude is that he is wrong and Dr. Morgan is right?
A. I would not give evidence if I did not believe
it.

Q. They are always wrong and Dr. Morgan is always
right? A. No, that is not correct.

Q. Do you claim you are a specialist in tuberculo-
sis? A. I do not claim to be a specialist in
anything. 30

Q. Do you claim to be a specialist in tuberculosis?
A. No.

Q. As a matter of fact you have given His Honor the impression this morning, haven't you, that this institution at New Lambton is an institution which has very largely - the patients of which are largely Repatriation patients? (Objected to).

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Q. You have intended to give the impression to this Court that many of the patients in this institution are Repatriation patients?

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10

A. I do not intend to give anything of the kind. I have never had more than 7 patients in the place at any time.

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Q. Out of the 100 patients there are only 2 Repatriation patients? A. Yes.

Cross-
Examination
- continued.

Q. Two? A. Yes.

Q. You do not visit that place more than half a dozen times in a year? A. Once a month regularly.

Q. I suggest it is once every two months?

A. Once a month regularly.

20

Q. When you go there you give no treatment whatever?

A. None. I go there to make a report for the Department. I do not give treatment until they come out. I have already said that.

Q. You have never studied tuberculosis as a specialist would study it? A. Yes, I have.

Q. Are you a specialist or not?

A. No, I have studied it. It does not follow because you are not a specialist you do not know anything about it. That is foolish.

30

Q. You would not claim to be as authoritative on the matter, as a doctor who had given up his life to the study and exclusive study of it?

A. Probably - it depends who he is.

Q. Take Dr. Mills for instance; do you know Dr. Mills? A. I do.

Q. He is the official chest physician in this city for the Repatriation Commission, is he not?

A. Yes.

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Cross-
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- continued.

Q. You are now merely a general Medical Officer?
A. Local Medical Officer.

Q. And Dr. Mills is the official specialist and so
appointed by the Repatriation Commission?
A. That is correct.

Q. I suppose you have heard of Dr. Hughes, who is
the Deputy Director in this State on tuberculosis?
A. No, I do not know.

Q. Would this be correct that you have never done,
for example, a thoracic surgery?
A. Never done any surgery. I am a physician.

10

Q. You are a physician? A. Yes.

Q. And you have given evidence on numerous occasions
about surgical matters? A. No, I have not.

Q. In the Courts of this land?
A. No, I rarely give evidence on surgical matters.

Q. You have given evidence on matters related, for
instance, to orthopaedic surgery?
A. Not orthopaedic surgery. Fractures are not
surgeries.

20

Q. Are fractures part of a physician's work?
A. Not necessarily, no. It does not follow he
does not know anything about them.

Q. I am not suggesting - ? A. You are.

Q. I am only suggesting the contrasts in doctors?
A. No I find it difficult to follow what you are
asking me.

Q. The position is this, that there are only
two Repatriation patients there at the moment?
A. That is correct.

30

Q. And you are prepared to swear that the land
around the institution has played no part whatever
in the treatment of these patients between the
years 1947 and 1952? A. That is my opinion.

Q. Do you call this a chest hospital?
A. I call it Rankin Park.

Q. Is it a chest hospital?
 A. It is classed as such, yes.

Q. Who classes it as that?
 A. Newcastle Hospital. That is the official title.

Q. Do you call it a chest hospital? A. Yes.

Q. I suppose you would agree there is a difference between a chest hospital and a sanitorium for tubercular patients, would you not?

10 A. No, a chest hospital is a minor sanitorium. I cannot see any difference.

Q. You draw no distinction -

HIS HONOR: Q. What was your answer?
 A. A chest hospital is a minor sanitorium.

MR. WALLACE: Q. You draw no distinction. You say there is none?
 A. No, except one is a minor edition of the other.

20 Q. If you take Concord Hospital by way of illustration, in Concord Hospital there is a considerable number, is there not, of people who are suffering from T.B.? A. So I am told.

Q. Is it within your knowledge that after certain clinical treatment there they are later removed out to what has recently been established called the Lady Davidson Rest Home out there in French's Forest on the road to Bobbin Head?
 A. That is not to my knowledge. Most of mine are sent back to me.

Q. Not to your knowledge? A. No.

30 Q. Is it within your knowledge that people suffering from T.B. are clinically treated in Royal North Shore Hospital? A. I have been told so.

Q. And later moved out for this lengthy treatment in the Lady Juliana Home?
 A. Only certain selected cases.

Q. That type of case is precisely the type of case that is treated in New Lambton?
 A. No, New Lambton treats acute cases.

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Q. And if the cases from New Lambton require thoracic surgery they are taken into the General Hospital in Newcastle City and treated there for a while and then brought back to New Lambton for this treatment?

A. A small percentage do require treatment.

Q. Some of them, those who require thoracic surgery? A. Yes.

Q. If they in any way require some other clinical treatment they may be taken into that General Hospital? 10

A. No, if they require concentrated clinical treatment for tuberculosis they are kept at Rankin Park.

MR. WALLACE: Q. They go in there for periods, I suggest, and later are brought back to Rankin Park for long periods, to fit them for the outside world again? A. The period varies.

Q. Is that within your knowledge?

A. Yes, the period varies according to the special cases. 20

Q. Is this correct to put to you, that when a person, say a man who has a wife and family, becomes an acute sufferer from this disease and has to enter any sort of institution, he is subject to very considerable nervous stress and strain? A. Yes.

Q. And the same thing happens in the case of a woman who may be mothers and housekeepers? A. Yes.

Q. That nervous strain or stress emanates from a number of causes?

A. Yes, the only causes I know are fear of life and fear of economic circumstances. That seems to be about the only thing. 30

Q. Fear of the disease itself?

A. Yes, and fear of economic results.

Q. Fear of life generally and fear of the effect of the economic dislocation which is a consequence upon a long stay away from the capacity to earn money? A. Yes.

Q. In that state of affairs do you agree that they are difficult patients, in the sense that they require ideal surroundings? 40

A. No. I do not find them any more difficult than the patients in the general wards of the hospital.

Q. No different from a man who goes in for a fortnight and then goes home?

A. No, they want to get out just the same. I do not find them difficult.

Q. Where do you treat them to qualify you to say they are not difficult? A. I go out to see them.

10 Q. You don't treat them out there; you are not allowed to treat them, are you? (Objected to)

Q. Where else do you treat them?

A. In their own homes; and in my surgery, of course.

Q. Are you suggesting that these people in their own homes would be acute cases?

A. No, they are not. When they come out of hospital they are not.

Q. You have not treated acute cases? A. Yes.

Q. Where?

A. In Newcastle Hospital and in their own homes.

20 Q. Now, you will admit that this institution at New Lambton is doing very very fine work?

A. Excellent work, of course.

Q. And is probably unique in Australia?

A. I cannot say. I have not seen the others.

Q. In N.S.W. anyway?

A. Probably it is one of the best chest hospitals in the place.

HIS HONOR: Q. You mean N.S.W.?

A. Australia, I think.

30 MR. WALLACE: Q. I am putting to you that one of the reasons why it is such an excellent institution is that it is in ideal surroundings, with large natural forests all around it?

A. I do not think the surroundings have the slightest thing to do with it.

Q. You don't think that? A. No.

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Q. You won't agree with this then, that this disease of tuberculosis cannot be fought effectively in industrialised and urbanised civilisations if other aspects of health are neglected?

A. It depends on what other aspects of health are neglected.

Q. What I want to put to you is this, that if you went to treat a patient - and if I may digress you will admit that the treatment might well extend over 2 years?

10

A. In the acute stage. I do not want to get to a misunderstanding about the stage of acute tuberculosis which must be treated in hospital and the case which is not acute and goes to his own home. I think the surroundings in those circumstances are entirely different. I say that a case which is acute and active must be treated by bed rest in a hospital. After that it is a different proposition.

Q. I am dealing with the type of case of which there are a hundred at New Lambton?

20

A. I would not treat any active case in his own home.

Q. Would you agree those cases out there, in respect of those it would be highly improper to treat them in some heavily industrialised centre with smoke and smog all round them?

A. It would be inadvisable but my experience is that they do just as well in the wards of Newcastle Hospital as they do out there.

30

Q. Is it advisable or not?

A. I think it is inadvisable I think it is a very doubtful matter.

Q. Inadvisable or advisable?

A. Inadvisable probably.

Q. So, we have got to this stage, that probably it is a good thing medically speaking to have them out in a place like New Lambton?

A. Acute cases - active cases: I am qualifying it. I say active cases only.

40

Q. Do you agree there are some active cases out there? A. They are all active.

Q. Will you agree that in respect of the type of

patient which is out at New Lambton it is medically desirable they should be in that type of surroundings in preference to being in an highly industrialised area with smoke and fog?

A. Acute cases, yes.

Q. Once you get to that stage, you will agree, will you not, that the presence of a large area of forest trees is an integral part of the proper treatment? A. No, as long as the air is free of

10 smoke and fog. The house and garden will do the same purpose.

Q. Will you not agree that the best way of freeing the air of smog and other impurities is to have a countrified area?

A. No, if you have wind that does not blow the smoke over the place. The countrified area won't cure smog within the area if it is blown from somewhere.

Q. Do you know Waterfall Sanitorium? A. Yes.

20 Q. There we have what I will describe as a Sanitorium for tuberculosis patients which is constituted within the National Park area, on the borders of it, or somewhere near it. At all events for my purposes it is roughly correct to say that it would have a radius of some miles of natural forests with a few settled areas, wouldn't it? A. Yes.

Q. And I suggest that place was resorted to for the very purpose that New Lambton has this 300 acres of forest on it?

30 A. They do just as well with a sandy desert, provided the air is pure. That is active cases only.

Q. I thought we were ad idem on that, that we were dealing with active cases?

A. You said something which made me think differently. I am sorry if I misunderstood you.

Q. Will you agree that if you are going to have men with families in an institution for maybe up to two years, having particular regard to the mental stresses to which they are inevitably subjected, it is desirable that the institution should be close to transport facilities? A. Yes.

40

Q. Will you agree that New Lambton institution is extremely well suited from that viewpoint?

A. Moderately.

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Q. Having got to that stage, will you agree that it was a good thing to plan and envisage an institution of this type to serve Newcastle, the Hunter Valley, and the populous areas up there?
A. Yes.

Q. Having got to that stage, will you agree that Newcastle is one of the most heavily industrialised areas in N.S.W.? A. It is said to be so.

Q. I suppose only Mascot would compare with it, or Alexandria -

10

MR. MACFARLAN: And Port Kemble.

MR. WALLACE: Q. Do you know, as the Town Clerk has told us, that the City Council has a special committee established to try and deal with the smoke nuisance which constantly obtains in this City?
A. I read that in the paper.

Q. Would it not be better for these active patients if, instead of having buildings within 100 yards or 80 yards or so of their hospital buildings, you had 1,000 yards of forests and trees? A. No.

20

Q. Better for them?
A. Trees do not make any difference to the smoke. It is the wind that blows the smoke and it comes whether there are trees, sand, rock or anything else. Trees don't stop the smoke.

Q. Would you say trees have any purifying effect on the area at all?
A. So do garden shrubs and grass.

Q. Purely from the point of view of purifying the air on the outskirts of industrial cities, wouldn't it be better in an institution of this sort to have 1,000 yards of trees around it rather than to have factories built within 50 or 100 yards?
A. Only from the point of view that there would be smoke from the factories. I do not think the trees purifying the area would make any difference - it is just the general fact of a few trees scattered anywhere - negligible, compared with a vast majority. Over 300 yards, they are a few trees.

30

Q. Have you studied Town Planning?
A. No, I have something to do with it.

40

Q. You won't then concede that it would be preferable in the interests of patients to have a belt of 1,000 yards of trees rather than to have even residences within 50 or 100 yards of it? A. No.

Q. The answer is you won't concede it? A. No.

Q. Do you concede that there is a big difference between the desirable layout and the locality of a general hospital on the one hand, and the tuberculosis sanatorium on the other?

10 A. I think they both ought to be housed in fairly spacious grounds.

Q. I did not ask you that?

A. No. I do not think there should be any difference.

Q. So that, according to you, a sanatorium with the objective that this has, needs no larger grounds than a large general hospital?

20 A. It needs larger grounds than a large general hospital because the average general hospital has not got enough grounds as it is, but if the two were to be put in idealistic circumstances from the beginning, I do not see any reason why the chest hospital would require any more ground than a general hospital.

Q. Take the case of a man who enters hospital to have his appendix out? A. Yes.

Q. I suppose he is in and out in less than a week these days? A. Sometimes less than that.

30 Q. And all he is concerned with is getting over the physical disabilities of the operation, and I suggest it does not matter to that patient whether he is in a suburb of Sydney or out in the country?

A. It does. From what they tell me it does.

Q. He is only there a week and then his room is occupied by another appendix patient?

A. It matters. You have only to talk to them to find out.

Q. But not to the same extent it matters to people who are going to be inmates of this institution for a year or 2 years?

A. No, probably not. In my experience both of

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them complain equally bitterly about being in hospital, and want to get home.

Q. Are you serious about that, equally?

A. Yes. "When can I go home?" That is the first thing they say.

Q. Take the case of a man who goes in for an appendix operation in a city hospital with a special surgeon; he knows he is going in for 4, 5 or 6 days; he knows his business is not going to be appreciably disrupted and he knows his wife and family are not going to be prejudiced to any extent worth talking about. Do you say he is in the same position as a man who knows he has to give up his employment for 2 years and who has to leave his wife and children on the State? A. No.

10

Q. Is not one much greater mental stress than the other? A. Yes.

Q. Isn't the mere fact that one stays a year, while one stays 5 or 6 days, an all important matter in deciding that the former needs serene and attractive and idyllic surroundings, and the other it does not matter, as long as it is an up-to-date clean hospital; it does not matter where he is? A. Within limits, yes.

20

Q. Just to leave the matter, by way of illustration; If you take a general hospital, it might have a room occupied by a child with tonsillitis? A. A ward as a rule.

Q. Children who are there getting small operations or the like, and it does not matter much to them whether they are at the Scottish Hospital, the Lewisham Hospital or the North Shore Hospital? A. The general layout of the ward, that is what they complain bitterly about in no time. You are asking for their surroundings and I am giving you my impression of what the children's impressions are of their surroundings. Those surroundings, and the ward they are in, it reacts badly on them and the sooner they get out the better.

30

Q. You are not suggesting now, in the light of the three or four illustrations I have given you, that a general hospital needs as much land and forest and garden around it as a tuberculosis sanitorium?

40

A. The general hospital gets over it by having a convalescent home.

Q. Isn't that precisely what it is out at New Lambton?

A. It is a chest hospital with as much land as a general hospital has got with the convalescent home, and that is all it requires.

Q. It is a convalescent treatment hospital?

10

A. No, it is a treatment for active cases and once a case is arrested it is discharged. It is not a convalescent hospital. As soon as a case becomes arrested it is discharged from the hospital and is treated elsewhere, at home.

Q. What I am putting to you is that it is treatment over a long term? A. The term varies, yes.

Q. And it is not a chest hospital in the sense of a chest department in a general hospital?

A. No, it should be called a tuberculosis hospital.

20

Q. Would you agree it would be better named a tuberculosis sanatorium?

A. Yes, as I said before it was a minor sanatorium.

Q. I want to ask you whether you ever do any reading about tuberculosis? A. Yes.

Q. And would you agree that leading American Physicians are world famous on this subject?

A. They have a standing in the world, yes, I suppose you could say they were famous.

30

Q. Have you ever heard of any of these works which deal with tuberculosis?

A. I have heard of them. I have read digests of them mostly.

Q. What works have you read?

A. Quarterly magazines, the Year Book of Medicine and the Year Book of Tuberculosis. They are the annual digests of world thought that are published yearly. Those are the ones I generally read.

Q. Do you know any leading American works dedicated to T.B. and nothing else?

A. I could not mention it off-hand, no.

40

Q. Let me suggest there is such a thing as the

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American Review of Tuberculosis?

A. I have heard of that. I have read extracts from that.

Q. How often do you think that comes out?

A. I do not know. Three times a year I think. I would not be sure.

Q. Would you agree that is one of the authoritative publications on this disease in which leading American specialist physicians write?

A. The Americans lean on it a lot. The Continental authorities don't. There is considerable disagreement. It is a leading authority in America. 10

Q. The American leaders of their profession are world authorities?

A. Some of the world authorities. British authorities and some of the Germans are just as solid.

Q. Would you agree in America, in institutions of this sort, they treat non-active patients as well as active patients? A. I did not know that.

Q. And put them into institutions of this sort for lengthy periods? 20

A. That is not my reading of most American authorities. The trend in America is the other way.

MR.MACFARLAN: Could my friend indicate the date of the publication?

MR.WALLACE: November, 1954.

Q. Would you say a person was an active patient if he showed a negative culture?

A. Yes, he could be active - that statement depends on your definition of "active". 30

Q. What is your definition of it?

A. When an x-ray shows what the radiographer regards as no evidence of activity, when there are no tubercule bacilla, when the B.S.R. is normal and when the patient has not regained his weight; when those criteria are satisfied he is non-active, but the Americans have a system which class some people as active for some years. British specialists don't use the word "active" in the same way as the Americans; and even in America the trend is not to put these people in the hospital but to 40

rehabilitate them in their own homes and get them back into their own jobs without the stigma of disease, and restore them to useful citizens.

Q. Can you point to anything in writing?

A. Yes, if I had access to my library. I could do that if necessary. It would take some time.

Q. Where did you last see that in writing?

A. I cannot remember now.

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10 Q. Was that something you thought of on the spur of the moment? A. No.

Q. Where do you think you would look to find that in writing?

A. I think the last article I read on that was the British Medical Association Journal in 1954.

Q. We are speaking of America?

A. The article was discussing the general trend of the treatment and rehabilitation of tuberculosis patients.

Q. In America?

20 A. No, it was the world trend. A general article.

Q. In America, you said specifically did you not?

A. America is part of the world and therefore it mentioned American opinion. I said it was discussing the world trend. America is part of the world and it discussed the American trend as part of its world review, if I remember, generally. I think it was in the British Medical Association Journal, but I am speaking from memory. I am only speaking from memory of what I read.

30 (Luncheon adjournment)

At 2 p.m.

HIS HONOR: Q. You are on your former oath? A. Yes.

MR. WALLACE: Q. You used the phrase this morning "acute case". Would you give me a statement of what you understand by an acute case in that context?

40 A. An active case, a case that is active. I was referring, I think, to the cases that were treated in Rankin Park Hospital, I used the word "acute". The word "active" would have been the more appropriate word.

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Q. Did you have any concept of sudden onslaught?
A. No, not when I was using that word.

Q. You used the word "arrested"? A. Yes.

Q. Would you just illustrate that?
A. With the disease smouldering but no longer active and progressing.

Q. Supposing an active patient had been treated and the stage was reached when there was stability of lesion and no active radiological sign of changes; would you say as soon as that stage was reached that the disease was arrested? 10
A. If the blood sedimentation rate was down and weight had been regained and the patient was showing no toxic signs, yes.

Q. Do you know what I am suggesting is the fact that at Rankin Park they retain, for ordinary moderate cases, they retain the patient there for six months or so after the patient has achieved stability of lesion and negative results radiologically?
A. I did not know the period was 6 months, but -- 20

Q. That is of your own knowledge?
A. In my experience of the patients I have had there, they do not.

Q. Do you know also that during that period further treatment is administered to them of various types including occupational therapy, walking exercises and other matters?
A. That is the routine treatment.

Q. Do you agree with this - he was speaking of earlier occasions - the effective way to combat consumption and other infectious fevers, the early pioneers knew, was to assure for each citizen good air, pure water, adequate food and pleasant and happy surroundings both at work and at play. Do you agree with that? A. No. 30

Q. Do you know this publication, a Journal on Pulmonary Diseases entitled "The American Review of Tuberculosis"?
A. I have never heard of it. I do not know of it.

Q. I am reading from September, 1954, issue being an article entitled "Resolved Problem in Tuberculosis" by Rene Dubos; you are not familiar with 40

that? A. I have heard of Dubos.

Q. You have heard of him as a man of high standing in this field? A. Yes.

Q. Do you agree with this - I am reading from the November issue of that publication being a report of a panel discussion held at the annual meeting of the American Trudeau Society, Atlantic City, New Jersey, on the 20th May, 1954; Dr. Tucker was the chairman and Dr. Mitchell was apparently a leading participater and Dr. Medlar and Dr. D'Esoppo - are those names at all familiar to you?

10

A. Never heard of them.

Q. Listen to this question put during this panel discussion by Dr. Tucker, "Dr. Mitchell, do you think that all patients should be hospitalised at the start of any microbial therapy when there are adequate facilities? Dr. Mitchell - Yes I do and my reasons if I may give them are that it is difficult to get patients to follow out the instructions about their chemo therapy and continue long after they have been feeling well to take P.A.S. when it makes them sick for their stomachs, to do all the things, to follow themselves up closely, unless they have been brought into realisation of the nature of tuberculosis. The best way to learn that is in contact with other patients, with nurses, doctors and other staff members who can teach these things to them." Do you agree with that?

20

A. That refers to active cases and I have already said I agree with that. He said at the beginning they were active cases.

30

Q. Do you agree with Dr. D'Esoppo who said this "I think patients should not be discharged from the hospital unless their cultures are negative and unless they are expected to stay negative; in other words, I would not discharge a patient from a hospital if he had an open cavity no matter how long his cultures were negative. I would like to be able to say that those cultures are not only negative but they will stay that way?"

40

A. No, I cannot agree with that. I have a number of patients in that condition who have been earning their livelihood for 5 and 6 years and there is no need to enlarge about them at all.

Q. You would not say that a doctor who believed

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that would be wrong and Dr.Morgan would be right?
A. Not necessarily. He has as much right to his
opinion as I have to mine.

Q. Would you agree that if doctore believe and
state their belief that this land, this area of
300 acres, has played a material part in the treat-
ment given over a long period at Rankin Park, they
might be right - (Objected to).

Q. I am putting this to you, that you have already
disagreed with certain views that I have read out
to you. You concede that they might be right in
these views and you may be wrong?

10

A. Nobody is infallible.

Q. Will you further concede that if some doctors
say that this land has played a material part it
is conceivable in your judgment that they could be
right? A. Again, nobody is infallible.

Re-Examination:

Re-Examination.

MR.MACFARLAN: Q. Those instructing my learned
friend have instructed him to put to you that you
have criticised Dr.McCaffrey on certain occasions?
A. I have.

20

Q. Do you know of any reason why you should not
criticise him?

A. No, it was done quite openly and without any
malignant feeling.

Q. Have you criticised him to his face?

A. I think I have. I would not remember.

Q. Have you ever said anything behind his back that
you would not say to his face?

30

A. Nothing that I would not have said to his face.
There was nothing malignant about it.

Q. Have your relations with him always been
friendly? A. As far as I know, yes.

(Witness retired)

(Case for Plaintiff closed)



CASE FOR DEFENDANT

MR.WALLACE: There is a doctor from Sydney whom I would like to take out of logical order.

MR.MACFARLAN: I will assist my friend but I may have to ask the doctor to stay.

No. 5.

JOHN HUGHES

Sworn, Examined, Deposed:

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J. Hughes.

Examination.

10

TO MR.WALLACE: My full name is John Hughes. I am a duly qualified medical practitioner and I have certain degrees.

Q. Do you hold some official position?

A. I am the Deputy Director of the Tuberculosis Division of N.S.W.

Q. Is that the State Department of Health? A.Yes.

Q. The Department of Public Health? A. Yes.

Q. How long have you been in that office?

20

A. 21 years - not as Deputy Director for that time but I have been in the Tuberculosis Division for 21 years.

Q. What have been your duties?

A. Admission of patients to Sanatoria, advice to patients and their relatives and friends, provision of anti-T.B. Clinics and Sanatoria, examination of mass surveys; I suppose that would cover it all.

Q. Have you as a medical man directed your mind and researches especially to the subject of tuberculosis over that long period?

30

A. I have studied nothing else but tuberculosis for that 21 years and 7 years before that I was an Honorary on a clinic at Surry Hills, an Anti-T.B. clinic in Surry Hills.

Q. Are you conversant with the various hospitals in this state which treat T.B. and with the sanatoria which also treat some stages of the patients?

A. There is not one hospital or sanatorium in N.S.W. that I have not visited.

Q. Take Rankin Park, when were you first acquainted

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with that locality and institution?

A. Back roughly in about 1944, if not a little earlier. I knew of it but I would be acquainted with it in 1944.

Q. It was a Commonwealth Government institution and emergency hospital in 1941, was it not?

A. Yes.

Q. That was an emergency general hospital, nothing to do with T.B.? A. No.

Q. About that time certain additional acres - 10 10
acres being that red triangle an Exhibit.

A. Your Honor. Perhaps I could tender this plan. It shows the dates of acquisition which might have some bearing.

(Plan tendered and marked Exhibit 2).

Q. You observe that red triangle on Exhibit 2. I was telling you, subject to proof later, that that 10 acres was purchased at or about the time when this was an emergency hospital for national purposes during the war, an emergency general hospital. 20
Then at that stage was there some suggestion of a foundation of a tuberculosis institution, at a later stage? A. Yes.

Q. I think you had various discussions with certain governmental authorities, didn't you? A. Yes.

Q. And with the Newcastle Hospital authorities? A. Yes.

Q. And then were you asked to come to Newcastle and did you come to Newcastle about the middle of 1944? A. Yes. 30

Q. Did you inspect certain land at New Lambton adjoining that emergency hospital?

A. Yes, with Dr. McCaffrey and the late Mr. Rankin.

Q. The late Mr. Rankin was then Chairman of the Hospital Board? A. Yes.

Q. Did you walk over and inspect that area - I don't mean every particle of it but you walked through and across it being about 220 acres on the outside of the emergency hospital area - is that so? A. We walked out on the road and it was 40

pointed out to me where some more land was to be purchased and I got out on a height where it could be seen.

Q. In the result did you give certain advice about the acquisition of a general area in question?

A. I thought it was a very - (Objected to).

Q. You gave certain advice, didn't you? A. Yes.

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10

Q. In the result we know that the 220 acres was acquired, on the 18th April, 1946 - that is when the resumption was concluded; there was a resumption Your Honor, I now tender the Gazette, fol.963, N.S.W. Government Gazette No.41 of the 18th April, 1946. It has a description attached to it.

(Above Gazette tendered and marked Exhibit 3).

Q. Subsequent to the acquisition of the land in that way were you thereafter on the premises of the institution? A. Yes.

Q. How long?

20

A. When it was first opened I would go out once every three months, then once every six months and I have gone out regularly to see the institution until the last two years. I had not seen that for two years.

Q. 1952 - what was the last time?

A. I would have been there in 1953 and been out to the institution.

Q. On your visit did you observe how the institution was conducted and the types of treatment being given? A. Yes.

30

Q. Let me come back to other institutions for a moment. If you take Rankin Park, what sort of institution elsewhere in the State would it compare with? What would be a comparable type of institution - (Objected to; argued).

Q. I put it this way, first of all do you regard this as a chest hospital?

A. No. I regard Rankin Park as a sanatorium.

Q. What different objectives or purposes are served by those respectively?

A. If I may give examples of others, taking the North Shore Hospital, they would have a thoracic

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unit. They would do their immediate surgical work in that unit and then transfer their cases to Princess Juliana Sanatorium. Here I would consider, although there is no named thoracic unit at Newcastle Hospital, there are beds that are devoted to tuberculosis patients who are acute or in need of active treatment. That would be done and then they would transfer them to Rankin Park and it is serving the same purposes as the Princess Juliana (Sanatorium). The same condition of affairs arises at Prince Alfred and Sydney Hospital. There are acute cases which were admitted to the T.B. State Ward at Prince Alfred, received their immediate treatment but could not possibly be kept in those hospital beds for the long periods that are so necessary in the treatment of tuberculosis and then would be transferred to the Queen Victoria Home at Wentworth Falls, to Waterfall or to the Queen Victoria Home at Thirlmere, so that I regard this as serving an equal purpose to any one of the Sanatoria in the State. In fact I regard it as the sanatoria of the north. 10 20

Q. What is the treatment that is given at the Sanatorium?

A. Bed rest, good food, fresh air and exercise. Plus the treatment mentioned this morning. The Chemo therapy.

Q. In your opinion would all that entail a long period of time?

A. Yes. We would always tell any patient that was interviewed that there would be a minimum period of twelve months treatment, so that when they are being admitted to the Sanatoria they know they would be in that Sanatorium for at least 12 months. 30

Q. What in your opinion and experience are the requisites of a sanatoria of that type?

A. Able nursing staff, situation where there is abundant fresh air, good cooking and good food and attention. With arrangements made so that the patient can gradually test his stability by exercises. Where it was occupational therapy by the walks and he would be under the supervision of a medical man during that period. 40

Q. Are those requisites present in the case of Rankin Park?

A. To every degree. Our Department always recommends -

Q. At all events, you say to every degree?
 A. To every degree.

Q. You know the area in question, you know that the total area is about 327 acres. You have been over the land or seen it on many occasions, have you not? A. Yes.

Q. You visited the hospital over the period from 1947 onwards to 1953; is that so? A. Yes.

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10 Q. In your opinion did the presence of that land in its forest-like condition, contribute itself any treatment which is given to these patients throughout those years?

A. Yes, I think so because it is the only Sanatorium in the State that is literally within a City. Again it is within a City that is highly industrialised, so that those parklands are the lands that are supplying the fresh air.

Q. You heard Dr. Idris Morgan's evidence this morning did you not? A. Yes.

20 Q. You were in Court? A. Yes.

Q. I take it you do not agree with what he said about that?

A. No, I do not agree at all upon that point.

MR.MACFARLAN: Q. That is about the parklands I take it? A. Yes.

30 MR.WALLACE: Q. In view of Mr.MacFarlan's question to me, I will point out that what I ask you is whether there had been any material part played in the treatment by the Hospital of the land; the land I mean is the whole 327 acres, that area?

A. Yes, I meant the whole land was, to my mind and from my experience, a necessary adjunct to the hospital.

Q. In your experience with that Sanatoria of a similar nature, did they all have large areas of land or are they all set in large areas of virgin or semi-virgin country (Objected to; discussion ensued).

40 Q. One part of Dr. Morgan's evidence, I think I fairly summarised one part of his evidence when I say he said that a sanatorium of this type did not

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require any greater area of land than did a general hospital or a true chest hospital required. Do you agree with that?

A. No, I do not agree with that.

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MR.MACFARLAN: Q. You were never connected with this Rankin Park Sanatorium, as you call it, except in the capacity in which you visited the hospital from the Department? A. Yes, that is my capacity.

Examination
- continued.

Q. By the way, have you been in private practice? 10
A. Yes.

Cross-
Examination.

Q. When?

A. I graduated in 1920. I was in private practice in New South Wales and Queensland and then in Macquarie Street while I was on the Honorary Staff at the Chest Hospital Clinic.

Q. In the last 21 years I think it is?

A. Since 1933 I have not been in private practice.

Q. You will agree, won't you, that in recent times there has been a considerable change in the method of treating T.B. patients? (Objected to: allowed) 20

A. Yes, I know there has been a considerable change I have to know because I am in touch with the various sanatoria and I am the intermediary with the relatives who cannot visit their sick patients.

Q. I asked you whether there had been a change and your answer to that is Yes? A. Yes.

Q. And a considerable change too, is it not?
A. Yes.

Q. And a change of great significance in the results which are produced? A. Yes. 30

Q. And that change of method first became known as a matter of general use about 1948, did it not?
A. Yes, it was an added method.

Q. I will come to that. This change first became known about 1948? A. Yes.

Q. And that was through the discovery of the use of various drugs? A. Yes.

Q. The drugs which we heard about this morning from Dr. Morgan in his evidence and which are taken or prescribed by doctors to be taken by patients in the way Dr. Morgan prescribed?

A. Yes.

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10 Q. It would be correct to say, would it not, that in the case of all T.B. patients who now come within the control of a medical man for treatment, that at some stage of the treatment they are treated by the administration of these drugs?

A. Almost without exception.

Q. Of course there may be something in addition. I am talking of the treatment now? A. Yes.

Q. There is something in addition to the administration of the drugs such as thoracic surgery of which you spoke? A. Yes.

Q. But that surgery is applied as a remedy in a comparative small number of cases, is it not?

A. Yes.

20 Q. Virtually speaking, it is the drugs which produce the results in the - ?

A. The drugs and the rest.

Q. The rest of course is an ordinary kind of treatment which any medical person prescribes for a patient when he is undergoing surgical or - another form of medical treatment; is that so?

A. May I say more than just Yes?

Q. Can you answer Yes to that first?

A. I would have to add a little more.

30 Q. Very well, if you have to?

A. As a department we suggest that drugs are not given without the patient having some preliminary sanatorium or hospital treatment. In other words the drugs should not be used without hospitalisation and rest - not just rested at home.

Q. And the rest is used, to put it another way, collaterally with and concurrently with the administration of the drugs? A. Yes.

40 Q. Of course the whole picture of the T.B. sufferer was a pretty bleak one from the medical point of view, was it not? A. Yes.

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Q. He did not have much future to look forward to, either from the point of view of recovery or from active participation in the affairs of life, did he? A. No, the recovery rate was much smaller.

Q. And almost exceptional?

A. No, but it was much smaller than it is at present. You hold out the hope for the future much more genuinely.

Q. Previously, before these drugs, you actually could not hold out hope for the future in some cases? 10

A. It would have reduced the time of treatment by at least half. You can speak hopefully to your advanced cases now. You give him a chance of recovery, whereas before you were only giving him a palliative to go into hospital and rest, and pretend to yourself that he would recover. Now it is very hopeful.

Q. Whereas the rest was in the old treatment, a rest of practically indefinite duration? A. Yes.

Q. Of course, it is quite common, is it not now, under the present treatment for sufferers to resume work? A. Yes. 20

Q. And physical work?

A. Yes. Of course we think that light jobs are easier to obtain now and we can get some of our people back to work. Now there is such a thing as a light job and a person who has been in a Sanatorium can really do it reasonably well. I think that economic factor has helped our patients.

Q. Do you believe in the magic of the mountains? 30

A. No.

Q. That has gone right out?

A. Yes. As a matter of fact at times it was harmful.

Q. A person can contract it in any climate?

A. Yes.

Q. And he can virtually be cured so far as his Chemo therapy is effective in any climate?

A. Yes, to give them the right supervision.

Q. You understand the idea of the disease being arrested? A. Yes. 40

Q. I take it that you would agree with the definition of arrested disease that Dr. Morgan gave today?

A. Yes. You arrive at a stage where there is no radiological evidence of activity, no positive sputum - no toxic effects. As Dr. Morgan said you seek to use the word arrested and not use the word cured.

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10 Q. He was right when he said that?
A. Yes, I agree with that entirely.

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Q. You would also agree that when such a stage has been reached in the treatment of a particular patient that a desirable form of future treatment is a rehabilitation treatment?

Cross-
Examination
- continued.

20 A. Yes. Once you have decided the disease is arrested, as I have mentioned those three points, no sputum, negative culture, then you test him out as regards his activity. Testing him in rehabilitation work or in walks to see whether he may retain and hold that arrest for a period of say three to six months.

Q. I think you have agreed with me that once you are satisfied that the disease has been arrested then - ? A. Return them to their homes.

Q. Return to his home and if possible to his work?
A. Yes.

30 Q. You agree with me then that it is desirable in a broad sense, including the psychological factors, with the medical factors, that the patient should be treated in his home and got back to work as soon as possible?

A. Yes, as soon as you have attained that desirable state.

Q. You would agree with what Dr. Morgan put on that point in his evidence this morning?

40 A. I will agree with one exception. He said that it was arrested and then left your institution. I have maintained they should then be tested by your medical officer for a period of three to six months by doing some work or by doing some walks and having held that arrested condition over that period of six months then I agree with Dr. Morgan in sending the patient home.

Q. Your opinion really is, on that point, is a

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difference of opinion with Dr. Morgan? A. Yes.

Q. You acknowledge, I take it that there may be a difference of medical opinion on that point?

A. There has been. As far as our sanatoria and institutions are concerned, I am sure I can make the statement that what I have described on that period of testing after the arrest of the disease is uniform. No person is discharged until it is seen at a later stage -

Q. Until it is seen that it has been arrested? 10

A. Yes.

Q. You will agree that for a number of years medical opinion held the view that there was some magic in the mountains, did they not?

A. For quite a number of years we have decried that in New South Wales.

Q. Did you ever hold the view yourself at any time?
(Objected to)

Q. Did you ever hold - ?

A. We have all been taught in our text books - the text books were written from England and there was the object to get the sunshine present in the magical climates of Switzerland. That had always been taught. 20

Q. There are mountain sanatoria in England and Scotland?

A. Yes. The greater percentage were sent over to sunny areas in Switzerland.

Q. What advantages was it believed that a patient derived from residing in the mountains? 30

A. I think only a matter of sunshine. That is my idea of it.

Q. Have you any knowledge of the freshness of air or the period - ?

A. No, actually in New South Wales we always advised that certain types of cases should be kept off the mountains. We found that the western winds were very harmful to the person with a throat - in the late stage of advanced disease. We decried the mountains. 40

Q. That is for certain T.B. patients? A. Yes.

Q. Do you know of the educational service of the Anti-Tuberculosis Association?

A. Yes, they always send me their bulletin.

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Q. Do you read them? A. Yes.

Q. Do you know the people who write them?

A. Yes, I know the staff very well.

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Q. And they are specialists in their T.B. field?

A. Yes, they are good men.

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Cross-
Examination
- continued.

10 Q. I would like to read this from their bulletin of September, 1953. It purports to come from the Diagnostic and Research Clinic, Surry Hills, Sydney. You came from there? A. Yes.

Q. Where you were at one stage? A. Yes.

Q. "It was believed - and the belief still holds in a few quarters - that the more miles a T.B. patient puts between his home and a health resort the better chance he had for recovery. Sanatoria were built in the most mountainous districts, in distant flat lands and in far away forests. Some

20 of these places were so far away that patients underwent severe strain, or often died, on the long journey from homes. The difficulties facing relatives and friends wishing to see a patient were so great that few visits were ever made."

You will agree that sums up the view that was held?

A. We cannot bring our sanatoria into the City except in the case of Rankin Park which we are discussing at present.

30 Q. Do you agree with this "the role of climate in the modern treatment of tuberculosis is relatively insignificant"? A. Yes.

Q. We know now that just as tuberculosis can be contracted in any climate so can it be cured in any climate. Extremely hot and humid places are not ideal for treatment, but provided adequate nursing and surgical facilities are available and provided the area is sufficiently free of dust and smoke even these do not present a real problem". You agree with that? A. Yes.

40 Q. I think you have expressed the opinion that the presence of this wooded area at the back adds something to the treatment of patients?

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A. Yes, I sincerely do think. I feel that that helps the atmosphere of fresh air and I feel that a big space is of great help and I think that it is an aid to treatment and is essential for the treatment.

Q. Do you suggest that there is any one particular factor that the presence of this bush or any background contributes?

A. Yes, it must contribute towards the fresh air because it prevents the building upon the allotment. As I said one essential treatment is fresh air. 10

Q. It contributes to the fresh air?

A. I think so.

Q. You say it contributes to it because, in your own words, it prevents building up on the allotment?

A. You have not got closer settlement to the hospital. We all have taken it for granted that if there are parklands we have more fresh air. 20

Q. There is nothing to do with the disposition of smoke or fog in your understanding of the part which these trees play?

A. The only matter that is on my mind is the fact that this is an industrialised city with a lot of fog and smoke. I would expect them to have a fairly large allotment attached to the sanatorium.

Q. Is it the opinion you are expressing that this area of 300 odd acres behind the building, in some way reduces the smoke or fog that would otherwise affect this building and the patients? 30

A. It is my opinion that this space area is essential to supply a greater quantity of fresh air to patients in that institution.

Q. I put it to you, is your opinion that the presence of this wooded area of about 300 acres behind this building, in some way contributes to the prevention of smoke or smog or fumes, penetrating the buildings and the patients?

A. I think it is getting too scientific for me to express an opinion. 40

Q. You could not express an opinion on it?

A. No.

Q. You are not prepared to say affirmatively, to His Honor, that the presence of these trees in any way assist to prevent smoke, smog or fog penetrating these buildings or the places where the patients are?

A. Except if they were there you might have another industrial building and contribute more smoke and smog.

10 Q. It might depend on the zoning?

A. I do not know.

Q. Have you considered the zoning of that land?

A. That is beyond me.

20 Q. Apart from the consideration of another industrial building being put there on this sloping area to the west of these buildings, do I express your opinion correctly when I say that you are not prepared to say that these trees contribute in any way to the prevention of smoke or fog fumes penetrating the buildings or the area where the patients are?

A. Yes, I am not prepared to say that.

Q. Of course all the verandahs in these buildings face in the opposite direction from the tree area?

A. Yes, that is very similar to Boddington.

Q. But it is so in this case, is it not? A. Yes.

Q. In fact, they all face the direction of Newcastle City and the prevailing wind, at any rate in the summer, is from the direction of Newcastle City?

30 A. I do not know. I only heard it stated this morning. I do not know the prevailing wind in Newcastle.

Q. Had you never considered the prevailing wind of Newcastle at any stage when you were visiting these buildings? A. No.

Q. Did you ever consider at all the question of smoke or fog in relation to these buildings at Rankin Park?

A. Yes, being in an industrial city like this.

40 Q. Did you then consider whether or not the wind would be likely to blow them there or blow the fog and the smoke there or blow them away?

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A. I thought the local authorities had that consideration. They would know the prevalent wind.

Q. The fact is you did not go in to a consideration of the prevailing wind at any time. You knew on all occasions of your visits that Newcastle was an industrial city? A. Yes.

Q. And had been for some time of course? A. Yes.

Q. Is not this the situation that you did not really at any time consider there was any practical possibility of smoke or fog reaching the buildings at Rankin Park? 10

A. I think the fog and smoke would reach the buildings - practically all buildings in Newcastle would they not? That is what I think if you ask my opinion of that.

Q. Is that the first time you thought that way, smoke would reach Rankin Park?

A. No, I say I have always taken it there would be fog and smoke in an industrial city like Newcastle.

Q. If the trees in this 300 acres at the back of the buildings - if you are not prepared to say affirmatively that they do prevent the fog and smoke, can you tell His Honor what in your opinion is any other particular factor that they contribute towards the running of these hospitals at Rankin Park? 20

A. They have made a bank and stopped the industrial area creeping up on the hospital.

Q. Are there any other factors or reasons other than that? 30

A. Not that I can recall at the moment.

Q. Do you regard the Rankin Park Sanatorium as being an ideal set-up?

A. I consider it the show place in New South Wales.

Q. When was it opened?

A. I could not remember the date.

Q. You may assume it was July, 1947. Apart from one or two factors you consider it the show place of New South Wales?

A. One of the show places of New South Wales. 40

Q. You consider the gardens and paths and flower beds may assist in a physiological way in perhaps rehabilitating these people? A. Yes.

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Q. Are they well laid out?

A. Not except that compared with other - only as it compares with other Sanatoria. That is the only way I can express my opinion.

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Q. Of course none of these paths or gardens face out towards this 300 odd acres, do they? A. No.

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J. Hughes.

10 Q. You will agree with me that none of the land at the back or the western side of this group of buildings is developed in any way at all for the purpose of walking around and looking at the 300 acres?

Cross-
Examination
- continued.

A. There are paths through the trees - tracks.

HIS HONOR: You are on your former oath.

20 MR.MACFARLAN: Q. Perhaps if I just read you one further passage from this bulletin, Dr. Hughes. This is the same one, September, 1953. The bulletin from which I am reading is headed: "Changes in approach to treatment of T.B." and it says, "Prior to the era of surgery and chemotherapy, the treatment of tuberculosis depended on three ingredients - rest, diet and climate. During the last 50 years, the importance of two of these ingredients - diet and climate - has gradually diminished, being replaced by greater reliance on rest, chemotherapy, collapse therapy and surgery". Collapse of the lung? A. Yes.

30 Q. And surgery generally?

A. Yes, it has turned to a greater extent to chemotherapy and collapse.

40 Q. When you said in answer to my learned friend, that one of the four requisites you mentioned, "food, good" you say, I take it, that you use that phrase "good food" having regard though to the overall importance that they had been placed on diet previously; but you say that good food is necessary, but diet in itself does not play so important a part as before?

A. That bulletin, that Association and my Department are really working with a great percentage of people who may not have good food, or may not in the earlier days have had good food.

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Cross-Examination - continued.

Re-Examination.

Q. You mean in the earlier days of the disease?
A. In the earlier days of our treatment. You meant diet as meaning special diet?

Q. Yes? A. No, I just mean liberal food.

Q. But no special diet?
A. Not anything special.

Re-Examination:

MR.WALLACE: Q. You spoke to my friend of the necessity in your view of retaining the patient after the first arrest of the disease for a period of from 3 to 6 months in the institution? A. Yes. 10

Q. And during that period of 3 to 6 months, which you describe as a testing period, what sort of treatment is given?
A. You would probably carry on your chemotherapy and test the individual by little tasks of walking, maybe walking for a quarter of a mile and then increase it up to a mile. You might help the patients by encouraging them to go for some rehabilitation treatment. For instance, some of the girls may be taught typing, and would go along to the typing room there and have typewriting lessons, but it would vary, to put an effort on their body and see that the effort did not break them down. 20

Q. And I think in this Rankin Park they do have quite an extensive occupational therapy department?
A. Yes.

Q. For that particular period of training?
A. Yes.

(Witness retired) 30

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C.J.McCaffrey.

No. 6.

CHRISTIAN JAMES McCaffrey

Sworn, Examined, Deposed:

MR.WALLACE: Q. You are a legally qualified medical practitioner? A. Yes.

Q. How long have you been a medical practitioner?
A. Since 1924.

Q. How long have you been associated with the Newcastle Hospital? A. Since 1927.

Q. And were you for some years after you were first associated with the hospital - what were you doing?
A. I was a Resident Medical Officer for 2 years. I was in the Pathology Department for about 2 years subsequent to that, until I became Superintendent, and for some time after I became Superintendent, I was the Radiologist.

Q. You have had experience and association with the disease of tuberculosis?
A. As administrator, yes.

Q. And as radiologist? A. Yes.

Q. And as Superintendent your duties include sitting in and presiding over perhaps technical activities and discussions, concerning various activities of the hospital?

A. Yes, I attend all meetings to discuss any technical matters of that nature.

Q. You have been Superintendent - by that I mean in charge of all departments of the hospital?

A. That is correct.

Q. Since when? A. 1939.

Q. In 1941 or thereabouts did the Commonwealth Authorities require some emergency hospital in this district? A. Yes.

Q. And was Rankin Park, as it was then and as we now know it selected for that purpose? A. Yes.

Q. And at or about that time was the 10 acres triangular area acquired by the hospital?

A. It would be about that time. I am unaware of the exact date.

Q. What period were the then buildings used as an emergency hospital?

A. They did not ever have to be put into operation for that purpose. They were what they said, buildings which were to be used as an emergency hospital in the event of an emergency. Fortunately that did not happen.

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Q. It was about the time of the Japanese scare?

A. Yes, they were commenced in 1942 and if you remember the nature of work at that particular period, the original building was very much in an unfinished stage. The four walls, the floor and the roof put on and certain essential services put in and the finishing was done at some later date.

Q. Prior to 1941, what were the then buildings used for? A. As a convalescent ward.

Q. Of the Royal Newcastle Hospital? 10

A. Male and female.

Q. Did it continue to be so used up to what date?

A. The other buildings or the emergency ones?

Q. Any of the buildings?

A. The convalescent home so called ceased to be used as a convalescent home 3 or 4 years ago and then it became an ordinary sub-acute ward of the hospital.

Q. Up to 3 or 4 years ago was that building used continuously from prior to the war? is that what you say? 20

A. The convalescent home area, yes. I think for a short period during the war it was closed down.

Q. For what time?

A. I do not recall. It was only a short period.

Q. Was it then being used as a convalescent, etc., home in 1945 and 1946? A. Yes.

Q. When was the main Y-shaped building erected, the one we now call Rankin Park? being a building numbered 2 on Exhibit 1A? 30

A. We started that in 1942.

Q. And work continued on that spasmodically until about 1946 or later? A. Yes.

Q. We know that 220 acres was acquired by resumption in April, 1946. It has been given in evidence here. At that time was Rankin House completed, that is the building numbered 2 on Exhibit 1A? A. Which is building No.2.?

A. Rankin House - the Y-shaped one?

A. It could be nearly said to be completed, that 40

building. I have a little hesitation in being dogmatic in saying that as we were building it with our own labour and it was not contract; and as sums of money were made available. There was never a clear bill or final certificate issued by the architect.

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Q. It was practically completed in April, 1946?
A. Yes.

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10 Q. At that time in April, 1946, and prior thereto when the 220 acres was about to be acquired, was it determined there was to be a T.B. Sanatorium there? A. Yes.

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C.J.McCaffrey.
Examination
- continued.

Q. That determination had been arrived at in 1945, I think? A. Yes.

Q. And from then on it was only a question of implementing the determination? A. Yes.

20 Q. And the acquisition of the 220 acres and the completion of the Y-shaped, No.2 building, were part and parcel of the execution of that determination? (Objected to; pressed; argument ensued).

HIS HONOR: I think the question is admissible. I will note your objection.

Q. And the acquisition of the 220 acres and the completion of the Y-shaped No.2 building were part and parcel of the execution of that determination? A. Yes.

30 Q. The present institution, as I understand the position, did not actually commence as a full-going concern until July 1947 or thereabouts, is that so? A. Yes.

Q. What was taking place between April, 1946 and July 1947 in regard to Rankin Park.?

MR.MACFARLAN: That will be subject to my objection.

HIS HONOR: That will be noted.

WITNESS: We were trying to get staff.

MR.WALLACE: Q. That was an immediate post-war problem? A. Yes.

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Q. And did you get the staff by degrees, so to speak - collect them gradually?

A. No, the Red Cross came to our assistance and an agreement was arrived at between the Hospital Commission, the Hospital and the Red Cross, and they provided the nursing staff. We administered the hospital.

Q. The hospital began in 1947 with the staff so obtained, is that so? A. Yes.

Q. And I think it began with about 31 T.B. patients? A. Yes. 10

Q. And within about 18 months you had about 100? A. Yes.

Q. And it has hovered round the 100 mark ever since, sometimes down to 80 and sometimes a little over 100? A. Yes.

Q. Have you been a frequent constant visitor to that Rankin Park since July, 1947?

A. Very frequent in the early 4 or 5 years. Still frequently. 20

Q. It is something in which you have taken a very special interest, I think? A. Yes.

Q. And did you play any part in the recommendation of the acquisition of that area? A. Yes.

Q. The 220 acres? A. Yes.

Q. And are your recommendations those which go before the Hospital Board? (Objected to)

Q. I will ask this: What was the particular object in the acquiring of the 220 acres? (Objected to; rejected) 30

Q. During those many visits have you seen the treatment which has been given there? A. Yes.

Q. And does the question of the type of treatment come under your general supervision?

A. I must know what is going on. I am not responsible for the treatment.

Q. But any department of your hospital, you must

be completely conversant with?

A. To the best of my ability.

Q. And having regard to the treatment that you know has been going on over those years, 1947 to 1952 both inclusive, can you say whether the area of land, apart from the immediate vicinity of the hospital, particularly 220 acres and other portions of the land which was outside the 3 acres that the pegs enclose, can you say whether that large balance of land has served any purpose and, if so, what; any treatment which has been given to the patients there during those years?

10

A. In my opinion, yes.

Q. You are quite clear on that?

A. Quite definite.

Q. Will you elaborate that answer to His Honor and say why you give that answer, and the reasons therefor?

20

A. In a general hospital, as I have helped administer over many years, the question of land is not so important, provided you have an adequate space for your buildings, provided that you have the hospital sited in a place which is convenient to transport, to the essential services which must be provided; provided that people like your out-patients have ready access to the hospital, and the transport is easy and the hospital centrally situated, the amount of ground is not so important. Something between 5 acres or even for a hospital round about 50 beds, that is considered desirable. These people are generally suffering from physical ailments which are curable and their average bed stay in a large hospital averages something about a fortnight. In a T.B. Sanatorium, or hospital, whichever you like to call it, the position is far otherwise. These people are coming into hospital for a very prolonged period. I need hardly state the stress under which many of these people suffer.

30

Q. You mean mental stress?

40

A. Mental stress and physical stress, but the mental stress is of an extreme order. Many of these people, as other witnesses have said, have been separated from their families. The future is obscure. Jobs may be lost and they have families to look after. They are uncertain as to the course of their disease and it is very necessary that these

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people should be taken into a satisfactory environment and that they should be given the very best medical and nursing care. In the early stages these people are in bed but later they are up and about. Part of the treatment of the disease is that these people shall be placed in the very best possible physical environment, and it is therefore important, and my belief, that in endeavouring or in providing that, we should not only have good buildings, the services and facilities which go with such buildings, but good staff and an adequacy of land.

10

Q. An adequacy of land, in your opinion is 327 acres in excess of what you consider, as a medical man, an adequacy? A. No.

Q. Which would you prefer, more or less? A. More.

Q. Would you regard some substantial increase to it as a reasonable thing, if you could get your way, to acquire more land?

A. If I could persuade my Board to acquire more land, I would do so.

20

Q. And is that view of yours different from or constant with the situation which obtains in other sanatoria of a similar nature? (Objected to; pressed; rejected).

With regard to this treatment, you heard Dr.Hughes differ from Dr.Morgan in a couple of matters, one of them being with regard to the retention of the patient in the institution of this type after the disease has first been arrested, do you remember?

30

A. Yes.

Q. Dr.Hughes indicated in his knowledge of this particular institution, patients are retained there from three to six months? A. Yes.

Q. Would you agree with that? A. Yes.

Q. During that period of three to six months what sort of treatment do they get?

A. Do you wish me to elaborate on what Dr. Hughes said.

Q. Yes. Do they get occupational therapy?

40

A. The objective as I understand it, is fairly simple treatment. Patients in a sanatorium receive the appropriate medical treatment. It is

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10 hoped that such treatment will restore them to a degree of health. It is the ideal, of course, that they should be completely cured, that is, the disease to be eradicated. It is probable it rarely happens so that the target at which they aim is to render the sputum free of tubercule bacillae to ensure with the x-rays it is stable and that the patient's physical condition is stable. As I understand it they are the criteria on which they pass their judgment that the disease has been satisfactorily arrested. Once that stage has been reached it is necessary to be sure that it will stay that way and (2) it is necessary to determine the possibilities of the patient in respect of his work, how he can live and what will be his reaction to his environment when he can go out and how he will face up to the social circumstances which will face him, and therefore it is necessary, once the disease has been arrested, that the patients stay there for a variable period in order to determine those facts.

20

Q. During that variable period do you have a planned programme based on medical grounds, factors drawn up and carried out by the staff?

A. The physicians in charge of the cases have drawn up such programmes of treatment.

Q. Does that include such things as occupational therapy, progressive exercise and so on? A. Yes.

30 Q. And indeed is there quite a substantial occupational therapy department in Rankin Park - leatherwork and all sorts of things of that type?

A. Yes, in fact the problem is now not less but greater.

Q. What do you mean by that?

40 A. Well, you see, it has been said that during that chemo therapy and surgery they improve the chances of recovery of the patient. It has also been said of course that very minimal cases would recover, some 70% of them, without treatment but in those moderate to serious cases surgery and chemo therapy have greatly enhanced their chances of getting back as useful citizens. That being so we have fewer cases dying and modern treatment is more calculated to pose us bigger problems than the older methods where the patients died on us. We are now faced with a deal of work, or rather the physicians are

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faced with a deal of work and a great deal of thought in making these patients, many of whom would previously have died, now fit and useful citizens.

Q. Is that where an institution like Rankin Park plays a particular part? A. That is its function.

Q. The view is obviously held by the Council and its medical witness, Dr. Morgan, that 36 acres in area in this spot is all that the institution has needed and has used for those purposes during these 10 years. What do you say to that?

A. If that were the case I would sooner not see it there. I entirely disagree with that statement.

Q. Something has been said about facing the north west. Do you think it would be wise to have buildings like these facing the western sun and the western wind?

A. No, if it is at all feasible in this area buildings should face north east and, if necessary, they should be built with two wings, one facing 20 north and one facing north-east to protect them from the south and the west which are probably our most inclement aspects.

Q. Is that what you attempted to do here?

A. To the best of our ability at the time.

Q. You do get a lot of westerly wind there in parts of the area? A. Yes.

Q. But apart from aspects of purification of the air, generally, would the trees serve any other purpose on the westerly side, in your opinion, 30 these westerly winds? (Objected to).

Q. Would the trees serve any purpose in your opinion with regard to the westerly winds? A. Yes.

Q. I will ask you this general question; when you said you would rather see more than less of the 327 acres, what are the reasons which operate in your mind?

A. I said originally that adequate land was an essential in this type of institution and it is to my mind most important that adequate fresh air, 40 adequate ground to provide that be given or be secured and I don't think that the amount of land

that we desire is excessive; more would be desirable obviously. In a city the more protective land you have the less you are going to be subject to vitiated atmosphere, smoke and fog.

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Q. Would you regard protection from future encroachment on resistance or otherwise as also a factor? A. That is part of the previous thinking.

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Q. Does this land lend itself to any future planning and development for this type of institution?

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10 A. Yes.

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Q. In what regard? (Objected to; argument ensued).

Examination
- continued.

MR. MACFARLAN: I say I may need Dr. Hughes now.

HIS HONOR: I rescind the release which I offered Dr. Hughes.

(At this stage Court adjourned until 10 a.m. Wednesday, 16th March, 1955).

THIRD DAY: WEDNESDAY, 16th MARCH, 1955.

20 HIS HONOR: As to the admissibility of the last question, Counsel referred to Municipal Council of Mosman v. Spain, 29 S.R., 492, and Trustees of Wentworth Park v. Glebe Municipal Council, 17 L.G.R. 146.

30 The question before me is whether an area of $291\frac{3}{4}$ acres is used or occupied by the Defendant for its purposes. Mr. Wallace, for the Defendant, asked me to follow the decision in the second case, in which the Judge of the Land & Valuation Court had regard to what had been done with and on the land, the subject of that case, in the past, and what it was intended should be done with and on it in the future.

As the learned Judge himself said "the source of difficulty is a certain agreement and what has been done and is intended to be done on the land under its provisions". Here there is no agreement affecting the future user. This witness may be able to say that it is intended to use the land in the future for village settlement, but it may never be so used.

40 Mr. Macfarlan relied for his objection upon the

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decision of the Full Court in the first case. There it was held that the word "use" means "substantially use" - nothing turns upon that in this case - and it must be in fact used as required by the section.

In my opinion that decision limits the admissibility of evidence to present use and not to anticipated future use.

I had already admitted evidence to show that in 1946 preparations were being made to convert what was an emergency hospital built during the war period into a chest hospital, and that its commencing period as such was delayed because of the shortage of nurses. That kind of evidence, in my view, is distinguishable from evidence now sought to be led.

10

The evidence so admitted has relation: (1) to work done and preparations made, and (2) to the impossibility of utilising that work and preparation for the time being in the conduct of a chest hospital due to other contingencies. But the evidence proposed to be led here may have relation to a matter which will never be implemented.

20

It would, I think, be straining the imagination too far to suggest that such matter comes within the phrase "is used or occupied" by the Defendant for its purposes, and I uphold the objection.

CHRISTIAN JAMES McCAFFREY,
on former oath:

30

MR. WALLACE: I tender Minute of the 3rd October 1944, of the Board of Directors of the Defendant Hospital under heading entitled "Chest Hospital".

HIS HONOR: I reject the tender and mark it for identification 1.

MR. WALLACE: Q. Is the question of obtaining staff for that hospital an easy one or a difficult one?
A. A difficult one (Objected to; admitted).

Q. Over the years in question the subject of this action, has there been in your view, a desirability to have amenities for the staff in that sanatorium?
A. Yes.

40

Q. Have the staff been in fact using the subject land part of the 220 acres, for the purposes of exercises and walking and so on? (Objected to: admitted).

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Q. Have the staff including the nurses in fact, to your own observation throughout that period of years been using part of the land including that ridge that runs for a thousand or more yards - you remember His Honor and we walked on part of it during the view - have they in fact been using that for purposes of recreation?

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Examination
- continued.

A. To my knowledge, yes.

Q. In your opinion, was that a desirable amenity to give the staff and provide for the staff? A. Yes. (Objected to; admitted).

Q. During the period which we have heard of in evidence after the disease has been arrested and when the patient is kept in the hospital or sanatorium for an interval, a period, of six months or so in moderate cases; have you told me what is the programme, progressive, education, physical and mental of the patient. Is that the position?

A. Yes.

Q. That programme includes occupational therapy and other matter, does it not? A. Yes.

Q. Did it include during those years, progressive exercises by the patient, physical exercises?

A. Yes.

Q. Did those progressive exercises include the walking in the part of the subject 220 acres, along the ridge and so on, by the patients?

A. To my knowledge but not to my observation, yes. (Answer struck out by direction of His Honor upon objection by Mr. Macfarlan).

Q. Have you seen the patients exercising?

A. In the ground, yes.

Q. Into the area that we are speaking of as the 220 acres? A. To my observation --

HIS HONOR: Q. You are only asked about your observation? A. No.

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MR.WALLACE: Q. You know that Dr.Mills is there now,
is he not? A. Yes.

Q. What is his position? A. Chest Physician.

Q. Is he a specialist in tuberculosis? A. Yes.

Q. When did he join the sanatorium?
A. Approximately 18 months ago. The exact date I
do not know.

Q. Has there been any change in regard to the
treatment of the patients before he arrived as
compared with after he arrived? A. No.

10

Q. The progressive education, physical and mental
which was in operation prior to his arrival, is
that substantially the same as since his arrival?
A. Yes.

Q. Something was said about climate yesterday.
When you said yesterday that this land - that is
all the land 327 acres - had served a useful pur-
pose in the treatment of patients during the sub-
ject years and you gave your reasons - were you
considering climate in the sense that appears to
have been used in this case earlier?
A. I was not thinking of climate at all.

20

Q. What do you understand by climate?
A. I understand climate to be a geographical term
affecting the situation of a place in respect of
its position on the earth's surface. I suppose
that would be relevant to the equator and the fact
of its being affected by such facts as height,
humidity, temperature and so on.

Q. Climate in that sense, does that play any part
in your views you have given in evidence regarding
the necessity for this 300 odd acres of land?
A. No.

30

Q. With regard to such matters as smog and smoke,
you envisage those as coming solely from factory
life? A. No.

Q. What else have you in mind?
A. Domestic or commercial.

Q. Is there an incidence, according to your medical

learning, of domestic smoke in relation to the atmosphere in other countries? A. Yes.

Q. Would you illustrate?

A. Yes. (Objected to: discussion ensued; admitted).

Q. I do not want you to give any detailed evidence, but just give by reference to what is happening elsewhere according to medical knowledge in regard to compromising with the atmosphere with residential - what about England?

10 A. In England and Wales last year it was computed that one million tons of smoke (Objected to).

Q. Is this something that you are taught in your medical text books? A. Yes.

Q. And writings? A. Yes.

Q. Is it something that the profession relies upon as part of its training and teaching when planning any institution of this sort and the treatment of tubercule patients? A. Certainly.

20 Q. What is your medical law on that matter again?
A. One million tons of smoke and one million tons of sulphurdioxide were deposited by domestic users alone in one year.

Q. From your observations in an industrial city such as Newcastle, do you say whether or not in your opinion residences built close up to or around an institution of this sort would tend to compromise the purity of the atmosphere of the institution? A. That must follow.

Cross-Examination

30 MR.MACFARLAN: Q. I just want to be clear on what you have said as to your experience. I think you said you graduated in 1924? A. Yes.

Q. You first became associated with the Newcastle Hospital in 1927? A. Yes.

Q. That was as an ordinary resident medical officer? A. Yes.

Q. You then specialised or did pathological work for some period of time? A. Radiology.

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Q. Ultimately radiography? A. Radiology.

Q. In 1939 you then became the superintendent of the hospital? A. Yes.

Q. Did you carry on your radiology work after you became superintendent? A. For some years, yes.

Q. From 1924 to 1927 I suppose you were also in some other hospital?

A. The mental hospital department.

Q. Since you have become superintendent of the Newcastle Hospital, with the growth of the hospital I suppose your work has been principally connected with problems of administration? A. Yes. 10

Q. Do I understand the account you gave in your evidence in chief yesterday to mean that you have not been in private practice? A. No.

Q. Other than in the years when one of the Resident Medical Officers, in the early years of your association with the hospital, you have not been concerned yourself with the treatment by yourself of T.B. patients? A. No. 20

Q. Is that correct? A. That is correct.

Q. Of course it follows that you have never had the opportunity, having regard to those appointments, of treating T.B. patients in a domiciliary way - in their home? A. Did I personally? No.

Q. I think it would also follow, would it not, from your qualifications as you have fairly stated them to be that you do not claim to be a T.B. specialist? A. That is correct.

Q. Did I understand from your evidence that you say that the existence of this area to the west of the buildings in the Chest Hospital, as your minutes call it, is an essential part of the treatment of T.B. patients. I think I understood you correctly to say that? A. Yes. 30

Q. You indeed even said that you consider more land than 327 acres desirable? A. Yes.

Q. Would you say more than 327 acres was necessary? A. No.

Q. Do you say that 327 acres is necessary?
A. The area of land we have I consider necessary.

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Q. Do you agree with me when I say that you consider that 327 is necessary?
A. The figure is something that is arbitrary. I could not answer that question just as it is put.

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Q. Is that because you do not know the number of acres in this area of land at Lambton?

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10

A. I know the number of acres. They have been measured.

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Q. What is the number? A. 327 I believe.

Cross-
Examination
- continued.

Q. You are not prepared to say that 327 acres is necessary for the proper treatment in this hospital?
A. 327 acres somewhere else could be quite different --

Q. I am asking you about this hospital?
A. I think these 327 acres as they are necessary.

20

Q. But you tell His Honor that more than 327 acres though desirable are not necessary?
A. That is right.

Q. You know Marshall Street or the line of Marshall Street, don't you? A. Yes.

Q. Running from Grandview Road in a northerly direction? A. Yes.

Q. And forming part of if not the whole of the westerly boundary of the hospital grounds there?
A. Yes.

30

Q. Will you agree with me that the trees, shrubs and condition of the country of Marshall Street itself on your westerly boundary is the same as the trees and shrubs and country to the east of Marshall Street in your own property?
A. Well, I haven't noticed any difference in the area so I presume it is the same.

Q. There is no apparent difference?
A. No, I could not see any difference.

Q. If you take the area of land immediately to the west of Marshall Street the nature of that country

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is also the same as that to the east of Marshall Street? (Objected to; question allowed). Is that so? A. I imagine so. I have not been over it.

Q. You have no real doubt about that? A. No.

Q. Can you suggest to His Honor why, in your opinion, it is necessary to have the 327 acres up to the eastern boundary of Marshall Street where as it is not necessary to have any land to the west of Marshall Street?

A. When Mr. Rankin and myself were looking at this land trying to work out with Dr. Hughes how much land we should have, I should say we walked that country from top to bottom, and frankly I did not measure 327 acres. I inspected with him and made a decision as to what we thought was the amount of land we should have. Unconsciously I imagine people are affected by land marks and what they know of the topography of the country and we knew of the existence of that bare line and so-called Marshall Street which is just a mark on a map, and while I personally was not willing to settle for less than that area we regarded that as about the right amount of country. In submitting it, some of my people thought we should have --

Q. I am asking your opinion?

A. It was just that I fixed on that as being what I thought, in view of my discussions with those people who knew and being guided by the people with whom I had discussed it, I fixed that as being the minimum area that we should have.

Q. That is then the reason why you consider 327 acres on this site necessary and to the west of Marshall Street not necessary? A. Yes.

Q. Did you have any reason associated with the nature of the treatment that was being given to T.B. patients for saying that 327 acres was necessary and more than 327 acres was not necessary? A. Yes.

Q. What was that reason?

A. It is generally considered - and I believe it - that sanatorium treatment requires the environment and an area of land in order to provide the most suitable conditions for the patient.

Q. What I put to you was, did you have any reason associated with the treatment of T.B. patients for fixing on the 327 acres as being necessary and more than 327 acres not necessary?

A. Yes, the ideal treatment of the T.B. patients requires that.

Q. And that was the only reason you had, that it required 327 acres in that site. Is that right?

A. I am afraid I cannot quite follow that.

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10 Q. I will put it to you this way, you have said to His Honor that 327 acres at Lambton is necessary for the treatment of T.B. patients and you have said that further land of the same character to the west of Marshall Street is desirable but not necessary to the treatment of patients; that summarises fairly your evidence so far? A. No.

Q. What is wrong with that summary?

20 A. I did not say to His Honor that I considered 327 acres were necessary. In selecting the land we picked out a tract of land which we thought was necessary. It happened to work out at 327 acres. I think that is a distinction. I am not discussing exactly 327 acres. I did not know how much land was contained in that area.

Q. You know that that area of land on the western side of your property does consist of 327 acres?

A. Yes.

30 Q. You know that you have told His Honor that that land which incidentally measures 327 acres, is necessary to the treatment of T.B. patients?

A. Yes.

Q. You have told His Honor also that the land immediately adjoining that property described as 327 acres is desirable but not necessary? A. Yes.

40 Q. Can you tell His Honor any reason associated with the treatment and course of treatment of T.B. patients that the land on the east of Marshall Street is necessary for the treatment and the land immediately on the west of Marshall Street is not necessary?

A. Because it must be, to my mind, a question of degree. It would be desirable but not necessary, I imagine to have 1,000 acres or 2,000 acres. It would be very desirable to have an area like that.

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I don't think I could say that it is necessary. We come down to a point ultimately where we say you could not plan the treatment of these patients in an area as low as has been suggested; at least I would not, and there must be some point between the two which is to my mind necessary. It could be 350 acres; it could be 360 acres. To my mind it was most undesirable to come down below the area we selected. That happened to be 327 acres and therefore I say it would be desirable to have more but I think the amount was necessary to our purpose.

10

Q. Of course the acquisition of this land was in 1946, was it not? A. Yes.

Q. And at that time did you know of Chemotherapy? A. No, not for T.B.

Q. In relation to the treatment of T.B. sufferers. You recognise, of course, in your position as Superintendent at the Hospital that there has been a great change in the methods of treatment of T.B. patients since 1946? A. That is correct.

20

Q. That was largely induced by the discovery of the uses to which these drugs that have been named can be put? A. Correct.

Q. You said that a T.B. Hospital requires much more land, in your opinion, than an ordinary general hospital? A. Yes.

Q. I think you said in answer to my friend yesterday, provided you have an adequate space for your buildings, in the case of the general hospital you have adequate land - I think that is what you said? A. Very slight - not so literal as to say that the building would -

30

Q. I will read it? "Provided you have an adequate space for your buildings, provided that you have the hospital in a place which is convenient to transport, to the essential services which must be provided and ready access for out-patients." I suppose in your view the 36 acres that has been spoken to at Lambton would be quite sufficient land for a general hospital of the size of the buildings which are now there? A. Yes.

40

Q. Of course you do not claim to be an expert on T.B. do you, as I understand what your evidence has been?

A. I must know what the experts say about it, that is all.

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Q. You yourself do not claim to be an expert on T.B.?
A. No.

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10 Q. In your opinion have the changed methods of treatment which were introduced and discovered in 1948, out here anyway, in any way affected the opinions which you formed in 1946 as to the desirable or necessary amount of land for a T.B. chest hospital?
A. They have intensified them.

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Q. So is this what you are suggesting that if 327 acres was necessary at Lambton in 1946 more land then 327 acres is now necessary?
A. No.

20 Q. In what way in relation to the size of this land have these new discoveries in 1948 intensified your opinion?
A. I think I said it yesterday. In the pre-anti-biotic era tuberculosis fell broadly into three groups, minimal, moderate and advanced. Minimal cases tended to get better, anti-biotics or no anti-biotics. Moderately advanced and advanced cases had a more serious outlook, particularly advanced cases and the prognosis in those people was very serious, the outlook was bad. Therefore the fate of those people in sanatoria was slow, slowly progressive and downhill and they died. Since the
30 introduction of anti-biotics the outlook for the patient has been much better and therefore we have fewer deaths and more people are now leaving sanatoria, if not completely recovered at least reasonably well. We are also faced with the problem of people who have been reduced to a condition of invalidism but short of death so that it seems to me that we have and we will continue to have an increasing population although there are fewer cases of T.B. being reported - although there are
40 fewer reported the death rate is falling at an even greater rate than the cases being reported, so we will have an increasing population of moderately advanced and advanced cases of tuberculosis. Our early cases do better, relatively, in that we have fewer deaths but we did not have many of those anyway and their treatment period is shorter, but

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the moderately advanced and advanced people will, I think, present an even greater problem to us in the future, so we won't have any more patients in hospital at any one time but we will have fewer patients who are going to die.

Q. That is your answer to the question how the change of drugs in 1948 has intensified your opinions as to the area of land that is necessary?

A. Yes.

Q. Do you agree that once you are satisfied that the T.B. disease has been arrested the proper treatment is to return the patient to his home?

10

A. The definition of "arrested" as given by the others --

Q. By whom?

A. I heard Dr. Hughes say, I think, that "arrested" is, say, a period of six months after stability has been reached.

Q. Is that your understanding of arrested?

A. That is my understanding of arrested.

20

Q. Is that your understanding of arrested, 6 months or thereabouts?

A. Some period of 6 months or 12 months.

Q. After stability has been reached?

A. Stability as they defined it - that is, negative sputum, chest x-ray changes have ceased or are improving and the patient's physical condition is satisfactory.

Q. But whenever that period of arrest is you agree that the best treatment for the patient is to send him home?

A. No, not all.

30

Q. You would not agree with this then, that once you are satisfied that the disease has been arrested the patient should be returned to his home?

A. That may operate in the majority of cases.

Q. Can you agree with that statement I put to you or not?

A. No.

Q. Will you agree that once the disease has been arrested the patient should return to his home and if possible to work?

A. No.

40

Q. You won't agree with that? A. No, you have -

Q. Your answer is "No" to that? A. Yes.

Q. You do not claim to be an expert in fog and smoke, do you? A. No.

Q. Were you born in Newcastle? Did you live here as a boy? A. No.

Q. You came here in 1927? A. Yes.

Q. And in 1946, 1947 or 1948 when the buildings at Lambton were being erected, you were the Medical Superintendent and you had lived in Newcastle for some 20 years at that point of time?

A. Nearly, yes.

Q. You were quite satisfied at that time, I take it, that you understood the characteristics of Newcastle as an industrial city? A. Yes.

Q. Where the industries were situated? A. Yes.

Q. And you agree with me, don't you, that those buildings are all facing to the north or north-east. Is that right?

A. So far as one can site them.

Q. I think you said in your evidence yesterday - I don't think I am quoting your exact words - that if at all feasible buildings should be sited with north or north-easterly aspects? A. Yes.

Q. Is that a fair statement of what you said yesterday? A. Yes.

Q. Has that been your opinion for some time, that if at all feasible buildings should be sited with that aspect? A. It has always been my view.

Q. Was it your opinion in 1946 and 1947? A. Yes.

Q. Of course the rooms at the back of the hospital building itself at Lambton - when I say at the back I mean on the westerly side - they consist entirely, do they not, of toilets and linen rooms and kitchens and store-rooms; there are not wards?

A. There are solaria.

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Q. Whereabouts? A. On each end of that building on both floors there is a large solarium.

Q. That is on the tip of the broad way - is that what you are speaking of?

A. Yes and in each of those there is a large area which is open to the west - I am sorry; on the northern end of the building they are open to the west, the north and the east, and on the southern end of the building they are open to the south, the west and the east.

10

Q. That building also contains of course, the kitchen? A. That is so.

Q. Is that the kitchen to cook food for all the persons at Lambton? A. For Rankin Park.

Q. A big kitchen? A. It is a good kitchen.

Q. What sort of fuel is used there? A. Coke.

Q. Are there any fumes or smoke?
A. Coke is the ideal fuel.

Q. Are there any fumes or smoke?
A. From coke, very little.

20

Q. There are some? A. Yes.

Q. What you have done there, of course, I suppose you are suggesting by that last answer, is to reduce the incidence of the smoke?
A. That was pure accident.

Q. Is that because you did not think smoke and fumes of any significance in relation to T.B. patients?

A. No, it is because we put in Aga cookers which we did in the emergency hospital; that was the reason.

30

Q. You have said that you walked over these 327 acres. Did you say you were familiar with the nature of the country that is comprised within them?

A. I am not an expert on country. I have been over it quite a deal. I am not an expert where any part of it lies. I have been over it with people who do know.

Q. And it is rough country? A. Yes.

Q. And rocky in the bottom of gullies and ravines?
A. It is rough country.

Q. And bushy country? A. Yes.

Q. And of course I think it is a fair thing to say that it is country that is well covered by trees?
A. Yes.

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10 Q. Of course the country itself is much lower than the level of the land facing Lookout Road and Croudace Street, isn't it - the country to the west of the buildings at Lambton is at a much lower level than the land on which these buildings are built facing Lookout Road?

A. No, not all of it, not the ridges.

Q. Not the ridges? A. No.

20 Q. But would you agree with me that there is a difference of about a couple of hundred feet between the countour level of the land on which the buildings are put and the lowest portion of that land, to the west of the buildings? A. Yes.

Q. It would be easy that?
A. Yes, that is correct.

Q. How many times have you seen these nurses recreating in there?

A. I said to my knowledge, because I have been rung when they have been lost - (Objected to; to be struck out).

Q. How many times have you seen these nurses recreating there? A. Infrequently. Not many times.

30 Q. Will you agree the position is that there is a wire fence which runs down the group of buildings, commencing on Lookout Road, on the southern end, that is to say near the Nurses Home along to the corner of the Nurses Home and round, running south to north, behind the Nurses Home?

A. That would be approximately so.

Q. And there is an individual gate? A. Yes.

Q. For persons on the southern side of that fence; just near the Nurses Home? A. That is so.

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Q. And that there are no gates along the fence, running along facing west, that is to say from south to north? A. That is so.

Q. Of course, you know, that there is a considerable public reserve in the vicinity of Lookout Road, don't you? (Objected to; allowed).

HIS HONOR: What reserve are you referring to?

MR. MACFARLAN: What is known as Blackbutt Reserve.

Q. I think my question was, do you know of a public reserve in the vicinity of the Chest Hospital at Lambton? 10

A. Only vaguely. I do know there is and I do know that it is somewhere close but I do not know exactly its location.

Q. Do you know the reserve is named Blackbutt Reserve? A. Yes.

Q. I suppose you agree that the Chest Hospital at Lambton has plenty of fresh air? (Objected to; allowed).

Q. You will agree this sanatorium has plenty of fresh air? 20

A. It is good - a good supply of fresh air.

Q. Basically, where does it come from?

A. The atmosphere.

Q. From what direction; you knew what I meant?

A. No.

Q. Tell me now what direction it comes from?

A. It does not come from any direction. It is round the air.

Q. Can you say from where it is supplied? 30

A. An important source of fresh air is vegetation. It comes from vegetation. That is the thing that purifies the air. That is the answer medically and in a purely natural environment where there is no vegetation whatever we have got a perfect supply of fresh air. So as an answer to the question, I said good. I did not say perfect and in a perfectly natural environment the air is purified by the vegetation.

Q. You know the prevailing wind in Newcastle, as has been put by the Newcastle Council is the north and the norSeaster?

A. That is the prevailing wind.

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Q. Do you suggest to His Honor in any way that these park lands to the west of the buildings contribute to the purification of the air which is blown in by the nor'easters?

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10 A. There is little, if any. I would suggest that somebody come out there with me. The prevailing nor'easter hardly ever gets out that far.

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Q. I was there on Monday? A. I say very little.

Cross-
Examination
- continued.

Q. What is the altitude at Lambton?

A. 400 feet I guess.

Q. Your approximate idea is 400 feet?

A. About 400 feet.

Q. Is this what you are saying, that you very rarely feel the nor'easter out there?

20 A. You very rarely feel a decent nor'easter at New Lambton.

Q. That is so, notwithstanding that the prevailing wind in Newcastle is the nor'easter? A. Yes.

Q. And of course, there are no mountains or hills between Lambton and the sea? A. No.

Q. Or really between Lambton and there? (indicating). A. That is so. That is my opinion.

Re-Examination:

30 MR.WALLACE: Q. I think my friend put to you a question such as the following: Did you have a reason associated with the treatment of tuberculosis patients for fixing the area necessary to be resumed; do you remember that? A. Yes.

Re-Examination.

Q. In addition to this - (Objected to; allowed).

MR.MACFARLAN: Your Honor will note my objection.

MR.WALLACE: Q. Did you have any other reason associated with the treatment of tuberculosis patients for selecting or fixing the area which was in fact

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resumed? A. Did I have any other reason?

Q. In relation to the treatment of patients, did you have any other reason other than what you have given, the purification of the air and so on?
A. In selecting the area?

Q. Yes. A. Yes.

Q. What is that? A. We elaborated (Objected to)

Q. Did you have any reason for selecting this area other than the matters you have been alluding to, purification of the air, surroundings, and so on?
A. Yes because I wanted to provide a full service for the treatment of T.B. patients and that was an ideal area for doing it, the site as well as the size.

10

Q. What is involved -

A. MR.MACFARLAN: I object to anything further.

MR.WALLACE: Q. What do you mean by a full service; what does that mean? (Objected to)
A. I was asked a question - (Objected to).

Q. Listen, please. I put two questions to you, one, did you have any other reason apart from the reasons you have given about the atmosphere and so on for selecting the area which was in fact resumed. Then you answered me by saying, "I wanted to provide an area for full service for treatment of tuberculosis". What do you mean by saying a full service for tubercular patients?

20

A. A full service means that you not only provide hospital treatment, sanatorium treatment in the strictly limited medical sense, but you should also provide the right type of occupational therapy, rehabilitation therapy and in many cases it is necessary to provide some protected industry set up and a further period of living under medical supervision.

30

Q. You mean within the (Objected to).

Q. Where would you envisage that occupational therapy and as you said, in some cases the establishment of some type of industry under medical supervision; what area did you envisage those things being established in and set up? A. There.

40

Q. And was that answer which you have just given still an intention throughout the years that are in question here? (Objected to).

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Q. Did that intention so to give that full service of planning throughout the subject years; did it continue to exist throughout the subject years.

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HIS HONOR: 1946 to 1952.

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MR.MACFARLAN: That is covered by my objection.

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10 HIS HONOR: I will note your objection and allow the question.

Re-Examination - continued.

MR.WALLACE: Q. Did that intention exist throughout those years? A. Yes.

Q. And are you able to say, from your position as Medical Superintendent, whether or not it is more likely or not that those intentions will be implemented in the reasonably near future?

HIS HONOR: I disallow that question.

(Witness retired)

No. 7.

No. 7.

20 ETHEL BYRNE

E. Byrne.

Sworn, Examined, Deposed:

Examination.

MR.WALLACE: Q. I think you are a duly qualified medical practitioner? A. Yes.

Q. And could I say correctly that you have given up most of your medical life to the special study of the treatment of tuberculosis? A. Yes.

Q. Will you tell us with a little more detail what your medical experience and work has been over the years?

30 A. In 1922 I took charge of the local Anti-Tuberculosis Dispensary which at that time was disassociated from the hospital. It was run by the Benevolent Society actually. The hospital always gave us a great deal of help and from 1934 onwards they took over the dispensary with me in charge of it,

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and from then they supplied us with 16 beds for male tubercular patients and 8 for women. That was the position in 1947 when the hospital was opened.

Q. Where was that?

A. At the Waratah Hospital - the William Lyne block of the Newcastle Hospital.

Q. During those years I think you have done really nothing else but tubercular work?

A. No, I did clinical pathology as a livelihood and did tuberculosis because I was extremely interested in it, and in 1945 I became a full-time employee of the Newcastle Hospital. 10

Q. This Rankin Park began as a going concern in its present role, as we understand it, somewhere about the middle of 1947, and you were with it from the beginning? A. From the inception.

Q. And in fact you are officially in charge?

A. Yes.

Q. And you now have an assistant there, Dr. Mills?

A. Yes. 20

Q. Who is actually a T.B. Specialist?

A. That is correct.

Q. And over the years we are dealing with in this case that is 1946 or 1947 to 1952, have you been responsible for the treatment which has been given to the patients there? A. Yes.

Q. In your opinion has that been satisfactory and proper treatment of the type given? A. Yes.

Q. And in your opinion has the area of land which we know in this Court to be about 320 odd acres, going down Marshall Street down Lookout Street - you know the area? A. Yes. 30

Q. In your opinion has that area of land, the whole of it, played any part in the treatment which you have given to those places during those years?

A. Yes, I think a considerable part.

Q. And can you say whether or not in a sanatorium of this type, such an area of land, a large area of land, is or is not medically necessary or desirable? A. I consider it extremely desirable. 40

Q. We have been told that consequent upon treatment of acute and other cases, with the aid of, inter alia anti-biotic drugs, we now get from your institution a large number of cases where the disease is arrested? A. Yes.

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Q. Do you keep those patients there for a further period after the disease is first arrested?
A. Yes.

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10 Q. During that period which may be - by the way, how long on an average? A. They average 9 months.

E. Byrne.

Examination
- continued.

Q. During that period do you subject them to progressive medical treatment? A. Yes.

Q. Involving various factors? A. Yes.

Q. What are those factors; what are the ingredients of that treatment, in other words?

20 A. They do occupational therapy. They do that practically from the time they come into hospital. That is increased in the difficulty of task and the amount of physical stress occasioned by them but in addition they have exercises under supervision starting with a short walk, perhaps the length of the verandah. Then they graduate from that to a longer walk which takes them outside the hospital building to the surrounding country and they will do a walk. The stronger they get the longer the walk, of course. I should think the maximum would be probably - some of them as much as two miles. That would involve a mile in the morning and the afternoon, which they are able to
30 do in the grounds of Rankin Park.

Q. Do you know the ridge that runs from the back of the Nurses quarters along for 1,000 yards or more in the general north or north-westerly direction? A. Yes.

Q. Is that one of the places?

A. Yes, that is one of the places they can use.

Q. In your opinion has that played an appreciable or material part in the treatment which you have given? A. A very material part.

40 HIS HONOR: Q. When you said that they can use it, do you mean to infer that they in fact do use it?
A. Yes.

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MR.WALLACE: Q. What about the staff, is it an easy or difficult matter to keep or maintain staff there for that institution?

A. It is not an easy matter.

MR.MACFARLAN: Your Honor overruled my objection before.

MR.WALLACE: Q. Do you regard the provision of good surroundings and spacious grounds as a desirable feature from the viewpoint of the staff? A. Yes. 10

Q. Would you express a view as to whether the spaciousness of the ground in question has contributed towards the well-being and contentment of the staff? A. Yes. (Objected to).

HIS HONOR: I note the objection.

MR.WALLACE: Q. You told me fairly early in my questioning that you were very definitely - (Question withdrawn). You told me before that you were of opinion that this area had played a useful part in the treatment which has been given during those relevant years? A. Yes. 20

Q. And are you quite clear on that?
A. Yes, quite clear.

Q. Can you say whether a smaller area would have done the job or do you think that a still larger area would have been better still?

A. I think a smaller area would hardly fit in with our long-range plans for these patients. (Objected to: to be struck out). 30

MR.WALLACE: Q. You told us that the whole area has in fact played a useful part in the treatment you have given? A. I consider it has.

Q. Would you say it is a material part in that treatment? A. Yes.

Q. I am not going to ask you about the future plans, but the material part that whole area of 320 odd acres has played, would you say that some

lesser area, or appreciably lesser area would have done that material work that you have referred to, or do you say that you wanted substantially that area, or perhaps even a larger area?

A. I think we need that area.

Q. Amongst other things, does the question of the purity of the air come into prominence when giving treatment to T.B. patients in a sanatorium of this sort? A. I think undoubtedly it does.

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10 Q. And is that in accord with medical treatment, universal medical treatment throughout the world, so far as your researches and teachings go?
A. Yes, I think so.

Q. And in your opinion, and from your experience, is it desirable that a sanatorium of this sort should, if possible, be near the centre of population providing you can get purity of air? A. Yes.

20 Q. For more reasons than one do you suggest that?
A. Yes, because of a number of reasons, one of them specially being the point of view of the patients' relatives.

Q. And if the patients' relatives have reasonably ready access to the patients, does that itself have any value mentally and physically on the patient? A. Yes, undoubtedly.

Q. In what way?

30 A. Well, they seem to content themselves very much better in a hospital if they are able to see their friends and relations. It solves a tremendous lot of problems such as laundry for the patients, and various things being brought in for them.

Q. And does the patient in that type of institution enter it with the knowledge that he or she is going to be there for a long time? A. Yes, always.

Q. Does that knowledge have any bearing on any mental strain to which the patient is suffering?

40 A. I think when you say to a patient, "It will probably be 12 months", their immediate reaction is probably shock. When they get up there and see the conditions in which they are living and see the extent of the land to which they will have access later, I think it has a definitely settling effect.

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Q. Tubercular patients, you get them there in ad-
vanced stages?

A. We get them there in all stages.

Q. Can you say whether or not such patients are
peculiarly sensitive to mental stresses and strains
to which patients in general hospitals are not very
often subjected?

A. I think all long term patients whether in tuber-
cular hospitals or not.

Q. When the patients leave you after that period,
which you suggested average 9 months, after the
arrest of this first period, when they return home
after that for home treatment, if any, how would
you envisage that home treatment?

10

A. We never lose sight of the patients when they
are discharged from hospital. They are super-
vised quite regularly at the chest clinic.

Q. Do you yourself visit that clinic?

A. I spend 3 days a week there. I see all my old
patients. Dr. Mills sees all of his.

20

Q. I think at the present time there are only about
2 rehabilitation patients out there?

A. There are two at the moment.

(Short adjournment)

Cross-Examination:

Cross-
Examination.

MR. MACFARLAN: Q. Do you live at the sanatorium?

A. No.

Q. How frequently do you visit there; for instance,
take this year? A. At least four times a week.

Q. Is that typical of the number of times you vis-
ited there in previous years?

30

A. No, I visited there more often before Dr. Mills
came.

Q. He has been there about 18 months?

A. Yes, nearly two years. Two years in June.

Q. How long do you stay as a rule?

A. I spend almost the whole Monday. I suppose five
hours on Tuesday. On Wednesday I do not usually
go. On Thursday two to three hours and on Friday
I go when I have very sick patients. In the week-

40

ends I go probably for an hour each morning.

Q. You have an office or surgery, a consulting room?

A. I have the room which is used for pneumo-thoracs treatment and that acts as a medical office and then there is a sitting room.

Q. I suppose you see walking patients in the office?

10 A. Mostly I do a round and see the walking patients in the office. Very often it is a question of asking how a patient is. If he has a social problem we see them around in the consulting room.

Q. Is the most of your time there spent seeing the patients in the way you have just described in the building? A. Yes.

Q. Of course the laid-out grounds in front of the buildings are very extensive are they? A. Yes.

Q. They are built up with paths? A. Yes.

Q. And gently sloping lawns? A. Yes.

20 Q. Quite extensive and in their condition they would be suitable of course for patients who were there exercising in those grounds?

A. To a point, but they are not extensive enough - the garden part of it.

Q. On most occasions when you visit there, you very rarely see patients about in the gardens do you? A. Yes, I see them frequently.

Q. In the gardens?

30 A. Yes, around the grounds generally, but not in the gardens so much, there are concrete paths which they can walk on and the lawns which they are not encouraged to walk on to a great extent.

Q. You see them around the grounds? A. Yes.

Q. That is the grounds in front of the buildings?

A. No, ground to the left of the building and round at the back of the building.

Q. Of course, you know there is a fence right around the back of these buildings? A. Yes.

Q. And these patients you see in the grounds are

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generally inside the fence? A. Yes.

Q. I think you said something about the desirable distance for a patient to walk? A. Yes.

Q. That of course is a patient who is an obviously walking patient - whose condition is well advanced towards - ? A. Towards a cure - arrest.

Q. Arrest of the tuberculosis? A. Yes.

Q. I think you said about a mile?
A. Yes, some of them walk that far.

Q. Some of them walk a mile? A. Yes.

10

Q. A mile is really the maximum is it not?
A. No, some can walk further but the time usually does not allow for them to walk further.

Q. Some of them you say walk further, but that is exceptional? A. Yes.

Q. And indeed, I suppose it is an exceptional class of case for them to walk even a mile?
A. I would think 20% of the patients are able to do that.

Q. The aim, of course of the walk is that they should walk, is it not? A. Yes.

20

Q. It is not necessary that they should walk in any particular place?

A. That is rather interesting. The patients can walk the length of the verandah and do a mile that way, but they feel very much better when they have ground under their feet. For that reason we have the special walks in the ground for them.

Q. They can walk along the front of the building, the whole length of the front of the buildings make a third of a mile?

30

A. It is again on concrete. There are the gardens.

Q. Or the grass lawns? A. Yes.

Q. They walk for a quarter of a mile, I think?
A. Yes.

Q. Or more if they walk back again?
A. They can do a mile if they keep on doing it.

Q. And they repeat themselves? There is no restriction upon these walking patients walking along the road?

A. We discourage them from walking onto the road.

Q. There is no restriction of them doing that?

A. No, there is not. I have seen patients there but they are instructed not to leave the grounds.

Q. If relatives come to see them - ?

10

A. No, they cannot. They do not go with relatives without special permission.

Q. They can see them to the bus?

A. Just to the gate. They can take them around to the gates.

HIS HONOR: Q. The bus stop is almost opposite the gate, is it not? A. Yes.

MR. MACFARLAN: Q. You know there is an iron fence around - from the southern side of the building?

A. Yes.

20

Q. And running around the back near the Nurses Home - the western side, you know that? A. Yes.

Q. There is no gate at the back?

A. I am afraid I could not tell you that.

Q. You do not know of any gate there?

A. No, I do not actually.

Q. You can take it that Dr. McCaffrey has said there is no gate along that fence? A. No.

Q. There is only a small gate on the southern side that is so is it not, near the Nurses' quarters?

A. Yes.

30

Q. And the patients are forbidden to leave the grounds, you said? A. Yes.

Q. And that is of course the grounds made by the various fences of the north, south, east and west sides. A. Yes.

Q. Do other doctors visit the sanatorium other than you yourself and Dr. Mills? A. It is staffed entirely by Newcastle Hospital doctors. The Chief Repatriation Medical Officer visits there if he has Repatriation patients.

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Q. I only want to know if other doctors - ?
A. No other doctors treat patients.

Q. Do I understand you correctly when I put it to you, that you and Dr. Mills and other doctors who are on the staff of the Newcastle Hospital visit this sanatorium for the purpose of treating patients? A. Yes.

Q. Does that include persons on the honorary staff of Newcastle Hospital?

A. An honorary can visit there if he wishes to, but the tuberculosis work has been done entirely by a unit for so many years that individual honoraries do not treat patients. 10

Q. I want to be clear; you and Dr. Mills and other doctors -

A. Who are designated by us. Members of the resident staff and registrars.

Q. Some other doctors on the staff of the Newcastle Hospital who are not honoraries? A. Yes.

Q. Visit the Sanatorium for the purpose of treating patients there? A. Yes. 20

Q. Of course, it can never be said with certainty, not known with certainty, when their other duties at the hospital will enable them to go there?

A. The resident staff has its duties mapped out fairly regularly and accurately. It works fairly well to a timetable.

Q. Are there many of those doctors who go there?

A. There are various registrars - Eye, Ear and Throat. The staff surgeons go in special circumstances if Dr. Mills or I should ask them. 30

Q. Even patients who are well advanced towards the arresting of the disease, but who are nevertheless still patients at the Sanatorium, they must not have any very violent physical exercises? A. No.

Q. And they must not have any strenuous exercises? A. No.

Q. At that point of their cure or at any point of time while still required to be patients of the Sanatorium? A. Yes. 40

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Q. Such walking as they do do would need to be done on level sort of ground and not arduous?
A. I do not think that matters very much.

Q. They could not undertake climbing, could they?
A. Not climbing mountains.

Q. At any rate, they are still at that point of time undergoing either some chemo-therapeutic treatment or recovering from some surgery?
A. Some of them may finish their chemotherapy.

10 Q. I think you said that the patients are kept there for a while after it has been believed that the disease has been arrested?
A. Yes, that is right.

Q. And a further period of time is used in order to ensure that the arrest has been effected; is that right? A. Yes.

Q. But in all the average time that a patient is in your hospital is in the vicinity of 12 months?
A. Yes.

20 Q. Would you agree that the 12 months includes the period after - in an average case, the period after the arrest and before discharge?
A. I think a little longer than 12.

Q. You said 12 months this morning?
A. Yes, I think I did. I was thinking more in terms of the average stay in hospital.

Q. The average stay - you were speaking of the average stay in the sanatorium from the time of entry? A. Yes.

30 Q. And that stay includes the period of time during which the check is being made on whether the disease has been arrested? A. Yes.

Q. It was in relation to that whole period of time that you expressed the opinion to His Honor, that the period of time that would be contemplated for the patient coming in would be a stay of 12 months?
A. Yes.

40 Q. You quite agree that as soon as the Medical Officers or doctors are satisfied that the disease has been arrested, then it is desirable that the

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patient should go home?

A. It is desirable but it is not always practicable.

Q. Might I put it to you that it is very desirable whether it is practicable or not? A. Yes.

Q. And that it is very desirable when the disease has been arrested, he should return to his home and, if possible, to his work? A. Yes.

Q. As soon after the discharge as possible?

A. No, not as soon as after discharge. When we are satisfied that he is fit too. 10

Q. Is not this the position, that when you are satisfied that the disease has been arrested, and I emphasise "satisfied", the patient is discharged? A. Yes.

Q. Will you agree then that when he is discharged by your officers that it is desirable that the patient should return to his home? A. Yes.

Q. Will you agree that when he is discharged it is desirable he should return to his home and, if possible to his work? A. His work being suitable. 20

Q. If possible, I take it the suitability of the work - A. Is covered by that "possible".

Q. The suitability of the work is covered by the phrase "if possible"? A. Yes.

Q. You know do you not, that in 1948 there was a change in the methods of treatment relating to T.B. patients? A. Yes.

Q. Prior to that time, chemo therapy in relation to T.B. had not been practised - A. Yes. 30

Q. At any rate, extensively in Australia; is that right? A. Yes.

Q. And your patients who are in the sanatorium are treated in that way? A. Yes.

Q. By the way, have you ever been over these acres of land behind the hospital? A. Yes.

Q. All of them? A. All over them.

Q. You agree it is rough country? A. Yes.

Q. Very rough country?

A. I did agree at the time it was rough country.

Q. You have no reason to change your opinion now?

A. No.

Q. Have you ever actually seen any patients on this track behind the Nurses' home?

10

A. Yes, it is part of the grounds to which the patients have access.

Q. But, of course, there is no gate leading down to it from behind the hospital is there?

A. I am finding it hard to visualise that boundary.

Q. You cannot say that there is a gate behind there?

A. I cannot really.

Q. Had you often seen them come down this track?

A. No. I cannot say I have often seen them.

Q. You have been going there, of course, since July?

20

A. Some of my time does not cover the patients' recreation time. They have recognised rest periods when they are not allowed out.

Q. You have been going there since July, 1947?

A. Yes, I have.

Q. How long is it since you have last seen a patient on that track?

A. I have seen them there recently. Certainly since Christmas. Certainly within the last month or six weeks.

30

Q. That occasion since Christmas, on one occasion since Christmas you have seen patients there; is that the position?

A. I could not answer really reliably I am afraid.

Q. I suppose the position with regard to the period of time that has elapsed since 25th December, 1954, and the present time is typical really of the previous years since this hospital has been going?

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A. Yes - no perhaps hardly typical. I think certain alterations have been made in the hours of the patients walking. In the summer months the patients' walks in the afternoon are not just after their lunch as in the cooler period of the year. On the other hand, I am seldom there in the evenings unless there is somebody very sick to see.

Q. Of course, you do not suggest that the patients walk anywhere else but on this track?

A. We suggest that the patients remain within the grounds.

10

Q. You do not suggest to His Honour that the patients walk anywhere else within these 327 acres other than on this track behind the Nurses' Home?

A. They can walk out of the grounds anywhere to a certain distance, so long as they are not exceeding their allowance.

Q. What is that distance?

A. Some of them walk a mile and some two miles. The ones immediately prior to discharge often walk two miles.

20

Q. You said the two miles consisted of a mile in the morning and a mile in the afternoon? A. Yes.

Q. And that is how you compute the two miles, is it not? A. Yes.

Q. Before Christmas 1954, have you any recollection of seeing any patient out on this track?

A. Yes, but I could not give you dates and times.

Q. It would be fairly infrequently, I suppose, would it? A. No.

30

Q. Can you give His Honor any idea?

A. I think a certain number of patients use it quite regularly.

Q. Can you give any idea of the number?

A. Four or five - four or five days a week.

Q. That is what you have seen?

A. I have seen them if I have been there at the time.

Q. I am only asking you about what you have seen,

what is the greatest number of patients you have seen on this track at any one time?

A. 10 to 12 I think.

Q. You do not see them every day?

A. I am not there at the time they walk every day.

Q. But in the winter, would you see them every day then? A. Yes, definitely.

Q. You do not see them down in the bottom of the gullies or in the bush - on the slopes or in the track, do you? A. Personally, I do not.

10

Q. I am only asking you about what you have seen yourself. Is your recollection very clear on the numbers you have seen? A. Walking at a time?

Q. On the track, yes?

A. You see 12 perhaps start off.

Q. You have said what you have seen?

A. Yes. In the winter months I would see them starting off after their lunch.

Q. What about this 10 or 12. Is that just a guess?

20

A. No, I have seen as many as 10 or 12.

Q. Have you seen any this year?

A. No, I have not seen parties setting off this year.

Q. Where are you when you see them?

A. At the hospital.

Q. Whereabouts?

A. I may be in one of the wards. You can see them from the wards - from the corridors.

Q. In the hospital itself? A. Yes.

30

Q. From what wards?

A. There is a corridor running down the side of each ward and there are windows that look out over the ground. You can see them from there when they go out the back door and they walk up that way towards the ridge.

Q. You mean you have seen them walking from the direction of the track?

A. I have seen them walking towards the track.

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Q. Of course, the fact is that the wards all face towards Newcastle, do they not?

A. The wards themselves but not the corridors - I said that.

Q. I think you said you saw them walking from the wards?

A. Yes, I am sorry. From the corridor beside the wards you can see them from there. See them from the windows. There is a corridor with windows that runs the whole length of the wards. The corridor which leads to their bathroom but there are quite big expanses of walls with windows.

10

Q. Of which wards? A. One and three.

Q. A big expanse of wards with windows?

A. Of walls with windows of these corridors.

Q. Which way do these windows face?

A. They face out towards the Nurses' Home.

Q. It is from there you have seen them then?

A. I have seen patients go out the back door of the hospital and start out that way.

20

Q. You have seen them walking towards that fence?

A. Yes.

Q. At the back? A. Yes.

Q. You said that you have seen people on the track?

A. Yes.

Q. Where have you been when you have seen them on the track?

A. I may have possibly been leaving to drive into town.

Q. Can you recall any particular place where you were when you saw them on the track?

A. No, I cannot. I know they do use the track.

30

Q. You realise that you are only being asked about what you have seen yourself? A. Yes.

Q. You say you have seen them when you have been leaving to drive to town; is that right?

A. Yes, I may have seen them then. I have seen them when I have been driving further to New Lambton Heights.

Q. You park your car in the front of the hospital?
 A. No, I never park it there but at the back always.

Q. Where have you actually seen them walking, in the vicinity of the hospital building itself?
 A. Yes.

Q. I am asking you, have you a distinct recollection of which you can tell His Honor of when you parked your car or got into it, you have seen these men walking on the track?
 A. Yes. I have spoken to them as they started off for the walks up the track.

Q. Does that not mean simply that you saw them when they were walking towards the back of the hospital; is not that all you saw?
 A. They do have some supervision from the hospital staff on their walks.

Q. I am asking you about what you saw - there may have been doctors or nurses with them?
 A. I have not accompanied them.

Q. When you saw them, these people, you spoke of when you were getting into your car to go back to town - were they passing the garage or shed where you had your car parked; is that the position?
 A. Yes.

Q. And that shed where you parked your car is the same shed that is up there now behind - ?
 A. I park it actually on the concrete outside the back door of the hospital.

Q. Where else have you been - when you say you have seen these patients on the track?
 A. The only time I can recollect definitely is when I went further up over New Lambton Heights from the hospital instead of going back to town.

Q. That is along towards Charlestown?
 A. Towards New Lambton Heights.

Q. When you say you went along there, you drove along Lookout Road?
 A. Yes.

Q. In your car?
 A. Yes.

Q. When was that; what year?
 A. That is this year.

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Q. That is the only occasion you remember seeing them?

A. Yes, it is the occasion I can recollect definitely.

Q. Who did you see, in the sense of how many people, did you see?

A. It was a party of people. It was not just one or two. They have been walking up- eight to ten.

Q. Where were they?

A. I suppose they were 100 yards up from the hospital at that time.

10

Q. On Lookout Road? A. They were not on the road.

Q. Along the side of the road? A. Yes.

Q. Walking from the direction of the hospital building? A. Yes.

Q. Do you recollect any other place you have been when you say you have seen people, who are patients, on the track?

A. No, I have seen them further towards the convalescent home. In that area towards ward 17.

20

Q. Is that in the old Croudace Homestead?

A. Yes, I have seen them over there.

Q. You say you have been there when you have seen them? A. I have seen them definitely.

Q. You have seen patients there? A. Yes.

Q. Or walking around about that building?

A. Yes, just walking.

Q. That, of course, is in a built-up or made up part of the grounds? A. Yes.

Q. What you are saying is this, is it not, that you have seen some of the patients walking around the built-up grounds in front? A. Yes.

30

Q. Is there any other place where you have been when you have seen these patients walking on this track? A. No, I cannot think of any.

Re-Examination:

Re-Examination.

MR.WALLACE: Q. Did I ask you about Newcastle being

an industrial city?

A. You asked about the desirability of the sanatorium being near to the town.

Q. And so you told us, and I think Mr. Macfarlan, you will agree this is a proper area which serves a useful purpose? A. Yes. (Objected to).

MR.WALLACE: I ask leave to be permitted to ask further questions -

HIS HONOR: I grant you leave.

10 MR.WALLACE: Q. When you say that this is a proper area - this area has served a useful purpose apart from any walking by the patient.

Q. This walking of the patients along the ridge you have told us about, has that been as a result of medical advice given to the patient? (Objected to; pressed, discussion ensued; admitted).

Q. Was the walking, whatever the extent of it in fact the result of medical advice given by you? A. Yes, definitely.

20 Q. Do you regard that as proper treatment? A. Yes.

Q. I am speaking now of the ridges and land right outside the fence and at the back of the hospital in the large area? A. Yes.

Q. When you say that this whole area is serving a useful purpose apart from any walking in it, what is the reason for your saying that?

30 A. Well, it is an area with abundant trees. It prevents us being built out perhaps by a factory, which I feel would be very detrimental to the patients in the hospital.

Q. What about the atmosphere itself as the result of this large area?

A. I think it is improved very greatly.

Q. Do you regard a clean or pure atmosphere essential for such an institution? A. Yes.

Q. Do you regard the presence of such an area of land as essential to get such purity and cleanliness of the atmosphere? A. Yes.

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Q. Does the fact that its proximity to a large industrial city have a bearing on the necessity for such an area? A. Yes.

Q. In what way?

A. Well, for instance, if that were flat in Mayfield we would have all the smoke from the various industries and while the smoke perhaps is not actively harmful it certainly increases the patient's cough and tends to discomfort.

Q. Does it prolong the stay in hospital? 10

A. I should think it would but I do not really know.

Q. Prior to Dr. Mills coming, how often used you visit the hospital?

A. I very seldom missed a day before Dr. Mills came except for week-ends that I happened to be away.

Q. Would your visits be for some hours each day?

A. Yes.

Q. When you told Mr. Macfarlan, he put his question this way "When you are satisfied the disease has been arrested the patient should be discharged and go to his home?" A. Yes. 20

Q. Just make it clear what you meant by "arrested"? Are you referring to the first point of time of arrest or the end of that period when they are retained there after the first point of arrest?

A. We judge it by the fact that the x-ray remains stable that the routine blood test remains within normal limits and that they have negative or no sputum, and they are maintaining their weight.

Q. Do you keep them for some time after that first arrest has taken place? 30

A. Yes, we usually keep them there 3 to 6 months after that.

Q. You say your visits do not coincide necessarily with the recreation period? A. No, they do not.

Q. Is it or is it not desirable as part of the treatment that any sense of confinement in the patient's mind should be eradicated?

A. Yes, I think it must improve.

Q. Has that any bearing on the medical advice you give them to go walking along the ridges and so on? A. Yes. 40

MR. MACTARLAN: Q. You do not put yourself forward as an expert relating to smoke and things of that kind? A. No, I am afraid I do not.

Q. However, you have had extensive experience in T.B. work? A. Yes.

Q. And the position is that you have told His Honor that you are not sure whether smoke would have any effect on T.B. patients?

10

A. Yes, I definitely said that. I do not know, for instance, that it would make a patient's x-ray worse but I do know that it has a very bad effect on the general comfort of the patient in that it increases his cough.

Q. Of course, until this sanatorium at Lambton was opened all the T.B. patients were treated at the hospital?

A. Waratah, yes - the William Lyne block at the general hospital.

20

Q. That is a very smoky and dusty spot?

A. Yes, it was nothing like as dusty as the side where the B.H.P. is, for instance, but it is smoky.

Q. And cures were effected?

A. No, very few. It was before the days of streptomycin. I do not think it is possible to compare the pre-1946 years.

Q. On account of the effect of streptomycin and A.N.H. and so on? A. Yes.

Q. However, T.B. patients are treated down here at the general hospital?

30

A. Not very many. Patients for different reasons come into the general hospital.

Q. Do you not run a clinic?

A. A clinic, yes, but that is for out-patients. They are not admitted there.

Q. Persons who require surgery in the course of their treatment are dealt with there? A. Yes.

Q. Of course when patients are discharged from Lambton they are not thereby freed from the necessity of further treatment?

40

A. No, that is why the clinic continues to operate.

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Q. They come down here. Do you have any trouble with Zara St. Power House?

A. No, the patients are there for only a couple of hours a month at the longest. They can just be supervised, to have special investigations.

Q. But the smoke from that power house is --

A. It may make them cough a little more while they are there but I am sure it does not affect them.

Q. It is very dense? A. It can be.

Q. And the effect of it is felt at the hospital in the vicinity of the clinic? 10

A. It is felt everywhere in the vicinity of the hospital because we get a pall of soot from it.

Q. Of course, prior to the Lambton sanatorium being built, T.B. cases were treated down here?

A. Yes, treated here or at Waratah.

Q. When you have to treat any of these patients with thoracic surgery how long are they as a rule kept down here at the hospital?

A. Varying times. 20

Q. What would be the average time?

A. It depends on the surgery. Actually the more major the surgery it is - a pneumectomy - the shorter the time they stay here. If they have a thoracoplasty they stay any time up to 6 to 8 weeks.

Q. And stay at this hospital down here? A. Yes.

Q. I want to ask you about the advice you give these people to walk, I think you said, along the ridges; that is what you said? 30

A. Not specially along the ridges but they are entitled to walk there.

Q. And the ridges include, I think you have pointed out, along Lookout Road? A. Yes.

Q. And along Croudace Street and right along Lookout Road whatever is the specified distance?

A. Yes.

Q. A mile or half a mile for as far along there as is necessary to comply with that distance? A. Yes.

Q. Would they pass along down the front of Lookout Road down to the Croudace Mansion?

A. Not usually along the front of the road. They usually go through the grounds there.

In the Supreme Court of New South Wales.

Q. In that particular part? A. Yes.

Q. Which itself is part of the ridge? A. Yes.

Defendant's Evidence.

Q. And the direction really that you give is that they usually take a walk, following what you have put, along the ridges provided they keep to a ridge and do not exceed the specified distance?

10

A. Yes.

No. 7.

E. Byrne.

Q. Then they are complying with your clinical or medical requirements. Is that right? A. Yes.

Further Cross-Examination - continued.

(Witness retired)

No. 8.

ROY MARKHAM MILLS.

No. 8.

R.M. Mills.

Sworn, Examined, deposed:

Examination.

TO MR.WALLACE: My full name is Roy Markham Mills. I am a duly qualified medical practitioner and for some years I have been specialising in tubercular disease.

20

Q. Just briefly what was your first acquaintance-ship with T.B. in a specialised manner?

A. 1947, at the Repatriation General Hospital, Concord.

Q. How long were you there? A. For 3 years.

Q. What did you do then?

30

A. Then I was invited to make a special study of tuberculosis infection and disease in childhood at the Institute of Child Health. That was at the University of Sydney and the Royal Alexandria Hos-pital for Children.

Q. How long were you there?

A. For two and a half years.

Q. From there did you go out to Rankin Park?

A. Yes the Royal Newcastle Hospital.

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Defendant's
Evidence.

No. 8.

R.M. Mills.
Examination
- continued.

Q. You are the officially appointed chest physician to the Repatriation Commission of Newcastle?

A. Yes.

Q. Your full time duties are with Rankin Park?

A. Royal Newcastle Hospital and Rankin Park.

Q. You are second to Dr. Ethel Byrne of Rankin Park?

A. Yes.

Q. And only the two of you treat patients for tubercular disease?

A. Yes.

Q. You first went there when?

A. In June 1953.

10

Q. We have been told that the general principles of treatment are the same before as since you have been there?

A. Yes.

Q. And that they include progressive medical treatment for rehabilitation of the patient from the outset of his stay there and in particular after the first arrest of the disease. Is that right?

A. Yes.

Q. Does that include progressive stages of exercises and so on?

A. Yes.

20

Q. And occupational therapy and the like?

A. Yes.

Q. From your knowledge of the hospital or the sanatorium - you know the area on which the hospital stands, about 327 acres?

A. Yes.

Q. Have you ever been across it from time to time?

A. Yes.

Q. From your knowledge of the sanatorium and its objects and assuming that its work has been much the same from 1947 to 1953 as you have seen it, from 1953 onwards has that area of 320 odd acres served any useful or material purpose in the treatment of patients which has been given there?

30

A. Yes. It plays a part in their recovery.

Q. In what way?

A. Well, in two ways. The most important thing is for the patient to have equanimity of mind and the hospital in large parkland is conducive to that and another stage of convalescence, to be able to walk in the parkland is most beneficial.

Q. In your opinion is it desirable to have a sanatorium of this type, if possible, near a city area where the patients go there and their relatives go there? A. If it is possible, yes.

In the Supreme Court of New South Wales.

Q. And if it is placed near a city and that city is an industrial city does that have any bearing on the area of ground on which the sanatorium should stand, the quantity of ground?

Defendant's Evidence.

10 A. I think a sanatorium should always have a large area of ground.

No. 8.

Q. Has that got any bearing on the atmosphere and the purity thereof? A. I believe so.

R.M. Mills.
Examination
- continued.

Q. That is your medical belief? A. Yes.

Q. You say, in your opinion, this area of land has served a material part in the treatment of patients at that sanatorium? A. Yes.

Cross-Examination:

MR.MACFARLAN: Q. Do you live in the sanatorium grounds? A. No.

Cross-Examination.

20 Q. Where do you live?

A. In Cardiff Road, New Lambton.

Q. Is that farther along Lookout Road, travelling south - is it in that direction?

A. Yes, it is one mile from Rankin Park, just where it turns off Lookout Road.

Q. You have been living there ever since you went there? A. Well, not until 1953.

Q. Have you any duties with the general hospital down here at Nobbys?

30 A. I am a physician at the Royal Newcastle Hospital.

Q. You visit there frequently or infrequently or what? A. Frequently.

(Witness retired)

(Case for Defendant Closed)

No. 9.

CASE IN REPLY

No. 9.

Case in Reply.

MR.MACFARLAN: I will tender a proclamation defining the whole of this area at the back as a

In the
Supreme Court
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Wales.

No. 9.

Case in Reply
- continued.

residential proclamation which was brought into force about 1924 and is still in force.

MR.WALLACE: That will be objected to.

MR.MACFARLAN: The indulgence which I will have to ask Your Honor, is, there is not, as far as we have been able to ascertain, in Newcastle an issue of the Government Gazette for the 30th May, 1934, but I have here a copy of the relevant entry of Gazette No.70 of that date which has been forwarded to the Town Clerk of the Council by the Under-Secretary of the Local Government Department. Your Honor might permit me to make the tender and I undertake to replace it. 10

MR.WALLACE: I take no objection on that ground. My main objection is on substance and secondly, splitting the case.

(Argument ensued)

HIS HONOR: I have listened carefully to the argument of Mr. Wallace but it cannot be overlooked that two of his witnesses at least said that this additional area was necessary because it could be that a factory might come into the area and this plan which shows section 309 proclamations at various times, I think, is in reply and therefore I admit it. 20

(Plan and copy declaration tendered and marked Exhibit D.)

(Case in Reply closed).

HIS HONOR: I propose to read the transcript very carefully and suggest that addresses might be given in Sydney. I also propose to reserve the decision even after Counsel have delivered addresses because I think it is important that a considered and written judgment should be given. 30

No. 9A

REASONS FOR JUDGMENT OF HIS HONOUR
MR. JUSTICE RICHARDSON

In the
Supreme Court
of New South
Wales

IN THE SUPREME COURT)
OF NEW SOUTH WALES)
IN CAUSES)
HOLDEN AT NEWCASTLE)

CORAM -) RICHARDSON, J.
FRIDAY, 24th JUNE, 1955.

No. 9A
Reasons for
Judgment of
His Honour Mr.
Justice
Richardson.

THE COUNCIL OF THE CITY OF NEWCASTLE v. THE ROYAL
NEWCASTLE HOSPITAL.

24th June 1955

10

J U D G M E N T

HIS HONOR - This action is brought by the Council of the City of Newcastle against the Royal Newcastle Hospital, the registered proprietor of land comprising 291 acres 3 roods 12 $\frac{1}{4}$ perches situated at New Lambton within the City of Newcastle. The claim is for rates for the years 1946 to 1952, both years inclusive, with interest on the unpaid arrears, and amounts to the sum of £4,001.9.8d.

20 The hospital is also the registered proprietor of an additional 36 acres adjoining which is not rated. The Council admits that this area is exempted from liability by the provisions of s.132 (1)(d) of the Local Government Act, 1919, as amended. The total holding, it will be seen, is 327 acres 3 roods 12 $\frac{1}{4}$ perches.

30 It is important, I think, to show the steps by which this area was acquired. Two parcels were purchased in the year 1926, first 24 acres 1 rood 13 perches, and second 68 acres 0 roods 12 perches. An additional area of 4 acres 2 roods 32 perches was acquired in the year 1934 but a small portion, 1 rood 5 $\frac{1}{2}$ perches, was transferred to the owner of an adjoining area, leaving 4 acres 1 rood 26 $\frac{1}{2}$ perches. The total holding was thus brought up to 96 acres 3 roods 11 $\frac{1}{2}$ perches.

It appears that the first purchase of 24 acres 1 rood 13 perches included the buildings known as the Old Croudace Home, and being used for the purposes of the Hospital it was immediately exempted

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—
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Reasons for
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24th June 1955
- continued.

from liability for rates. Following upon the purchase of 68 acres 0 roods 12 perches and further classification by the Hospital the exempted area was increased to 32 acres. When the Hospital acquired the 4 acres 1 rood $26\frac{1}{2}$ perches the exempted area was further increased to 36 acres, and for many years this area has been separately valued by the Valuer General. The Hospital paid rates to the Council in respect of the balance of its then holding until the year 1946.

10

During the second World War the Commonwealth Government, by arrangement with the Hospital, took over the area as a temporary measure and established an emergency hospital for national purposes.

The main building belonging to the hospital has been situated within the principal part of the city for many years and up to and including the year 1947 tuberculosis patients were admitted and treated there. In the year 1944, when the Commonwealth Emergency Hospital was no longer required, it was decided by the hospital authorities to extend the buildings and to establish there a chest hospital or sanatorium. There is some dispute between the parties as to these terms but, at all events, tuberculosis patients were, from the month of July, 1947, admitted and treated there. The additions had been completed in April, 1946, but there were certain administration and staff difficulties which prevented its immediate operation. This branch of the hospital has its own medical and nursing staff but the Superintendent of the main hospital is also the Superintendent of this hospital which has been named Rankin Park. In 1944 when it was decided to establish Rankin Park, the hospital purchased an additional 10 acres 3 roods $5\frac{3}{4}$ perches and about the same time it commenced negotiations for the acquisition of a further 220 acres 0 roods 35 perches. These two areas are situated immediately at the rear and on each side of the 96 acres 3 roods $11\frac{1}{2}$ perches and run down a succession of gullies in a westerly direction to Marshall Street, which is unmade. Eventually, in 1946, the 220 acres, part thereof being crown land and part private property, was appropriated and/or resumed, according to the gazette notice, for the purposes of the Newcastle Hospital. The total area was thus increased to 327 acres 3 roods $12\frac{1}{4}$ perches.

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The buildings which comprised the Commonwealth Emergency Hospital and those which have been erected

10 since stand within $17\frac{1}{2}$ acres which is wholly fenced excepting a small portion at the intersection of Lookout Road and Croudace Street which provides access by several roads from Croudace Street into the enclosed area. This $17\frac{1}{2}$ acres which has a considerable frontage to Lookout Road, a main thoroughfare leading into the centre of the city, is laid out in lawns and gardens in front of and between the various buildings and lies wholly within the 36 acres already referred to as exempted land. The balance of the
 20 exempted land, $18\frac{1}{2}$ acres, is unfenced and lies to the west and north of the $17\frac{1}{2}$ acres. It is not built on nor cultivated in any way. There is no line of demarcation between the 36 acres and the 291 acres excepting that there are 5 white posts almost equidistant along the boundary separating those two areas which were put in by a surveyor 2 years ago as the result of instructions given to him by the Town Clerk to delineate the 36 acres. The land at this
 30 point is heavily timbered and the white posts are not easily discernible; indeed, no two of them can be seen at one and the same time.

The subject land comprising 291 acres 3 roods $12\frac{1}{4}$ perches surrounds the 36 acres on the north, west and south. It comprises ridges and gullies heavily timbered with different types of trees reaching to a maximum height of 50 ft. with a good deal of underwood. The gullies are steep and rough, some of them so steep that they are impassable.
 30 There is very little flat land. It is described as poor land with insufficient herbage for the pasturing of stock. There are a few bush tracks one of which is well defined running up to Lookout Road and to which I shall presently refer. I shall call this one the main track. The remaining tracks all terminate in bushland.

40 It was admitted that rate notices were properly served and that the rates as assessed have not been paid but the Hospital relied upon the provisions of s.132(1)(d) aforesaid and claimed that the 291 acres as well as the 36 acres at all material times was used or occupied by it, being a public hospital, for the purposes thereof and was not ratable.

Section 132(1) provides -

"All land in a municipality or shire (whether the property of the Crown or not) shall be ratable excepting

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(d) Land which belongs to any public hospital, public benevolent institution or public charity and is used or occupied by the hospital, institution or charity as the case may be for the purposes thereof."

That section applies to the City of Newcastle by virtue of the provisions of sub-section 3 of s.3 of the Greater Newcastle Act, 1937.

It is admitted that the Royal Newcastle Hospital is a public hospital within the meaning of clause (d) so that the only question is, what meaning should be given to the words "used or occupied by the hospital for the purposes thereof." Mr. Wallace, who appeared for the Hospital, relies upon tangible and intangible use. With regard to the former, the only tangible use relied upon at the hearing was the use by patients of the main track. It was suggested that patients who have reached a certain stage in their treatment require walking exercise and use this track. It is reached from the 17½ acres by a gate near the nurses' quarters which is a brick building erected at the southern end of that area and it runs firstly in a north-westerly direction in the 220 acre block and thence in a northerly direction in the 10-acre block and continuing in the same direction in the 68-acre block. It is admitted by the hospital that tangible user is limited to a very small area; indeed the 220 acres would be scarcely touched at all by any person walking along the main track, but Mr. Wallace relies upon the decision in Warringah Shire Council v. Salvation Army (N.S.W.) Property Trust; 15 L.G.R.91, in which Street, J. (as he then was) held -

"To entitle land to exemption from ratability as being used or occupied by a public benevolent institution or public charity (or public hospital) it is not necessary that there should be a physical user of every portion of the area in which the building stands; the area used to give a reasonable degree of privacy and seclusion for inmates of the same is also entitled to exemption from ratability."

That involves a question of degree. The area under consideration in that case was about 10 acres. I should doubt whether an area of this size (327 acres) would have been wholly exempted in the circumstances

of that case for it seems to me that the portion of adjacent land claimed to be exempt must be a reasonable area. What is a reasonable area depends upon the facts in each case. Here it was not suggested that the patients used the subject land excepting on the main track. It would be unreasonable to assume that tuberculosis patients would climb up and down the gullies which I have described.

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- continued.

10 However, it becomes unnecessary for me to de-
cide what would be a reasonable area since I re-
gard the evidence of physical user by the patients
as so indefinite that I must reject it. Dr. Byrne
was the only witness called on this question. It
is her practice to visit the hospital on Mondays,
Tuesdays and Thursdays spending the whole of the
first day there, 5 hours on Tuesdays and 2 to 3
hours on Thursdays. She may visit also on Fri-
days according as to whether or not she has very
20 sick patients. In addition she attends the Hos-
pital on Saturdays and Sundays in the mornings for
one hour. In reply to Mr. Wallace she deposed
that patients in whom the disease has been arrested,
have exercises under supervision starting with a
short walk, perhaps the length of the verandah,
graduating to a long walk involving, eventually,
a mile in the morning and a mile in the afternoon,
which they are able to do in the grounds of Rankin
Park. As to the main track, 1,000 yards long on
30 the ridge at the back of the hospital, she said in
further reply to Mr. Wallace that this is one of
the places they can use. However in cross examin-
ation by Mr. Macfarlan, she admitted that walking
patients (20 per cent of the total of 100) whom
she has seen have been generally inside the fences
and that they are forbidden to leave the grounds.
She added, however, that such patients are allowed
to walk outside the grounds under supervision but
she limited herself to one occasion, which she can
40 definitely recollect, when she saw a party under
supervision outside the grounds and they were walk-
ing towards the convalescent home, which is near
the old Croudace homestead. It is clear by ref-
erence to Exhibit "A" this portion is within the
36 acres. Dr. Byrne agreed with Mr. Macfarlan
that what she said in this regard must be taken to
mean that she has seen some of the patients walk-
ing around the built up grounds in front. This
evidence shows that the main track is available for
use by walking parties and that patients may be

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- continued.

taken there under supervision but there is no evidence to show that the track has been, in fact, used by patients. No medical officer or nursing sister or patient was called to prove that fact. I am also of the opinion that the evidence concerning the use thereof by the nursing staff is far too slender to prove tangible user. The probabilities are that when off duty they would seek more exciting recreation than walking along a bush track at the back of the hospital where they nurse patients afflicted with this malady.

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I pass now to a consideration of intangible use. In the first place I accept the evidence of Dr. Hughes that Rankin Park is a Sanatorium. He regards it as serving an equal purpose to any sanatoria in this State and as the sanatorium of the north. That term does not take the case out of the provisions of sub-clause (d). It is, I think, still a hospital. The former is generally sited in a large area, at all events that is the position in this State. The latter can be and often is sited in a comparatively small area. I prefer the evidence of the medical witnesses called on behalf of the hospital to that of Dr. Morgan on this aspect of the matter. Dr. Morgan said that a sanatorium of this type does not require any greater area of land than a general hospital, but the other witnesses disagreed with him. I have used the following as some guide to the meaning of the word "sanatorium"; the Shorter Oxford Dictionary defines it as an establishment for the treatment of invalids, especially convalescents and consumptives. Webster's New International Dictionary defines it as an establishment for the treatment of the sick, especially one that makes much use of natural therapeutic agents or local conditions or that employes some special treatment or that treats particular diseases. I shall continue to employ the term "hospital" in referring to this institution. The evidence of the witnesses called on behalf of the hospital, in my view, shows that the hospital authorities make much use of the natural therapeutic agents to be found in this continuous area in the treatment of tuberculosis. Dr. Hughes, who has held the office of Deputy Director of the Tuberculosis Division of the New South Wales Department of Health for the past 21 years, said that this area is desirable for the purposes of the hospital which is serving an equal purpose with the other tuberculosis sanatoria in New South Wales. He detailed the treatment

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The grounds of appeal are as follows :-

- (1) The decision of His Honor was wrong in law.
- (2) The said decision was against the evidence and weight of evidence.
- (3) His Honor was in error in finding that the Defendant during the relevant periods used the subject lands within the meaning of Section 132(1)(d) of the Local Government Act 1919 as amended.
- 10 (4) His Honor was in error in finding that such user of the subject lands as the defendant had was for the purpose of the defendant as a public hospital within the meaning of Section 132(1)(d) of the Local Government Act 1919 as amended.
- 20 (5) As the basis of the evidence of Dr. Hughes, relating to the use of the subject lands for the purpose of supplying fresh air to the defendant hospital was that the ownership of such lands by the said hospital would prevent it being used by other persons for industrial purposes, His Honor was in error in failing to give proper consideration to this aspect of Dr. Hughes' evidence and in finding that Dr. Hughes' evidence established that the subject lands had been used for the purposes of the defendant hospital.
- 30 (6) His Honor was in error in his analysis of the medical evidence tendered by the plaintiff and defendant and in finding that the defendant had proved that the subject lands were used by the defendant hospital for its purposes, in that it supplies fresh air to the said hospital.
- (7) His Honor was in error in finding that the plaintiff had failed to discharge the onus of proof.
- (8) Even if it were open to His Honor to have found that some parts of the subject lands were used for the purposes of the defendant hospital, it was not open to His Honor and His Honor ought not to have found that every part of the subject land was used for the purposes of the defendant hospital and therefore His Honour should have found for the plaintiff.

40 DATED this 13th day of July, 1955.

A.R. MOFFITT
Counsel for the Appellant.

In the
Supreme Court
of New South
Wales

No. 10

Notice of
Appeal.

13th July 1955
- continued.

In the
Supreme Court
of New South
Wales

No. 11

REASONS FOR JUDGMENT

(A) MR. JUSTICE OWEN

No. 11

Reasons for
Judgment.
(A) Mr.
Justice Owen.

IN THE SUPREME COURT)
OF NEW SOUTH WALES)

CORAM: OWEN J.
ROPER C.J. in Eq.
MAGUIRE J.

18th June 1956.

Monday, 18th June, 1956.

COUNCIL OF THE CITY OF NEWCASTLE v. ROYAL NEWCASTLE
HOSPITAL.

10

J U D G M E N T

OWEN, J.: The appellant council sued the respondent hospital to recover the sum of £4,001.9.8d that being the amount of municipal rates claimed to be due for the years 1946 to 1952 inclusive in respect of an area of about 291 acres of land owned by the hospital.

The land in question adjoins other land owned by the respondent on which it conducts a hospital for the treatment of tuberculosis. The hospital is situated in one of the residential areas of Newcastle, 4 or 5 miles away from the industrial areas of that city. The building and surrounding lawns and gardens occupy an area of approximately 17½ acres fronting a main thoroughfare and facing north-east towards the city. This area is surrounded by a fence. Behind it is a further area of about 18½ acres of bushland owned by the hospital, which has no buildings on it and is not cultivated in any way. This last mentioned area has always been treated by the appellant council as non-ratable land and no question as to this arises. Behind it again lies the land which is the subject of the present case. It consists of bush in its virgin state, intersected with steep gullies and heavily timbered. It is unfenced and is part of a very much larger area of bushland stretching to the north, to the west and to the south. As I understand it, the land was originally resumed and vested in the hospital with

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a view to setting up on it a rehabilitation centre in which patients on the road to recovery might live and earn a living doing light work and at the same time be under medical supervision. That proposal, however, has not yet begun to be carried out.

In the
Supreme Court
of New South
Wales

No. 11

Reasons for
Judgment.

(A) Mr.
Justice Owen.

18th June 1956
- continued.

10 The action was heard by Richardson J. sitting by consent of the parties, without a jury. He came to the conclusion, for reasons which he gave, that the land was not ratable and entered judgment for the respondent. From that decision the appeal is brought. It is conceded by both parties that the case is one in which an Appeal Court is in as good a position as was the trial judge to determine any questions of fact which may arise.

The respondent's claim that the land is not ratable is based upon Section 132(1)(d) of the Local Government Act, the material part of which provides that -

20 "All land in a municipality or shire (whether the property of the Crown or not) shall be ratable except -

(d) Land which belongs to any public hospital
.....and is used or occupied by the hos-
pital.....for the purposes thereof."

To come within the exemption three conditions must be fulfilled: the land must belong to a public hospital; it must be used or occupied by the hospital, and that use or occupation must be for the purposes of the hospital.

30 The learned Judge held that during the relevant years there had been no "tangible use or occupation", to adopt His Honor's phrase, of the land and this finding is not attacked. He held, however, that there had been an "intangible" use for hospital purposes and that the land was therefore not ratable. The evidence on which this conclusion was based may, I think, be fairly summarised as follows:-

Fresh, unpolluted air is a necessary element in the treatment of persons suffering from tuberculosis.

40 The subject land is used by the hospital to produce fresh air and to provide a barrier against the possible approach of residences and other buildings which, if not kept at a distance, might pollute the

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of New South
Wales

No. 11

Reasons for
Judgment.

(A) Mr.
Justice Owen.

18th June 1956
- continued.

air which patients and staff must breathe. This proposition would carry greater weight to my mind in the present case if the land in question lay between the hospital and the City of Newcastle and not in the opposite direction. The prevailing wind in the locality comes from the north-east, that is to say, from the direction of Newcastle and blows away from the hospital across the land. There is nothing to suggest that in the foreseeable future there is any real likelihood of the pollution of air in the area to the west and south-west of the hospital or that the hospital would not have got, during the relevant years, the benefits which it claims to have had from this area of land even if it had not been the owner of it. The derivation of benefit is, however, not the test. The question is whether the hospital used or occupied this land for a hospital purpose. As to "occupation" I feel no doubt. It was not "occupied" as that word is used in rating law. As was pointed out by Isaacs J. in Knowles v. Newcastle Corporation (9 C.L.R.534 to 544) "occupation" is not synonymous with mere legal possession. It includes possession, but it also includes something more. The learned Judge went on to quote a passage from the judgment of Lush J. in R. v. St. Pancras (Assessment Committee of) (2 Q.B.D.581 at p.588):-

"The owner of a vacant house is in possession, and may maintain trespass against anyone who invades it, but as long as he leaves it vacant he is not ratable for it as an occupier. If, however, he furnishes it, and keeps it ready for habitation whenever he pleases to go to it, he is an occupier, though he may not reside in it one day in a year".

The respondent, however, submits that this land was being "used" by the hospital for the purpose of providing fresh air. It seems to me that it is a misuse of language to say that the land was being "used". The patients may well have derived a benefit from the fact that it was there, but, as I have said, the derivation of benefit is not the test laid down by the Act. I think that the real fact is that the hospital was not using the land.

In my opinion the respondent failed to bring this land within the exemption provision in the Act and I would set aside the verdict and judgment for the defendant and enter a verdict and judgment for the appellant for the amount claimed.

(B) MR. JUSTICE ROPER

IN THE SUPREME COURT)
OF NEW SOUTH WALES)

In the
Supreme Court
of New South
Wales

No. 11

CORAM - OWEN J.
ROPER C.J. in Eq.
MAGUIRE J.

Reasons for
Judgment.
(B) Mr.
Justice Roper.

Monday, 18th June, 1956.

18th June 1956

COUNCIL OF THE CITY OF NEWCASTLE v. ROYAL NEWCASTLE
HOSPITAL.

10

J U D G M E N T

His Honour Mr. Justice Roper, Chief Judge in
Equity, concurred in the judgment of Mr. Justice
Maguire for the reasons contained therein and did
not add anything.

(C) MR. JUSTICE MAGUIRE

(C) Mr.
Justice
Maguire.

IN THE SUPREME COURT)
OF NEW SOUTH WALES)

CORAM - OWEN J.
ROPER, C.J. in Eq.
MAGUIRE, J.

20

June, 1956.

COUNCIL OF THE CITY OF NEWCASTLE v. ROYAL NEWCASTLE
HOSPITAL

J U D G M E N T

MAGUIRE, J.: The appellant Council sued the res-
pondent Hospital to recover the sum of £4,001.9.8d

In the
Supreme Court
of New South
Wales

No. 11

Reasons for
Judgment.

(C) Mr.
Justice
Maguire -
continued.

unpaid rates levied by the Council for the years 1946 - 1952 inclusive in respect of certain lands owned by the Hospital at New Lambton.

At the trial, which took place by consent of the parties before Richardson, J. without a jury, the only question in dispute was whether the lands in question were exempt from rating under s.132(1) (d) of the Local Government Act, 1919-1954, which provides that all land in a municipality or shire shall be ratable except "land which belongs to any public hospital....and is used or occupied by the hospital.....for the purposes thereof." The learned trial judge found that the lands were used by the Hospital for its purposes and were accordingly exempt under the sub-section, and he entered a verdict for the respondent. Against that decision the present appeal is brought and, again, the only question argued before this Court was whether the lands were used or occupied by the hospital for its purposes within the meaning of the subsection.

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The evidence disclosed that the Hospital owned, at all relevant times, a total area of 327 acres at New Lambton and there conducted, as a branch of its General Hospital in the City of Newcastle, a hospital for the treatment of patients suffering from tuberculosis. The buildings which accommodate the patients, the staff quarters, and other incidental buildings with surrounding gardens, are adjacent to and front Lookout Road and are enclosed by a fence which surrounds some $17\frac{1}{2}$ acres of the total area owned by the hospital. The Council has never contended that this area is ratable, nor does it seek to impose liability, in the present proceedings, on the Hospital in respect of a further area of $18\frac{1}{2}$ acres more or less arbitrarily delineated and which lies outside the fence which has been mentioned and which is in its natural condition and comparable with and adjoining the remainder of the lands owned by the hospital. This remaining area of 291 acres is the area the subject of the dispute in this action and is virgin country, covered with trees and bush, unfenced, carrying no buildings, and marked by gulleys and a few rough paths; it is not put to any active use by the hospital, and an attempt to prove that some portion of it was used by patients for the purpose of exercise and recreation rightly failed before the learned trial judge. However, it was argued on behalf of the hospital that this area was nevertheless, used in an intangible way

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for the purposes of the hospital so as to exempt from ratability under s.132(1)(d).

The answer to the question whether land can be said to be used for particular purposes depends upon a consideration of what those purposes are and of what is necessary to achieve them and this, in turn, when the matter arises to be considered in litigation, must depend upon evidence. The evidence in this case, so far as it is necessary to examine it, was given by medical practitioners. The hospital called as witnesses Dr. Hughes, Deputy Director of the Tuberculosis Division in the New South Wales Department of Health, who has had very lengthy experience in relation to tuberculosis, Dr. McCaffrey, Medical Superintendent of the Newcastle Hospital (including the hospital in question, known as Rankin Park) and Dr. Mills, who is attached to the staff of Rankin Park and has for some years specialised in the study of tubercular infection and disease.

Dr. Hughes described Rankin Park as a sanatorium catering for patients who are not acute cases requiring, for instance, surgical treatment, and providing for such patients rest, appropriate food, fresh air and chemo-therapy. He pointed out that the hospital is situated only a few miles from the heart of a highly industrialised city and expressed the opinion that the large area of virgin country owned by the hospital provided the fresh air so necessary for the achievement of the purposes of the hospital in treating its patients over a protracted period and he regarded the whole area of 291 acres as a necessary adjunct to the hospital and its retention in its more or less virgin condition as being helpful in preventing the encroachment of buildings and activities of various types on the hospital itself. He was of opinion that the mere existence, contiguous to the hospital, of the area in question contributed to the treatment which the hospital provided for its patients. Dr. McCaffrey expressed the opinion that sufferers from tuberculosis were victims of extreme mental stress and an adequacy of land was necessary to provide a suitable environment for their treatment. He thought that whilst a comparatively small area of land would be sufficient for the purposes of an ordinary hospital, yet a total of 327 acres was not in excess of what was necessary to protect a tuberculosis hospital from an atmosphere vitiated by

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Wales

No. 11

Reasons for
Judgment.

(C) Mr.
Justice
Maguire -
continued.

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Reasons for
Judgment.

(C) Mr.
Justice
Maguire -
continued.

smoke and other impurities and, indeed, he thought that an even larger area would be desirable. He was of opinion that the natural vegetation assisted in the purification of the surrounding air. Dr. Mills was of opinion that equanimity of mind is a most important factor in the treatment of patients in a sanatorium of the type of Rankin Park and that a large area of unoccupied surrounding land is conducive to that state of affairs and he thought that this area had played a part in the recovery of patients at the hospital.

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The trial judge preferred to accept the evidence of the doctors who have been mentioned rather than that given by Dr. Morgan, who was called on behalf of the appellant and who expressed the opinion that the large area of undeveloped land had played no part in the treatment of patients at Rankin Park. I agree with His Honor's preference.

"Rankin Park" can be said, on the evidence, to stand in a different position from the majority of other hospitals. Its purpose is to treat patients who are required to remain in the hospital for protracted periods and who are suffering from a disease the effective treatment of which requires not merely medical and nursing skill but the provision of surroundings which are conducive to repose and equanimity of mind in an atmosphere as free as possible from dust and other vitiating elements. I think that the preponderance of evidence is in favour of the view that the retention of a large area of undeveloped land attached to the hospital is necessary for the attainment of this purpose. It seems to me that it can truly be said that by retaining the land in question so that the purposes of the hospital might be achieved, the hospital is "using" that land for its purposes. Ordinarily, the use of land would involve some activity on or in relation to it, but where the question is whether land is used for a particular purpose, an enquiry into how that purpose can best be achieved is necessary. The evidence establishes that the land, the subject of the present action, is necessary to the fulfilment of the purposes of the hospital, and, in my view, the hospital, by retaining it in its virgin condition, is using it for those purposes.

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Little assistance can be derived from a consideration of reported decisions which deal with legislation somewhat differently expressed from

s.132(1)(d) and with facts which are greatly dissimilar from those disclosed in the evidence in this case. However, Street, J. (as he then was) in *Warringah Shire Council v. Salvation Army (N.S.W.) Property Trust* (15 L.G.R.91) recognised that land could properly be said to be used for the purposes of an institution within the meaning of the same sub-section which governs the determination of the present appeal, although it was not subjected to any active use. There, His Honor was dealing with an area of some 10 acres of land owned by the Salvation Army and used for the purpose of a home for aged men. In addition to bedrooms, staff quarters and usual offices which were erected on the land, a portion was also used for vegetable gardens in connection with the home but on each side of the buildings and gardens there was a substantial area of rough, precipitous, rocky and thickly timbered land of which it was not possible for the occupants of the Home to make any physical use: His Honor, nevertheless held that the whole area was exempt under s.132(1)(d) of the Local Government Act and expressed himself as follows:-

"It is true that the land must be used and (sic) occupied in order to have the protection given by the Legislature to the institution in question, but I do not think it necessary that there should be a physical user of every portion of the area. The idea of a home carries with it the suggestion that it should be equipped with proper amenities and, as Lieut.Col. McLean stated, a reasonable degree of privacy and seclusion is necessary for the physical and mental well-being of these old men. In this area they find peaceful surroundings, conducive to that quietude of mind and that cheerfulness of outlook which the home in question seeks to provide as a solace in their declining years..."

An intangible use of portion of the land there in question was held sufficient to exempt it from liability for rates and the difference between that case and the present is not one of principle but merely of degree and, having regard to the unique purposes of the hospital at Rankin Park, I am satisfied that there has been, during the relevant period an intangible use for the purposes of the hospital of the whole of the land owned by the respondent at New Lambton.

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(C) Mr.
Justice
Maguire -
continued.

Counsel for the appellant sought to minimise the value of the evidence given by Drs. Hughes, McCaffrey and Mills by pointing out that the prevailing wind in Newcastle was from the north-east and that the hospital buildings were facing north-east, towards the City, with the bulk of the vacant land lying to the west and south behind them. It was argued that, this being so, the vacant land could not be regarded as a real factor in securing an adequate supply of fresh air for the patients. However, Dr. McCaffrey's evidence was that a strong north-east wind is rarely felt at New Lambton and this criticism by Counsel of the evidence of these doctors bears, in any event, on some aspects only of that evidence and does not dissuade me from concluding that the evidence does establish that the whole of the land, during the period in question, was used for the purposes of the hospital.

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I would dismiss the appeal with costs.

No. 12

Rule of the
Supreme Court
of New South
Wales dated
18th June 1956.

No. 12

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RULE OF THE SUPREME COURT OF NEW SOUTH WALES

IN THE SUPREME COURT OF NEW SOUTH WALES

No. 994 of 1953.

BETWEEN

COUNCIL OF THE CITY OF NEWCASTLE
Appellant (Plaintiff)

and

ROYAL NEWCASTLE HOSPITAL
Respondent (Defendant)

Monday the Eighteenth day of June One
thousand nine hundred and fifty-six.

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UPON MOTION made to this Court on the Thirtieth day of May One thousand nine hundred and fifty six WHEREUPON AND UPON READING the Notice of Motion dated the 13th July 1955 and the Appeal Book filed

herein AND UPON HEARING what was alleged by Mr. A.R. Moffitt of Queen's Counsel and Mr. Colin Allen of Counsel on behalf of the Appellant in support of the Motion and Mr. Gordon Wallace of Queen's Counsel and Mr. J.M. Williams of Counsel on behalf of the Respondent in opposition thereto IT WAS ORDERED that Judgment be reserved and the motion standing in the list this day for judgment accordingly IT IS ORDERED that the Appeal be and the same is hereby dismissed AND IT IS FURTHER ORDERED that the costs of the Respondent in this Motion be taxed by the proper officer of this Court and that such costs as so taxed be paid by the Appellant to the Respondent or its Solicitor Mr. D.N. Rankin.

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By the Court
for the Prothonotary

CHIEF CLERK

In the
Supreme Court
of New South
Wales

No. 12

Rule of the
Supreme Court
of New South
Wales dated
18th June 1956
- continued.

No. 13

NOTICE OF APPEAL

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IN THE HIGH COURT OF AUSTRALIA NEW SOUTH WALES
REGISTRY

No. of 1956.

ON APPEAL from the Full Court of the
Supreme Court of New South Wales
in an action numbered 994 of 1953

BETWEEN

THE COUNCIL OF THE CITY OF NEWCASTLE
Appellant (Plaintiff)

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and

ROYAL NEWCASTLE HOSPITAL
Respondent (Defendant)

In the
High Court of
Australia

No. 13

Notice of
Appeal.

5th July 1956.

TAKE NOTICE that the appellant herein appeals to the Full Court of the High Court of Australia from the whole of the judgment and Order of the Full

In the
High Court of
Australia

No. 13

Notice of
Appeal.

5th July 1956

- continued.

Court of the Supreme Court of New South Wales delivered and made on the eighteenth day of June, One thousand nine hundred and fifty six dismissing with costs an appeal of the appellant against the verdict and judgment of the Supreme Court of New South Wales for the Defendant with costs in an action by the appellant against the respondent for the recovery of rates in respect of certain lands possessed by the defendant upon the following grounds:-

1. That the Full Court of the Supreme Court of New South Wales erred in law in dismissing the said appeal. 10
2. That the said decision of the Full Court of the Supreme Court of New South Wales was against the evidence and weight of evidence.
3. That the Full Court of the Supreme Court of New South Wales was in error in holding that the respondent during the relevant period used the subject lands within the meaning of Section 132 (1)(d) of the Local Government Act 1919 as amended. 20
4. That the Full Court of New South Wales was in error in holding that such user of the subject land as the respondent has was for the purposes of the respondent as a public hospital within the meaning of Section 132(1)(d) of the Local Government Act 1919 (as amended).
5. That there was no evidence upon which the Full Court of the Supreme Court of New South Wales could or ought to have held that the respondent retained the subject lands for the purpose of ensuring for the treatment of patients an atmosphere as free as possible from dust and other vitiating elements. 30
6. That there was no evidence upon which the Full Court of the Supreme Court of New South Wales could or ought to have held that the respondent retained the subject lands for the purpose of ensuring for the treatment of patients the provision of surroundings which were conducive to repose and equanimity of mind.
7. That if it were open to the Full Court of the Supreme Court of New South Wales to have held that some part or parts of the subject lands were used by the respondent for the purposes of the respondent as a public hospital it was not open to the said 40

Court and the said Court ought not to have held that every part of the subject lands was used for the purposes of the respondent as a public hospital.

In the
High Court of
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AND FURTHER TAKE NOTICE that the Appellant seeks in lieu of the judgment and order herein appealed from judgment as follows :-

No. 13
Notice of
Appeal.

1. That the Judgment and Order of the Full Court of New South Wales be set aside and a verdict and judgment be entered for the appellant for the amount claimed.
2. That the Respondent pay the appellant's cost of the trial of the action before the Supreme Court of New South Wales and of the appeal to the Full Court of the Supreme Court of New South Wales and of this appeal.

5th July 1956
- continued.

DATED this 6th day of July, One thousand nine hundred and fifty six.

COLIN ALLEN

Counsel for the Appellant

20 This Notice of Appeal is filed by Messrs. Kevin Ellis & Price of 10 Martin Place, Sydney in the State of New South Wales agents for Messrs. H.V. Harris Wheeler & Williams Solicitors for the appellant of Bolton and King Streets Newcastle in the said State.

To the District Registrar

And to the Respondent

30 And to its Solicitors Messrs. Rankin & Nathan by their Sydney Agents Messrs. Purves Moodie & Storey of 11c Castlereagh Street, Sydney.

In the
High Court of
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No. 14

REASONS FOR JUDGMENT

No. 14

(A) MR. JUSTICE WILLIAMS

Reasons for
Judgment.

THE COUNCIL OF THE CITY OF NEWCASTLE

(A) Mr.
Justice
Williams

- v -

ROYAL NEWCASTLE HOSPITAL

21st March
1957.

JUDGMENT

WILLIAMS J.

This is an appeal by the plaintiff, the Council of the City of Newcastle, in an action in which the Council sued the defendant, the Royal Newcastle Hospital for rates alleged to be due upon certain land, approximately 291 acres, situated at New Lambton within the area of the city, in respect of the years 1946 to 1952 inclusive. The appellant derived its power to levy the rates from sec. 144 of the Local Government Act 1919 which provided that every rate shall, except where this Act otherwise expressly provides, be paid to the Council by the owner of the land in respect of which the rate is levied. It is not in dispute that the 291 acres were owned by the respondent in the relevant years. But it claims that it was exempt from rates by virtue of sec. 132 of that Act which provides so far as is material that all land in a municipality or shire (whether the property of the Crown or not) shall be rateable except inter alia (d) land which belongs to any public hospital.....and is used or occupied by the hospital.....for the purposes thereof. It is admitted that the respondent is a public hospital within the meaning of paragraph (d). The question at issue is whether the 291 acres in the relevant years were used or occupied for the purposes of the hospital. Richardson J. who tried the action without a jury held that the land was land used by the hospital for these purposes. An appeal to the Full Supreme Court of New South Wales was dismissed by a majority (Roper C.J. in Eq. and Maquire J., Owen J. dissenting). The 291 acres form part of a larger area of 327 acres. The whole of this area was not acquired by the respondent at the same time. It would seem that about 1926 the

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respondent wished to set up a branch away from the main hospital which is situated in the heart of the city. In that year it purchased 24 acres of land fronting Croudace Street on which were erected the buildings known as the old Croudace home and opened a convalescent home. As this land was clearly used for the purposes of the hospital, it was exempt from rates. In the same year an additional 68 acres of adjoining land and in 1934 a further four acres of adjoining land were purchased. Of this total area of 96 acres, 36 acres were regarded by the appellant as used for the purposes of the hospital and exempted from rates. The balance of the area was rated. In 1941, during the second world war, the convalescent home was reserved as a Commonwealth emergency hospital. But in 1944 it was no longer required for this purpose and reverted to the respondent. In that year a further ten acres of adjoining land were purchased. Up till this time patients suffering from tuberculosis had been treated at the main hospital but the board of the respondent under the chairmanship of the late Mr. A. Rankin was evidently anxious to set up a separate chest hospital for the reception of patients suffering from this disease and in particular for the reception of patients who with proper rest and treatment were likely to recover in the sense that the disease would be arrested and they would be able to return to their own homes and do light work. The treatment for such patients, apart from chemo-therapy, consisted of plenty of rest and fresh air, proper food and attention and later, when the disease appeared to be arrested, a period of up to six months during which time the patients remained under medical observation to be sure that the arrest was permanent and so that they might by means of light exercise and some form of occupational therapy recover their strength and capacity to do some work.

Dr. McCaffrey was the Superintendent of the hospital at this time and it is clear from his evidence that rightly or wrongly he and Mr. Rankin thought that for the purposes of such a chest hospital the area of land then owned by the respondent was inadequate. They therefore, inspected the area of land adjoining the existing area to the west with a view to acquiring what they considered would be sufficient area for that purpose. They thought that if this land to where it fronted Marshall Street, an unmade road, was added to the existing area the total area would provided the

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minimum space suitable for the purpose. Finally in April 1946 the area in question which was found to comprise 220 acres was acquired so far as it comprised Crown land by appropriation and so far as it comprised private lands by resumption under the provisions of the Public Works Act 1912 "for purposes of Newcastle hospital". The new buildings required to accommodate the patients and nursing staff were erected in the vicinity of the existing buildings and the new chest hospital was opened for patients in July 1947. Since then there have been on an average about 100 patients at the hospital. The only land actively used for the purposes of the hospital has been an area of about $17\frac{1}{2}$ acres of land fronting Croudace Street enclosed with a fence on which the hospital buildings and surrounding paths, lawns and gardens are situated. Immediately behind the $17\frac{1}{2}$ acres there is a further area of about $18\frac{1}{2}$ acres now slightly delineated and separated from the remaining 291 acres by five surveyor's white posts. These two areas of land comprising altogether 36 acres have always been regarded by the appellant as used for the purposes of the hospital and exempted from rates. Behind these 36 acres there lie the 291 acres upon which the dispute centres. It would appear that the board of the respondent at the time the 220 acres were acquired thought that it might want to set up some industry on part of the total area in which patients on the road to recovery could earn a living doing light work whilst still remaining under medical supervision. This scheme has never been carried out, it may be because about 1948 the treatment of tuberculosis was greatly advanced by the advent of new drugs which facilitated the arrest of the disease and limited the necessity for patients remaining in hospital for as long periods as before. There is a conflict in the medical evidence as to whether for the purposes of a chest hospital more land is required than in the case of a general hospital. But the preponderance of evidence, and this was the evidence accepted by Richardson J., is to the effect that it is necessary or at least very desirable that chest hospitals should be situated in a spacious area carrying a considerable body of natural vegetation so that there will be a plentiful supply of fresh air and an absence of smoke, dust, noise and other irritants or any feeling of overcrowding. According to this evidence such an area not only assists the physical condition of the patients but also assists their mental outlook, the

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mentality of patients suffering from tuberculosis being subject to severe stress due to the fact that they have to be absent from their homes and families for at least a year and to the further fact that such a prolonged illness often has a very serious effect on their financial position and future economic prospects.

10 The defendant has taken no active steps to improve the 291 acres. It is land in its virgin state comprising ridges and gullies heavily timbered with a good deal of underwood. Richardson J. said: "The gullies are steep and rough, some of them so steep that they are impassable. There is very little flat land. It is described as poor land with insufficient herbage for the pasturing of stock. There are a few bush tracks one of which is well defined running up to Lookout Road.....The remaining tracks all terminate in bushland." It can safely be said that in the relevant years no physical use in any real sense was made of the 291 acres. The use to which this land has been put, if it can be considered to be use at all, has been the passive use of leaving the land in its virgin state with the resultant benefits that are derived from the presence of plenty of fresh air and the avoidance of overcrowding. In the argument before Richardson J., the Full Supreme Court and ourselves, this use of the land was described as an intangible use and it was contended that such a use is a use of land for the purposes of the hospital within the meaning of s.132(1)(d). This contention found favour with Richardson J. and the majority of the Full Court. Richardson J. said "I have reached the conclusion, looking at the whole of the evidence, that the subject land is in fact used for the attainment of a desirable result in connection with the treatment of tuberculosis at this hospital and which could not be attained without the use of the subject land, and that it is used for a purpose connected with the hospital. There is a connection between the user and the purposes of the hospital. It is not essential to the user of land that it be used physically, it is also used if it is applied to any advantageous purpose." Maguire J. with whom Roper C.J. in Eq. concurred said:- "Rankin Park can be said, on the evidence, to stand in a different position from the majority of other hospitals. Its purpose is to treat the patients who are required to remain in the hospital for protracted periods and who are suffering from a disease

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the effective treatment of which requires not merely medical and nursing skill but the provision of surroundings which are conducive to repose and equanimity of mind in an atmosphere as free as possible from dust and other vitiating elements. I think that the preponderance of evidence is in favour of the view that the retention of a large area of undeveloped land attached to the hospital is necessary for the attainment of this purpose. It seems to me that it can truly be said that by retaining the land in question so that the purposes of the hospital might be achieved, the hospital is 'using' that land for its purposes. Ordinarily, the use of land would involve some activity on or in relation to it, but where the question is whether land is used for a particular purpose, an enquiry into how that purpose can best be achieved is necessary. The evidence establishes that the land, the subject of the present action, is necessary to the fulfilment of the purposes of the hospital, and, in my view, the hospital, by retaining it in its virgin condition, is using it for those purposes."

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In these passages the case for the respondent is summed up. There is ample evidence which Richardson J. was entitled to accept that a chest hospital, or perhaps what would be a better description of Rankin Park, a sanatorium for tuberculosis patients, requires a large area of land to achieve the most beneficial results. The whole of the evidence, apart from the evidence of Dr. Morgan which His Honor was unable to accept, is to this effect. In other parts of Australia it has been found to be beneficial for other chest hospitals or sanatoria to be situated in large areas of land much of which is left in its virgin state. The old belief that persons suffering from tuberculosis should be isolated has gone by the board and modern opinion is that such institutions should be located as close as possible to the large cities or in other words to the large centres of population so that the relatives of the patients are able to visit them. If these institutions are situated in a large area of land they derive the double benefit of being as it were as much in the fresh air as if they were in the country and at the same time of being very accessible. It may be that the opinion of Richardson J. and the majority of the Full Court that the whole of such an area of land can be said to be "used" in the special circumstances of the case for the purposes of the hospital is right. But it is

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unnecessary for the respondent to rely on the word "used". It is sufficient if the land is "used" or "occupied" for the purposes of the hospital. The passages that have been cited from the reasons for judgment of Richardson J. and Maguire J. are quite apt to show that if the 291 acres in the relevant years were occupied by the respondent they were occupied for the purposes of the hospital. No real examination of the meaning of the word "occupied" was attempted in the courts below, probably because counsel for the respondent there, as he did here, preferred to concentrate his attention on the word "used". Owen J., it is true, did refer to occupation but not with any enthusiasm. He said: "The question is whether the hospital used or occupied this land for a hospital purpose. As to "occupation" I feel no doubt. It was not "occupied" as that word is used in rating law. As was pointed out by Isaacs J. in Knowles v. Newcastle Corporation (9 C.L.R. 534 to 544) "occupation" is not synonymous with mere legal possession. It includes possession but it also includes something more." His Honor referred to the well-known passage in the judgment of Lush J. in Reg. v. St. Pancras Assessment Committee (2 Q.B.D. 581 at p.588):- "The owner of a vacant house is in possession, and may maintain trespass against anyone who invades it, but as long as he leaves it vacant he is not ratable for it as an occupier. If, however, he furnishes it, and keeps it ready for habitation whenever he pleases to go to it, he is an occupier, though he may not reside in it one day in a year." But it must be remembered that Lush J. was there dealing with the meaning of ratable occupation in England where, to be ratable, the occupation must be beneficial, and His Lordship was discussing what constitutes the beneficial occupation of a house and there is a great difference between what constitutes the occupation of a house and the occupation of vacant land. In a case that was not cited to us, Liverpool Corporation v. Chorley Union Assessment Committee and Withnell Overseers, this distinction is brought out. It is reported in the Divisional Court (1911 1 K.B. 1057), in the Court of Appeal (1912 1 K.B. 270) and in the House of Lords (1913 A.C. 197). The facts are set out fully in the report in the Divisional Court at pp.1058-1062. The important facts are those relating to the 859 acres of moorland. One question was whether the Liverpool Corporation who were the owners and occupiers of a system of reservoirs and waterworks known as the Rivington

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Waterworks were in beneficial ownership of this moorland. It formed part of an area of 1165 acres which the corporation used and controlled for the purposes of securing a water supply to their reservoirs and waterworks. Of the 1165 acres 306 were planted with trees or used as a nursery for young trees and enclosed in a ring fence. The remainder of the land, the 859 acres of moorland, was already enclosed by a fence when the corporation bought it. In order to reduce the population and cattle on the 1165 acres and to diminish the risk of pollution of the water flowing therefrom, the corporation demolished or caused to be left unoccupied certain farm houses and buildings and abolished certain rights of pasture and turbary which had previously been enjoyed thereon, and limited the user thereof, except for the afforestation upon the 306 acres already mentioned, to letting sporting rights in respect of which the lessees were rated. Apart from letting these rights, the only use the appellants made of the 859 acres of moorland was to keep them vacant so that the water that flowed over them would be unpolluted and none of it would be used thereby lessening the supply of water to the reservoirs. It was held that the corporation was not merely in occupation but in beneficial occupation of the moorlands. In the judgments in all three courts the rule that the owners of the fee simple of land in possession are prima facie in occupation of that land was relied upon. It was pointed out that this presumption is of course rebuttable first and most directly by proof that someone else is in occupation and by the nature of the case. The case of Reg. v. St. Pancras Assessment Committee was distinguished as a case referring to a particular class of property, that is, a house. At p.1073 in the Divisional Court Hamilton J. (as Lord Sumner then was) after saying that "ownership is in most cases prima facie and useful evidence of occupation, failing proof that some other person is in occupation." said: "Here not only is there prima facie evidence of occupation in the fact that the appellants are owners of the fee simple in possession, and an absence of any rebutting evidence that any one else is in possession, but any doubt that might remain seems amply covered by the conditions under which the ownership was acquired and the objects for which it is held by the appellants.....Here ownership was acquired and is held by the appellants for a specific purpose, and that specific purpose carries and is intended to carry with it - to use an uncontro-

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versial term - control, and the whole object with which the land was acquired was the retention of control and the exercise of it in case of need." At p.1075 his Lordship said: "But although it is preserved more or less in a state of nature, the land is anything but derelict and is in fact being used, in pursuance of a highly intelligent policy, in a manner which has involved and still involves continuous control by the appellants over the land and which is deliberately inconsistent with the transfer of occupation to any other person." In the Court of Appeal Buckley L.J. said of the corporation at pp.288-289: "It was worth their while to pay a large sum of money for the land to ensure the absence of a population which might (a) contaminate or (b) consume. They have put no other person in occupation. They are enjoying the benefit for which they bought the land. Further, by the demise of the sporting rights they are deriving profit from the land being left free of population. Their purpose, which is to ensure absence of population, is thus in several ways of value to them. They are persons capable of maintaining trespass: they are enjoying a benefit from the land. In my opinion the conjoint effect of those two facts is to constitute ratable occupation." At pp.292-293 Kennedy L.J. said: "I understand it not to be denied by the appellants that, if the corporation had placed and maintained upon the land works, however simple, for collecting or diverting water, an "occupation" would have been created. At present the contour of the land renders any such artificial work unnecessary for the purpose of getting and maintaining its beneficial user. If beneficial user exists, and if beneficial user affords good ground for the inference of ratable occupation, it appears to me that the presence of artificial works cannot be essential to proof, but that, when it is proved, it strengthens of course the evidence of such occupation." Finally in the House of Lords Lord Atkinson at pp.211-212 said: "I do not think the cases dealing with the ratability of vacant houses are applicable to such a property as this moor, which, through the operations of nature, unaided by man, produces each year products such as grass, heath, and bracken, useful and valuable to man, and in this case rears and harbours game upon it in addition, thus differing in almost every aspect from a vacant house, which produces nothing, and is used for no purpose whatever. Mr. Balfour Browne

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continued.

has urged that occupation includes possession plus use. He admitted, however, that if the appellants had built an embankment across the mouth of a valley on this moorland and flooded the valley, thereby turning it into a reservoir to supply their lower works, they would properly have been held to be in beneficial occupation of the lands upon which the water rested in the valley. I am quite unable to discover any principle upon which these latter lands can be distinguished on this point from those upon which the rainwater falls and over which it runs on its way to its resting place. The lands of each kind all help to this same end, and serve in different ways to effect the same ultimate purpose, namely, to feed the appellants' works with a supply of pure and unpolluted water for their commercial gain."

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All these passages would appear to be apposite, *mutatis mutandis*, to the present case. It would be impossible to describe any portion of the 291 acres as derelict, that is, as forsaken or abandoned land. The respondent has not abandoned any of its land at New Lambton. On the contrary its Board of Directors must have been satisfied in 1946 that the land they then held was insufficient for the purposes of a chest hospital or sanatorium and the additional 220 acres was acquired so that the defendant would have an area of land which it considered to be the minimum area of land with which it would be safe to open such an institution. There can be no question that the respondent as the owner in fee simple of the 291 acres is in occupation of the whole of this area. There is no suggestion that anyone else is in occupation of it. There is nothing in the nature of the case to rebut the *prima facie* presumption. On the contrary, the nature of the case supports the presumption. The land is not fenced but a fence would simply be some evidence of occupation. Artificial works are not necessary to prove occupation. If they exist they are evidence, as Kennedy L.J. said, in support of it, that is all. The respondent is at present only making an active use in the physical sense of $17\frac{1}{2}$ acres. But it would be little use commencing operations on an area of $17\frac{1}{2}$ acres or even 36 acres if a sanatorium for tuberculosis required for its full development a much larger area. The respondent is at least occupying undeveloped land for the purpose of the hospital in the sense that it is preventing the public from purchasing it and building upon it or

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from otherwise occupying it. It is land too poor in fertility to be put to any monetary use in its virgin state. Its only benefit to the respondent in that state is derived from its natural therapeutic qualities of providing plenty of fresh air and a suitable environment for a particular class of patients. There is no reason to doubt the medical evidence that these conditions, particularly fresh air, are necessities of a sanatorium for tuberculo-
 10 sis patients is to provide the optimum treatment. Such an institution will no doubt require further buildings and other improvements as time goes on. It will develop with the years. If a large area of land will be required for such development those who are responsible for its start and growth must be entitled to secure an adequate area of land whilst it is still available. But the foundation of the case for the respondent is the medical evi-
 20 dence that such a sanatorium can only operate with full efficiency if it occupies a large area of land. It is spaciousness that counts to whatever extent that area may be developed. But it would seem that it should not be developed to such an extent as to destroy its natural therapeutic qualities. In supplying plenty of fresh air the area in its natural state provides for the sanatorium a corre-
 30 sponding benefit, having regard to their different functions, to that of the moorland in the Liverpool Corporation Case in providing the reservoirs with plenty of unpolluted water. In that case the attempt was made, as we have seen, to prove that the moorland was not occupied because it was purchased not for the purpose of occupation but for the express purpose that it should not be occupied. But that attempt failed. There can be no sugges-
 40 tion in the present case that the area of 291 acres was acquired to be left derelict. It was purchased so that it should be occupied by the respondent to the exclusion of anyone else and it is the respon-
 dent that is in occupation. In Knowles v. Newcastle Corporation 9 C.L.R.534 at p.545 Isaacs J. said: "The first condition of liability is that it must be 'used or occupied for any purpose'. 'Used' is there not necessarily synonymous with 'occupied', and probably points to utilization in some other way than merely actual occupancy." On the same page His Honor said that one could not well conceive of the Chief Commissioner himself occupying railway premises except for railway purposes. How can it be said in the present case that the respondent occupies only a part of the

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(B) Mr.
Justice Webb.

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327 acres. It is impossible to say that the respondent occupies the developed but does not occupy the undeveloped part. It occupies the whole. It is all occupied for the same purposes, that is, the purposes of the hospital. The whole of the area need not be put to an active physical use in order to be so occupied. Bare occupation is sufficient so long as that occupation is for the purposes of the hospital and on this case one could not well conceive, in the absence of evidence to the contrary, that the respondent could itself occupy it for any other purposes.

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The appeal should be dismissed with costs.

(B) MR. JUSTICE WEBB

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JUDGMENT

WEBB J.

I would dismiss this appeal. I have nothing to add to the reasons stated by Williams J. and Taylor J.

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(C) MR. JUSTICE FULLAGAR

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(C) Mr.
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JUDGMENT

FULLAGAR J.

The dissenting judgment of Owen J. in this case was, in my opinion, right, and I agree entirely with the judgment of my brother Kitto, which I have had the advantage of reading.

10 The trouble in this case seems to me to have begun when counsel for the Plaintiff municipality called Dr. Morgan as a witness. This course was apparently adopted because it was known, or anticipated, that the defendant hospital would tender certain "expert" evidence. The evidence of Dr. Morgan, and the evidence of the four doctors who were called for the defendant was, in my opinion, plainly irrelevant to any real issue in the case. The defendant, however, very naturally did not object to Dr. Morgan's evidence, and the plaintiff, having called Dr. Morgan could not very well object to the calling of evidence which to some extent contradicted Dr. Morgan. The result was that the case was fought on a false issue, and decided on a fallacy.

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30 The root of the fallacy lies in the assumption that deriving an advantage from the ownership of land is the same thing as using the land. The fallacy is helped out by the coining of an expression - "intangible user" - which has no real meaning. Actually, while using the land will practically always mean deriving an advantage from it, an advantage may clearly be derived from the ownership of it without its being "used" in any way. What has been done in this case is to begin with the proposition that he who uses land derives an advantage from it. (This proposition is probably true, but its converse is false). Evidence is then adduced to show that an advantage is derived from the ownership of the particular land in

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question. The conclusion is then deduced that the land in question is being "used". It seems to me to be a clear example of a familiar fallacy.

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(C) Mr.
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The only other observation I would make is that the case of Liverpool Corporation v. Chorley Union Assessment Committee (1913) A.C.197, seems to me to stand out in conspicuous contrast with this case, and to illustrate very well the kind of thing which it would have been sufficient for the defendant to prove in this case.

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continued.

The appeal should, in my opinion, be allowed.

(D) Mr.
Justice
Kitto.

(D) MR. JUSTICE KITTO

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JUDGMENT

KITTO J.

This appeal is from an order of the Full Court of the Supreme Court of New South Wales dismissing an appeal against a judgment given for the defendant at the trial of an action by a municipal council for rates in respect of the years 1946 to 1952 both inclusive. The appeal depends upon the meaning and application of the provision in para. (d) of s.132(1) of the Local Government Act, 1919 (N.S.W.) by which all land in a municipality is made ratable except (inter alia) "land which belongs to a public hospital....and is used or occupied by the hospitalfor the purposes thereof."

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The land in question, being vested for an estate in fee simple in the appellant the Royal Newcastle Hospital, admittedly "belongs", in the relevant sense of the word, to a public hospital. The only question in dispute is whether, in the relevant years, it was "used or occupied by the hospital for the purposes thereof".

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The land is an area of 291 acres of rough bush-land comprising stony ridges and deep gullies, heavily timbered, and substantially in its wild natural condition. It is contiguous to other land of the hospital, 36 acres in area, on which stand the buildings of the Rankin Park Chest Hospital, a section of the Royal Newcastle Hospital. A portion of this smaller area, comprising 17½ acres, is fenced and forms what may be described as the curtilage of the Chest Hospital buildings. The remainder of the 36 acres, lying outside the fence, is in its natural state, and, though not physically distinguished from the land which is the subject of this appeal, has not in fact been rated by the Council in the relevant years.

The expression "used or occupied" in para.(d) occurs also in para. (f) and (fi) and the several sub-paras. of para. (h). "Used" suffices for paras. (a), (b), (c) and (e), and the extending portion of paragraph (j). "Occupied and used" is the expression in para. (g) (ii), in the general portion of para. (h), and in the main portion of para. (j). It seems to me that throughout the section care has been shown to observe a distinction between the occupation and the use of land. Of course, conduct which satisfies the one word may also satisfy the other and it is not surprising to find the words treated in particular contexts, in some judgments for example, as if they were interchangeable. But there is a distinction nevertheless, and it is suggested by the celebrated passage in the judgment of Lush J. in Reg. v. St. Pancras Assessment Committee (1877) 2 Q.B.D. 581 at p.588 as to the meaning of ratable occupation under the Statute of Elizabeth (43 Eliz. c.2). In words frequently quoted, the learned judge made it clear that an occupation of land involves conduct over and above legal possession; and he went on, in words which are quoted less often, to point out that even actual possession is not enough, for another element in occupation is permanence. Accordingly Bingham J. in Borwick v. Southwark Corporation (1909) 1 K.B.78 at p.83 defined occupation, in words which the Court of Appeal approved in Associated Cinema Properties Ltd. v. Hampstead Borough Council (1944) 1 K.B.412 at p.414, as being "constituted of legal possession and of permanent (as distinguished from mere temporary) user". The three elements, legal possession, conduct amounting to actual possession, and some degree of permanence,

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seem to me to be involved in the word "occupy" as used in the Local Government Act of New South Wales. So the courts of that State appear to have considered, for in McLean v. Burrangong Shire Council (1914) 14 S.R. (N.S.W.) 291 emphasis was laid upon the necessity for something beyond proprietorship, "some physical act of occupation"; and in Colonial Treasurer v. Albury Municipal Council (1915) 15 S.R. (N.S.W.) 320 at p.324 it was said by Pring J. that occupation would appear to be something which is definite in its purpose and, to some extent at any rate, continuous. The word "used", on the other hand, does not involve more than physical acts by which the land is made to serve some purpose. The acts no doubt must be recurring, but the notion of continuity or permanence is absent.

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One other point should be mentioned concerning the word "occupied". The English authorities as to ratable occupation belong to a specialised field of law, and great care is needed in using them out of context. In particular it is important to note that s.132(1)(d) of the Local Government Act does not refer to occupation generally; it refers to occupation for specific purposes. I do not think it is correct to take from the English rating cases the principle that title in fee simple in possession is prima facie evidence of occupation and to conclude that, since any occupation which the Royal Newcastle Hospital has must be for its hospital purposes, its title to the subject land is prima facie evidence of occupation for those purposes. The expression in the section "occupied by the hospital for the purposes thereof" is not satisfied, in my opinion, unless there is proof of actual and continuous possession directed to serving the purposes of the hospital. Even in the realm of English rating law, the Court of Appeal said in Associated Cinema Properties Ltd. v. Hampstead Borough Council (1944) 1 K.B.412 at p.416 that no case could be cited in which occupation had been held to be established without proof of some overt act amounting to user.

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The case for the respondent hospital may be put in alternative ways: first, that the subject land, the 291 acres, should not be considered separately from the rest of the 327 acres, and that what was done on the 17½ acres in the relevant years was in truth a user or occupation of the whole 327 acres: or, secondly, that the subject land was separately used or occupied for the purpose of the hospital in those years.

The trial judge seems to have accepted the first of these alternatives, for he held that "the exempted area is the continuous whole in the occupation of the hospital." It is easy to imagine a case in which hospital buildings may take up a small part only of a large park-like area and yet the proper conclusion of fact may be that the whole area is occupied or used for the purposes of the hospital. And of course it is clear that if the whole area is in fact being used or occupied for those purposes it is nothing to the point, in relation to s.132(1)(d), to inquire whether so large an area is actually necessary, or is considered by experts to be necessary, for those purposes. What area the hospital should use or occupy is a matter for its governing body to decide. The only relevant inquiry is one of objective fact; what land is the hospital using or occupying for its purposes. For this reason a good deal of expert medical evidence given at the trial in the present case had little if any bearing on the issues to be decided. That there was in the relevant period both a user and an occupation for the purposes of the hospital of the land which formed the site and curtilage of the hospital buildings, no one could doubt. That the conduct which constituted that user and occupation related at least to the whole of the 17½ acres is equally clear. But did it relate to the whole of the 327 acres so as to constitute a user and occupation of that entire area? I think the answer is that an observer of what went on in the years 1946 to 1952 on the respondent hospital's property would be struck at once by the difference in treatment of the 17½ acres on the one hand and of the rest of the land on the other - not only because a fence divided them, but because the whole of the activities that took place were confined to the land within the fence, that land having been developed and being maintained in a condition suitable for those activities, while the land outside the fence was completely neglected. If asked how much of the land the hospital used or occupied, I cannot doubt that the observer's answer would be that it used and occupied the 17½ acres and left the rest completely unused and unoccupied. It would never occur to him, I think, to say that the whole area of virgin bushland, the stony ridges and the impassable gullies, formed a coherent whole, so that the hospital's activities on the 17½ acres were a use of occupation of that whole. The evidence of his eyes would be too strong. He would no doubt

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assume that it was considered by the hospital authorities expedient that the land outside the fence should be retained, either for future use by the hospital or to prevent its being used by anyone else: but a conclusion that there was a present and positive use or occupation by the hospital of the whole of the land would not be justified by that assumption and would be, I think, plainly contrary to the fact.

In support of the second alternative proposition reliance is placed by the hospital upon evidence given by several witnesses, which tended to show that the 291 acres served four specific purposes in relation to the hospital: first, that it ensured the clear atmosphere necessary for the proper treatment of patients; secondly, (which seems to come to the same thing) that it acted as a barrier against the approach of buildings, particularly factories, likely to emit smoke, fumes or dust; thirdly, that it provided quiet and serene conditions having psychological advantages to patients suffering from a disease in the treatment of which psychological conditions are important; and, fourthly, that it gave opportunity for future expansion of the hospital and the establishment of allied activities. But evidence of this character, even if given complete credence, means only that by owning the subject land the hospital derived the negative advantage of being able to exclude any form of development which it might not wish to see in that portion of its neighbourhood, and the positive advantage of being able to make any future use of the land which it might think desirable. It is surely undeniable that a bare holding of land is neither a use nor an occupation of it, and it makes no difference that the reasons which lead the owner to retain the land unused and unoccupied are logically connected with the pursuit of purposes which he is serving by means of a use or occupation of other land. When it is said that the Hospital owned the 291 acres in the relevant years, all had been said that can be said of the relation of the Hospital to that land in those years. And that is not enough to bring the case within s.132(1)(d).

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In my opinion the appeal should be allowed.

(E) MR. JUSTICE TAYLOR

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TAYLOR J.

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10 In the action which has given rise to this appeal the appellant sued the respondent to recover municipal rates alleged to be payable by the latter, in respect of the years 1946 to 1952 inclusive, as the owner of some 291 acres of land situated on the outskirts of Newcastle. The action failed and an appeal subsequently brought to the Full Court of the Supreme Court was dismissed. This appeal is brought from the order of dismissal.

20 The land in question is part of a larger area of 327 acres known as Rankin Park and upon the land, or part of it, is erected a number of buildings used by the respondent as a hospital and sanatorium for the treatment of tuberculosis. The main buildings, comprising Rankin Hall, the chest hospital and nurses' quarters, are erected towards the south-eastern boundaries of the land adjacent to Lookout Road and the land in the immediate vicinity of the buildings is laid out in lawns and gardens. The area so laid out is said to be $17\frac{1}{2}$ acres in extent and this area is surrounded by a fence. Except for a short distance at its northern extremity the fence appears to consist of steel posts and wire strands. The residue of the land beyond the fence has been described as virgin country. It is still in its natural timbered state and it slopes away to the west. For some reason or other - and one explanation was suggested to us by counsel but this does not appear from the evidence - the appellant, whilst attempting to levy rates on approximately 291 acres of this land has forborne to do so in respect of the remaining $18\frac{1}{2}$ acres. The latter is in no way distinguishable from the balance of the unmade land; it is precisely of the same character though it is situated adjacent to the fence referred to and is, therefore, not as remote from the existing buildings.

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The respondent is and at all material times was a public hospital within the meaning of s.132 (1)(d) of the Local Government Act 1919 as amended and its answer to the appellant's claim is that the 291 acres in question were at all material times used or occupied by it, being a public hospital, "for the purposes thereof".

The land which is now owned by the respondent was not acquired by it in one parcel. It purchased two parcels in 1926, aggregating 92 acres, and an additional area of $4\frac{1}{2}$ acres was purchased in 1934. The first purchase included an old home which was apparently subsequently, used for the purposes of the respondent. In 1941, during the recent war, the area then owned by the respondent was taken over by the Commonwealth for the establishment of an emergency hospital. The Commonwealth retained control of the area until 1944 and at, or towards, the end of this period the possibility of the establishment of a hospital and sanatorium in this vicinity for the purpose of the treatment of tuberculosis appears to have come under consideration. At that time provision was made for the treatment of patients suffering from this disease at the respondent's main hospital, a large general institution situated in the City of Newcastle itself. The evidence of what was then done lack a considerable amount of essential detail but it is plain enough that the project came up for consideration by the board of the hospital and by the Department of Public Health. About the middle of 1944 an inspection was made of the locality in which Rankin Park is now situated. This inspection was made by the president of the Hospital Board, who is now deceased, in company with Dr. Hughes, who was the Deputy Director of the Tuberculosis Division of the Department of Public Health, and Dr. McCaffrey, the Superintendent of the hospital. Following this inspection, a further purchase of a small area was made by the respondent and, a few years later, the remaining portion of the present area, that is, 220 acres, was resumed under the provisions of the Public Works Act 1912 "for the purposes of the Newcastle Hospital". This occurred on the 10th April, 1946 and the land so resumed is included in the 291 acres in respect of which the appellant seeks to recover rates. Apparently, in anticipation of the resumption, work had already commenced on the construction of one or some of the buildings previously referred to with the result that one of the main buildings,

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Rankin House, was in a position to receive some patients in 1947. Some 30 patients were then received and within 18 months the hospital was in a position to receive approximately another 70. The precise times at which the chest hospital and the nurses' quarters were erected do not appear but it would be unreasonable to suppose that they were not erected in the course of carrying out a project envisaged in 1944 and, indeed, actually commenced during or very shortly after that year.

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The question in these somewhat scantily proved circumstances is whether, during the relevant years, the respondent, being a public hospital, used or occupied the land in question for its purposes. For the appellant it is asserted that it did not and as I understand the argument two notions are involved. The appellant concedes that the enclosed land was so used and, *ex gratia*, is prepared to treat the additional $18\frac{1}{2}$ acres previously referred to as if they were so used. But the balance of 291 acres, it is asserted, is neither used nor occupied by the hospital. Up to this point the argument treats the whole of the land owned by the hospital as consisting of several parcels some of which it has occupied and used and one, including the land last acquired, as never having been used or occupied for any purpose. The boundary between the latter portion and the residue of the land is marked out by a series of white posts which were placed in the position by the appellant, to delineate 36 acres which had been valued separately by the Valuer-General and this may account for the somewhat arbitrary division between the land which the appellant considers ratable and the land which it does not.

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The second notion involved in the appellant's argument appears to have been intended to anticipate, at the hearing, a claim by the respondent that the land in its entirety had been devoted to the establishment of the project in question. It is said, first of all, that the original project conceived the establishment, in addition to a hospital and sanatorium, of a village settlement for the convalescence and regeneration of patients, and, that in 1946 or shortly thereafter, recently devised forms of treatment rendered the establishment of such a settlement unnecessary. Evidence was given which indicated that new forms of treatment did tend to render obsolescent, in some cases at least, forms of after-treatment which, previously,

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had been more or less common and which could be effective only if administered over a long period of time. On this basis it was said that it became unnecessary for the hospital's purposes to occupy or use the whole of the land and that its continued retention of the land in question, in no way served any such purpose.

Three observations should be made at once concerning these submissions. First of all, it may be said that, although the evidence is scanty it sufficiently appears that the project envisaged in 1944 and which, about that time, the respondent commenced to carry out involved a single, though comprehensive, purpose. But though it was a long term project capable of development only over a number of years it could in no sense be said that it comprised a series of projects to be carried out on several parcels of land. Secondly, although the contrary assertion was made in argument, the evidence does not show that the land in question was acquired or held for the establishment of a village settlement or that it was held, merely, to fulfil a future purpose which it was, for a time, contemplated that the land might serve. It may be that, originally, it was thought that some part of the land might be put to such a use but, even if this were so, I can find nothing to suggest that it was a material factor in determining the area which Dr. McCaffrey and Dr. Hughes appear to have thought desirable or necessary for the establishment of a sanatorium and hospital. Finally, it may be said that it is of little assistance to the appellant to assert that the acquisition of the whole of the area by the respondent was, in point of fact, unnecessary to permit the effective establishment of a sanatorium and hospital if, upon the facts, it may be said that it has been used for the purposes of the respondent as a public hospital. If, within the meaning of s.132(1)(d), it was so used it is nothing to the point that newly developed forms of treatment made it unnecessary in the opinion of some people for a tuberculosis sanatorium to be established in open country or that, in the present case, the appropriation of a substantial area of bushland did not, in fact, result in any benefit or advantage in the treatment by the hospital of its patients.

A medical practitioner called as a witness by the appellant testified that a sanatorium of this

type does not require any greater area of land than a general hospital. This, however, was not the effect of medical evidence called on behalf of the respondent. But what is more to the point, the effect of the evidence of Dr. McCaffrey - who was and still is the superintendent of the hospital and who recommended the acquisition of the additional 220 acres - was that he regarded the tract of land comprising the total area as the minimum necessary for the establishment of a hospital and sanatorium of this character and that, after the inspection in 1944 at which Dr. Hughes and the President of the hospital were present, he fixed that area as the minimum the hospital should have. And notwithstanding the fact that new forms of treatment have been devised his view at the hearing was that if he could persuade the board of the hospital to acquire more land for that purpose he would do so. Dr. McCaffrey's evidence was acceptable to the learned trial judge as was that of Dr. Hughes who, quite obviously, agreed with Dr. McCaffrey concerning the land which should be acquired and there is nothing in his evidence to suggest that what was thought to be necessary then is not necessary now. On the contrary it is clear that Dr. Hughes regarded and still regards the whole of the land as "a necessary adjunct to the hospital".

The onus of establishing the facts necessary to support the defence which is raised rested of course upon the respondent and it may be that in attempting to discharge this onus attention was directed predominantly to the issue whether ownership of the land in question, having regard to more modern forms of treatment, has been advantageous to the hospital in carrying on its work. But as Owen J. observed in the Supreme Court "the derivation of benefit is not the test". Although the evidence is scanty the picture as I see it is that in 1944 a project was envisaged and that the carrying on of this project required, in the view of those responsible for it, appropriation of land additionally to that already owned by the hospital. What then occurred has already been related. A further area, thought to be necessary if a hospital and sanatorium of the type referred to were to be provided, was resumed and the project commenced. The hospital, itself, was concerned with but a single piece of land devoted to one object and thought to be necessary for carrying out of that object. And nothing appears to suggest to my mind that the whole area

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did not remain devoted to this purpose during the whole of the relevant period. In these circumstances it is nothing to the point to say that the appellant or some other person or body considers that such an extensive area was unnecessary for the purposes which the hospital had in mind or became unnecessary as new forms of treatment were devised.

The question then is whether, upon these facts, the hospital is entitled to say, in the language of s.132(1)(d), that the whole of the land was occupied or used by it for its purpose. At least I feel bound to say that it was so used. That it should be so used was a matter for the hospital to determine and it is unnecessary to speculate whether it was used to advantage or whether, in the opinion of some other body, the hospital used more than was necessary.

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The word "used" is, of course, a word of wide import and its meaning in any particular case will depend to a great extent upon the context in which it is employed. The uses to which property of any description may be put are manifold and what will constitute "use" will depend to a great extent upon the purpose for which it has been acquired or created. Land, it may be said, is no exception and s.132 itself shows plainly enough that the "use" of land will vary with the purpose for which it has been acquired and to which it has been devoted. It may be used for a public cemetery; for a common; for a public reserve; in connection with a church or school and so on. Each of the forms of user referred to in the section relate to use by the owner and some of them, no doubt, contemplate a use which is synonymous with actual physical occupation and enjoyment. Others contemplate a use in a less direct form. But where an exemption is prescribed by reference to use for a purpose or purposes it is sufficient, in my opinion, if it be shown that the land in question has been wholly devoted to that purpose even though the fulfilment of the purpose does not require the immediate physical use of every part of the land. In my opinion where a hospital acquires or sets apart, for a project which may properly be described as a purpose of a public hospital, a tract of land which it considers is the minimum requirement for its

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contemplated project and thereupon proceeds to carry out that project it, thereby, uses the whole of the land. How its purposes shall be fulfilled is, within reason, for it to decide and, as I have already said, it is nothing to the point to say that it has employed in the project more land than may, upon the views of others, be thought to have been necessary, or that in fact, it has derived no benefit or advantage therefrom in the fulfilment of its purposes.

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For the reasons given the appeal should, in my opinion, be dismissed.

No. 15

ORDER ON APPEAL

IN THE HIGH COURT OF AUSTRALIA)
NEW SOUTH WALES REGISTRY) No.33 of 1956

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES

BETWEEN: THE COUNCIL OF THE CITY OF NEWCASTLE
(Plaintiff) Appellant

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- and -

ROYAL NEWCASTLE HOSPITAL
(Defendant) Respondent

BEFORE THEIR HONOURS - MR. JUSTICE WILLIAMS, MR.
JUSTICE WEBB, MR. JUSTICE FULLAGAR, MR. JUSTICE
KITTO and MR. JUSTICE TAYLOR

Thursday the Twenty-first day of March 1957.

THIS APPEAL from the judgment of the Full Court of the Supreme Court of New South Wales given on the 18th day of June 1956 dismissing an appeal from the verdict and judgment given on the 28th day of June 1955 by his Honour Mr. Justice Richardson coming on for hearing before this Court at Sydney on the 8th day of November 1956 UPON READING the transcript record of the proceedings herein AND UPON HEARING Mr. Moffitt of Queen's Counsel and

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In the
High Court of
Australia

No. 14

Reasons for
Judgment.

(E) Mr.
Justice
Taylor.

21st March
1957 -
continued.

No. 15

Order on
Appeal.

21st March
1957.

In the
High Court of
Australia

No. 15
Order on Appeal.
21st March 1957
- continued.

Mr. Colin Allen of Counsel for the above-named Appellant and Mr. Wallace of Queen's Counsel and Mr. J.M. Williams of Counsel for the above-named Respondent THIS COURT DID ORDER on the said 8th day of November 1956 that this appeal should stand for judgment and the same standing for judgment this day accordingly at Sydney THIS COURT DOTH ORDER that this appeal be and the same is hereby dismissed AND THIS COURT DOTH FURTHER ORDER that it be referred to the proper officer of this Court to tax and certify the costs of the Respondent of this Appeal and that such costs when so taxed and certified be paid by the Appellant to the Respondent or to its Solicitors AND THIS COURT BY CONSENT ALSO ORDER that the said costs of the Respondent be paid out of the sum of £50.0.0 paid into Court by the Appellant as security for costs so far as the same shall extend and that the balance of the said sum of £50.0.0 if any be paid out of the Court to the Appellant or its Solicitors.

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BY THE COURT
N. GAMBLE
DISTRICT REGISTRAR.

In the
Privy Council

No. 16

No. 16

ORDER IN COUNCIL GRANTING LEAVE TO APPEAL TO
HER MAJESTY IN COUNCIL

Order in Council
granting leave
to Appeal to Her
Majesty in
Council.

AT THE COURT AT BUCKINGHAM PALACE
The 3rd day of June 1958

P R E S E N T

3rd June 1958.

THE QUEEN'S MOST EXCELLENT MAJESTY

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LORD PRESIDENT

MR. GEOFFREY LLOYD

MR. SECRETARY LENNOX-BOYD

MR. MAUDLING

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 15th day of May 1958 in the words following, viz :-

"WHEREAS by virtue of His Late Majesty King Edward the Seventh's Order in Council of the 18th

In the
Privy Council

No. 16

Order in Council
granting leave
to Appeal to Her
Majesty in
Council.

3rd June 1958 -
continued.

10 day of October 1909 there was referred unto this
Committee a humble Petition of the Council of the
City of Newcastle in the matter of an appeal from
the High Court of Australia between the Petitioner
and the Royal Newcastle Hospital Respondent setting
forth (amongst other matters) that this is a Peti-
tion for special leave to appeal from a judgment of
the High Court of Australia upholding a decision
of the Supreme Court of New South Wales that the
Respondent a public hospital was exempt from liabi-
20 lity for payment of Local Government rates in res-
pect of an area of approximately 291 acres of land
owned by the Respondent in the City of Newcastle
in the State of New South Wales: that the Petitioner
brought an action in the Supreme Court of New South
Wales against the Respondent for the payment of
£4,001.9.8 in respect of such rates for the years
1946 to 1952 both years inclusive and the Court de-
livered judgment in favour of the Respondent: that
20 the Petitioner appealed to the Full Court of the
Supreme Court of New South Wales which Court dis-
missed the appeal: that the Petitioner appealed to
the High Court of Australia and that Court by its
judgment dated the 8th November 1956 dismissed the
appeal: and humbly praying Your Majesty in Council
to grant the Petitioner special leave to appeal from
the judgment of the High Court of Australia dated
the 8th November 1956 and for such further or other
Order as to Your Majesty in Council may seem fit:

30 "THE LORDS OF THE COMMITTEE in obedience to His
Late Majesty's said Order in Council have taken the
humble Petition into consideration and having heard
Counsel in support thereof and in opposition thereto
Their Lordships do this day agree humbly to report
to Your Majesty as their opinion that leave ought to
be granted to the Petitioner to enter and prosecute
its Appeal against the judgment of the High Court of
Australia dated the 8th day of November 1956 upon
the condition that the Petitioner does not seek to
40 disturb the existing Orders as to costs incurred in
the Courts of Australia:

"AND THEIR LORDSHIPS do further report to Your
Majesty that the proper officer of the said High
Court ought to be directed to transmit to the Regi-
strar of the Privy Council without delay an authen-
ticated copy under seal of the Record proper to be
laid before Your Majesty on the hearing of the Appeal
upon payment by the Petitioner of the usual fees for
the same."

In the
Privy Council

No. 16

Order in Council
granting leave
to Appeal to Her
Majesty in
Council.

3rd June 1958 -
continued.

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of the Commonwealth of Australia for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W.G. AGNEW.

E X H I B I T S

EXHIBIT D (1)

COPY OF PROCLAMATION

Exhibits

D (1) Copy
Proclamation.

30th May 1924.

EXTRACT FROM GOVERNMENT GAZETTE NO. 70
OF 30th MAY, 1924

PP.2536/7

LOCAL GOVERNMENT ACT, 1919

PROCLAMATION

10 (L.S.)
D.R.S. de Chair,
Governor

20 I, Sir Dudley Rawson Stratford de Chair, Governor of the State of New South Wales, with the advice of the Executive Council, in pursuance of the Local Government Act, 1919, do hereby declare the portion of the Municipality of New Lambton, described in Schedule "A" hereto to be a residential district (No. 1 New Lambton), and I do hereby prohibit in such district (1) the erection of any building for use for the purpose of the trades, industries, or manufactures, which are described in Schedule "B" hereto; (2) the use of any building for any such purposes; and (3) the erection or use of advertisement hoardings.

Signed and sealed at Sydney, this twenty-first day of May, 1924.

By His Excellency's Command

J.C.L. Fitzpatrick

GOD SAVE THE KING.

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SCHEDULE "A"

That portion of the Municipality commencing at the intersection of the Waratah Coal Company's Line with Lambton-road; thence generally southerly and south-westerly along the eastern and south-eastern

Exhibits
 D (1) Copy
 Proclamation.
 30th May 1924.

boundaries of the Municipality to its inter-section with St. James road; thence by the northern side of St. James road to its intersection with the northern boundary of portion 179; thence generally westerly by the northern boundary of that portion and the northern boundary of lot 1 d.p. 3,365 to Orchard-road; thence by the western side of Orchard road and its prolongation generally southerly to its intersection with the Great Northern Railway Line; thence generally westerly by the northern side of the Great Northern Railway to its intersection with the western boundary of the Municipality; thence along that western boundary to the northern boundary; thence along part of that northern boundary to the Lambton Bridges; and thence along the northern side of Hobart-road generally easterly and south-easterly, to the point of commencement.

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SCHEDULE "B"

Prohibited Buildings, Trades Etc.

Buildings for the purposes of the following trades, industries, or manufactures:- Trades, businesses, or manufactures declared to be noxious trades within the meaning of the Noxious Trades Act, 1902, and also the following:- Bottle depots, lime and cement works or depots, iron and brass foundries, iron works, monumental masons' yards or workshops, sawmills, flour mills, factories, chemical works, steam laundries, ice works, livery stables, tanneries, brickworks, pipe works, potteries, soap works, tile works.

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EXHIBIT "3"Exhibits

EXTRACT FROM NEW SOUTH WALES GOVERNMENT GAZETTE
NO. 41, dated 18th APRIL, 1946, Folio 963.

Exhibit 3

Extract from
Government
Gazette
dated
18th April
1946.

PUBLIC HOSPITALS ACT, 1929-1937

NEWCASTLE HOSPITAL

ACQUISITION OF LAND

10 APPLICATION having been made that the land
described in the Schedule hereto be appropriated or
resumed for the purposes of Newcastle Hospital, an
incorporated hospital within the meaning of the
Public Hospitals Act, 1929-1937, IT IS HEREBY
NOTIFIED AND DECLARED by His Excellency the Lieu-
tenant-Governor, acting with the advice of the Exe-
cutive Council, that so much of the said land as is
Crown land is hereby appropriated and so much of the
said land as is private property is hereby resumed
under Division 1 of Part V of the Public Works Act
1912 for the purposes aforesaid; And it is hereby
20 further notified that the said land is vested in
Newcastle Hospital.

Dated at Sydney, this 10th day of April, 1946.

F.R. JORDAN, Lieutenant-Governor.

By His Excellency's Command

J.J. CAHILL, Minister for Public
Works.

SCHEDULE

30 All the piece or parcel of land situate in the
City of Greater Newcastle, parish of Newcastle and
county of Northumberland, being part of portions 23,
167, 171 and 172: Commencing on the north-western
side of Look-out road at the north-eastern corner
of lot 28, deposited plan No. 10,201; and bounded
thence on the south-west by the north-eastern bound-
ary of that lot bearing 282 degrees 40 minutes 346
feet $8\frac{3}{4}$ inches on the north-west and again on the
south-west by part of the south-eastern boundary

Exhibits

Exhibit 3

Extract from
Government
Gazette
dated
18th April
1946 -
continued.

and the north-eastern boundary of the land shown in plan annexed to dealing No. C836373 bearing 12 degrees 34 minutes 505 feet $3\frac{3}{4}$ inches and 302 degrees 55 minutes 1,033 feet $1\frac{1}{4}$ inches respectively to the eastern side of Marshall Street; on the west by that side of that street, being lines successively bearing 359 degrees 20 minutes 446 feet $11\frac{1}{2}$ inches, 359 degrees 39 minutes 3,451 feet $7\frac{1}{4}$ inches, 9 minutes 194 feet $7\frac{3}{4}$ inches 359 degrees 53 minutes 225 feet $9\frac{1}{2}$ inches and 359 degrees 35 minutes 862 feet 3 inches; on the north-east by a line bearing 106 degrees 34 minutes, 2,732 feet $1\frac{1}{4}$ inches to an angle in the generally northern boundary of the land shown in plan annexed to dealing No. C155216; generally on the south-east by the generally north-western boundary of the said land shown in plan annexed to dealing No. C155216 and the north-western boundary of lot C, miscellaneous plan of subdivision (R.P.) registered No. 49011, being lines successively bearing 255 degrees 33 minutes 264 feet $1\frac{1}{4}$ inches, 290 degrees 2 minutes 230 feet, 203 degrees 4 minutes 479 feet, 224 degrees 12 minutes 292 feet, $10\frac{3}{4}$ inches, 201 degrees 20 minutes 383 feet 10 inches, 221 degrees 42 minutes 111 feet and 196 degrees 29 minutes 1,141 feet $6\frac{1}{2}$ inches; generally on the north-east by the south-western boundary of the said lot C and lot B and the generally northern boundary of lot A of the said subdivision, being lines successively bearing 114 degrees 34 minutes 437 feet $4\frac{1}{2}$ inches, 142 degrees 53 minutes 30 seconds 857 feet $4\frac{1}{4}$ inches, a curved line being 92 feet $6\frac{1}{2}$ inches of the arc of a circle having a radius of $13\frac{3}{4}$ feet the centre lying towards the north-east of the chord which bears 123 degrees 6 minutes for a distance of 90 feet $8\frac{3}{4}$ inches, and lines successively bearing 103 degrees 19 minutes 99 feet $4\frac{1}{4}$ inches and 58 degrees 19 minutes 42 feet 5 inches to the generally north-eastern side of Look-out Road aforesaid; again in the south-east by that side of that road being lines successively bearing 193 degrees 19 minutes, 346 feet $0\frac{1}{4}$ inch, 195 degrees 23 minutes 255 feet $9\frac{1}{4}$ inches, 207 degrees 32 minutes 484 feet $0\frac{3}{4}$ inch, 216 degrees 33 minutes 158 feet 10 inches and 226 degrees 29 minutes 342 feet $3\frac{1}{2}$ inches to the north-eastern corner of lot 12, deposited plan No. 19,357; again on the south-west by the north-eastern boundary of that lot bearing 306 degrees 26 minutes 155 feet $3\frac{3}{4}$ inches; again on the south-east by the north-western boundary of lots 1 to 12 inclusive, being lines successively bearing 226 degrees 29 minutes 101 feet $6\frac{1}{2}$ inches, 216 degrees 26 minutes 258 feet 3 inches and

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10 193 degrees 58 minutes 320 feet $5\frac{3}{4}$ inches; again on the north-east by the south-western boundary of the said lot 1 bearing 103 degrees 58 minutes 162 feet $5\frac{1}{4}$ inches; and again on the south-east by the said north-western side of Look-out Road, being lines successively bearing 188 degrees 3 minutes 151 feet $1\frac{1}{4}$ inches, 201 degrees 34 minutes 260 feet $9\frac{3}{4}$ inches and 218 degrees 20 minutes 178 feet 6 inches to the point of commencement - having an area of 220 acres 35 perches or thereabouts, and said to be in the possession of the Scottish Australian Mining Company Limited.

(Misc. 46-1,376)

(7326)

Exhibits

Exhibit 3

Extract from
Government
Gazette
dated
18th April
1946 -
continued.

IN THE PRIVY COUNCIL

No. 38 of 1958

ON APPEAL
FROM THE HIGH COURT OF AUSTRALIA

B E T W E E N :-

THE COUNCIL OF THE CITY OF NEWCASTLE
(PLAINTIFF) APPELLANT

- and -

ROYAL NEWCASTLE HOSPITAL
(DEFENDANT) RESPONDENT

RECORD OF PROCEEDINGS

KIMBERS,
34, Nicholas Lane,
London, E.C.4.
Solicitors for the Appellant.

LIGHT & FULTON,
24, John Street,
London, W.C.1.
Solicitors for the Respondent.