*Privy Council Appeal No.* 38 *of* 1958

**The Council of the City of Newcastle** - - - - - *Appellant*

*v.*

**Royal Newcastle Hospital** - - - - - - - *Respondent*

FROM

## THE HIGH COURT OF AUSTRALIA

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# JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 19TH MARCH 1959.

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*Present at the Hearing:*

VISCOUNT SIMONDS
LORD COHEN
LORD SOMERVELL OF HARROW
LORD DENNING

[*Delivered by* LORD DENNING]

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In the city of Newcastle, New South Wales, there is a hospital called the Royal Newcastle Hospital, which receives patients suffering from tuberculosis. It has about 100 beds. It is set in grounds laid out with lawns and gardens. These grounds cover 17½ acres and are enclosed with a ring fence. Outside the fence the hospital owns 18½ acres of rough ground marked off by five white posts. Beyond this rough ground the hospital owns 291 acres of land which is still in its virgin state. These 291 acres are traversed by ridges and gullies, which are heavily timbered, with a good deal of underwood. The gullies are steep and rough, some of them so steep that they are impassable. There is very little flat land. There are a few bush tracks, one of which is well defined: but there was no evidence sufficient to establish that it was used by patients or by the nursing staff. There was, in short, no physical use of the 291 acres by the hospital. It was just vacant land.

The City Council claims that the hospital is liable to pay rates on these 291 acres for the years 1946 to 1952 inclusive. It does not seek to make the hospital liable on either the 17½ acres or the 18½ acres, but only on the 291 acres. The sum claimed is £4,001 9s. 8d.

At the hearing of the action, Richardson, J., held that the 291 acres were exempt from rates. His decision was affirmed by a majority of the Supreme Court of New South Wales (Roper, C.J., and Maguire, J., with Owen, J., dissenting) and their decision was in turn affirmed by a majority of the High Court of Australia (Williams, Webb and Taylor, JJ., with Fullagar and Kitto, JJ., dissenting.

It should be noticed at the outset that rates are levied in New South Wales, not on the occupiers as in England, but on the owners: and they are calculated, not by reference to the annual value as in England, but by reference to the unimproved capital value: and all land, occupied or unoccupied, is subject to the payment of rates unless it can be brought within one of the statutory exceptions. English rating decisions are, therefore, not of much help.

The Royal Newcastle Hospital is undoubtedly liable to pay rates on these 291 acres, unless the land comes within section 132 (1) (*d*) of the Local Government Act, 1919, which exempts "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."

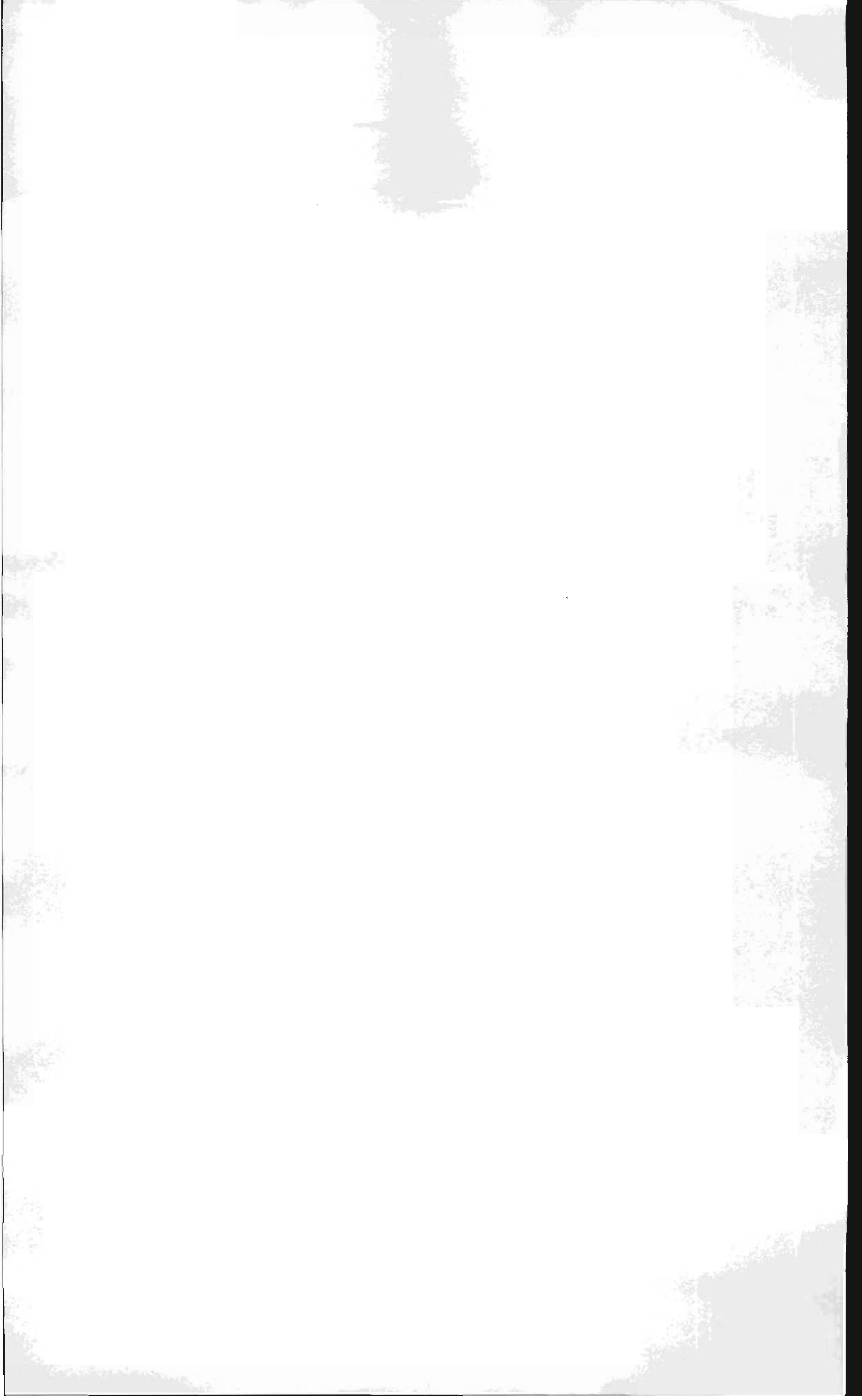
The hospital acquired the land in a series of parcels from 1926 to 1946, namely, 92 acres in 1926, 4 acres in 1934, and 220 acres in 1946. There is no doubt that the hospital acquired all the land for the purposes of the hospital. Indeed, when the latest portion of it (220 acres) was compulsorily acquired in 1946, the Government Gazette expressly stated that it was "resumed for the purposes of the Newcastle Hospital". According to the evidence these purposes were to keep the atmosphere clear and unpolluted : to prevent building upon the land and so act as a barrier against the approach of factories and houses: to provide quiet and serene surroundings for the patients : and to give room to expand the activities of the hospital. The land was undoubtedly *acquired and owned* for those purposes. But was it *used* or *occupied* for those purposes? That is the question.

Their Lordships are of opinion that it was *used* for those purposes. Mr. MacKenna submitted that an owner of land could not be said to use the land by leaving it unused: and that was all that had been done here. Their Lordships cannot accept this view. An owner can use land by keeping it in its virgin state for his own special purposes. An owner of a powder magazine or a rifle range uses the land he has acquired nearby for the purpose of ensuring safety even though he never sets foot on it. The owner of an island uses it for the purposes of a bird sanctuary even though he does nothing on it, except prevent people building there or disturbing the birds. In the same way this hospital gets, and purposely gets, fresh air, peace and quiet, which are no mean advantages to it and its patients. True it is that the hospital would get the same advantages if the land were owned by the Crown or by a trust which had determined to keep it in a natural state, or by an owner who was under a restrictive covenant not to build on the land. But the advantages then would be fortuitous or at any rate outside the control of the hospital. Here they are intended, and that makes all the difference.

In these circumstances it is unnecessary for their Lordships to consider whether the 291 acres were "occupied" by the hospital: but in view of the argument submitted to them, their Lordships would say a few words on it. The hospital was undoubtedly in legal possession of the 291 acres : for the simple reason that, where no one else is in possession, possession follows title. But legal possession is not the same as occupation. Occupation is matter of fact and only exists where there is sufficient measure of control to prevent strangers from interfering, see Pollock and Wright on Possession, pp. 12,13. There must be something actually done on the land, not necessarily on the whole but on part in respect of the whole. No one would describe a bombed site or an empty unlocked house as "occupied" by anyone: but everyone would say that a farmer "occupies" the whole of his farm even though he does not set foot on the woodlands within it from one year's end to another. Their Lordships have some doubt whether these 291 acres were "occupied" by the hospital, because they were not fenced in or enclosed in any way, and it is difficult to say they were so much linked with the hospital grounds as to form part of an entire whole. But it is unnecessary to come to a conclusion on the point.

Their Lordships will humbly advise Her Majesty that the appeal should be dismissed. The appellant must pay the costs.

(39729) Wt. 8021—25 100 4/59 D.L.



**In the Privy Council**

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THE COUNCIL OF THE CITY OF NEWCASTLE

*v.*

ROYAL NEWCASTLE HOSPITAL

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[DELIVERED BY LORD DENNING]

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