

1

In The Privy Council

**22 OF 1968**

**ON THE APPEAL FROM THE SUPREME COURT OF  
NEW SOUTH WALES COURT OF APPEAL IN  
TERM No. 586 of 1967**

IN THE MATTER  
of an Appeal against a valuation by the Valuer-General of certain land in the  
Valuation District of Greater Wollongong

BETWEEN

THE BROKEN HILL PROPRIETARY COMPANY LIMITED }  
AND } *Appellants*  
AUSTRALIAN IRON AND STEEL PROPRIETARY LIMITED }

AND

THE VALUER GENERAL ..... *Respondent*

**TRANSCRIPT RECORD OF PROCEEDINGS**

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3.	Rule of the Supreme Court of New South Wales Court of Appeal granting conditional leave to Appeal to Her Majesty in Council	2nd May, 1968
4.	Certificate of compliance of the Prothonotary of the Supreme Court of New South Wales	24th May, 1968
5.	Notice of Motion for final leave to Appeal to Her Majesty in Council	24th May, 1968
6.	Affadavit of Nicholas Roderick Carson in support of notice of motion for final leave to Appeal to Her Majesty in Council	24th May, 1968

## No. 1

**CASE STATED BY THE LAND AND VALUATION COURT  
FOR THE DECISION OF THE COURT OF APPEAL THEREON  
IN PURSUANCE OF SECTION 17 OF THE LAND AND  
VALUATION COURT ACT 1921-1965**

*In the  
Supreme Court of  
New South Wales*

No. 1

Case Stated

I, MARTIN FRANCIS HARDIE, Judge of the Land and Valuation Court do of my own motion state the following case for the decision of the Court of Appeal on the question of law hereinafter set forth:

1. The Appellants are iron and steel masters carrying on business at various places in Australia and operating Steel Works at Port Kembla in the State of New South Wales. 10
2. The said Steel Works are situated upon land within the Valuation District of the City of Greater Wollongong and part thereof consists of an area of five hundred and three acres, no roods, twelve and a half perches comprising the residue of the land in Certificate of Title Registered Volume 6913 Folio 230 after resumption pursuant to Notice of Resumption Number G 463331. A certified copy of the said Certificate is annexed to this case and marked with the letter "A". The said five hundred and three acres twelve and a half perches is hereafter referred to as the said land. 20
3. Prior to the 30th day of May 1960 the said land was owned by the first-named Appellant and by an Agreement dated the 30th day of May 1960 and made between the first-named Appellant and the second-named Appellant it was agreed that the first-named Appellant would transfer to the second-named Appellant the said land for an estate in fee simple. A true copy of the said Agreement is annexed to this case and marked with the letter "B". 30
4. At the date of the said Agreement there were upon the said land
  - (a) Objects attached to the said land such as large buildings and objects attached to such buildings

such as furnaces, stacks and flues. The said buildings and items such as those exemplified above were so attached that they could not be removed without structural damage thereto. Such objects passed under the said Agreement being fixtures as between Vendor and Purchaser as forming part of the land.

- 10 (b) Objects attached to such land or buildings but which were so attached that they might have been removed without structural damage thereto such as cranes attached by bolts and weighbridges. Such objects passed under the said Agreement being fixtures as aforesaid.
- (c) Objects which were not attached to the said land or buildings such as ladles having a capacity of up to 300 tons used in connection with furnace operations and which by reason, for example, of their weight and size passed under the said Agreement being also fixtures as aforesaid.
- 20 (d) Objects which were not attached to the said land or buildings such as fork lift trucks and front end loaders and construction tools, which were not fixtures and did not pass under the said Agreement.
5. At all relevant times the said land was premises occupied for trade, business or manufacturing purposes.
6. After the Appellants had lodged the said Agreement for stamping the Commissioner of Stamp Duties issued to the Appellants a requisition for evidence of value to be supplied and the Appellants made to the Valuer-General an application for a valuation which the Appellants stated in their application was required for Stamp Duty purposes. The said application, omitting some formal parts, was in the following terms:—
- 30

APPLICATION FOR A CERTIFICATE OF  
VALUATION, OR A NEW VALUATION  
THE VALUER-GENERAL,  
SYDNEY.

Application is hereby made for a Certificate showing:—

- 40 (1) The value of the fee simple in possession only,  
~~(2) An interest less than the fee simple in possession~~  
—as follows:—

(Strike out as required)

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as at 30th May 1960 in respect of the property described  
(here specify date of valuation)

~~—prescribed or—~~

below, for which provisional fee of One thousand pounds  
— shillings — pence (£1000.0.0) is herewith enclosed,  
and I hereby undertake to pay such additional amount as  
is necessary to meet the full amount of the fee fixed in  
accordance with the Valuation of Land Act, 1916, as  
amended, and the Regulations thereunder.  
(See back hereof.)

10

DESCRIPTION OF PROPERTY

Valuation District Wollongong

(Shire or Municipality)

Val. No. 1505 and 1229

County Camden Parish Wollongong

Portion No. Part of 53, 50, 67, Allan's  
Creek and Tom Thumb Lagoon

Residue of C.T. Volume 6913 Fol. 230 after  
resumption G.463331

State whether land is Vacant: No

20

Nature of Building Steelworks  
(if any)

Owners in Fee Simple THE BROKEN HILL  
PROPRIETARY COMPANY  
LIMITED

Owner of Interest —

If owner deceased state: Executors or —

Trustees —

Address —

Purpose for which valuation required: Stamp Duty 30

State on whose behalf application  
is made:

purchaser

7. On the 22nd day of February 1967 the Valuer-General issued to the Appellants a Certificate of Valuation which, omitting formal parts, was in the following terms:

CERTIFICATE OF VALUATION

Under the Valuation of Land Act,  
1916 (as amended)

This is to Certify that the following was the value of  
the interest of The Broken Hill Proprietary Company 40  
Limited in the property herein described:

Valuation District of GREATER WOLLONGONG

Ward or Riding                    FOURTH  
 Valn. No.                         7319 & Pt. 7318  
 County   Camden   Parish   Wollongong  
 Portion   Pts. 50, 53 & 67 and Allan's  
               Creek & Tom Thumb Lagoon  
 Area or Dimensions   503A.0R.12½P  
 Improvements        See Back.  
 Nature of Interest:

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10

Owner of the fee simple of the land,  
 with vacant possession.

Date of Valuation   Thirtieth day of May 1960.

Valuation of Interest:   One hundred million dollars  
                                  (\$100,000,000)

Such valuation included the value of objects falling within  
 Paragraph 4(a), (b) and (c).

8. On the 6th day of March 1967 the Appellants delivered to  
 the Valuer-General a Notice of Objection to the said valuation.  
 The said Notice was, omitting some formal parts, in the  
 following terms:

20

OBJECTION is hereby made to the Valuations  
 entered on the Valuation Roll under Valuation No.  
 7319 & Pt. 7318 as hereunder set out:  
 (Please quote this No.)

Valuation District       Greater Wollongong

Ward or Riding            Fourth

Area or Dimensions      503A.0R.12½P.

County                    Camden

Parish                    Wollongong

30

Portion                   Pts. 50, 53 and 67 and Allan's  
                                  Creek & Tom Thumb Lagoon

Valuation of Interest   \$100,000,000

Nature of Interest       Owner of the fee simple of the  
                                  land, with vacant possession

Date of Valuation        30th May 1960

40

I contend that the Valuation should be altered as set  
 out hereunder for the following reasons, viz:—

that the value assigned is too high both generally and by  
 reason of the inclusion in the valuation of values assigned  
 to plant, machines, tools and other appliances which are  
 not affixed to the premises or are only so fixed that they  
 may be removed from the premises without structural

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damage thereto.

The values contended for by me are as follow:—

Improved Value \$27,198,656

9. On the 21st day of March 1967 the Valuer-General issued to the Appellants a Notice of Disallowance of Objections, which said Notice was received by the Appellants on the 23rd day of March 1967.
10. On the 7th day of April 1967 the Appellants delivered to the Valuer-General a request that the said objection be referred to a Valuation Board. 10
11. On the 16th day of June 1967 the Valuation Board for the District of the City of Greater Wollongong pursuant to Section 36M of the Valuation of Land Act 1916 as amended referred the said objection to this Court for hearing as an Appeal under Part IV of the said Act.
12. Upon the hearing of the said Appeal before this Court it was contended by the Appellants that although the Valuer-General was correct in including in the valuation the value of objects falling within 4(a) he should not having regard to the provisions of section 5(2) of the Valuation of Land Act 1916 20 (as amended), have included therein the value of any objects falling within categories (b) and (c) referred to in Paragraph 4 above. The Valuer-General contended that in making the said valuation and having regard to s.65 and s.70 of the said Act he was entitled to include therein the value of all objects falling within categories 4(b) and (c) above as well as those falling within category (a) of Paragraph 4.

The question of law stated by me for the decision of the Court of Appeal is:

Whether in making the valuation referred to in this case the Valuer-General was in error in including in that valuation the value of objects falling within: 30

- (i) Paragraph 4(b) of this case.
- (ii) Paragraph 4(c) of this case.

DATED this Tenth day of November, 1967.

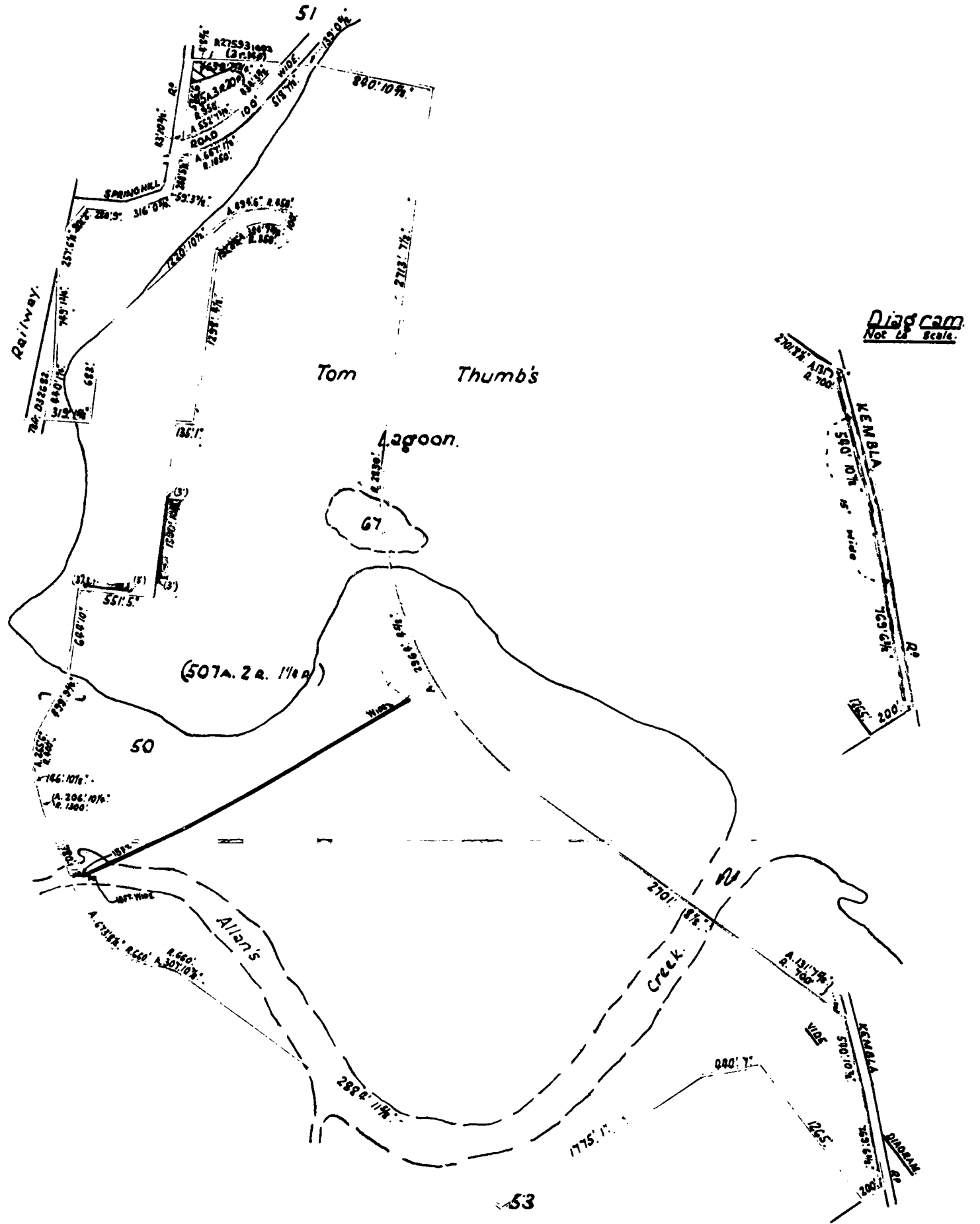
JUDGE OF THE LAND AND  
VALUATION COURT.



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Total Area included in Certificate:-

513ac. 1rd. 21 $\frac{1}{2}$ per.

All lengths shown hereon are in feet & inches

Scale:- 800 feet to one inch.

"A"

# New South Wales.

6872-1 (11.3) K 1953  
[CERTIFICATE OF TITLE.]

Primary Applications Nos. 22841 and 32740

Reference to Last Title

Vol. 4784 Fol. 24



REGISTER BOOK.  
VOL. 6913 FOL. 230  
Issued on Transfer No. G164265

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Annexure "A" to  
Case Stated

THE BROKEN HILL PROPRIETARY COMPANY LIMITED, is now the proprietor of an Estate in Fee Simple, subject nevertheless to the reservations and conditions if any contained in the Grants hereinafter referred to and also subject to such encumbrances, liens and interests as are notified hereon in Those pieces of land in the City of Greater Wollongong Parish of Wollongong and County of Camden, shown in the plan hereon and therein edged red and also shown in plan lodged with Transfer No. G164265 being part of Portion 53 granted to David Allan on 24th January 1817, parts of Portion 50 granted to Jemima Waldron on 6th June 1835, part of Portion 67, part of the bed of Allan's Creek and part of the bed of Tom Thumbs Lagoon.

EXCEPTING THEREOUT the minerals not acquired by the notifications of resumption referred to in clause 4 of the agreement set out in the first schedule to the Australian Iron and Steel Limited Agreement Ratification Act 1936.

In witness whereof I have hereunto signed my name and affixed my Seal, this Eighteenth day of January 1955.

Signed in the presence of

*J. W. Moss*

*J. Pells*

Registrar General



NOTIFICATION REFERRED TO

Covenant contained in Transfer No. C480813 as regards the land edged brown in the plan hereon.

*J. Pells*

Registrar General.

The land above described is subject to the covenant in clause 26 of the agreement a copy of which is set out in the first schedule to the abovementioned Act.

*J. Pells*

Registrar General.

*No J 92717 RESUMPTION OF LAND for PUBLIC ROAD. Notice in Government Gazette dated 19th February, 1965. Folio 507 whereby and by operation of the Public Roads Act 1902, the road shown in the plan catalogued R 27593-1603 in the Department of Lands and hatched black and designated R 27593.1603 (3r 14p) on the plan hereon was declared to be a public road. Entered 9th May 1966*

*Janatson*  
Registrar General



Persons are cautioned against altering or adding to this Certificate or any notification thereon.

No. <i>G 463331</i>	NOTICE OF RESUMPTION
<i>The Minister for Public Works</i>	
is the proprietor of	part of the land
as shown in	existing
all other	reserves and deposits
Produced	on 14th of the Public Works Act 1912) read from
<i>6th March 1956</i>	and entered
<i>6th July 1956</i>	at <i>12</i>
a clock in	noon
to land in this Resumption	
The certificate is unissued	
Vol. <i>4784</i>	Fol. <i>24</i>

*J. Pells*  
Registrar General

IN PURSUANCE of the Real Property Act, 1900, as amended, I Jack Hayward Watson, Registrar General for the State of New South Wales, hereby certify that the .v. sheets attached hereto are a photographic copy of an instrument registered in the Registrar General's Department, Sydney, No. Vol. 6913, Fol. 230 DATED at the Registrar General's Department, Sydney, this ..... day of ..... 1955.

L 813104

*Janatson*

Registrar General.

*No J 361105 Transfer and Grant dated 10th May 1963 to the Metropolitan Water Sewerage and Drainage Board of an easement for water supply purposes more fully set out in the schedule hereto affecting that part of the land within described shown 10 ft. and wide and 15 ft. wide in the plan hereon. Entered 2nd August 1963.*

*Janatson*



**"B"**

*In the  
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Annexure "B"  
to  
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AGREEMENT made the 30th day of May One thousand nine hundred and sixty BETWEEN THE BROKEN HILL PROPRIETARY COMPANY LIMITED a Company duly incorporated in the State of Victoria and having its registered office at 500 Bourke Street, Melbourne in the said State (hereinafter called "B.H.P") of the one part and AUSTRALIAN IRON & STEEL PROPRIETARY LIMITED a Company duly incorporated in the State of New South Wales and having its registered office at 28 O'Connell Street, Sydney  
10 in the said State (hereinafter called "A.I.S.") of the other part

WHEREAS B.H.P is seised in fee simple of certain lands at Port Kembla in the State of New South Wales being the residue of the land comprised in Certificate of Title Volume 6913 Folio 230 after resumption pursuant to Notice of Resumption No. G.463331 AND WHEREAS B.H.P. has agreed to sell and A.I.S. has agreed to purchase the said land AND WHEREAS the said land is premises occupied for trade business and manufacturing purposes AND WHEREAS there are on the said premises certain plant machines tools and other appliances not being goods wares or merchandise  
20 which are fixed to the premises so that they may not be removed from the premises without structural damage thereto which said plant machines tools and other appliances are more particularly described in the Schedule hereto AND WHEREAS the parties have agreed that A.I.S. should pay to B.H.P on the said sale a consideration in money or money's worth equal to the unencumbered value of the said land within the meaning of the Stamp Duties Act 1920 as amended AND WHEREAS the parties have valued the said land and the plant machines tools and other appliances which are fixed to the premises so that they may not be removed from the premises without structural  
30 damage thereto at the sum of £13,599,328.0.0 AND WHEREAS the parties believe that by reason of the provisions of Section 125 of the Stamp Duties Act 1920 as amended and of Sections 5 and 65 of the Valuation of Land Act 1916 as amended the unencumbered value of the property for the purposes of the assessment and payment of stamp duty does not include the value of any plant machines tools or other appliances which are not fixed to the premises or which are only so fixed that they may be removed from the premises without structural damage thereto AND WHEREAS it is intended by the parties that  
40 no goods wares or merchandise which are or may be upon the said land should be or form part of the subject,of this Agreement or of any transfer or conveyance in pursuance hereof AND WHEREAS the parties have agreed that if it should be found that the unencumbered value of the said land for the purposes of the Stamp Duties Act 1920 as amended exceeds the said amount of £13,599,328.0.0 A.I.S. will

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on demand pay to B.H.P. the amount of such excess NOW THIS AGREEMENT WITNESSETH THAT in pursuance and consideration of the premises the parties agree as follows:

1. B.H.P will transfer the said land being the residue of the land comprised in Certificate of Title Volume 6913 Folio 230 after resumption pursuant to Notice of Resumption No. G.463331 to A.I.S. for an estate in fee simple.
2. A.I.S. will pay to B.H.P the sum of £13,599,328 as the purchase price thereof on completion.
3. COMPLETION shall take place on or before the 31st day of 10 May 1960.
4. IN the event of the value of the said land for the purposes of stamp duty under the Stamp Duties Act 1920 as amended being properly determined to be an amount which exceeds the said sum of £13,599,328 then A.I.S. will on demand pay to B.H.P an amount equal to the amount of the excess as an addition to the price to the intent that the consideration paid to B.H.P. shall be a consideration in money or money's worth equal to the unencumbered value of the said land for the purposes of the Stamp Duties Act 1920 as amended.

IN WITNESS whereof the parties hereto have duly executed 20 these presents the day and year first hereinbefore written.

**THE SCHEDULE HEREINBEFORE REFERRED TO.**

**No. 2 Open Hearth Shop**

"G" Bridge	
"H" Bridge	
Services Bridge	
Charging Building including Platform and Bins	
Stripping Bay Building	
Office, Laboratory and Workshop	
Change House and Lunch Room	30
Bath Change House	
Pay Office and Clock House	
Ambulance Station	
Substation	
Lavatory Block	
Services Building	
Steam Building	
Brickshed	
Raw Materials Building	
Charging Building Foundations	40
Stripping Bay Foundations	
Mould Preparation Foundations	

Office, Laboratory and Workshop Foundations  
 Change House and Lunch Room Foundations  
 Bath, Change House Foundations  
 Ambulance Station Foundations  
 Substation Foundations  
 Service Building Foundations  
 Steam Building Foundations  
 Brickshed Building Foundations  
 Raw Materials Bay Foundations  
 10 Stopper Makers Shed Foundations  
 Furnace Piling and Foundations Nos. 33 and 34  
 Furnace Stacks Foundations  
 Stockyard Gantry Foundations  
 Compressed Air Supply Foundations  
 Cable Duct under Furnaces  
 Filling  
 Drainage  
 Road and Rail Culvert  
 Roads

20

**Ore Handling and Sinter Plant**

Building — No. 1 Machine  
 Bridge over Salt Water Channel  
 Miscellaneous Materials Building Foundations — Rod Mill  
 Bin House Foundations  
 Bin House Building  
 Storage and Mixing Bins Foundations  
 Sinter Station Foundations  
 Fan Room  
 Building for No. 2 Machine — Foundations  
 30 Building for No. 2 Machine — Complete  
 Electrostatic Dedusting Substation  
 Stack Foundations excluding Piling  
 Coke Crushing Station Building  
 Coke Crushing Station Building Foundations  
 Conveyor Foundations  
 High Line Gantry Piling, Concrete Work and Steelwork  
 Substation Building and Foundations  
 Finished Sinter Station Foundations  
 Office, Workshop etc. Building and Foundations  
 40 Lavatory Block  
 Clock House Building Extensions  
 Septic Tank  
 Engineers Office, Workshop etc. Foundations  
 Engineers Office, Workshop etc. Building  
 Engineers Office, Workshop etc. Septic Tank

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Fan Room and Gantry Foundations  
Fan Room and Gantry Building  
Fine Ore Bins (14)  
Fill, Drainage and Tar Paving of Area  
Roads  
Bins Complete — Miscellaneous Materials Handling Section  
Lift Complete, including Supports

#### **Tinplate Plant**

Piling — Extensions  
Ambulance Station (and Drainage) and Women's Welfare  
Office Building 10  
Tinplate Office and Sub Store Building  
Tinplate Office and Sub Store Building Septic Tank  
Change House Building  
Assorting and Despatch Office Building  
Assorting and Despatch Office Building Septic Tank  
Sectional Foreman's Office Building  
Machine Shop Office and Store  
Machine Shop Office and Store Septic Tank  
Women's Change House, Lunch Room etc. Building  
Women's Change House, Lunch Room etc. Septic Tank 20  
Sectional Lunch Room Buildings  
Sectional Lavatory Buildings  
Sectional Lavatory Septic Tanks  
Pipe Shop Building  
Pipe Shop Building Foundations and Floors  
Lunch Room Foundations H.D.T. Line  
Bath, Change House Foundations  
Bath, Change House Building  
Tinplate Warehouse Foundations  
Tinplate Warehouse 400' and 225' Sections 30  
Buildings "Q" — "W" and Extensions  
Laboratory  
Buildings "Q" — "W" and Extensions Foundations  
Laboratory Foundations  
Second NX Gas Unit Lean-to Building  
Second NX Gas Unit Lean-to Building Foundations  
H.D.T.P. Extensions, Equipment and Equipment Extensions  
Foundations  
No. 10 H.D.T.P. Foundations  
N.C.R.P. Building Extensions 40  
N.C.R.P. Building Extensions Foundations  
Drainage, Drainage N.C.R.P. and Drainage Extensions  
Fill Extensions  
Levee Banks

Diversion of Allan's Creek  
Roads and Yard Surfacing  
Tar Paving of Yard

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**Slabbing Mill and Soaking Pits**

Piling — 3 Additional Furnaces  
Building  
Building Foundations  
Equipment Foundations  
Concrete Work  
10 Office Building  
Office Building Septic Tank  
Engineers Office Building  
Foremen's Office Building  
Lavatory Block Building and Septic Tank  
Lunch Room Building  
Change House Building  
Excavations and Filling

**Stainless Steel Slab Conditioning**

Building  
20 Building — Foundations  
Equipment Foundations  
Office & Amenities Building  
Office & Amenities Building — Foundations  
Office & Amenities Building — Septic Tank

**Ore Storage and Handling Plant  
not in use**

Ore Storage Trough (Concrete)  
Piling & Foundations for Runway  
Track Steelwork  
30 Ore & Sinter Conveyor Foundations  
Excavations & Refilling  
Excavations & Concrete for Open Drain

**No. 4 Blast Furnace**

Furnace Foundations & Piling  
Cast House  
Hoist House  
Pump Room — Gas Cleaning  
Foundations Pump & Filter — Dust Recovery  
Foundations Agitators  
40 Pump Room — Dust Recovery  
Filter House Dust Recovery  
Change House, Lunch Room etc., Building and Foundations  
Office and Workshop Building

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Office and Workshop Foundations	
Lavatory Block Building and Foundations	
Lavatory Block Septic Tank	
Time and Pay Office Foundations	
Time and Pay Office Building	
Slag Pits Concrete Work, Structural and Piling	
Miscellaneous Storage Building, including Rescue Station	
Ladle Shop — Building Equipment Foundations	
Ladle Shop Building	
Re-bricking Shop Foundations and Floors	10
Re-bricking Shop Building	
Fill	
Drainage	
Raw Material Bins Chutes	
Scale Car Track	
Thickener Tank	
Copper Storage Area	
<b>Wharf — Inner Harbour — not in use</b>	
1,100' Wharf	
Piling — Land Side Track of Ore Unloaders	20
Piling — Loading Berth Luffing Cranes	
Foundations — Land Side Track of Ore Unloaders	
Foundations — Crane Tracks of Loading Berths	
Drainage	
Sub-Station Building	
Excavations for Loading Berths	
Ore Unloader Tracks	
<b>No. 2 Boiler and Blowing Station</b>	
Main Building — Piling, Foundations & Floors	
Main Building — Building complete	30
Main Switch Room — Foundations and Floors	
Main Switch Room — Building	
Filling	
Drainage	
Duct & Pond — Excavations, Dewatering and Concrete Work	
Access Roads	
<b>No. 2 Steelworks Services</b>	
Cable Duct from No. 2 O.H. Substation to No. 2 Blower Station	
Diesel Repair Station Building	40
Diesel Refuelling Tanks and Piping	
Culvert under Road Adjacent "G" Bridge	
Roads	
Drainage	



Excavations

**General Plant**

Foundations and Floors — Weighbridge — Northern Entrance  
Weighbridge Cabin — Northern Entrance  
Roads, including Culverts — Northern Entrance  
Fencing — Northern Entrance

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Annexure "B"  
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THE COMMON SEAL of THE BROKEN  
HILL PROPRIETARY COMPANY }  
10 LIMITED was hereunto affixed } C. C. CLARK  
in the presence of: } I. McLENNAN  
Directors

J. L. JENKINS  
Secretary

THE COMMON SEAL of AUSTRALIAN  
IRON & STEEL PROPRIETARY }  
LIMITED was hereunto affixed } C. C. CLARK  
in the presence of: } I. McLENNAN  
Directors

J. L. JENKINS  
Secretary

**REASONS FOR JUDGMENT OF THE PRESIDENT  
MR. JUSTICE WALLACE**

WALLACE, P.: This is a Case Stated under s.17 of the Land and Valuation Court Act 1921-1965. The learned judge of the Land and Valuation Court, Hardie J., at the request of both parties stated the case of his own motion before taking evidence. The Case raises the important question of how premises occupied for trade, business or manufacturing purposes should be valued for the purpose of enabling the Commissioner of Stamp Duties to charge ad valorem stamp duty on an agreement for the sale of such premises. The appellant's claim is that the value of the premises hereinafter described is \$27,198,656 but the Valuer General has valued the property at \$100,000,000 — a difference of \$72,801,344. If the Valuer General's method of valuation is correct, the additional amount of stamp duty involved will be about \$910,000. 10

The substantial question is whether subsection (2) of s.5 of the Valuation of Land Act 1916 as amended applies to the valuation referred to in the statement of facts appearing in the Case.

Section 5 reads as follows:— 20

“5(1) The improved value of land is the capital sum which the fee-simple of the land might be expected to realise if offered for sale on such reasonable terms and conditions as a bona-fide seller would require.

(2) In determining the improved value of any land being premises occupied for trade, business, or manufacturing purposes, such value shall not include the value of any plant, machines, tools, or other appliances which are not fixed to the premises or which are only so fixed that they may be removed from the premises without structural damage thereto.” 30

The facts set forth in the Case may be summarised as follows:—

1. The Appellants are iron and steel masters carrying on business at various places in Australia and operating steel works at Port Kembla in the State of New South Wales.
2. The said steel works are situated upon land within the valuation district of the City of Greater Wollongong and part thereof consists of an area of 503 acres, no roods, 12½ perches which area is hereafter referred to as the said land.

3. Prior to the 30th day of May 1960 the said land was owned by the first-named Appellant and by an Agreement dated the 30th day of May 1960, and made between the first-named Appellant and the second-named Appellant, it was agreed that the first-named Appellant would transfer to the second-named Appellant the said land for an estate in fee simple. This contract, omitting the lengthy schedule which lists details of plant, machines, tools and other appliances, reads as follows:—

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10           “AGREEMENT made the 30th day of May One thousand  
                  nine hundred and sixty BETWEEN THE BROKEN HILL  
                  PROPRIETARY COMPANY LIMITED a Company duly  
                  incorporated in the State of Victoria and having its  
                  registered office at 500 Bourke Street, Melbourne in the  
                  said State (hereinafter called ‘B.H.P.’) of the one part  
                  and AUSTRALIAN IRON & STEEL PROPRIETARY  
                  LIMITED a Company duly incorporated in the State of  
                  New South Wales and having its registered office at 28  
20           O’Connell Street, Sydney in the said State (hereinafter  
                  called ‘A.I.S.’) of the other part

                  WHEREAS B.H.P. is seised in fee simple of certain  
                  lands at Port Kembla in the State of New South Wales  
                  being the residue of the land comprised in Certificate of  
                  Title Volume 6913 Folio 230 after resumption pursuant  
                  to Notice of Resumption No. G.463331 AND WHEREAS  
                  B.H.P. has agreed to sell and A.I.S. has agreed to purchase  
                  the said land AND WHEREAS the said land is premises  
                  occupied for trade business and manufacturing purposes  
                  AND WHEREAS there are on the said premises certain  
30           plant machines tools and other appliances not being goods  
                  wares or merchandise which are fixed to the premises so  
                  that they may not be removed from the premises without  
                  structural damage thereto which said plant machines tools  
                  and other appliances are more particularly described in the  
                  Schedule hereto AND WHEREAS the parties have agreed  
                  that A.I.S. should pay to B.H.P. on the said sale a con-  
                  sideration in money or money’s worth equal to the  
                  unencumbered value of the said land within the meaning  
                  of the Stamp Duties Act 1920 as amended AND  
40           WHEREAS the parties have valued the said land and the  
                  plant machines tools and other appliances which are fixed  
                  to the premises so that they may not be removed from the  
                  premises without structural damage thereto at the sum of  
                  £13,599,328.0.0 AND WHEREAS the parties believe that  
                  by reason of the provisions of section 125 of the Stamp

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Duties Act 1920 as amended and of Sections 5 and 65 of the Valuation of Land Act 1916 as amended the unencumbered value of the property for the purposes of the assessment and payment of stamp duty does not include the value of any plant machines tools or other appliances which are not fixed to the premises or which are only so fixed that they may be removed from the premises without structural damage thereto AND WHEREAS it is intended by the parties that no goods wares or merchandise which are or may be upon the said land should be or form part of the subject of this Agreement or of any transfer or conveyance in pursuance hereof AND WHEREAS the parties have agreed that if it should be found that the unencumbered value of the said land for the purposes of the Stamp Duties Act 1920 as amended exceeds the said amount of £13,599,328.0.0 A.I.S. will on demand pay to B.H.P. the amount of such excess NOW THIS AGREEMENT WITNESSETH THAT in pursuance and consideration of the premises the parties agree as follows:—

1. B.H.P will transfer the said land being the residue of the land comprised in Certificate of Title Volume 6913 Folio 230 after resumption pursuant to Notice of Resumption No. G.463331 to A.I.S. for an estate in fee simple. 20
2. A.I.S. will pay to B.H.P. the sum of £13,599,328 as the purchase price thereof on completion.
3. COMPLETION shall take place on or before the 31st day of May 1960.
4. IN the event of the value of the said land for the purposes of stamp duty under the Stamp Duties Act 1920 as amended being properly determined to be an amount which exceeds the said sum of £13,599,328 then A.I.S. will on demand pay to B.H.P. an amount equal to the amount of the excess as an addition to the price to the intent that the consideration paid to B.H.P shall be a consideration in money or money's worth equal to the unencumbered value of the said land for the purposes of the Stamp Duties Act 1920 as amended." 30
4. At the date of the said Agreement there were upon the said land
  - (a) Objects attached to the said land such as large buildings and objects attached to such buildings such as furnaces, stacks and flues. The said buildings and items such as those exemplified above were so attached 40

that they could not be removed without structural damage thereto. Such objects passed under the said Agreement being fixtures as between Vendor and Purchaser as forming part of the land.

(b) Objects attached to such land or buildings but which were so attached that they might have been removed without structural damage thereto such as cranes attached by bolts and weighbridges. Such objects passed under the said Agreement being fixtures as aforesaid.

10

(c) Objects which were not attached to the said land or buildings such as ladles having a capacity of up to 300 tons used in connection with furnace operations and which by reason, for example, of their weight and size passed under the said Agreement being also fixtures as aforesaid.

(d) Objects which were not attached to the said land or buildings such as fork lift trucks and front end loaders and construction tools, which were not fixtures and did not pass under the said Agreement.

20

5. At all relevant times the said land was premises occupied for trade, business or manufacturing purposes.

6. After the Appellants had lodged the said Agreement for stamping the Commissioner of Stamp Duties issued to the Appellants a requisition for evidence of value to be supplied and the Appellants made to the Valuer General an application for a valuation which the Appellants stated in their application was required for Stamp Duty purposes. The said application was in the form set forth in Schedule IX to the Regulations made under the Valuation of Land Act and sought a valuation of "the value of the fee simple in possession only" as at 30th May 1960 and a provisional fee of £1000 was enclosed with the form of application. The application further described the owners in fee simple as being The Broken Hill Proprietary Company Limited.

30

It will be observed that the contract was made prior to the amendments to the Valuation of Land Act which were made in 1961 (Acts Nos. 66 and 67) and 1964 (Act No. 11) and although the application for the valuation was made subsequent to 1961 I think the case must be decided on the Act as it stood in 1960.

40

7. On the 22nd day of February 1967 the Valuer General issued

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to the Appellants a Certificate of Valuation in respect to the said land and improvements which showed the valuation of the interest of the owner of the fee simple of the land as being \$100,000,000.

8. Such valuation included the value of objects falling within paragraph 4(a), (b) and (c) above.

It was the Valuer General's action in including objects falling within paragraph 4(b) and (c) which in the light of subsection (2) has caused this appeal by Stated Case.

9. On the 6th day of March 1967 the Appellants delivered to the Valuer General a Notice of Objection to the said valuation, the relevant portion of which reads— 10

"I contend that the valuation should be altered as set out hereunder for the following reasons viz:

that the value assigned is too high both generally and by reason of the inclusion in the valuation of values assigned to plant, machines, tools and other appliances which are not affixed to the premises or are only so fixed that they may be removed from the premises without structural damage thereto. 20

The values contended for by me are as follows:—

Improved Value \$27,198,656."

10. Thereafter the Valuer General issued a Notice of Disallowance and the Appellants delivered to the Valuer General a request that the objection be referred to a Valuation Board. On the 16th June 1967 the Valuation Board for the district of the City of Greater Wollongong pursuant to s.36M of the Valuation of Land Act 1916 as amended referred the said objection to the Land and Valuation Court for hearing as an appeal under Part IV of the said Act. 30
11. Upon the hearing of the said appeal to the Land and Valuation Court it was contended by the Appellants that although the Valuer General was correct in including in the valuation the value of objects falling within 4(a) he should not, having regard to the provisions of section 5(2) of the Valuation of Land Act 1916 (as amended), have included therein the value of any objects falling within categories (b) and (c) referred to in Paragraph 4 above. The Valuer General contended that in making the said valuation and having regard to s.65 and s.70 of the said Act he was entitled to include therein the value of all objects falling within categories 4(b) and (c) above as well as those falling within category (a) of 40

## Paragraph 4.

The question of law stated by Hardie J. for the decision of this Court is—

“Whether in making the valuation referred to in this Case the Valuer General was in error in including in that valuation the value of objects falling within:

- (i) Paragraph 4(b) of this Case
- (ii) Paragraph 4(c) of this Case.”

10 It thus appears that a requirement of a Certificate of Valuation having arisen for the purposes of the Stamp Duties Act 1920 (see s.65 of the Valuation of Land Act) an application was made under s.70 of the Valuation of Land Act and thereafter the valuation which has been objected to was made.

Sections 5, 6 and 7 of the Act deal respectively with improved value, unimproved value, and assessed annual value. I will hereafter refer to valuations made under these sections as valuations made under the statutory formula. Of these there can be no doubt that unimproved value at least is fundamentally a rating concept — *Gollan v. Randwick Municipal Council* 1961 A.C. 82 at p.102. The question in this Case  
 20 is whether the Valuer General when giving a valuation for the non-rating purpose of the assessment of ad valorem duty on a contract for the sale of land with improvements and fixtures of various types thereon is bound on the true construction of the Act read as a whole to apply the s.5 definition in its entirety (including subsection (2)) or whether, as he undoubtedly in fact did here, he can in such a case value such land on a different basis. The Case does not state what his actual basis of valuation was, but this is not itself important. Various references were made during argument to “real” and “true” values and also to the hypothetical and unfettered fee simple (as qualified by  
 30 well known authorities) but at all events it is abundantly clear that he did not use the statutory formula relating to “the improved value of land” (s.5(1) and (2)). There were in fact certain restrictions on the relevant Certificate of Title here of a type which in the light of *Gollan’s Case* (supra) and the *Royal Sydney Golf Club Case* 91 C.L.R. 610 would be disregarded in arriving at a s.5(1) value but these also are not relevant for present purposes. One of the unusual features of the present case is that the “true” or market value is, where there are particular restrictions on the title, generally less than the statutory formula value but here the reverse is claimed because of the enormous  
 40 value of “fixtures” (see *Australian Provincial Assurance Co. Ltd. v. Coroneo* 38 S.R. 700 at p.712) which would normally pass with the land but which are excluded from a s.5 valuation because of the operation of subsection (2). We were, of course, referred to the dicta of the Judicial Committee in *Gollan’s Case* (supra) at pp 95-102,

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particularly at pp 101-102. At p.102 Lord Radcliffe refers to the "similar duality" which runs through various sections of the Act.

The question in Gollan's Case was whether in valuing land for rating purposes under ss 5 and 6 of the Valuation of Land Act the Valuer General should take into consideration certain trusts restrictions conditions and provisos affecting the resumed land and the Judicial Committee applied the ruling which had been given on s.3 of the Land Tax Assessment Act 1910-1950 in *Royal Sydney Golf Club v. Commissioner of Taxation* (supra) to the unimproved value required by s.6 of the Valuation of Land Act i.e. "a fee simple unencumbered and subject to no conditions" (pp 100-101). At p.96 their Lordships said that the principles which determine questions of compensation for property resumed or expropriated are not of assistance on questions of rating assessment. The main ratio concludes at p.101 of the report. Between pp 95 and 101 important statements appear relating to the ambit of the words "fee simple" in the statutory formula and improved and unimproved values (perhaps especially the latter) were stated to be fundamentally rating concepts. But the *Royal Sydney Golf Club Case* was approved and *Stephen's Case* (45 C.L.R. 122) was not and this seems to be part of the main reasoning, and in which (at p.101) the provisions of s.132 of the Local Government Act were said to be of particular significance. 10 20

But their Lordships then added—

"It might still be necessary to ignore all these considerations if the Valuation of Land Act were so constructed as to provide a single basis of valuation of land, whether improved or unimproved, which was to do duty for such various purposes as death duties, resumption and mortgage valuations as well as for rating. For while burdens on individual titles may naturally enough be treated as irrelevant under a general rating scheme, it would hardly be possible to expect that similar treatment was intended to be given when it came to valuing a person's individual interest for any of these other purposes." 30

Immediately following this passage their Lordships clearly rejected the construction of the Act which is based on it evidencing a "single scheme of valuation of land" They added that improved value and unimproved value which have a particular statutory meaning will be resorted to "only where the taxing or other Act in question requires a valuation to be made with reference to these concepts" At p.102 their Lordships state that "throughout the Act it is intended that valuation of individual estates and interests which will presumably allow for matters of title, will be determined and made available side by side with such special categories of valuation as the improved and 40



unimproved value and assessed annual value of the land itself” For present purposes the concluding sentences are of much importance:—

“A similar duality runs through other sections of the Act— see ss 43, 65, 68, 70. The scheme of the Act therefore, does not require that the highly artificial conception of unimproved value should be imported into values of estates and interests required for other purposes served by the Act.”

I do not regard the dicta on pp 101-102 of the judgment as obiter because their Lordships regarded a consideration of the respective  
 10 claims of the single and dual systems of valuation as a necessary final stage of the judgment. Even, however, if, contrary to my view, they be regarded as obiter, I am of the opinion that this Court should follow and apply the relevant dicta of the Judicial Committee implicitly. The express references to ss 65, 68 and 70 together with an earlier reference to s.16 on p.102 are therefore important. But we heard elaborate and careful arguments from both counsel involving close examination of many of the sections contained in the Act running through from s.5 to s.78 and indeed with few exceptions the only  
 20 sections not analysed were those contained in Parts IIIA and IV of the Act. These arguments were on the part of the appellants’ counsel based on the proposition that the dicta of the Judicial Committee on pp 101 and 102 were either obiter or inapplicable to the facts of the present case.

But notwithstanding the express references to ss 65 and 70 a decision thereon was not AS SUCH a part of the ratio and it was submitted that the case of a valuation for the purpose of stamp duty chargeable on a transfer of or a contract relating to land is in a separate category which, in the light of certain statutory provisions and consistent with their Lordships’ dicta, requires resort to the statutory  
 30 formula and therefore differs from a valuation made for assessing compensation after a resumption. I think it is permissible in the circumstances for me to express the views which I have formed thereon. My approach which is made with deep respect to the Judicial Committee, is perhaps further justified by the knowledge that both as to the amount of stamp duty involved and the application of relevant principle the case is an important one which may well be argued before their Lordships of the Judicial Committee after we shall have delivered our judgment and therefore the expression of my views even if  
 40 unacceptably to the Judicial Committee may be more helpful than a mere dismissal of the appeal on the ground that it is covered by Gollan’s Case.

I begin by stating that there seems to be no EXPRESSED charter granted to the Valuer General to value lands other than by the statutory formula. Coupled with the statutory formula, ss 14 and 16

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seem to be the foundations on which the whole edifice of the Act is built. The scheme of the Act is to establish valuation rolls by the Valuer General (the values shown therein being obtained by using the statutory formula and not otherwise) and the supply by him therefrom to rating authorities of valuation lists. Ancillary matters relate to the periodical review of the roll, the supply of fresh and new valuations and the methods of valuing fractional interests and of estates and interests less than the fee simple. Then (important for present purposes) directions are given in Part VI of the Act that the valuation rolls SHALL be used for purposes of obtaining values required under several other named Acts (ss 65, 66, 67, 68 and 69). So far as the purpose of the Stamp Duties Act 1920 (as amended) is concerned (which is the purpose to which I will confine my attention) s.65 of the Act appears to be complementary to, or at all events fits in precisely with, the provisions of ss 124A(7) and 125 of the Stamp Duties Act. Other sections of the Valuation of Land Act which are important for present purposes (notably s.70) will be referred to later. 10

I will now examine the Act a little more closely. As earlier indicated one must commence with ss 14 and 16. The former is a direction to the Valuer General to make valuations according to the statutory formula and the second paragraph of s.14 makes it PERMISSIBLE for the valuation to include unimproved improved and assessed annual value of the "estates and interests" of all owners including the interests of lessors and lessees" in any such lands. It was conceded by counsel appearing for the Valuer General that however difficult, valuations, for example of tenancies in common, are thereby intended to be made by the statutory formula. The same comment applies to lessors and lessees and reference may be made to s.22. 20

As regards s.16, paragraphs (d) (e) (f) and subsection (1) clearly enough relate to the statutory formula. Subsection (2) again gives a permission to the Valuer General but the terms thereof are not entirely clear but it does seem to me that the estates or interests again are to be valued in accordance with the statutory formula. 30

It is by s.16 that the valuation roll is established and its establishment is fundamental to the scheme of the Act. Valuation lists are referred to in Part V of the Act which begins with s.47. By s.48 the Valuer General must furnish the authorities mentioned in s.47 with a valuation list at least once in every six years. Section 53 enacts that a valuation list together with any supplementary list shall be the valuation roll or assessment book of the authority, and of course is used for rating purposes — see s.58. 40

Returning to subsection (2) of s.16 it may be observed that if the Valuer General inserts the values of the estates and interests referred to in paragraph (a) he must be careful to comply with the

provisions of s.21, in which the phrase "improved value of the land" appears, and this is clearly a reference back to the statutory formula.

At this stage I will interpose some references to the Stamp Duties Act 1920 as amended.

By s.66 every conveyance is to be charged with ad valorem duty in respect of the unencumbered value of the property thereby conveyed. By the second schedule to the Act an agreement for the sale or conveyance of any property is chargeable with the same duty as on a conveyance of a property and by the same schedule ad valorem duty at a specified rate is charged on conveyances of property according to the consideration in money or money's worth "of not less than the unencumbered value of the property" By s.125 subsection (1) it is provided:

"In every case in which the Commissioner deems it necessary to ascertain the value of any property for the purpose of assessing duty under this Act he may ascertain such value by such means as he thinks fit, subject in the case of land or any interest therein the value of which exceeds \$400 to the Valuation of Land Act 1916."

- 20 It may be added here that by s.124A of the Stamp Duties Act provision is made for appeals from the Commissioner of Stamp Duties' assessment of death duty (see s.105) and by subsection (7) which was inserted in 1934 it is provided that "in this section improved value and unimproved value in relation to land shall have the meanings ascribed to those terms by the 'Valuation of Land Act 1916'" and this it was submitted is a direction to use the statutory formula when valuing for the purpose of death duties. If it were not for the express reference to death duties in Gollan's Case (supra) I would have thought that this submission, with respect, was correct because of the clear wording.
- 30 But two comments may at once be made: (1) If the submission is correct then, as Mr. Officer for the Valuer General conceded, different methods of valuation would be necessary under the Stamp Duties Act (and notwithstanding s.125) in respect to assessment of death duties and ad valorem duties respectively. This seems strange; (2) In most cases a valuation under the statutory formula favours the Revenue Authorities as it would be higher than the "true" value. The present case is unusual. Both in relation to s.125 and to subsection (7) of s.124A in each of which the phrase "Valuation of Land Act 1916" appears some comment was made on the fact that the Act was not
- 40 amended except by other Acts until 1951 and in 1916 subsection (2) did not appear in s.5, but nothing very material seems to turn on this aspect. If a valuation has to be made in 1960 I think the legislative intentment in section 124A (added in 1933 and amended in 1952) and of s.125 (amended in 1933) is that the Valuation of Land Act

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in the form in which it then appeared is the intended reference.

Accordingly, in the light of s.125 of the Stamp Duties Act, one must return to the Valuation of Land Act in order to obtain the value of land for the purpose of assessing ad valorem duty on an agreement or conveyance. One immediately goes to s.65 which is the first section in Part VI entitled "Use of Valuation Rolls by Government Departments" The sub title is "Valuations for Stamp and Death Duties" The section then provides:—

"In every case where under the Stamp Duties Act 1920 the duty payable is dependent upon the value of land — (I am 10  
omitting references to amendments made after 1960 which being the date of the subject contract appears to be the relevant date for present purposes) — or of any estate or interest therein, such duty shall be paid according to the valuation made under this Act as shown in a certificate of valuation."

This reference to a certificate of valuation leads to an examination of s.70 which in 1960 form reads as follows:

"70.(1) The Valuer General shall, on application made by any person who has or had an estate or interest in the land 20  
at the date at which he requires the valuation made and on payment of the prescribed fee, make a fresh valuation to determine the value of any land at a date before or after the date of the making of the last valuation of such land under this Act.

This subsection shall apply only to applications made for valuations to be used for any of the purposes mentioned in this Part.

(2) Any such new valuation shall be subject to objection in like manner as in the case of other valuations under 30  
this Act.

(3) Where such new valuation is made as at a date prior to the date of the valuation entered on the roll it shall not be entered on the roll, but the Valuer General may furnish a certificate thereof."

This is the section which is complementary to s.65 and permits valuations for Stamp Duty purposes to be applied for and made. It is to be observed—

1. That s.70(1) is to apply only to applications made for valuations to be used for any of the purposes mentioned in 40  
"this part" Such purposes include in addition to stamp and death duty purposes under s.65 those referred to in s.66

(Loans by Government Instrumentalities); s.67 (The Fire Brigades Act); s.68 Resumptions (under certain specified acts) and s.69 Real Property Act.

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- 10           2. By subsection (2) a new valuation is subject to objection in like manner as in the case of other valuations made under the Act (s.29 et seq). This may be deemed of some significance because by s.43 (which was in the Act in 1960) when a “valuation” is altered after the hearing of an objection consequential alterations must be made for the purpose of fixing the unimproved value the improved value and the assessed annual value in respect of the land — which seem to be references to the roll and the values made under the statutory formula appearing therein.
3. By subsection (3) if such new valuation is made as at a date prior to the date of the valuation entered on the roll it shall not be entered on the roll.

              This seems to me a somewhat significant provision because it is consistent with the view submitted by the appellants that new valuations referred to in s.70 are envisaged as being made in accordance with the  
20           statutory formula. It is clear that valuations made under the statutory formula are placed on the roll and in the valuation lists supplied to the named authorities, and accordingly if a new valuation is required and made as at a date prior to the date of the current valuation appearing in the roll then it is natural enough that it should not be inserted in the roll otherwise confusion could occur. But a “certificate” may be furnished and this links up with s.65 and so with s.125 of the Stamp Duties Act. On the other hand if the new valuation is sought for a date subsequent to that appearing on the roll, it will, or at least may apparently, be entered. A contrast can now be made with s.76, which  
30           deals with the provision of a “certified copy” of an extract of any entry in the roll. The second paragraph of subsection (1) makes it mandatory for the Valuer General to supply a certificate of valuation in respect of a “new valuation” made pursuant to an application made under s.20 or s.70 of the Act. As regards s.70 this provision is possibly inconsistent with s.70(3) where the issue of a certificate is couched in permissive and not mandatory terms but this inelegance is not important. It is more important that the deduction to be made from the wording of s.70 is that the phrase “value of any land” means a value made under the statutory formula. Similarly s.20 is open to  
40           the same deduction if only because the new valuation sought and made thereunder “shall” be entered in the valuation roll (s.20(1)). Here, the mandatory nature of the direction to enter is understandable because the new valuation will be made at the current date. It is the duty of the Valuer General to keep the valuation rolls up to date

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(s.19).

The proviso to s.61 was also said to be consistent with subsection (3) of s.70. This proviso derives from s.10 of the Local Government (Amendment) Act of 1959 (being Act No. 21 of 1959) and it was inserted into the Valuation of Land Act in somewhat more general terms by s.2(1)(q) of Act No. 67 of 1961. The presence of the phrase “before or after” in subsection (1) of s.70 when read with subsection (3) thereof seems however to weaken any force which for relevant purposes might otherwise attach to the proviso.

The only other aspect of the appellants’ case to which I will refer is that which relied upon the long title of the Act. The importance of the long title and circumstances in which it can be resorted to for the purpose of resolving uncertainty were referred to by Latham C. J. in *Birch v. Allen* 65 C.L.R. 621 at pp 625 and 626 in a passage in which the Chief Justice quoted the words of Lindley M. R. in *Fielding v. Morley Corporation* 1899 1 Ch 1 at p.4 — “the title is an important part of the Act and is so treated in both Houses of Parliament” 10

It will be seen that the title envisages the determination of values to provide that statutory rates and duties shall be levied on values SO determined, that the values so determined shall be valid for purposes 20 of resumption; to provide that stamp duty and duties on the estates of deceased persons and duties upon transfer of land shall be paid on SUCH values.

The appellants also referred to the reference to s.5 (when an objection to a valuation made under s.70 was being mentioned) which was made by Kitto J. (with whose judgment Fullagar J. agreed) in *Turner v. Minister of Public Instruction* 95 C.L.R. 245 at pp 285-286.

But whatever may be my own views (and I think I have sufficiently indicated that if the matter were at large I would accept the appellants’ general submissions and find in its favour) I am of opinion 30 that in the light of the dicta in *Gollan’s Case* which I have earlier quoted or mentioned, it is not open to this Court to answer the questions asked in the Case in the affirmative. Because of the express mention made by their Lordships to “death duties” and to ss 65 and 70 I do not think it is for this Court to hold that a distinction can be made between death duties and ad valorem duty chargeable on a contract for the sale of premises.

The questions should be answered — “No” The appellants must pay the costs of the Case.

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WALSH, J. A.: The facts before the Court are set out in the case stated by the Land and Valuation Court (Hardie J.) and the annexures to that case. They have been reviewed in the reasons for judgment of the learned President. There are some aspects of them, however, to which I wish to draw attention, after I have referred to some relevant statutory provisions, and before I state my views upon the question of law which the Court has to decide.

- 10 By the Stamp Duties Act, duty is charged on specified instruments. See section 4. An agreement for the sale or conveyance of any property in New South Wales is to be charged with the same ad valorem duty as if it were a conveyance of the property agreed to be sold or conveyed. Section 41(1). Section 66(1) provides that a conveyance is to be charged with ad valorem duty "in respect of the unencumbered value of the property thereby conveyed" A conveyance on sale of any property is to be charged with ad valorem duty on the amount or value of the consideration for the sale. But, if the amount or value of the consideration is less than the unencumbered
- 20 value of the property, the duty is to be charged on the unencumbered value of the property, ascertained in accordance with section 68. See section 66(2)(a) and (b). A conveyance made upon a bona fide consideration in money or money's worth of less than the unencumbered value of the property conveyed shall be charged with ad valorem duty, as set out in section 66(3A), that is to say, at one rate on the amount or value of the consideration and at a different rate on the difference between the unencumbered value of the property, ascertained in accordance with the Act, and the amount or value of the consideration. Section 68 contains provisions for the ascertainment
- 30 of "the value of the property" comprised in an instrument. But this provision must be read, of course, with section 65 of the Valuation of Land Act, to which I shall refer later.

It is to be noticed that in the foregoing provisions of the Stamp Duties Act references are made to the "unencumbered value" of the property, except in section 68 where the adjective "unencumbered" is not used. In that Act "property" includes real and personal property and any estate or interest in any property, real or personal.

Section 65 of the Valuation of Land Act provides:—

- 40 "In every case where under the Stamp Duties Act, 1920, the duty payable is dependent upon the value of land or of any estate ~~of~~ interest therein, such duty shall be paid according to the valuation made under this Act as shown in a certificate of valuation."

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Because of the said provisions of the Stamp Duties Act, the duty payable on an instrument, by which property is conveyed upon a sale or which is an agreement for sale, will be dependent upon the value of land or of an interest in land if the subject-matter of the conveyance or agreement is land or an interest in land. It is contemplated in the charging provisions of the Stamp Duties Act that “the property” conveyed may be either real or personal property or an estate or interest therein. Thus, when section 65 comes to be applied, that on which the duty payable may be dependent may be either the value of “land” or the value of “any estate or interest” in land. In theory, what is being conveyed will always be, where real property is in question, an estate or interest. But section 65 is framed upon the assumption that a distinction is recognised between the ownership of “land”, in the sense of a sole entitlement to all proprietary rights over it (cf. *McCaughey v. Commissioner of Stamp Duties*, 46 S.R. 192 at 201) on the one hand and an entitlement to something less than that on the other hand, whether it is less because the rights are shared with co-owners or because it is to some lesser estate or interest that the relevant provisions of the Stamp Duties Act have to be applied. 10

In the present case, the agreement for sale recited that the appellant The Broken Hill Proprietary Company Limited was seized in fee simple of certain lands and that it had agreed to sell and the appellant Australian Iron and Steel Proprietary Limited had agreed to purchase “the said land” The agreement made was to transfer “the said land” for an estate in fee simple. 20

Section 70(1) of the Valuation of Land Act, as it stood in 1960, provided that, on application by any person who has or had an estate or interest in the land at the date at which he requires the valuation to be made, the Valuer General shall make a fresh valuation to determine the value “of any land” at a date before or after the date of the making of the last valuation of such land under the Act. By an amendment made in 1961, the wording was altered so that a fresh valuation might also be made, pursuant to section 70, of “any estate or interest” in the land. 30

The application which was made to the Valuer General by the appellants was for a certificate showing “the value of the fee simple in possession only” as at 30th May 1960, in respect of the property described in the application. In the description, the land was described by reference to a certificate of title and the appellant The Broken Hill Proprietary Company Limited was described as “the owners in fee simple” 40

The certificate of valuation which was issued certified that “the following was the value of the interest of The Broken Hill Proprietary Company Limited in the property herein described” The “Nature of



Interest” was stated to be “owner of the fee simple of the land, with vacant possession” and the certificate contained the words “Valuation of Interest: One hundred million dollars”.

I have mentioned the foregoing details because, at the hearing of this stated case, attention was directed to the difference, which may be said to exist, between a valuation of land on the one hand and a valuation of an estate or interest in land on the other. Undoubtedly, this is a distinction which is recognised in many provisions of the Valuation of Land Act, including sections 14, 16, 20, 21, 29, 34, 43, 10 65, 68 and 70. But, leaving aside at the present stage of these reasons what was said in *Gollan v. Randwick Municipal Council*, 1961 A.C. 82, it is not easy to see how the distinction has any bearing on the question raised by this case stated. The valuation had to be made for the purposes of the Stamp Duties Act and the reason for it was that an agreement had been made by a single owner for the sale of the full fee simple in the land. It is true in a theoretical sense to say that the subject of the sale was the “estate” of The Broken Hill Proprietary Company Limited in the land. But, if this is to be treated as a reason for saying that the thing to be valued was not the land but the estate and that, 20 therefore, section 5 of the Act had no application, the answer may be suggested that, if that is correct, there can never be a case in which it will be necessary or permissible to make or to use, in accordance with section 70 or section 65 or section 68 of the Act, a valuation of “land”. It will always be necessary to resort to a valuation of the estate or interest, held in the land by a deceased person or a party to a conveyance or agreement or a person entitled to compensation for a resumption, as the case may be. Yet the express terms of each of these sections refer to using the value of land or to making a fresh valuation of land as well as to using or making a valuation of an estate or interest. Thus, 30 the argument under consideration means that, by a process of construction, one must cross out, as it were, the references in those sections to the value of or a valuation of land and must leave them to operate solely pursuant to the references therein to the value of or valuations made of the estate or interest, and this must be done, although, in section 70, that reference has been included only since 1961.

Thus, I should be disposed to think that a sufficient reason for denying the applicability in this case of section 5(2) of the Act is not given simply by saying that section 5 is concerned with the ascertainment of the improved value of land and section 65 and 70 are concerned with fixing (in this case for a stamp duty purpose) the value of 40 an estate or interest in land and that thus they are dealing with different subject-matters and have no relationship to each other. But, having said that, I am obliged to consider the effect of the observations of Their Lordships in *Gollan’s case*, 1961 A.C. 82 at 101-102. Those observations have a bearing upon the distinction to which I have just

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been referring. They require also a consideration of the ultimate question whether section 5 (in this case in particular section 5(2)) is to be regarded as inapplicable, for the reason that that section and section 6 are intended to operate only upon a valuation which is made for rating purposes or for the purpose of some Act of a rating or taxing nature from which it appears that the valuation is to be made in accordance with the concepts of “improved value” or “unimproved value” as defined in sections 5 and 6.

This latter question is perhaps not really to be regarded as a different question from the question already discussed of the present 10  
relevance of drawing a distinction between the value of “land” and the value of an estate or interest in land, but as a question to which an answer may be found by adopting and applying that distinction. What was said by Lord Radcliffe, giving the judgment in *Gollan v. Randwick Municipal Council*, 1961 A.C. at 101 to 102, to the effect that the provisions of sections 5 and 6 are to be treated as applicable only to valuations made for rating purposes (or where in some statutory provision of a taxing kind a sufficient indication is given that they are to be applied), may be considered, I think, to be founded upon the 20  
reasons that those provisions are appropriate to the valuing of “land” and not to the valuing of some person’s estate or interest in land, and that, whilst it is proper to have regard for rating purposes to the value of land considered hypothetically as held under “an absolute or pure title”, for other purposes it is proper to have regard to the “actual title”, that is, to the estate or interest which some actual owner has. See 1961 A.C. at 101.

If this is a correct understanding of what was said, then, although the judgment did not at pp. 101-102 specifically mention the subject of stamp duties on conveyances (at page 100, it did, however, refer to “death and transfer duties”), it could hardly be asserted that there is 30  
any good reason for differentiating for present purposes between death duties and such stamp duties. Section 65 of the Valuation of Land Act is applicable in respect of both classes of duty, when the amount to be paid has to be worked out by reference to a valuation.

Thus, I come to the conclusion that the answer to the question before this Court depends upon deciding whether the reasons in *Gollan’s* case are to be read as setting up a clear division or duality as between (1) a valuation made in accordance with section 5 or section 6, to be used only for rating purposes (see Local Government Act, sections 118, 120, 121, 124 and 134) or for purposes stated in some 40  
other statutory provision which requires them to be used; and (2) a valuation of an estate or interest in land, as actually vested in some owner or owners thereof, made without reference to sections 5 and 6, and to be used for all other purposes. I think that they must be so

read, as will appear from the citations later made from them.

I think our decision depends upon that point because, in the first place, if the judgment is to be read in that manner, we must apply it to the present case. No doubt it may be said that this is a stamp duty case and Gollan's case was a rating case; that this case is concerned with section 5 and Gollan's case was concerned primarily with section 6; that the latter case was dealing, as this case is not, with the effect of restrictions to which the use of the land was subject; that Their Lordships did not have to direct attention to the special provision  
 10 made by section 5(2) or to its history or purpose; and that general observations in a judgment should be read in the light of the facts and the problems with which it was concerned. But, when all that is said, I think it is clear that, where, in an appeal from this Court, Their Lordships have put a construction upon the statutory provisions with which we must now deal and have made considered statements as to how those provisions are related to each other in the scheme of the Act and how they operate, this Court should apply those statements, without endeavouring to distinguish or to limit them, because  
 20 of such considerations as those to which I have just referred. That is a task which may be left to be undertaken, if it should be thought fit to do so, by a higher appellate tribunal.

Secondly, a decision as to the effect of what was said in Gollan's case is critical because I feel bound to say, with great respect, that my own conclusion in this case, if reached without the guidance which Gollan's case gives, would be in favour of the appellants. I have tried to indicate why I should regard the problem as not being dependent, in the circumstances of this case, upon any distinction between the value of "land" and the value of an estate or interest. In addition to that, I think that the analysis, made by Mr. Hope on behalf of the  
 30 appellants, of the provisions of the Valuation of Land Act, and of certain other statutory provisions which have a relationship to it, was persuasive towards the conclusion that regard should have been had to section 5(2) in making the valuation which was the subject of the appeal to the Land and Valuation Court. Some details of that analysis are reflected in the reasons prepared herein by the learned President and by Holmes J. A. I do not think it would be helpful to refer further to the arguments. I need say only that I think that counsel for the appellants was correct in attaching importance to such provisions as sections 14, 16 and 21 as providing the basic foundations for the  
 40 making of a "valuation made under this Act", to which reference should be made when sections 65 and 70 are being interpreted and applied.

But I come back to the statements in Gollan's case. After referring to the title of the Valuation of Land Act, Lord Radcliffe said at 100:—

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“In fact the valuations made under it are required not only for the purposes of rates, but also of such diverse transactions as resumption and exchange of land, advances on mortgage and death and transfer duties. A basis of valuation that may seem reasonable and appropriate for one of these purposes is not necessarily suitable for another.”

at 101, he said:—

“Prima facie, it appears to their Lordships, ‘the fee simple of the “land”’ as used in section 6 does not refer to the actual title vested in the owner at the relevant date but to an absolute or pure title such as constitutes full ownership in the eyes of the law.” 10

Then, after further reasons were stated for the view that, for rating purposes, a valuation should be treated as involving “the hypothesis of a fee simple unencumbered and subject to no conditions”, the judgment contained three paragraphs at 101 to 102 which are of the greatest importance for present purposes. Reference was made to an argument that the Act was constructed so as to provide a single basis of valuation of land, to do duty “for such various purposes as death duties, resumption and mortgage valuations as well as for rating”. In essence this was likewise the main argument for the appellants in this present case. But Lord Radcliffe said at 101:— 20

“Their Lordships are satisfied, however, that a full reading of the Act does not admit of any such construction.”

Then he said:—

“‘Improved value’ and ‘unimproved value’ are special terms to which is allotted a particular statutory meaning. They will be resorted to only where the taxing or other Act in question requires a valuation to be made with reference to these concepts.” 30

at 102, following a comment on the words “improved value” in section 68, the final paragraph of the reasons on this subject is as follows:—

“It seems that throughout the Act it is intended that valuations of individual estates and interests, which will presumably allow for matters of title, will be determined and made available side by side with such special categories of valuation as the improved and unimproved value and assessed annual value of the land itself. Thus, in section 16, which lays down the requirements for the initial valuation roll, it is provided that, apart from stating improved and unimproved values, the roll may contain a statement of ‘the value of the estates and interests of all owners’. The owner of any estate or interest is entitled to notice of, and to 40

object to, any valuation of it, whether or not he is the owner of a freehold estate in possession (section 29). A similar duality runs through other sections of the Act — see sections 43, 65, 68, 70. The scheme of the Act, therefore, does not require that the highly artificial conception of unimproved value should be imported into valuations of estates and interests required for other purposes served by the Act.”

10 I am of opinion that those statements plainly preclude the appellants from succeeding in this Court on an argument that the valuation made in this case, for the purpose of ascertaining the duty payable on the agreement, that is, for one of the purposes to which section 65 relates, had to be made in accordance with section 5 of the Act. In that section, the term “improved value” is, according to the judgment, a special term to which is allotted a particular statutory meaning. It must be regarded, equally with section 6, as containing a “highly artificial conception” The scheme of the Act does not require that it should be imported into this valuation.

20 Therefore, I am of opinion that the question of law stated by the Land and Valuation Court for the decision of this Court should be answered No and the appellants should pay the costs of the stated case.

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HOLMES, J. A.: In the course of the argument of this case we were referred to the Valuation of Land Act, 1916, as originally enacted and as amended from time to time. I do not propose to trace the very interesting and indeed valuable argument of Mr. Hope which traversed the Act in all its sections and which he embarked upon not only for the purpose of arguing that the Valuer General was limited to making only such valuations as were permitted under the Valuation of Land Act, but also that those valuations (1) must be always valuations of either land or estates or interests in land and (2) must be also valuations which were of the unimproved value, the improved value or the assessed annual value as described in Secs. 5, 6 and 7 of the Act in the form in which those sections stood at any relevant time. 10

I can accordingly for the purpose of this judgment omit a great deal of what was submitted to us by way of argument in support of that general proposition.

Before I enter upon my own statement of my reasons for judgment in this case it is important I think to emphasise that the cases in New South Wales courts, in the High Court of Australia and in the Privy Council, which culminated in the decision in *GOLLAN v. RANDWICK MUNICIPAL COUNCIL*, 1961 A.C. 82, are all concerned with the METHOD of valuing land which was subject to restrictions upon user or to some other form of restriction. These restrictions differed in form, that is to say, some were restrictions which flowed from the general law and others were restrictions which applied only to the land in question and which were contained for example in a deed or a Crown Grant or some other instrument under which the owner of the fee simple held the land. The changes in judicial exposition of the meaning of "unimproved value" whether contained in a Commonwealth or State taxing Act or in the Valuation of Land Act have given rise to many cases in which this problem has been expounded but to which I do not think it is necessary for the purpose of this judgment for me to refer in detail other than of course to the decision of the Judicial Committee in *GOLLAN'S CASE* (supra), and to some of the others. 20 30

The essential concept in the valuation of land has been, even prior to the Valuation of Land Act, 1916, the same in New South Wales as in other places, namely that the valuation which was to be adopted was not, at any rate in the ordinary case, of the value to the owner of the land, but the value of the land upon the sale by a hypothetical vendor to a hypothetical purchaser, the one willing to sell and the other willing and able to buy. The definitions contained 40

in Secs. 5 and 6 of the Valuation of Land Act, 1916, were based entirely upon this concept which was best known in Australia by the statement which had been made in *SPENCER v. THE COMMONWEALTH OF AUSTRALIA* by GRIFFITH, C. J. (5 C.L.R. 418 at p.432):—

10 “In my judgment the test of value of land is to be determined, not by enquiring what price a man desiring to sell could actually have obtained for it on a given day, i.e. whether there was in fact on that day a willing buyer, but by enquiring ‘What would a man desiring to buy the land have had to pay for it on that day to a vendor willing to sell it for a fair price but not desirous to sell.’”

When in 1922 *PIKE, J.* came to state the object of the 1916 Act in *ALISON v. VALUER GENERAL*, 6 L.G.R. 25, His Honour, before referring to the passage which I have cited from *SPENCER v. THE COMMONWEALTH*, said:—

20 “I desire at this stage to emphasise the fact that the Valuation of Land Act of 1916 is not a taxing Act, as many people seem to think. The object of that Act was to bring into line the serious differences that used to exist between the valuation of land for taxing purposes and the value of land for compensation and mortgage purposes; and under that Act the one value applied in every case. It applies for compensation as well as for rating and it also applies in the case of advances made by the State banks.”

30 It is clear therefore that when the Act was originally enacted and came to be interpreted by *PIKE, J.* (who was the acknowledged expert in this State upon the subject with which the Act dealt), there was no suggestion of any dichotomy between rating and resumption valuations. The other dichotomy to which I have made reference because some lands were subject to restrictions of either a general or a particular character was not strictly a dichotomy at all, at any rate not a dichotomy in the Act. Furthermore it was not the subject of any judicial decision until 1930.

40 When therefore it was necessary to value the unimproved value of a particular piece of land the Valuer General was always governed by Sec. 6 of the Valuation of Land Act and there is no case in the books which suggests that there is more or other than the one unimproved value of a piece of land. The only difference of opinion, as I have tried to emphasise, has been as to the method of determining the value of the hypothetical fee simple in a case in which there were restrictions upon the user of the land.

The next thing to notice is that the charter of the Valuer General is to be found primarily in Sec. 14 of the Valuation of Land Act.

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That section commenced Part III which is headed "Valuation and Rolls" The reference to rolls as well as to valuation in the heading is of primary importance and is spelt out throughout the rest of the Act, as has been said in another connection, "epexegetical to" (PARKE DAVIS & CO. v. COMMISSIONER OF TAXATION, 101 C.L.R. 521 at p.527).

Sec. 14 required the Valuer General to value the unimproved, improved and assessed annual value of all lands with certain exceptions. The second paragraph of the section is not mandatory as is the first paragraph but is permissive. The second paragraph permits the valuation which is made by the Valuer General to include the unimproved, improved and assessed annual value "of the estates and interests of all owners, including the interests of lessors and lessees in any such lands" Even though this part of the Valuer General's charter is permissive it is not permissive to make any valuation other than of the unimproved, the improved and the assessed annual value of the estates and interests therein referred to. Sections 5, 6 and 7 are not definitions applying unless there is a contrary intention but statements of the method of valuation to be pursued. 10

The next part of the machinery is in Sec. 16 which provides for the keeping of the valuation roll. The Valuer General is required to prepare that roll for each district and to set forth in respect of each valuation of land the particulars therein mentioned of which (d), (e) and (f) refer to the unimproved, the improved and the assessed annual value of the land. This part of the provision is directly related to the first paragraph of Sec. 14. Sec. 16(2) is permissive and in (a) provision is made for entry on the roll of the value of the estates and interests of all owners including the interests of lessors and lessees. So that if the Valuer General exercises the permissive power he is given in Sec. 14 he may enter that value on the roll. However though Sec. 16(2) is permissive in character the valuations of estates and interests that are made at the request of the persons described in Sec. 20 must be entered on the roll. 20 30

Sec. 21 requires that where there is more than one owner of the freehold the sum of the values of the interests of all of the owners in the land shall be not less than the amount at which the improved value of the land would be estimated if held by one owner in fee simple. This provision is directly related to the improved value of the land as provided for in Sec. 5 and is itself a provision dealing with the valuation of the estate or interest of an owner who has less than the whole of the freehold. That is to say Sec. 21 relates to the second paragraph of Sec. 14. The charter of the Valuer General to value under the Act would seem to be fully provided for in Sec. 14 and then to be worked out in the subsequent sections as to the manner in 40



which this function is to be carried out in particular cases. There are other sections later than Sec. 21 in which this working out, as I have called it, is provided for, but to which I do not propose to refer in detail.

Part III deals with Notices and Objections to which I do not think it necessary to refer. Part IV deals with the Valuation Court and is now directly related to the Land and Valuation Court Act of 1921. Part V relates to what is described in its heading "Use of Valuation Lists" Here a distinction is drawn for the first time between  
 10 the valuation roll which is kept by the Valuer General and in respect of the entries on which objections may be made and valuation lists which are to be furnished to certain rating and taxing authorities by virtue of Secs. 47 and 48. These lists are used by those authorities for the purpose of rating. Amongst the particulars on the valuation list supplied by the Valuer General is the value of the land, that is the value which has been entered by the Valuer General on the valuation roll. Primarily these are the values which he must make or may make under Sec. 14 and which are entered on the roll in pursuance  
 20 of Sec. 16. However new valuations may also come into existence (Secs. 19, 20, 70). All of these valuations must be entered on the roll and will in the course of time find their way on to the valuation list or a supplementary list. In certain cases, as for example Sec. 70(3) the new valuations cannot be made use of for rating. What I have said applies really in respect of all valuations including new valuations or valuations made in pursuance of objections as covered by Sec. 29 to 36 and 47 to 61. Part VI deals with the use of valuation rolls by Government departments so that if it is a case of a valuation for stamp duty under Sec. 65 it is a valuation which is on the roll (a rare event) or is put on the roll which is used by the rating authority,  
 30 unless it is in respect of a date earlier than the valuation on the roll. At this point we come for the first time to certificates of valuation, certified copies and extracts. These find their origin in Sec. 76. Certificates of valuation are supplied in respect of new valuations made pursuant to Sec. 20 or Sec. 70. It is a certificate of valuation which is in turn used by the various Government departments other than the rating authorities, for example the Stamp Duties Commissioner acting under the Stamp Duties Act acts upon a certificate of valuation in pursuance of Sec. 65. On the other hand public officers or departments obtain their information from the Valuer General as to what  
 40 he has entered on the roll. Likewise the valuations which are used for the purposes of the Fire Brigades Act, under Sec. 67 are the valuations on the valuation roll or the valuation list. Valuations for resumption are specially dealt with in Sec. 68 and are themselves related to the improved value of any land under the Valuation of Land Act. These valuations however are also related to compensation under

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the Public Works Act since any diminution of what was payable under that Act has been restored not by the Valuation of Land Act but by the Land and Valuation Court Act.

It will be seen therefore that the valuation which the Valuer General is entitled to make of any lands and be it of the improved value or the unimproved value is either the compulsory valuation under the first paragraph of Sec. 14 or a valuation of an estate or interest which is permissive under the second paragraph of Sec. 14. But as was emphasised in argument the estates or interests are themselves fractional interests and are in turn related to the improved value (Sec. 21). There seems to be no room therefore for the Valuer General to make any valuation other than that which is prescribed by Secs. 5, 6 and 7 of the Valuation of Land Act. Accordingly if that view is to be accepted, and putting aside for the moment GOLLAN'S CASE, or what is said in GOLLAN'S CASE, the improved value of land must exclude certain features which are described in Sub-sec. 2 of Sec. 5, even though those elements are themselves land within the ordinary understanding of that term in the common law. 10

The answer to this case would then be simple and it would be possible to say that the items of plant etc. included in paragraphs 4b and 4c of the Case Stated should have been excluded from the valuation made by the Valuer General and that the appellant would succeed. The difficulty which arises is that which flows from the important words used at pp.101-102 in the judgment of the Board in GOLLAN'S CASE. It has been argued by counsel for the Valuer General that these words were essential to the reasoning and if they were there is no doubt that whatever view one might have independently of the matter we would be bound respectfully to accept the views there expressed. It has been argued on the other hand for the appellant that this part of the judgment of the Board is obiter. If it is obiter it is still of great weight so far as this Court is concerned and it would seem to me that it should be followed by this Court even though independently of it a different view would have been taken. This is so particularly in a field which is not concerned with the common law but is an artificial one governed entirely by a statute and which therefore is more readily susceptible of amendment by the legislature than perhaps are matters which are fundamental to the common law. 20 30

This leads me to make an examination of what was decided and of the reasoning in GOLLAN'S CASE. For this purpose it is necessary to retrace the steps which have been taken in relation to the cases of which GOLLAN was the culmination. 40

The basis of what was expressed by ISAACS, C. J. and STARKE, J. in STEPHEN v. FEDERAL COMMISSIONER OF LAND TAX, 45 C.L.R. 122, stemmed to some extent from the view that it would

be unjust to an owner to confine unimproved value where the land was subject to restrictions and would also be contrary to the decision of the Privy Council in *CORRIE v. MacDERMOTT*, 1914 A.C. 1056. The latter decision is distinguished in *GOLLAN v. RANDWICK MUNICIPAL COUNCIL* (supra) since it related to compensation for resumption. It may be said that this is the point in that judgment at which "duality" is introduced. Though *DIXON, J.* (as he then was) did not so deal with the question he did refer to *CORRIE v. MacDERMOTT* (supra). Of course the problem in *STEPHEN v. FEDERAL COMMISSIONER OF LAND TAX* could never be complicated by such a view (duality) since that case *LIKE ROYAL SYDNEY GOLF CLUB v. FEDERAL COMMISSIONER OF TAXATION*, 91 C.L.R. 610, was concerned with an entirely different statute, even though the particular question of construction involved the same words, namely, the meaning of unimproved value as expressed in a statute but in each case confined to Land Tax. Resumption cases such as *CORRIE v. MacDERMOTT* (supra) and *PASTORAL FINANCE ASSOCIATION v. THE MINISTER*, 1914 A.C. 1083, arose under provisions of statutes bearing no resemblance to those in *STEPHEN* or *ROYAL SYDNEY GOLF CLUB*. However in 1916 and before 1921 the provisions of Sec. 68 of the Valuation of Land Act primarily related the value of the land resumed to the improved value of the land but the rights of a claimant for compensation could include other items or matters in addition to the improved value of the land. Special provision was made in Sec. 68 in relation to this. The effect of Sec. 9 of the Land and Valuation Court Act, 1921, was to place compensation for resumption in a situation where despite the provisions of Sec. 68 and the reference therein to "improved value of land" compensation for resumption was not confined to the provisions of the section (*MINISTER FOR PUBLIC WORKS v. THISTLETHWAYTE*, 1954 A.C. 475). However valuations of land or of estates or interests therein for the purposes of the Stamp Duties Act, 1920, as amended, are made by virtue of Sec. 65 of the Valuation of Land Act. Where the value of the land or any interest therein exceeds \$400 the improved value of the land is the improved value as expressed in the Valuation of Land Act, 1916 (Stamp Duties Act, 1920, as amended, Sec. 125). It is true that Sec. 12 does not in terms refer to the unimproved value or the improved value. But though in *GOLLAN'S CASE* at p.101 it is said that these concepts will only be resorted to when the taxing or other Act requires the valuation to be made in reference to them, it cannot be overlooked that Sec. 65 of the Valuation of Land Act refers to the valuation contained in the "certificate of valuation" That is the same as the valuation which is on the roll (See Secs. 76 and 70). The only valuation which must be on the roll is a valuation in accordance with Sec. 16(1) and for

*In the  
Supreme Court of  
New South Wales  
Court of Appeal*

No. 2

Reasons for  
Judgment of  
His Honour  
Mr. Justice  
Holmes

*In the  
Supreme Court of  
New South Wales  
Court of Appeal*

No. 2

Reasons for  
Judgment of  
His Honour  
Mr. Justice  
Holmes

present purposes Sec. 16(1)(e).

The matter then comes back to this: under Sec. 65 of the Valuation of Land Act in every case where the duty payable is dependent upon the value of land such duty shall be paid according to the valuation made under that Act AS SHOWN IN A CERTIFICATE OF VALUATION (Sec. 65).

The Valuer General shall supply a certificate of valuation in respect of a new valuation made pursuant to an application made under Sec. 70 (Sec. 76).

By implication that is a certificate of valuation which is or will be put on the roll or on a valuation list (Secs. 70 and 36), unless it is a valuation within Sec. 70(3). The provisions of Secs. 124A and 125 of the Stamp Duties Act, 1920, as amended, import not only the Valuation of Land Act, 1916, but the meaning of "improved value" appearing therein. This would appear to mean the improved value as stated in Sec. 5 before Sub-sec. 2 was inserted (COMMISSIONER OF GOVERNMENT TRANSPORT (N.S.W.) v. DEACON, 97 C.L.R. 535 at p.546). It does not seem to me that these are the governing provisions since they do not relate to valuations by the Valuer General. 10

In the end I am thrown back to Sec. 65 of the Valuation of Land Act, and despite my own view that that section requires the valuation which is to be made under Sec. 70 to be a valuation which will be entered on the roll, I am obliged respectfully to accept what is said in GOLLAN'S CASE. It follows therefore that I am obliged to answer the question in the Stated Case in the negative. 20

The appellant must pay the costs of the Case Stated.

**RULE OF THE COURT OF APPEAL***In the  
Supreme Court of  
New South Wales  
Court of Appeal*

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No. 3

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Rule**The Tenth day of April 1968.**

THIS MATTER coming on for hearing the Twenty-eighth and Twenty-ninth days of February and the First day of March 1968 WHEREUPON AND UPON READING the Stated Case herein dated the Tenth day of November 1967, and UPON HEARING Mr. R. M. Hope of Queen's Counsel with whom was Mr. T. R. Morling of Counsel on behalf of the appellant and Mr. Forbes Officer of Queen's Counsel with whom was Mr. E. T. Perrignon of Counsel on behalf of the respondent IT WAS ORDERED that the matter stand for judgment and the same standing in the list this day for judgment accordingly IT IS ORDERED that the question set out in the said stated case namely

“whether in making the valuation referred to in this case the Valuer General was in error in including in that valuation the value of objects falling within:

(i) Paragraph 4(b) of this Case

(ii) Paragraph 4(c) of this Case

20 be answered as follows:—

“No”

and IT IS FURTHER ORDERED that the costs of the respondent of and incidental to the said stated case be paid by the appellant to the respondent.

By the Court

For the Registrar

**B. MUIRHEAD**

Acting Chief Clerk.

*In the  
Supreme Court of  
New South Wales  
Court of Appeal*

No. 4

Rule Granting  
Final Leave

**The Twenty-seventh day of May 1968.**

UPON MOTION made this day pursuant to the Notice of Motion filed herein on the Twenty-fourth day of May 1968 WHEREUPON AND UPON READING the said notice of Motion the affidavit of Nicholas Roderick Carson sworn on the Twenty-fourth day of May 1968 and the Registrar's Certificate of Compliance AND UPON HEARING what is alleged by Mr. Morling of counsel for the appellants and Mr. Menz for the respondent IT IS ORDERED that final leave to appeal to Her Majesty in Council from the judgment of the Court of Appeal given and made herein on the Tenth day of April 1968 by and the same is hereby granted to the appellants AND IT IS FURTHER ORDERED that upon forty copies of the record printed in accordance with the Judicial Committee Rules 1957 being lodged with the Prothonotary and the payment by the appellants of all fees for the despatch thereof to England the sum of Fifty dollars (\$50) deposited in Court by the appellants as security for and towards the cost thereof be paid out of Court to the appellants. 10

By the Court

For the Registrar 20

B. MUIRHEAD

Acting Chief Clerk.

No. 5

**CERTIFICATE OF THE REGISTRAR OF THE SUPREME COURT OF NEW SOUTH WALES COURT OF APPEAL VERIFYING TRANSCRIPT RECORD**

*In the  
Supreme Court of  
New South Wales  
Court of Appeal*

No. 5

Certificate  
Verifying  
Transcript Record

I, REGINALD THOMAS BYRNE, of Sydney in the State of New South Wales, Prothonotary of the Supreme Court of the said State and Registrar of the Court of Appeal DO HEREBY CERTIFY that the sheets hereunto annexed and contained in pages numbered 1 to 46 inclusive and the annexure marked "A" hereunto attached contain a true copy of all the document relevant to the appeal by the appellants, The Broken Hill Proprietary Company Limited and Australian Iron & Steel Proprietary Limited from the judgment of the Court of Appeal delivered in this matter on 10th April 1968 so far as the same have relation to the matters of the said Appeal together with reasons for the said judgment given by the said court and an index of all the papers, documents and exhibits in the said suit included in the annexed transcript record which true copy is remitted to the Privy Council pursuant to the Order of Her Majesty in Council of the Twentieth day of December in the year of Our Lord One thousand nine hundred and fifty-seven.

IN FAITH AND TESTIMONY whereof I have hereunto set my hand and caused the seal of the said Supreme Court to be fixed this <sup>6. Green</sup> day of ~~June~~ <sup>July</sup> in the year of Our Lord One thousand nine hundred and sixty-eight.

*R T Byrne*

Prothonotary of the Supreme Court of  
New South Wales and  
Registrar of the Court of Appeal