

1940. THE AUSTRALIAN GAS LIGHT COMPANY v. THE VALUER-GENERAL.

Feb. 14, 15,
16;

Apr. 8.

Jordan C.J.
Davidson J.
Halse Rogers
J.

Valuation of Land Act, 1916 No. 2, ss. 59 (2), 60 (2)—Sydney Corporation (Amendment) Act, 1934 No. 9, ss. 15 (2) (a), (2) (b)—Construction of Statute—Meaning of words—Question of law or fact—Improved value and assessed annual value of land—Premises occupied for trade, etc.—Exclusion of plant—Removal “without structural damage thereto.”

The Valuation of Land Act, 1916, as amended, by s. 59 (2) provides that “For the purposes of this section in determining the improved value of premises occupied for trade, business, or manufacturing purposes such premises shall not include 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.” Sub-section 2 of s. 60 of the Valuation of Land Act, 1916, makes an identical provision in connection with the determination of assessed annual value.

The appellant was a manufacturer of gas and possessed of extensive plant, machines, etc., used in its business. It objected to certain valuations of improved value and assessed annual value made by the Valuer-General and its objections had been determined by the learned judge of the Land and Valuation Court before whom the appellant had contended that certain items of plant, machines, etc., should be excluded from the valuations by reason of the provisions of ss. 59 (2) and 60 (2) of the Valuation of Land Act, 1916. In these proceedings questions of law arose, involving the construction of the sections. These questions of law were referred by *Roper J.* to the Full Court under s. 17 of the Land and Valuation Court Act, 1921.

Held, (by the whole Court), (1) that the Act provides for the valuation of land which includes things once chattels which have become land through being fixed to land, and the tests to be applied are those supplied by the general law; (2) that the sub-sections only become relevant when it is sought to exclude from valuation something which on general principles is land; and (3) that the words “structural damage thereto” mean structural damage to the premises.

Held, further (by *Jordan C.J.* and *Halse Rogers J.*, *Davidson J.* dissenting); (4) that the word “plant” is used in a restricted sense; (5) that the meaning given to the word “structure” by *Roper J.* was correct when he held that premises included “anything which is a structure in the sense of a substantial erection necessarily constructed *in situ* and forming and intended to form a permanent feature of the land”; (6) that “structural damage thereto” (i.e., to the premises), means damage to the structure of some thing or things on the land,

or damage to the land regarded as structure-bearing land ; and (7) that “ plant, machines, tools, or other appliances . . . which . . . may be removed from the premises without structural damage thereto ” means things of the kind mentioned which can be removed without causing any damage to the structures on or in the land of a permanent character and in the nature, for example, of buildings, roads or reservoirs, as contrasted with structures such as machines or movable fittings.

Held, therefore (by *Jordan C.J.* and *Halse Rogers J.*, *Davidson J.* dissenting), that the learned Judge of the Land and Valuation Court in respect of his determination of questions of law had not misdirected himself or fallen into error of law, that the questions submitted should be answered accordingly, and that the appellant should pay the costs.

Whether the interpretation of words and phrases used in a statute is a question of law or fact considered by *Jordan C.J.* and *Davidson J.*

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STATED CASE.

This was a case stated by *Roper J.* under s. 17 of the Land and Valuation Court Act, 1921, and was in the following terms :¹

1. The Australian Gas Light Company (hereinafter called “the appellant”) is a Company duly constituted by the Australian Gas Light Company Acts, 1837-1935.

2. The appellant is the owner and the occupier of certain lands situate at Mortlake in the Municipality of Concord and Valuation District of Concord and is the person rateable in respect of the said lands. The whole of such lands are occupied by the appellant for the purpose of trade, business or manufacture.

3. The Valuer-General (hereinafter called “the respondent”) on or about the eighteenth day of September A.D. One thousand nine hundred and thirty-five caused a valuation of the said lands to be made in purported pursuance of the Valuation of Land Act, 1916, and Acts amending the same and duly caused a notice of the said valuation to be served upon the appellant whereby the improved capital value of the said lands was assessed at the sum of One million two hundred and fifty thousand pounds (£1,250,000).

4. The appellant duly caused a notice of objection to the said valuation to be served upon the respondent and on the eighth and ninth days of June, 1938, the said objection came on for hearing before me by way of appeal.

1. Various annexures, with schedules thereto, referred to in the case stated are not necessary to the judgment and are not printed.

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5. The parties to the said appeal agreed to make certain admissions for the purposes of the appeal, and such admissions are hereunto annexed and numbered 1.

6. The appellant contended upon the hearing that none of the items mentioned in Schedule "D" of the said Annexure "1" should be included by the respondent in determining the improved capital value of the said lands for the purposes of s. 59 of the Valuation of Land Act, 1916, or in determining the assessed annual value of the said lands for the purposes of s. 60 of the said Act. The respondent contended that all such items should be so included.

7. The evidence on the hearing of the said appeal was given wholly on the said lands and in the view of the items in dispute, and I found the facts in relation to each item referred to in the said Schedule "D" to Annexure "1" to be as herein-after more particularly set forth.

8. After hearing the said appeal I did on the fifth day of August, 1938, deliver judgment on the same by which I determined that certain of the items set forth in the said Schedule "D" to Annexure "1" should be included in determining the improved capital value of the said lands for the purposes of s. 59 of the Valuation of Land Act, 1916, and without entering final judgment adjourned the matter so that the parties might agree upon the value of such items which I so determined should be included, and on the nineteenth day of December last past the parties appeared before me and agreed upon the values set forth in the paper hereunto annexed and numbered "2", and I thereupon fixed the value in respect of the said land as follows:—Unimproved value, Eighty-four thousand two hundred pounds (£84,200); Improved value, One million and twenty-three thousand six hundred and twenty pounds (£1,023,620) and assessed annual value, Sixty-one thousand four hundred and sixteen pounds (£61,416). My reasons for my said determination were reduced into writing and a copy thereof is hereunto annexed and numbered "3".

9. The item described in the said Schedule "D" as the Telpher System is a form of overhead monorail tramway used for transporting coal from a wharf adjoining the appellant's land to certain retort houses thereon, raising it to the level

of the vertical retorts, tipping the coal into those retorts and later removing coke from the bottom of the retorts at or below the ground level after the gas and other products have been extracted from the coal. For the purposes of description it can be divided into two portions, firstly what is referred to in Schedule "D" as the fixed portion and secondly the revolving column and base, the value of which second portion has not been included by the Valuer-General in his determination of the improved value of the land. The fixed portion is composed of steel frames and towers, these towers being fabricated of steel frames and girders. The largest dimensions (apart from length) of any one component part are approximately 8 in. x 6 in. The girders which form the towers are bolted to concrete blocks let into the ground. Bolts are embedded in the concrete over which a hole drilled in the foot of the various pieces of the framework is fitted, and the framework is then held in position by a nut screwed on to the end of the bolt. By unscrewing the nuts the framework could be lifted off the bolts and moved, this being a practicable operation. It would not be possible by reason of its size to take away the fixed portion from its present site and replace it elsewhere without dividing it into a large number of portions which could be done by cutting rivets and undoing bolts. If this were done, the fixed portion could be taken away in sections of a convenient size and the sections re-assembled elsewhere on suitable foundations prepared for the purpose. This would be a practicable operation. The object of the frames is to carry the rail upon which the trucks run. The towers are to enable this rail to be carried up to and above the top of the vertical retorts, the rail running inside the towers in the form of a spiral, and the trucks are propelled up this spiral by the rotating arm on the revolving column. Annexure "4" hereto illustrates the construction of these towers. I held that the whole of the said fixed portion should be included in determining the improved value of the land for the purposes of s. 59 of the Valuation of Land Act, 1916.

10. The Pier Estate Tar Distillation Plant is used for the distillation of tar and similar substances and the storage and blending of the residues and distillates. There are three

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main divisions of this Distillation Plant, the first of which is called the Bitumen Melting Plant. This consists of concrete and brick foundations partially sunk in the ground to house vats and ovens. Annexed hereto and numbered "5" is a plan illustrating the said vats and ovens. To these foundations are bolted H-shaped steel uprights approximately 12 feet in length, the other dimensions of which are approximately 5 in. and 6 in. These uprights support a steel frame roof covered with galvanised iron. They also support rails to carry a travelling crane. The oven house is enclosed on three sides by galvanised iron and on the fourth side is open to a height of approximately 8 feet to allow bitumen barrels to be conveniently unloaded into the shed. The whole could be dismantled by the unscrewing of nuts from bolts into sections which are easily transportable leaving only the concrete and brick foundations. The said sections could be taken away and re-erected elsewhere on suitable foundations prepared for the purpose. I held that the value of the whole of the foundation uprights and galvanised iron as erected should be included in determining the said improved value of the land.

The second portion of this Distillation Plant consists of stills. The stills are contained in brickwork above furnaces and are approximately 12 ft. x 6 ft. x 5 ft. in size, each constituting a single steel unit. They are heated by burning combustible oil injected into the furnaces by which they are surrounded. The tar to be distilled is contained in the still and the distillate is carried by pipes from the still through a condenser and cooler into tanks. The distillate tanks and equipment of the Distillation Plant other than the actual furnaces are covered by a corrugated iron roof supported by steel uprights bolted to a concrete platform which acts as a base. Annexed hereto and numbered "6" and "6A" respectively are two plans illustrating the construction of the said stills. To remove the stills it would be necessary to demolish the brickwork and furnaces surrounding them. They could each then be transported in one piece. The corrugated iron roofing and supports could be dismantled by the unscrewing of nuts from bolts, into sections which are easily transportable leaving only the concrete foundations. The said sections could be taken away and re-assembled elsewhere on suitable foundations

prepared for the purpose. I held that the furnaces, stills, corrugated iron roofing and supports should be included in the said improved value of the land.

The third portion of the Distillation Plant is known as the Blending Plant. The object of this portion is twofold, namely to blend the distillates and residues with bitumen in blending tanks and store the mixture when blended in storage tanks whence it can be transferred in a fluid state to lorries for distribution to customers. These tanks are on a raised platform approximately 10 feet high so that their contents can flow by gravity into lorries. The platform upon which the tanks rest is a steel frame, the supports of the framework being bolted to concrete blocks let into the ground. There is a corrugated iron roof over the supports and the tanks and the sides are partially covered by corrugated iron. The tanks are warmed by means of steel coils and covered with insulating material to prevent loss of heat. The various ingredients are mixed in the blending tanks by means of a propeller which keeps the contents of the tank in motion and which completes the process of manufacture. Annexed hereto and numbered "7" is a plan illustrating the said Blending Plant. The whole of the said Blending Plant could be dismantled by the unscrewing of nuts from bolts, into sections which are easily transportable leaving only the concrete foundations. The said sections could be taken away and re-erected elsewhere on suitable foundations prepared for the purpose. I held that the said roof, supports and flooring as erected should be included in the said improved value of the land.

11. The gas holders referred to in the said Schedule "D" are three in number and each of them consists of three or four large cylinders, known as lifts, the whole being known as a bell. The lifts are constructed of a large number of steel plates riveted together, and the uppermost is enclosed on top. They fit into one another and are let into an annular ground tank, the tanks referred to as Nos. 1, 2, and 3, being those corresponding to the three gas holders. The tank is filled with water, and the bell is raised into the air lift by lift as the gas which the bell is intended to hold is forced into it. The bell moves within a ring of steel supports each of which is firmly bolted by a bolt of ten to twelve feet in length into a solid concrete

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block let into the ground as a foundation. The steel supports themselves are braced by cross members of steel latticework. The bell is not attached to but moves inside the steel supports which act as guides and stays. The tanks in the said Schedule "D" referred to as Nos. 1, 2 and 3 tanks are fashioned by removing earth and rock and facing the resulting hole in the ground with concrete. The steel supports and latticework and the bell could be reduced into sections of which there would be a large number, capable of being transported from place to place by—

(a) in the case of the steel supports and latticework, unscrewing nuts from bolts, and

(b) in the case of the bell, cutting and burning out rivets.

These sections could be taken away and re-assembled elsewhere on suitable foundations prepared for the purpose. This would be a practicable operation. There would be left on the site of the existing gas holder the annular ground tank and the concrete foundations of the steel supports. Annexed hereto and numbered "8" is a plan showing the construction of the said gas holders and tanks. I held that the whole value of the tank, uprights, framework and bells as erected should be included in determining the said improved value of the land.

12. The tanks referred to in the said Schedule "D" as tar and liquor tanks (concrete) are similar in construction to the tanks more particularly referred to in paragraph 11 hereof. They are used for the storage of various liquids. I held that the whole of these tanks should be included in determining the said improved value.

12A. The appellant duly requested under s. 17 of the Land and Valuation Court Act, 1921, the Land and Valuation Court to state this case for the decision of the Supreme Court.

13. The questions for decision are—

(a) Whether on the proper interpretation of subs. 2 of s. 59 of the Valuation of Land Act, 1916, and of that Act all or any and if so which of the items referred to in paragraphs 9 to 12 inclusive of this case should have been excluded in determining the improved value of the appellant's said land for the purposes of the said section and

- (b) whether any and if so which of my said determinations set forth in paragraphs 9 to 12 hereof were erroneous in point of law.

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ADDITIONAL QUESTIONS TO STATED CASE.

Set out hereunder are my determinations on certain questions of law which arose in the proceedings, namely, I held:

(1) That the word "premises" in ss. 59 (2) and 60 (2) of the Valuation of Land Act, 1916, includes land and buildings and also anything which is a structure in the sense of a substantial erection necessarily constructed *in situ* and forming and intended to form a permanent feature of the land.

(2) That the word "thereto" in the phrase "without structural damage thereto" occurring in the said sections refers to the antecedent "premises" and not to the antecedent "plant, machines, tools or other appliances."

(3) That having found as facts that the items described in paragraphs 9 to 11 inclusive hereof were "structures" in the said sense they were therefore necessarily included in determining the improved capital value and the assessed annual value respectively for the purposes of the said sections.

(4) That nothing which is a "structure" in the said sense can be "removed from the premises without structural damage thereto," within the meaning of the said sections.

(5) That as I found as facts that the items described in paragraphs 9 to 11 were structures in the said sense they could not be "removed from the premises without structural damage thereto," within the meaning of the said sections.

(6) That the removal of any of the items described in paragraphs 9 to 11 is necessarily "structural damage thereto" within the meaning of those words in the said sections whatever may be the condition of the premises left after the removal has been carried out.

(7) That the removal from the premises of anything which is a "structure" in the said sense is necessarily "structural damage thereto" within the meaning of those words in the said sections notwithstanding that no damaged structure remained as part of the premises after such removal.

(8) That nothing which is a "structure" in the said sense can be "plant" within the meaning of that word in the said sections.

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(9) That nothing can be "plant" within the meaning of that word in the said sections unless it has the characteristics of a chattel.

(10) That assuming that anything is "plant" within that meaning it must nevertheless be included under the said sections if it also is a "structure" in the said sense.

(11) That as I found that the items described in paragraphs 9 to 11 hereof were structures in the said sense they could not be "plant" within the meaning of that word in the said sections.

At the request of the appellant in pursuance of the provisions of s. 17 of the Land and Valuation Court Act, 1921, I state the following questions for the decision of the Supreme Court thereon, namely :

(a) Whether any of my said determinations are or is erroneous in point of law ; and

(b) If so, which of the same are or is erroneous.

Maughan K.C. and *Bavin* for the appellant. The Telpher system is a tramway. This is plant. The whole of this plant should have been excluded from valuation, and not merely certain movable portions. The whole could be removed by undoing bolts without causing any damage to the premises. The fact that you would remove it in parts is irrelevant. The other main items not excluded from valuation are the gas bells and distillation plant. The gas bells are not fixed and are similar to the movable parts of the Telpher system. To remove plant and leave only a hole in the ground is not to cause structural damage. The roofing over the distillation plant is merely secured to uprights and is part of the plant, and there is no finding that removal would damage the premises. The Act construed in *C. & J. Weir v. Assessor for Glasgow* (1) is different in terms from the present Act and that case is not applicable.

In applying the subsections there are four questions to be asked : (1) are the premises occupied for trade ? (2) is the article plant, machine, tool or other appliance ? (3) If this is answered affirmatively, is the article fixed ? and (4) can it be removed without structural damage to the premises ? The premises were admittedly occupied for trade. *Roper J.* decided

(1) [1924] Sc. L.T. 310.

that the disputed items were not plant. What is plant appears from *Blake v. Shaw* (1); *Yarmouth v. France* (2), and *New South Wales Associated Blue Metal Quarries Ltd. v. Valuer-General*.(3) The facts show these items are plant, his Honour held they are incapable of being plant. This, it is submitted, is wrong, and is a question of law: *Margrett v. Lowestoft Water and Gas Co.*(4) *Roper J.*'s decision that removal of a structure as defined by him necessarily involves structural damage is erroneous. Damage is to be regarded from the viewpoint of the condition of the residue: *Inland Revenue Commissioners v. Smyth* (5); *Whitehead v. Bennett*.(6)

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Weston K.C. and *Hooke*, for the respondent. The original questions submitted to the Court were not questions of law but questions of fact. The intention whether an article should be removed or is removable is not the test under the section. The sections show that even some tools, machinery, etc., are to be considered as part of the premises for the purpose of fixing the relevant values. The logical result of Mr. Maughan's argument is that all plant, tools, etc., would be excluded, and the unimproved and improved values would be identical. Any structure that has to be dismantled does structural damage to the premises. "Without structural damage thereto" means without damage to the totality of the premises, that is regarding land and fixtures as included in premises. If this argument is right, the appeal fails. If it is wrong, then the question arises, was the meaning given to the word "plant" by the learned Judge correct? What is or what is not plant is a question of degree, and, therefore, of fact: *G. & J. Weir Ltd. v. Assessor for Glasgow*.(7) Plant can only be removed so as to exclude it from valuation if it can be removed as plant, that is as a recognisable unit. It is not capable of being even notionally removed for the present purposes if it is disintegrated in the process.

Maughan K.C., in reply.

Cur. adv. vult.

(1) *Johns* 732.

(2) 19 Q.B.D. 647 at 658.

(3) 12 L.G.R. 114.

(7) [1924] Sc. L.T. 310 at 319, 322, 324.

(4) 19 Tax. C. 481.

(5) [1914] 3 K.B. 406 at 421.

(6) 27 L.J. Ch. 474 at 475.

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JORDAN C.J. This matter comes before the Court by virtue of s. 17 of the Land and Valuation Court Act, 1921, which provides that when questions of law arise in a proceeding before the Land and Valuation Court a case may be stated for the decision of the Supreme Court thereon.

The Valuation of Land Act, 1916, by s. 14, imposes on the Valuer-General the duty of making a valuation of the unimproved, improved and assessed annual value of all lands. Section 59 provides (1) that the improved value determined under the Act shall be deemed to be the improved capital value for the purposes of the Local Government Act, 1919, and (2) that for the purposes of this section in determining the improved value of premises occupied for trade, business or manufacturing purposes, such premises shall not include any plant, machines, tools or 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. Section 60 provides (1) that the assessed annual value determined under the Act shall be deemed to be the value for the purpose of certain other Acts, and (2) it makes similar provision for the exclusion of unfixed or readily removable plant, etc.

Owners are entitled to object to the Valuer-General's valuations; and such objections are heard and determined by the Land and Valuation Court. In the present case, the Land and Valuation Court gave its determination upon certain objections made by an owner; and a case was then stated to this Court at the request of the owner.

When the case was first submitted, it took the form of a statement of the facts which the learned Judge had found to exist in the light of the evidence which he had heard and seen, and of the conclusions at which he had arrived in the light of those facts as to whether certain things should be included in the premises for the purpose of determining value. The questions asked were (1) whether certain of these things should have been excluded, and (2) whether any of his conclusions that things should be included were erroneous in point of law. It was pointed out by this Court that the first question was a question of fact and not a question of law, and that the

second question did not indicate what the questions of law were upon the basis of which it was proposed to contend that certain things had been erroneously included. The case was therefore remitted to the learned Judge in order that he might formulate the questions of law which arose for decision. The case was returned with a statement of eleven determinations of law upon which the learned Judge had relied for the purposes of his ultimate conclusions of fact, and with questions asking whether any and if so which of these determinations were erroneous in point of law.

Before proceeding to the questions which have been submitted, it is necessary to keep in mind that this Court has jurisdiction to determine only questions of law and only such questions of law as are submitted to it. In cases in which an appellate tribunal has jurisdiction to determine only questions of law, the following rules appear to be established by the authorities :

(1) The question what is the meaning of an ordinary English word or phrase as used in the Statute is one of fact not of law : *Girls' Public Day School Trust v. Ereaud* (1) ; *Life Insurance Co. of Australia Ltd. v. Phillips* (2) ; *McQuaker v. Goddard*.(3) This question is to be resolved by the relevant tribunal itself, by considering the word in its context with the assistance of dictionaries and other books, and not by expert evidence : *Camden v. Inland Revenue Commissioners* (4) ; *In re Ripon (Highfield) Housing Confirmation Order, 1938*. *White and Collins v. Minister of Health* (5) ; although evidence is receivable as to the meaning of technical terms : *Caledonian Railway v. Glenboig Union Fireclay Co.*(6) ; *Attorney-General for the Isle of Man v. Moore* (7) ; and the meaning of a technical legal term is a question of law : *Commissioners for Special Purposes of Income Tax v. Pemsel*.(8)

(2) The question whether a particular set of facts comes within the description of such a word or phrase is one of fact : *Girls' Public Day School Trust v. Ereaud* (9) ; *Attorney-General for the Isle of Man v. Moore*.(10)

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(1) [1931] A.C. 12 at 25, 28.

(2) 36 C.L.R. 60 at 78.

(3) [1940] 1 All E.R. 471.

(4) [1914] 1 K.B. 641.

(5) [1939] 2 K.B. 838 at 852.

(6) [1911] A.C. 290 at 299.

(7) [1938] 3 All E.R. 263 at 267.

(8) [1891] A.C. 531 at 580.

(9) [1931] A.C. 12 at 35.

(10) [1938] 3 All E.R. 263 at 267.

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(3) A finding of fact by a tribunal of fact cannot be disturbed if the facts inferred by the tribunal, upon which the finding is based, are capable of supporting its finding, and there is evidence capable of supporting its inferences : *Farmer v. Cotton's Trustees* (1); *Currie v. Inland Revenue Commissioners* (2); *Inland Revenue Commissioners v. Lysaght*.(3)

(4) Such a finding can be disturbed only (a) if there is no evidence to support its inferences, or (b) if the facts inferred by it and supported by evidence are incapable of justifying the finding of fact based upon those inferences : *In re Ripon (Highfield) Housing Confirmation Order*, 1938. *White & Collins v. Minister of Health* (4), or (c) if it has misdirected itself in law : *Farmer v. Cotton's Trustees* (5); *Colonial Mutual Life Assurance Society Ltd. v. Federal Commissioner of Taxation*.(6) Thus, if the facts inferred by the tribunal from the evidence before it are necessarily within the description of a word or phrase in a statute or necessarily outside that description, a contrary decision is wrong in law : *Farmer v. Cotton's Trustees* (1); *Mersey Docks and Harbour Board v. West Derby Assessment Committee and Bottomley, etc.*(7) If, however, the facts so inferred are capable of being regarded as either within or without the description, according to the relative significance attached to them, a decision either way by a tribunal of fact cannot be disturbed by a superior Court which can determine only questions of law : *Farmer v. Cotton's Trustees* (1); *Currie v. Inland Revenue Commissioners* (2); *Inland Revenue Commissioners v. Lysaght* (3); *Mersey Docks and Harbour Board v. West Derby Assessment Committee and Bottomley, etc.*(7)

The subsection here in question—sub-s. (2) of s. 59—is concerned with the exclusion from valuation of things which would otherwise be included. What has to be valued is land : Local Government Act, 1919, Schedule III. Land includes things once chattels which have become land through being fixed to land. The tests to be applied for determining whether such things have become fixed and if so whether they have become land are those supplied by the general law : *Australian*

(1) [1915] A.C. 922 at 931.

(2) [1921] 2 K.B. 332 at 338-341.

(3) [1928] A.C. 234 at 246-7, 249-251.

(4) [1939] 2 K.B. 838.

(5) [1915] A.C. 922 at 930-1.

(6) 49 C.L.R. 171 at 175-6.

(7) [1932] 1 K.B. 40, 92 at 110-112.

Provincial Assurance Co. Ltd. v. Coroneo.(1) If, applying those tests, a thing is found not to be land, it is necessarily excluded, and it is not necessary to rely on the subsection for its exclusion. The subsection becomes material when it is sought to exclude from valuation something which on general principles is land. The fixed things so to be excluded are things of the types enumerated which may be removed without causing structural damage to the premises. "Structural damage to the premises" means damage to the structure of some thing or things on the land, or damage to the land regarded as structure-bearing land. The question then arises, what things are intended to be denoted as susceptible of damage? They are evidently structures in the sense of things possessing structure and the result of construction. They evidently do not include all forms of structure; because the things enumerated as capable of exclusion are generally, if not invariably, structures in the sense of things constructed or fabricated. In this connection, the enumeration is significant. Apart from the very general word "plant," the words "machines, tools or other appliances" all denote things not in the nature of buildings although they may be used in or in connection with buildings. Again, the use of the phrase "removed from the premises without structural damage thereto" suggests that what the Legislature had in mind was the type of damage in relation to which the phrase is ordinarily employed, i.e., damage to something in the nature of a permanent building or other permanent and constructed feature of improved premises, such as a road or artificial pond: cf. *Inland Revenue Commissioners v. Smyth* (2); *Black v. Shaw and Official Assignee in Bankruptcy of Walter Shaw*.(3) "Plant" is a very general expression which in certain contexts may be capable of including permanently fixed things such as buildings, but is evidently used in a more restricted sense in its present context. These considerations point to the conclusion that what is meant by plant, etc., which "may be removed from the premises without structural damage thereto" is things of the kind mentioned which can be removed without causing any damage to struc-

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(1) 38 S.R. 700 at 712.

(2) [1914] 3 K.B. 406 at 421.

(3) 35 N.Z.L.R. 194.

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tures on or in the land of a permanent character and in the nature, for example, of buildings, roads or reservoirs, as contrasted with structures such as machines or removable fittings. It was contended that a permanent building should be excluded if it is so constructed as to admit of its being readily removed without injury to the surface of the earth or to any fixed foundations embedded in the earth ; but the condition of exclusion is that the thing shall be capable of being removed without structural damage to the premises. This means without structural damage to the actual premises. It is obvious that part of a permanent building cannot be removed without causing structural damage. *A fortiori* the whole cannot. Such a removal would obviously cause damage to the premises regarded as structure-bearing land (the word "structure" being confined to the sense above indicated). Such an authority as *Webb v. Frank Beavis Ltd.*(1) has no bearing on the present case. There, the question was whether the thing was a tenant's trade fixture, *i.e.*, whether it could be removed from the land notwithstanding that its removal would cause structural damage to the land regarded as structure-bearing land.

Passing now to his Honour's determinations of law—

(1) The first determination is material because of his Honour's indication of the sense in which he employs the word "structure." His Honour's statement of this, as subsequently amplified by him, is in the following words :

"A substantial erection necessarily constructed *in situ* and forming and intended to form a permanent feature of the land, having substantially the characteristics either of a building or of a permanent framework affixed to the land and not being a machine."

I am of opinion that his Honour made no error in law in attaching this significance to the word "structure" for the purposes of the determinations of fact which he was called upon to make in the particular case before him, and that he made no error of law in his first proposition.

(2) It is not disputed that this is correct.

(3)-(7) These are all correct.

(1) [1940] 1 All E.R. 247.

(8) and (9) If these propositions mean that in no circumstances whatever can a structure in the nature of a building be plant, they are incorrect in law. If they mean only that a structure in the nature of a permanent building cannot be plant removable from the premises without structural damage thereto within the meaning of the sections in question, they are correct in law. In view, however, of the other findings of the learned Judge, these propositions appear to be immaterial.

(10) This is correct.

(11) This is correct if "plant" means plant removable from the premises without structural damage thereto.

I am of opinion that the costs of the proceedings before this Court should be paid by the Australian Gas Light Co.

DAVIDSON J. The questions of law which purport to have been submitted in the case stated for decision by this Court relate to the construction of ss. 59 and 60 of the Valuation of Land Act, 1916, as amended by subsequent legislation.

The sections provide for the determination by the Valuer-General, subject to appeal to the Valuation Court, of the improved capital values of lands and their assessed annual values in order to supply the basis for rating and taxation by various public authorities including amongst others those whose powers are conferred by the Land and Income Tax Act, 1902, and the Local Government Act, 1919.

The unimproved capital value is covered by s. 58 of the Valuation of Land Act which enacts that for the purposes of that section in ascertaining the unimproved value of any land there shall be a deduction for profitable expenditure by the owner on visible and effective improvements (if any) which although not upon the land have been constructed for its drainage, for its protection from inundation or otherwise for its more beneficial use.

The improved value is stated by s. 59 of the same act to be the improved capital value for the purposes of the Local Government Act, 1906. The latter Act however, has been repealed and so far as it deals with the determination of the improved capital value and assessed annual value has been replaced by s. 137 of the Act of 1919 and Schedule III thereto.

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Section 60 of the Valuation of Land Act relates to the determination of assessed annual values under that Act.

By the Sydney Corporation (Amendment) Act, No. 9 of 1934, the abovementioned ss. 59 and 60 and also ss. 3 and 4 of Schedule III to the Local Government Act, 1919, as amended by subsequent legislation, have been amended in each instance by the insertion of a new sub-section containing the following terms referable to the determination of the improved capital value or the assessed annual value as the case may be, namely:—"for the purposes of this section in determining the improved [or assessed annual] value of premises occupied for trade, business or manufacturing purposes, such premises shall not include 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."

No doubt these amendments were designed to bestow some benefit in the form of alleviation of the burden of rates and taxation upon owners and occupiers who might expend large sums of money upon the improvement of their land by the erection thereon of trading or industrial plant: cf. ss. 120-129, Local Government Act, 1919. But this object of the Legislature has been achieved by the use of language which according to the authorities gives rise to a difficult question as to the extent to which there results from the decision under appeal in the case stated a matter of law or of fact.

Under the earlier decisions the rule was very plain. In *River Wear Commissioners v. Adamson* (1), Lord Blackburn after referring to *Heydon's* case (2) said in effect that the office of the Judge is to declare the expressed intention of the Legislature. The Court, he added, must "take the whole statute together, and construe it all together giving the words their ordinary signification, unless when so applied they produce an inconsistency, or absurdity or an inconvenience so great as to convince the Court that the intention could not have been to use them in their ordinary signification, and to justify the Court in putting on them some other signification, which, though less proper, is one which it

(1) 2 App. Cas. 743 at 764.

(2) 3 Co. Rep. 7b.

is thought the words will bear." In explaining an Act of Parliament, it was said in another case to be impossible to admit evidence, for that would be to make it a question of fact in place of a question of law. Yet, in a demurrer a judge might inform himself from dictionaries or books on the particular subject concerning the meaning of any word. And if at *nisi prius* he should show these books to the jury it would not be as evidence but merely to explain the reasons for his decision : *A.-G. v. Cast-Plate Glass Co.*(1) Another important pronouncement made by *Eyre C.B.*, was in relation to all written instruments. It is the duty of the jury, he said, to take the construction from the Court either absolutely, if there be no words of art or phrases used in commerce and no surrounding circumstances to be ascertained ; or conditionally when those words or circumstances are necessarily referred to them. Unless this were so, he added, there would be no certainty in the law : *Neilson v. Harford* (2) ; *Hills v. Evans* (3) ; *Lyle v. Richards*.(4).

This statement was accepted in *Hills v. Evans*.(3) and the same principles were adopted fully or partially in other cases of high authority : *Lyle v. Richards* (4) ; *Baxter v. Commissioners of Taxation (New South Wales)* (5) ; *Eastman Photographic Materials Co. v. Comptroller General of Patents, Designs and Trade-Marks*.(6) Confusion, however, has crept in when the effort has been made to determine what words should first be submitted to a jury in order that the Judge's mind might be fully informed before he undertakes his duty of construing the instrument. *Lindley L.J.*, expressed the opinion that the meaning of words is always a question of fact, whilst the effect to be given to them is a question of law : *Chatenay v. Brazilian Submarine Telegraph Co.*(7) The interpretation of the language used in the document is kept distinct from the field of construction : *Di Sora (Duchess) v. Phillips* (8) ; *Williams Bros. v. Ed. T. Agius Ltd.*(9) *Isaacs J.* offers the explanation of these conclusions that ambiguity may arise, "from doubt as to the construction,

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(1) 1 Anst. 39 at 44.

(2) 8 M. & W. 806 at 823.

(3) 31 L.J. Ch. 457.

(4) L.R. 1 H.L.C. 222 at 241.

(5) 4 C.L.R. 1087 at 1104.

(6) [1898] A.C. 571 at 575.

(7) [1891] 1 Q.B. 79 at 85.

(8) 10 H.L.C. 624 at 638-639.

(9) [1914] A.C. 510 at 527.

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in their totality, of the ordinary and in themselves well-understood English words employed." "That," he says, "is true construction." Or the ambiguity "may arise from the diversity of subjects to which those words may in the circumstances be applied." That he says is rather the interpretation of terms. Or again "it may arise from obscurity as to the full expression in ordinary language of some abbreviated term or arbitrary form that has been adopted." That also he says is interpretation of terms: *Life Insurance Co. of Australia Ltd. v. Phillips*.(1)

If the interpretation of words be always a question of fact one would think that the statutory practice of deciding questions of law upon a demurrer arising out of a pleading of the terms of any written instrument, would disappear. There would always be an issue of fact. Moreover, in trials at *nisi prius* in which the rights of litigants depend upon the meaning of a statute or other instrument, the Judge might always be required to have a preliminary hearing in order to procure a finding from the jury as to the interpretation of terms, so that he might be in a position to submit the case in legal form to the jury in his summing up. And further, as any jury may lawfully find that words in a statute have different meanings, the statute may be given one meaning to a particular litigant but an entirely different meaning to another upon precisely the same set of facts. Such a result would produce uncertainty and not certainty in the law. Possibly some of these matters may have been in the mind of Lord *Parker* when in stating his opinion to the House of Lords, he said, "The views from time to time expressed in this House have been far from unanimous but in my humble judgment where all the facts are fully found and the only question is whether the facts are such as to bring the case within the provisions properly construed of some statutory enactment the question is one of law only": *Farmer v. Cotton's Trustees*.(2) The question there at issue related to whether or not a building was "divided into and let in different tenements", and so far as I am able to gather the case seems to have been determined on the ground that as the relevant facts were found and given in detail there was an error in law,

(1) 36 C.L.R. 60 at 78.

(2) [1915] A.C. 922 at 923.

because there was no evidence to support the conclusion of the Court of Trial when the Act was properly construed. In a later case it was held that the expression "public school" which was not defined in the statute under consideration was not a "term of art," and the question of what was the common understanding of such a term was a question of fact: *Girls' Public Day School Trust v. Ereaud*.⁽¹⁾ But Lord MacMillan⁽²⁾ after mentioning that in an earlier case no attempt was made to give an exhaustive definition of the expression "public school," went on to point out that the word "public" is so elusive in its meaning that even the authors of the New Dictionary prefaced their attempt at a definition with the warning that the varieties of sense are numerous and pass into each other by many intermediate shades of meaning. On the following page of the report his Lordship stated his conclusion that the question resolved itself into one of fact because the meaning of the words became a matter of degree. This would appear to suggest that there were peculiar circumstances forcing the Court to require for its assistance in construing the Act a finding of fact as to the interpretation of the words and as such a finding had been given it was binding. In *Pemsell's* case Lord Macnaghten, relying on a *dictum* in *Stephenson v. Higginson*,⁽³⁾ stated that in construing Acts of Parliament it is a general rule that words must be taken in their legal sense unless a contrary intention appears: *Commissioners for Special Purposes of Income Tax v. Pemsell*.⁽⁴⁾ No disagreement was expressed as to this statement of the law although Lord Macnaghten's judgment was referred to in the *Girls' Public Day School Trust v. Ereaud*.⁽⁵⁾ Consequently the inference seems to be that the interpretation of all words is not a question of fact. On the contrary in *Pemsell's* case the House of Lords decided as a matter of law that the words "charitable purposes" in their context should be given a legal sense as no contrary intention appeared. In addition Lord Wright in delivering the opinion of the Privy Council, with reference to the question whether "shale" could be held to be covered by the specific words "flag slate or stone", said that after some conflict

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(1) [1931] A.C. 12.

(2) [1931] A.C. at 34.

(3) 3 H.L.C. at 686.

(4) [1891] A.C. 531 at 580.

(5) [1931] A.C. at 29.

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of judicial opinion it has been finally established that this type of question is an issue of fact to be decided according to the particular circumstances of the case, the duty of the Court being to determine what the words meant in the vernacular of mining men, commercial men and landowners at the relevant time. This statement seems to involve a decision of law that the peculiar circumstances required a particular expression in the statute to be determined as a fact by the proper tribunal. There seems, also, to be a return to the old rule that "if there be no words of art or phrases used in commerce and no surrounding circumstances to be ascertained" the interpretation or meaning is a matter of law and not of fact: *cf. Neilson v. Harford*.⁽¹⁾ In a later case it fell to the Court of Appeal to determine the meaning of the word "park" and it was decided that in the particular statute the word should bear its ordinary meaning according to the definition in the dictionary and not its strictly legal sense. *Luxmore L.J.*, said that the jurisdiction to make the order under review was dependent upon a finding of fact whether or not certain land could be held not to be part of a park or not to be required for amenity or convenience. The Court decided this question itself as the existence of jurisdiction depended upon the result: *In re Ripon (Highfield) Housing Confirmation Order, 1938. White and Collins v. Minister for Health*.⁽²⁾

On these decisions I would with great diffidence conclude: (1) that the construction of a statute or any other instrument is always a question of law; (2) That the first question for decision as a matter of construction is whether words in the instrument were intended to be used in their strictly legal sense or with their ordinary meaning; (3) If it is determined as a matter of law that the strictly legal sense or the ordinary sense as the case may be was intended that sense must be applied by the Judge or Court; (4) If it be determined that the legal or ordinary sense may not have been intended there is then a further question of law to be decided, namely whether there are particular circumstances requiring a determination of fact, firstly as to the nature of such circumstances and secondly as to the meaning which would be applied to particular words or phrases in the vernacular of people concerned

(1) 8 M. & W. 806 at 823.

(2) [1939] 2 K.B. 838 at 852, 855.

in the occupation, trade, calling or circumstances dealt with by the statute; (5) With the aid of findings on those points the statute must be construed as a question of law.

The dispute out of which the questions in the case stated arise relates to the inclusion by the Valuer-General, in determining values under ss. 59 and 60, in connection with the lands of the Australian Gaslight Company, of certain fixtures which he claims are not removable without structural damage to the premises.

If then one applies the principles which have been enunciated it should be plain that in the Statute taken as a whole references to "land" and to what is "fixed" should be read in the legal sense which is always applied when things formerly chattels are affixed to land. The result must also be that the word "premises" can only bear the meaning of land together with some fixtures.

A further feature which must not be disregarded is that the learned Judge in the case stated has informed this Court of what he found as facts and what he decided as questions of law.

These fixtures which are severally described with detail in paragraphs 9 to 12 inclusive of the case are all attached in some degree to the land of which the Company is the owner and occupier, and form what in the usual acceptation of terms may be described as premises with a large and costly plant employed in the manufacture of gas.

There is no strictly legal sense which should be applied to the word "plant", but likewise there is nothing in the circumstances or context in which it is used to require any finding of fact. A clear and definite meaning is provided by the dictionary and by legal decisions. The Oxford Dictionary defines the word as including "the fixtures, implements, machinery and apparatus used in carrying on an industrial process." A somewhat similar definition more elaborately expressed is also given by *Lindley L.J. in Yarmouth v. France*.⁽¹⁾ Consequently practically everything normally on the Company's land whether or not affixed to it, but excluding raw materials and manufactured products, would be included under the description of "plant," as being devoted to the

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(1) 19 Q.B.D. 647 at 658.

1940. carrying on of an industrial process. Similarly the word "premises" if used in relation to the whole undertaking would be sufficiently comprehensive to describe the land and all the plant. But the aim of the statute is essentially restricted to the determination of the improved capital value or assessed annual value of land. Plant which is not "fixed to the premises" as well as certain portions of the plant which are "fixed" must be excluded. It is clear, therefore, that the context limits the extent of the "premises" to what is to be valued and, therefore, must include under that description only the residue of land and fixed plant remaining after deducting what is required to be excluded.

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Anything that is affixed to the land in a legal sense automatically becomes part of the land: *cf. Bain v. Brand*.⁽¹⁾ But in determining whether a particular thing is so affixed the question of intention enters. For instance, in considering whether a large tapestry in a frame nailed to the wall of a residence was a fixture, Lord Halsbury L.C. said, "the thing is so easily susceptible of being removed, and has in fact been removed, without any damage or material injury to the structure of the wall, that to my mind, so far as it is dependent upon a question of fact, it never was intended to form part of the structure of the house:" *Leigh v. Taylor*.⁽²⁾

The earlier test, since discarded, of determining whether a chattel had become a fixture was whether or not "it could be easily removed *intégré, salvé et commodé* without injury to itself or to the fabric and whether the annexation was for the permanent and substantial improvement of the freehold or merely for the more complete use and enjoyment of it as a chattel": *Hellawell v. Eastwood*.⁽³⁾ In the later decisions intention is made the dominating factor although it must be ascertained from the nature of the object as well as the degree of its annexation: *Reid v. Smith*.⁽⁴⁾ In other words the intention must be gathered only from the extent to which it must be presumed from the degree and object of the annexation: *Hobson v. Gorringe*.⁽⁵⁾

No question arises in the present case as to what articles are to be deemed not to be fixed to the premises, although

(1) 1 App. Cas. 762 at 772.

(2) [1902] A.C. 157 at 160.

(3) 6 Exch. 295 at 312.

(4) 3 C.L.R. 656; 9 Austn Digest 176.

(5) [1897] 1 Ch. 182.

the point may well occur in modern industrial concerns in connection with such things as large wooden structures either nailed to the wall or set on foundations and used for the publication of graphs and other notices relating to the course of production and the incidence of accidents. The importance of the authorities cited is to emphasise the reliance which must be placed on the nature of the article being considered and the degree and object of its annexation in determining whether it could ever be regarded as removable from the land. Buildings of brick and stone with foundations set in the soil have always been treated as standing in a special category and are practically never deemed to be removable in any circumstances even under the law relating to trade fixtures : *Reid v. Smith* (1); *Whitehead v. Bennett*.(2)

As to the nature of the objects affixed, the sub-sections to ss. 59 and 60 refer to "plant machines tools and other appliances." All are included in the general description of "plant"; but an "appliance" in ordinary language connotes something of a more comprehensive type than a machine or tool. For instance the word "appliance" may be used synonymously with "apparatus" which certainly is included under the term "plant", and may comprise "things collectively in which preparation consists and by which its processes are maintained." The Oxford Dictionary from which this definition is taken also says that an apparatus may refer to equipment, material or machinery and that an appliance is a thing applied as a means to an end.

The disputed items may be described very briefly as follows :—

1. Telpher System, consisting of towers constructed of steel frames and girders supporting a monorail tramway used for transporting coal in trucks from a wharf adjoining the appellant's land to the top of vertical retorts standing in retort houses on the land and thereafter for removing coke from the bottom of the retorts at or below ground level. The girders which, with interlaced steel bands, form the towers are bolted to concrete blocks let into the ground. The bolts are embedded in the concrete so as to project through holes drilled in the steel girders which are held in a fixed position

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by means of nuts screwed onto the ends of the bolts. The monorail is supported inside the frame of the towers in spiral form and the trucks are propelled by an arm of a rotating column which is set on a turntable operated by a motor and gearing. The towers could be detached from their concrete base by unscrewing the nuts but on account of their size could not be removed without being divided into a number of portions by cutting rivets and undoing bolts.

It was decided that the towers were not removable but that the revolving column monorail and trucks should be excluded in making a valuation.

2. Pier Estate Distillation Plant in three divisions.

(a) Bitumen Melting Plant. Under this heading there are concrete and brick foundations partially sunk in the ground to house vats and ovens. To the foundations there are bolted H-shaped steel uprights approximately 12 feet in length supporting a steel frame roof covered with galvanised iron. They also support rails to carry a travelling crane. The oven house is enclosed on three sides by galvanised iron and on the fourth side is open to a height of approximately 8 feet to allow bitumen barrels to be conveniently unloaded into the shed. The whole could be dismantled by the unscrewing of nuts from bolts into sections which are easily transportable, leaving only the concrete and brick foundations. The sections could be taken away and re-erected on another suitable foundation.

It was held that the whole of the foundations uprights and galvanised iron as erected should be included in determining the improved value of the land. Presumably the vats ovens and rails were not included.

(b) A distillation plant consisting of stills. These stills are contained in brickwork above furnaces approximately 12 feet by 6 feet by 5 feet in size each constituting a single unit. They are heated by burning combustible oil injected into furnaces by which they are surrounded. To remove the stills it would be necessary to demolish the brickwork and furnaces. The corrugated iron roofing and supports covering this plant could be dismantled in sections by the unscrewing of nuts from bolts attaching the steel supports from a concrete base.

The furnaces, stills, corrugated iron roofing and supports, were all included in the improved value.

(c) Blending Plant. Tanks are set on a raised platform approximately 10 feet high. This platform is a steel frame whose supports are attached by bolts and nuts to concrete blocks let into the ground. There is also a covering of galvanised iron as a roof and protection for portion of the sides. The whole of the blending plant could be dismantled into sections by the unscrewing of nuts from bolts.

The roof supports and flooring were all included in the improved value.

3. Gas Holders. These devices are three in number and each consists of three or four large cylinders, known as lifts, the whole being called a "bell." The lifts are constructed of many steel plates riveted together whilst the uppermost is enclosed at the top. They fit into one another and are let into an annular ground tank. This tank is filled with water and the bell is raised into the air, lift by lift, as the gas, which the bell is intended to hold, is forced into it. The bell moves within a ring of steel supports each of which is firmly held by a bolt 10 to 12 feet in length set in a solid concrete foundation let into the ground. The steel supports are braced together by cross-members of steel latticework. The bell is not attached but moves inside the steel supports which act as guides or stays. The whole could be dismantled in sections but to do so, in the case of the bell it would require the cutting of rivets.

The whole was held to be included in the improved value.

4. Tar and Liquor Tanks which are similar in construction to the gas holders, and were included in the improved value of the land.

The above descriptions are merely a resumé of the much more precise statements contained in the case and are only given in order to convey a general idea of the nature of the contested items. One could not imagine from such descriptions that any of them could be accurately described as a machine or otherwise than an appliance or apparatus. I can see no special circumstances or context requiring such matters to be dealt with as a question of fact.

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1940. As the Legislature expressly included appliances as one type of plant which might be excluded in a valuation, it would appear to be most unlikely that the mere size of the appliance, even if it resulted in the necessity of dismantlement before transportation, should have been intended as the test of capacity for removal without structural damage to the premises. It is only a notional removal that is contemplated and the Act applies equally to premises occupied by small or large businesses, trading or manufacturing undertakings. The latter in particular must always employ heavy and complicated plant.

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The learned Judge of the Valuation Court in the effort to establish some principle which might be of general application to guide him in dealing with the facts, expressed the following opinions and says that in doing so he determined questions of law. Firstly he concluded that "the word 'premises' in ss. 59 (2) and 60 (2) of the Valuation of Land Act, 1916, includes the land and buildings and also anything which is a structure in the sense of a substantial erection necessarily constructed *in situ* and forming and intended to form a permanent feature of the land; and secondly that the word 'thereto' in the phrase 'without structural damage to the premises' occurring in the said sections refers to the antecedent 'premises' and not to the antecedent 'plant, machines tools or other appliances.'"

Counsel for the parties are in agreement as to the correctness of the second of these definitions, which, presumably, indicates that the damage referred to must occur to the residue of the premises, including such fixtures as are not removable under the terms of the sections, but after the deductions of those portions of the plant that are lawfully treated as removable. However, as there was some contention regarding what was intended to be covered by the first of the above definitions his Honour was requested to amplify his statement and he has done so as follows, namely, by adding the words "having substantially the characteristics of a building or of a permanent framework affixed to the land and not being a machine."

Again I can see no necessity for the interpretation as an issue of fact of the expression "structural damage." One must

consider the Statute as a whole and where possible give words their ordinary meanings. The word "structure" is not defined by the Act, but is defined in the Oxford Dictionary as including a combination of related parts as in the case of a building or machine. Reference is made in s. 58, as already appears, to improvements constructed for the drainage of the land for its protection from inundation or otherwise for its more beneficial use. In this sense dams, drains and roads would be structures provided they were maintained in such condition as not to lose their character. *Scrutton J.*, as he then was, has said "I think a 'structure' is something artificially erected, constructed, or put together, of a certain degree of size or permanence, which is still maintained as an artificial erection, or which, though not so maintained, has not become indistinguishable in bounds from the earth surrounding": *Inland Revenue Commissioners v. Smyth*.(1)

Under these definitions a substantial concrete base for the erection thereon of a machine or of a shed or other combination of related parts on steel supports is a structure. Moreover, the machine or shed when attached to such a concrete base by bolts or otherwise becomes in law part of that structure and if removed in one sense causes structural damage to the premises. Furthermore a large machine or a large shed or apparatus or appliance could rarely be removed for purposes of being transported elsewhere without dismantlement in some form. In fact all these considerations suggest that the Legislature was referring to units of plant normally devoted to particular phases of production or other objects of an enterprise. Thus a brick or stone building by its very nature could not be deemed to be removable as there would be a disturbance of the soil with which its foundations must be incorporated. The very nature of its structure would show an intention to link it irreparably with the land in all circumstances. Likewise the unit in its form as a building could not be materially interfered with in its character of a unit, for instance by removal of the roof, as it would then cease to be a complete unit. The same arguments would apply with equal force to a substantial concrete foundation or to such

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(1) [1914] 3 K.B. 496 at 421.

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apparatus as the gas holders seeing that in the former case by removal the land would be disturbed and the constructed foundation attached to it structurally damaged, whilst in the latter case a removal would leave a large hole in the ground so that in itself it would not be plant. But a building might contain a number of machines or even apparatus which could be detached without destroying the entity of the building as a unit.

These contentions receive some support from authority. In a Scots case valuation was required to be made for rating purposes of all machinery fixed or attached to any land or heritages but with one proviso, amongst others, that there should not be included "machines tools or appliances which are only so fixed that they can be removed from their place without removal of any part of the building." It was decided that a hydraulic crane, the main part of which was inserted and retained only by its own weight by a hollow casting embedded in a concrete foundation and bolted to that casting, could not be treated as removable, because the hollow casting and foundation were essential to the use of the "tool" and by their attachment to the ground determined the character of the whole "machine." Likewise in the case of a weighing machine which, if removed, would leave a large hole in the ground. It was held that a tower crane with a jib lying loosely on the top was a single unit so that the unattached jib could not be separated: *C. and J. Weir Ltd. v. Assessor for Glasgow*.(1)

The statute in that case was essentially different to, and narrower in its terms than, the statute at present being considered, but the decision emphasises the importance of regarding machines and appliances as distinct units and of taking into account, as one of the essential elements relative to removal, the nature of the object in relation to its degree of attachment to the soil.

In my opinion, upon the construction of the Valuation of Land Act, ss. 59 (2) and 60 (2) each machine, tool, appliance, or apparatus, or other part of the plant, should be considered as a separate unit, so that unless it be regarded as being removable as a whole without structural damage to the premises

(1) [1924] Sc. L.T. 310.

no part of it can be removable ; and secondly, that the test of its removability is not its size or the fact that it was required to be put together *in situ*, but on the contrary the degree of its physical incorporation with the land in the sense of the soil ; and thirdly it is a question of fact in each case whether the above principles apply to any particular unit claimed to be removable within the meaning of the sections.

Without attempting to determine questions of fact relating to any of the fixtures which have been described some may be used as illustrations of the conclusions stated.

In the case of the Telpher System the towers, rotating column, monorail and trucks appear to constitute a complete unit of plant. Therefore, if the revolving column and trucks were removed there would no longer be a complete unit which would fulfil its object as a portion of the plant. Consequently the whole unit must be treated as removable or none of it, as the case may be. And, if it be only attached to a concrete foundation in the same manner as a machine, which is regarded as removable, it should fall within the same category and be wholly removable.

Similarly the gas holders are obviously apparatus or appliances and each is a distinct unit. Upon removal a large hole would be left in the ground. By the analogy to ditches and roads, which may be structures, the hole in the ground employed with the gas holders as an integral part of that portion of the plant would also be a structure, whilst maintained as such, namely in conjunction with the gas holders, and form part of an entire unit, irreparably linked with the soil. Removal of the holders would necessarily cause structural damage.

The same type of reasoning would apply to the first and second divisions of the Pier Distillation Plant as the foundations are incorporated with the soil and could not be removed, whilst apparently if the vats, ovens, stills and furnaces were removed there would be large holes left in the foundations which form part of the soil, or the foundations themselves in some instances would be required to be demolished. As to the third division unless it could be found as a fact that all three divisions were so intimately connected as to form one inseparable unit the position should be different. As in the

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case of a machine the whole appliance appears to be capable of removal by unbolting nuts.

With regard to galvanised structures consisting only of sheds, on supports bolted to the ground, the intention would appear in most instances that they were erected merely to cover machines and appliances and to protect the workers using them. They would accordingly in such circumstances generally form part of the unit, and the character of removability would depend on the removability of the units of which they form part.

The tar and liquor tanks would be *prima facie* within the same category as the gas holders.

It is only possible however to deal with the above matters as illustrations based on the general descriptions of the various units. The learned Judge also had the opportunity of inspecting the premises and no doubt was able to form impressions which could not possibly be gathered from mere descriptions.

In my opinion, for the reasons stated, the appeal should be upheld, and the first and second questions as amended answered accordingly. The remaining questions are consequential.

HALSE ROGERS J. In view of the judgments of the Chief Justice and Mr. Justice *Davidson* there is no need for me to re-state what occurred before the matter came before this Court in its present form. The learned Judge of the Land and Valuation Court has stated a special case for the opinion of this Court in the form set out hereunder :

“Set out hereunder are my determinations on certain questions of law which arose in the proceedings, namely :

I Held :

1. That the word ‘premises’ in ss. 59 (2) and 60 (2) of the Valuation of Land Act, 1916, includes land and buildings and also anything which is a structure in the sense of a substantial erection necessarily constructed *in situ* and forming and intended to form a permanent feature of the land.

2. That the word ‘thereto’ in the phrase ‘without structural damage thereto’ occurring in the said sections refers to the antecedent ‘premises’ and not to the antecedent ‘plant, machines, tools or other appliances.’

3. That having found as facts that the items described in paragraphs 9 to 11 inclusive hereof were 'structures' in the said sense they were therefore necessarily included in determining the improved capital value and the assessed annual value respectively for the purposes of the said sections.

4. That nothing which is a 'structure' in the said sense can be 'removed from the premises without structural damage thereto,' within the meaning of the said sections.

5. That as I found as facts that the items described in paragraphs 9 to 11 were structures in the said sense they could not be 'removed from the premises without structural damage thereto,' within the meaning of the said sections.

6. That the removal of any of the items described in paragraphs 9 to 11 is necessarily 'structural damage thereto' within the meaning of those words in the said sections, whatever may be the condition of the premises left after the removal has been carried out.

7. That the removal from the premises of anything which is a 'structure' in the said sense is necessarily 'structural damage thereto' within the meaning of those words in the said sections, notwithstanding that no damaged structure remained as part of the premises after such removal.

8. That nothing which is a 'structure' in the said sense can be 'plant' within the meaning of that word in the said sections.

9. That nothing can be 'plant' within the meaning of that word in the said sections unless it has the characteristics of a chattel.

10. That assuming that anything is 'plant' within that meaning it must nevertheless be included under the said sections if it also is a 'structure' in the said sense.

11. That as I found that the items described in paragraphs 9 to 11 hereof were structures in the said sense they could not be 'plant' within the meaning of that word in the said sections.

At the request of the appellant in pursuance of the provisions of s. 17 of the Land and Valuation Court Act, 1921, I state the following questions for the decision of the Supreme Court thereon, namely :

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(a) Whether any of my said determinations are or is erroneous in point of law ; and

(b) If so, which of the same are or is erroneous."

As the case is now stated, the main conflict concerns the first of these determinations. There is no conflict between the parties as to the second determination, which was accepted without challenge ; and the other determinations are in the nature of corollaries.

The learned Judge has construed the sections under discussion. He has propounded to himself the question, what did the Legislature mean, and he has answered that question. His method is made clear by the following extracts from his judgment. In the first place he said :

"The use of the word 'premises' in the sub-sections also creates a difficulty, as the word is not defined, nor is it used elsewhere in the Act. I think it must be taken to be equivalent to the word 'land' as used in s. 5 and elsewhere in the Act, i.e., the Valuation of Land Act, because the sub-sections apply in determining the improved and assessed annual values of the premises in question, and the duty of determining improved and assessed annual values is the duty of determining the improved and assessed annual values of 'land'."

Having then dealt with certain difficulties which he found were involved in the expression "plant, machines, tools or other appliances," he proceeded to consider the meaning of the phrase "without structural damage thereto," that is to the premises. Again he had to propound to himself the question, what did the Legislature mean by that phrase in the context in which it is found? He ultimately defined a structure as "a substantial erection necessarily constructed *in situ* and forming and intended to form a permanent feature of the land, having substantially the characteristics either of a building or of a permanent framework affixed to the land and not being a machine." This definition was in the nature of a direction to himself as to the matters which he should take into consideration in determining what might or might not be classed as structural damage to the premises. His conclusion on the whole matter was thus stated :

"In my opinion, in order to ascertain whether anything can be removed from the premises without structural damage

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to the premises it is necessary first to consider the premises (that is the land as a whole) as they actually exist, then to consider the thing in question that has been removed, and then to ascertain whether the premises as they are left are structurally damaged compared to the state in which they were prior to the notional removal. Trifling damage caused for example by the removal of nails or bolts affixing machinery to a building or to the soil would not be structural damage within the meaning of the section. The complete or partial destruction of a building or other structure would be such damage. The complete removal or destruction of a structure would, in my opinion, effect structural damage to the premises notwithstanding that no damaged structure remained as part of the premises after the removal or destruction. In other words, assuming, contrary to what I have said, with regard to plant, that a structure erected on, affixed to and forming part of the land is plant, then in my opinion it cannot be excluded under these sub-sections because it is in fact a structure, and consequently its removal would necessarily involve structural damage to the land."

In my opinion, the Court must, on this appeal, determine for itself the construction of the sections under review. There is no finding of fact as to the meaning of any word or phrase which in any way restricts or hampers the Court. We are, in my opinion, in the same position as was the learned Judge when he entered upon a consideration of the question of construction. For my part I think that he has not fallen into any material error. The keynote of the sections is exclusion from valuation: certain things are to be excluded if they fall within a certain category. The test is, removability without damage to the premises. When the meaning of the words "premises" and "structural damage" is determined, the ultimate question whether any particular item is removable without the structural damage contemplated is a question of fact; but the preliminary questions for determination are questions of law. In my view, the meaning attached by Mr. Justice *Roper* to the word "premises" is clearly correct. His view of the meaning of the word "plant" is, in my opinion, too narrow, but it is apparent from his judgment that this error does not affect the ultimate result in any way. If I

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had been putting a construction on the sections in the first instance I should have said that, apart from buildings, everything erected on the land for business or trade purposes is covered by the word "plant"; in fact, probably that word alone without the words "machines, tools or appliances" would have been sufficient. I read the sections to mean "the improved value of premises occupied for trade, business or manufacture shall not include anything which is not fixed to the premises or which is only so fixed that it may be removed without structural damage to the premises." That is substantially the construction put upon the section by Mr. Justice *Roper*, and, on that reading, his supplementary finding that "nothing can be plant within the meaning of that word in the said sections unless it has the characteristics of a chattel" is immaterial.

Mr. Maughan argued that to read the section in the way indicated is to defeat the intention of the Legislature which was to give a measure of relief to the taxpayer. I can find nothing to suggest that the amendment was for any other purpose than to give precise directions to the Valuer-General as to the basis of his valuation. Mr. Maughan asked us to say, in effect, that it was the intention of the Legislature to exclude everything that could be removed from the land and re-assembled elsewhere. I do not think that that contention could be accepted without doing violence to the language which has been used. On the view that was put forward by him, very few things used for trade, business or manufacture would fall outside the exemption, because even the most solid building could be removed brick by brick or stone by stone and re-assembled elsewhere. Such a construction would practically involve the interpretation of "premises" as meaning "land without buildings or erections." If it is suggested that it does not involve such an interpretation but merely the reading of "premises" as meaning land plus something more, that is, some buildings and erections, where is the line to be drawn? For it has to be remembered that the removal which is contemplated must be a removal without structural damage to the premises.

As I have indicated, I think that the learned Judge of the Land and Valuation Court followed a logical method and

arrived at the correct conclusion as to the intention of the Legislature. What the Valuer-General has to consider in making his valuation of premises under these sections is, what plant, machines, tools or appliances may be removed without structural damage thereto, and I agree with the view expressed by the learned Chief Justice that what is meant is "things of the kind mentioned which can be removed without causing any damage to structures on or in the land of a permanent character, and in the nature for example of buildings, roads or reservoirs as contrasted with structures such a machines or movable fittings."

In the result, although I am unable to concur in the view expressed by the Chief Justice as to the method in which this appeal should be decided and dealt with, I have arrived at the same conclusion as to the answers which should be given to the questions submitted. I am of opinion that the learned Judge did not misdirect himself or fall into any error of law in the preliminary matters to which he directed his mind before coming to a conclusion as to whether any or all of the items now in dispute should or should not be included in the valuation by the Valuer-General. His findings of fact were based on these preliminary decisions which he made, and of course no question can arise here as to them.

For the reasons given, I agree with the answers proposed by the Chief Justice, and with the proposed order as to costs.

Solicitors: *Allen, Allen & Hemsley*; *J. E. Clark* (Crown Solicitor).

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