

ON APPEAL FROM  
THE COURT OF APPEAL - JAMAICABETWEEN :THE COMMISSIONER OF VALUATIONS Appellant

- and -

JAMAICA GYPSUM LIMITED Respondent

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CASE FOR THE RESPONDENT

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- 10 1. This is an appeal from the Judgment of the Court of Appeal of Jamaica (Henriques, Moody (JJA) and Eccleston (Acting JA) ):- Record  
pp. 41-45
- (a) Affirming the decision of the Land Valuation Board for the parish of Saint Thomas, (hereinafter referred to as "the Board"), that the unimproved value of a parcel of land the property of the Respondent known as "Bull Park Pen" situate in the said parish and containing 95 acres 32 perches was to be fixed at £4,300 as of the 1st September, 1960, pursuant to the provisions of the Land Valuation Law, Law 73 of 1956, and pp. 34-35
- 20 (b) Varying the order for costs made by the Board by substituting an order that the Respondent should have the costs of the hearing before the Board taxed on the Supreme Court scale, for the Board's order that the Respondent should recover only fifty per cent of the said costs. p. 45  
p. 35, 1. 22
- 30 2. The Appellant had originally assessed the unimproved value of the said land at £14,800 and upon objection taken by the Respondent had reduced this original value to £9,500. pp. 1a, 1b, 1c
3. On appeal by the Respondent to the Land Valuation Board it was common ground between the parties that the said land had been transferred by one p. 1f. 1. 22

Record

p.1g

Charlotte Harmon to a Company known as Bellrock Caribbean Limited on or about the 27th March 1949, for the sum of £850, and that some time in the year 1954 it had together with six other properties been transferred by an American Corporation known as United States Gypsum to the Respondent for an assigned consideration of £900.

p.1,1.19

p.3, 1.43

p.1b,1.19

p.1c.

4. Before the Board it was contended by the Respondent that the unimproved value as at the material date ought to be fixed at £2,000, while the Appellant sought to persuade the Board that his revised value of £9,500 should be affirmed.

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5. The arguments of Counsel for the parties in support of their respective contentions before the Board are set out in pages 31 to 32 and 32 to 33 of the Record herein.

p.35,1.19

p.35,1.21

6. After a consideration of all the evidence and the submissions made, the Board found that the value contended for by the Appellant was too high, and that contended for by the Respondent was too low, and fixed the unimproved value of the said land as at the 1st September, 1960 at £4,300. The Board's findings and reasons for decision are fully set out at pages 34 to 35 and 39 to 40 of the Record herein.

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p.37

7. Before the Court of Appeal the Appellant sought to challenge the findings of the Board on three grounds:-

p.44,1.39

(i) That the decision of the Board that the unimproved value be assessed at £4,300 was not consistent with the findings of the Board.

(ii) That the decision of the Board was unreasonable and could not be supported having regard to the evidence.

(iii) That the Board precluded itself from properly considering the valuation by its failure to appreciate the concept of accommodation land.

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p.44,1.46

8. In support of those grounds it was argued by the Appellant that:-

(i) The Board in arriving at its valuation failed to take into account the possibility of the use of the subject land as building land, and in particular the re-

settlement of poor people; and

- (ii) In arriving at the valuation of £4,300 the Board mis-directed itself by basing that valuation on a sale price of lots at Windsor Lodge instead of the price of the whole property, alternatively, instead of the price of comparable units.

9. It is submitted by the Respondent that an examination of the findings and reasons for decision by the Board will establish and does establish that the Board did not mis-direct itself as alleged or at all.

pp. 34-35  
pp. 39-40

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10. Further in so far as it was contended that the decision of the Board was unreasonable and could not be supported by the evidence, it is submitted that there was an abundance of evidence to justify the conclusion arrived at.

In particular the Board while rejecting the valuations of the Respondent's Valuers Messrs. George Finson and Phillip Bovell (Real Estate Valuers of great experience) as too low, accepted the approach of these Valuers in preference to that of Mr. Stanley Scottrel Pratt (erroneously referred to in the Board's reasons for decision as "Stanley Scott") and upon whose testimony the Appellant relied exclusively to support the valuation of £9,500 for which they contended.

p. 35, l. 21  
p. 40, l. 10

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11. In any event the mere fact that another Court might on the evidence have come to a different conclusion as to value was not and is not a sufficient ground upon which an Appellate Court could properly upset the findings of the Board, and the Appellant having failed to discharge the onus of showing that the Board mis-directed itself either on the legal principles to be applied or on the evidence, or in the further alternative that the value of £4,300 was inordinately low, the Court of Appeal was right in dismissing the Appellant's appeal and affirming the decision of the Board.

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12. As to the order made by the Court of Appeal concerning the costs of the hearing before the Board, it is submitted by the Respondent that the Court of Appeal was right in holding that notwithstanding the fact that the Board's valuation of £4,300 was in excess of that contended for by the Respondent, the real issue in the case was that

p. 45  
p. 45, l. 31

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Record

the value of £9,500 assessed by the Appellant was too high, and on this issue the Respondent had been wholly successful as the Board had valued the land at £4,300.

p. 45, 1. 33

Further, the Appellant conceding in the Court of Appeal that "this was an intricate case concerning land valued at thousands of pounds, involving difficult questions of law and fact, requiring careful preparation and diligent research, wherein the parties stood in need of full representation, " the Court of Appeal was fully justified in exercising the discretion vested in it by the Land Valuation (Appeals) Rules 1960 Regulation 9(i)(d) to order the costs before the Board and in the Court of Appeal to be taxed on the Supreme Court scale.

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13. On behalf of the Respondent it will be contended that the judgment of the Court of Appeal affirming the valuation arrived at by the Board, varying its order as to costs, and awarding the Respondent costs before the Court of Appeal on the Supreme Court scale, is right and should be upheld for the following and other

REASONS

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- (a) The Board did not mis-direct itself in law or on questions of fact in arriving at its valuation of £4,300 as the unimproved value of Bull Park Pen as of the 1st September, 1960.
- (b) There was ample evidence to support the Board's findings as to the said value.
- (c) An Appellate Court cannot and will not disturb a finding of fact arrived at by a properly constituted Tribunal of fact in the absence of mis-direction, or unless it unmistakably appears that the said Tribunal has not taken proper advantage of the opportunity of having heard and seen the witnesses, or in the case of assessments of damages and by analogy assessments of value, the said assessment is manifestly excessive or inordinately low.

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The Appellant failed to discharge the onus of satisfying the Court of Appeal that any of the aforementioned considerations applied in the instant case.

- (d) And upon the grounds stated in the findings and reasons for decision given by the Board and on the grounds stated in the judgment of the Court of Appeal of Jamaica.

V. O. BLAKE

DAVID TRUSTRAM EVE

IN THE PRIVY COUNCIL  
ON APPEAL FROM  
THE COURT OF APPEAL - JAMAICA

BETWEEN :

THE COMMISSIONER OF VALUATIONS  
Appellant

- and -

JAMAICA GYPSUM LIMITED  
Respondent

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CASE FOR THE RESPONDENT

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