

Hamersley Iron Pty. Limited

Appellants

v.

The National Mutual Life Association of
Australasia Limited and Others

Respondents

FROM
THE FULL COURT OF THE
SUPREME COURT OF WESTERN AUSTRALIA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 11TH NOVEMBER 1985

Present at the Hearing:

LORD KEITH OF KINKEL
LORD ROSKILL
LORD BRANDON OF OAKBROOK
LORD TEMPLEMAN
LORD MACKAY OF CLASHFERN
[Delivered by Lord Roskill]

On 12th December 1962 an agreement was concluded between the appellants, Hamersley Iron Pty. Limited (called "the purchaser" in the agreement) and certain of the respondents as well as the predecessors in title of others of the respondents (called "the vendors" in the agreement). The agreement was of considerable complexity. So far as presently relevant it was concerned with the acquisition by the appellants as purchasers of mining rights for iron ore belonging to those vendors in Western Australia and the payment by the appellants of certain capital sums and also of royalties to those vendors as the consideration for those purchases.

The present dispute between the appellants and the respondents arises in connection with the method of calculation of the royalties claimed by the respondents to be due from the appellants in respect of iron ore, essentially low-grade iron ore, passed through a concentrator at Tom Price iron mine in Pilbara in Western Australia, a mine which the learned trial judge described as "one of the biggest of its type in the world".

As long ago as 1966 the appellants began mining the iron ore deposits acquired under the agreement. The iron ore thus mined was high-grade ore. But in the course of mining high-grade ore, much other material was extracted from the ground which had to be set aside as useless. That material could not be sold as high-grade ore after only crushing and screening. Most of that other material was low-grade iron ore. It was to meet this problem that the concentrator just referred to was built by the appellants at great expense to themselves. The concentrator began operating in 1979. It increased the purity of low-grade iron ore by detaching and removing impurities from the hematite. That purified product could then be blended with the high-grade iron ore from Tom Price or elsewhere and the blended product was a saleable commodity. Some of the evidence shown to their Lordships demonstrated the huge increase in the tonnage of iron ore available for sale as a result of the processing of low-grade iron ore through the concentrator, a process known as "beneficiation". The concentrator is sometimes in the evidence called "the beneficiation plant". Hence the present dispute as to the method of calculating the royalty payable by the appellants to the respondents in respect of this iron ore so beneficiated.

In their Lordships' view the solution of this dispute depends in the ultimate analysis upon the determination of two short points of construction of clause 9 of the agreement. Upon the first all four learned judges who have considered this dispute, Wallace, Kennedy and Rowland JJ. in the Full Court of Western Australia as well as Olney J. at first instance, reached a conclusion adverse to the appellants. Upon the second those four learned judges were equally divided. The majority of the Full Court of Western Australia, Kennedy and Rowland JJ. reached a conclusion adverse to the appellants. This further conclusion was determinative of the dispute in favour of the respondents. But Wallace J. agreed with the learned trial judge, Olney J., who on this issue had reached a conclusion favourable to the appellants and had made a declaration in their favour to which their Lordships will refer in more detail later. The appellants now appeal against the majority decision of the Full Court in favour of the respondents, contending that on the first issue all four learned judges fell into error and that on the second the majority of the Full Court did likewise.

But, though the essential issues are issues of construction, it is not possible to understand how those issues arise without at least some understanding of the beneficiation process. The quantum of any royalty payable by the appellants has in the events which have occurred to be determined by an arbitrator. Their Lordships were told that an

arbitrator was appointed as long ago as 1981. But that question of quantum has to be so determined by reference to the value of the iron ore at a particular moment during the beneficiation process. The arbitrator must therefore know what that moment is before he can fix the relevant value of the iron ore and thus determine any royalty payable by the appellants to the respondents. The Courts below were asked to determine what that moment was, in advance of any decision by the arbitrator. Not unnaturally having regard to their respective commercial interests, the appellants were arguing for a moment early in the beneficiation process at which it was claimed that the iron ore had little or no commercial value while the respondents were arguing for a moment later in that process at which it was claimed that the iron ore had a greater commercial value.

Their Lordships have read and re-read with respectful admiration the lucid narrative accounts in the several judgments below of the operation of the beneficiation process. They have also been supplied with a description of that process in diagrammatic form. They are reluctant to burden this judgment with their own description of that process which could not hope to improve upon those given in the judgments below. They therefore gratefully adopt the narrative description of that process from the judgment of Kennedy J. and for ease of reference they have appended the diagrammatic description of that process as an appendix to this judgment.

" Feed for the concentrator is brought by truck from the mine and sized by a grizzly into +200mm and -200mm ore. The +200mm ore then goes through a crushing and screening process, following which it is stockpiled ready for railing to Dampier, where it is blended and further screened prior to export. These proceedings are not concerned with the +200mm ore, that ore clearly falling to be dealt with, for royalty purposes, under the terms of para. (a) of the proviso to cl. 9.

It was generally accepted that, on its passing through the grizzly, the -200mm ore entered the concentrator (or beneficiation plant). Save only with respect to that portion of the ore which may be withdrawn at one of the possible stages shortly to be referred to, everything done in the concentrator is done for the purpose of beneficiation, and it is done as part of what was described as a single industrial process.

Following its passage through the grizzly, the -200mm ore goes, by way of a separate stockpile, to "scalping" screens, where it is sized into +80mm and -80mm ore. The +80mm ore then goes to secondary crushers, which reduce it to -80mm ore.

The two streams of what is now -80mm ore rejoin and go to bins. From each bin, the ore falls down through a pulping box, approximately 1.5 metres in height, during which time water is jetted on to it. This is the part of the process which has assumed critical importance in these proceedings, and to which it will be necessary to return later.

At the bottom of the pulping box, the ore falls on to a metal plate, from which it slides, as a slurry, on to a screen. Additional water is jetted on to the ore immediately over the screen. The effect of this process is to clean as well as to separate the ore, because the water loosens and detaches the clayey shales and other fragments. The screen sizes the wet material into +30mm and -30mm fractions. A further screen, immediately below the first, sizes the -30mm material into +6mm and -6mm fractions. More water is jetted on to the material while it is on this screen, with the same effect as that described earlier. Three streams accordingly emerge at this stage, constituted by material between 80 and 30mm, material between 30 and 6mm and material of less than 6mm.

The -6mm material descends as a slurry through pipes on to a sieve bend, which is essentially a screen, although in the circumstances it also serves a dewatering function, and thence on to another screen, where it is further jetted with water, again with the same effect as before. The sieve bend and this screen size the material into two fractions, the first between 6mm and .5mm and other below .5mm. There are now four streams, identified as A, B, C and D, A consisting of material between 80 and 30mm, B consisting of material between 30 and 6mm, C consisting of material between 6 and .5mm and D consisting of material of less than .5mm.

Each of streams A, B and C goes to its own preparatory screens where the material is further cleaned and separated with jets of water. Any material of less than 6mm in stream A or in stream B which has become detached from the larger pieces since the earlier treatment falls through these preparatory screens and joins stream C. The material between 80 and 30mm and the material between 30 and 6mm which is retained on these preparatory screens goes to separate revolving heavy media drums. At the preparatory screen for stream C, material between 6 and .5mm is retained and fed to heavy media cyclones. Material of less than .5mm, which has become detached from the larger pieces, falls through the screen and passes to hydrocyclones, where it

is sized into two fractions, the first between .5 and .04mm and the second of less than .04mm. The latter is then discarded. Prior to May, 1982, the size below which the material was discarded was .063mm.

Both the drums and the heavy media cyclones make use of an unstable suspension of ferrosilicon in water with a specific gravity which permits the higher density iron ore ("concentrate") to sink, and the lighter, shaley material ("tailings") to float. The efficiency of the suspension in performing this task is reduced if small particles of clayey shale and other material are not thoroughly removed from the material entering the drums and cyclones, because those particles upset the specific gravity and viscosity of the suspension. The ferrosilicon is itself later retrieved from both concentrate and tailings by further jetting with water on recovery screens.

Stream D material flows into sumps from which it is pumped to hydrocyclones, where it is sized into two fractions, the first between .5 and .04mm and the second of less than .04mm (previously .063mm). The latter is also discarded. The former fraction, together with material of the same size derived from stream C, goes to a wet high intensity magnetic separator ("WHIMS"). The WHIMS extracts the iron ore concentrate by working on its magnetic properties and disposes of the non-ferrous tailings.

After the ferrosilicon has been washed off, concentrate between 80 and 30mm is reduced in size to -30mm by a further separate crushing and screening process before being put on the lump ore stockpile. Concentrate between 30 and 6mm goes directly to a lump ore stockpile after the ferrosilicon has been washed off. Concentrate between 6 and .5mm is "dewatered" in bunkers after the ferrosilicon has been washed off. It then goes to a fines stockpile. Concentrate between .5 and .04mm goes to horizontal pan filters, which extract water from the concentrate by vacuum, and thence to a fines stockpile.

The concentrator is designed to run continuously for 24 hours per day, 7 days per week. It is constructed on a modular basis, so that specific parts of the plant can be isolated and taken off line to effect repairs and maintenance and to control product grades and feed volumes. There are larger numbers of both cyclones and hydrocyclones than there are of drums or WHIMS. If it becomes necessary to close a cyclone, for example, the material which would

have gone to it can be distributed amongst the other cyclone modules without significantly interrupting the flow of material through the plant. However, there is only one drum which handles the material between 80 and 30mm, only two drums which handle the material between 30 and 6mm, and only two WHIMS which handle the material between .5 and .04mm. Because it may not be, and, in the case of material between 80 and 30mm, it is not possible to distribute all the material which would have gone to these modules to a "spare" module, the plant was designed so that the flow of material for these stages can be diverted elsewhere in order to avoid the closure of the whole plant. It is, therefore, possible for stream A to by-pass its preparatory screens and drums and to go straight to the separate crushing and screening process for ore between 80 and 30mm, and thence to the lump stockpile. It is also possible for stream B to by-pass its preparatory screens and drums and to go directly to the lump stockpile, and for the material between .5 and .04mm (being part of the original D stream) to by-pass the WHIMS and, after dewatering, to go straight to the fines stockpile. These by-passes are, it was suggested, used essentially for short-term maintenance. If lengthier maintenance is required, then either an adjacent module is loaded to full capacity and the total plant throughput reduced, or the whole plant is stopped. It appears, however, that when the grade of the ore has warranted it, the by-passes have been used from time to time, notwithstanding that no maintenance was being undertaken, and the ore sent to product.

A further possibility exists, whereby the ore between 200 and 80mm, which is scalped and crushed to below 80mm in the secondary crushers, need not rejoin the -80mm ore which falls through the scalping screen. Instead, if the reach of the conveyor belt which takes it from the secondary crushers is extended, it can be sent directly to the further crushing and screening processes, and thence to the lump ore stockpile. The design of the plant incorporated this alternative as a further means of controlling the grade and size distribution of ore sent through the treatment processes. From the time when the concentrator was first commissioned until 1st March 1981 this part of the plant was run in that alternative mode.

Accordingly, from four different points, quantities of low-grade ore have been taken straight to product, without going through the remainder of the beneficiation process.

The ore which Hamersley mines at Tom Price is a mixture of hematite and shale. The shale contains the bulk of particular non-ferrous elements which reduce the purity of the ore, and consequently its effectiveness in steel making. The most significant impurities which it contains are alumina, silica and phosphorus. Most of the iron ore sold by Hamersley which comes from Tom Price is known as "high-grade ore" or "direct shipping ore". Whilst this ore contains small proportions of impurities, it is of sufficient natural purity to be sold without treating it other than by crushing and screening. Before being railed to Dampier for shipping, high-grade ore is crushed to below 30mm and thereafter sized by screens into lump ore (between 30 and 6mm) and fine ore (below 6mm). No part of it is discarded. No water is used in its processing, except to control dust."

It is against this lucid description of the operation of the beneficiation plant that their Lordships turn to consider the question of the construction of clause 9 of the agreement. Though the crucial sub-paragraphs of clause 9 are (b), (c) and (e)(ii) those sub-paragraphs must not be construed in isolation. It is axiomatic that clause 9 must be construed as a whole and by reference to its commercial purpose, including the factual background by reference to which the parties concluded this agreement in 1962.

Clause 9 reads thus:-

"9. As further consideration for the foregoing the Purchaser shall pay to the Vendors in respect of all iron ore produced by the Purchaser (whether operating alone or in association with or by licence to others) from the Temporary Reserve land and sold or otherwise disposed of by the Purchaser or by the Purchaser and such associate or by such licensee an amount equivalent to 2½% of the amount received on sale or other disposal of that iron ore in unrefined and unmanufactured form f.o.b. the first port of shipment thereof PROVIDED ALWAYS THAT:

(a) If iron ore is upgraded before shipment by crushing and/or screening then the Vendors shall receive an amount equivalent to 2½% of the amount received on sale or other disposal of the iron ore so upgraded f.o.b. the first port of shipment thereof.

(b) If iron ore is beneficiated or otherwise treated by the Purchaser it shall be deemed to have been disposed of at the

time beneficiation or other treatment begins but crushing or screening shall not be deemed to be beneficiation or any part thereof.

- (c) Iron ore deemed to be disposed of as provided in paragraph (b) hereof shall be deemed to be disposed of at the assumed f.o.b. price and that price shall be deemed to have been received by the Purchaser.
- (d) Iron ore sold or otherwise disposed of to a company which is a subsidiary of the Purchaser (within the meaning of that term in the Companies Act 1961 of the State of Victoria) or iron ore sold or otherwise disposed of in any way that does not amount to a *bona fide* sale shall be deemed to be sold or disposed of and payment therefor shall be deemed to be received at the assumed f.o.b. price.
- (e) "The assumed f.o.b. price" shall for the purposes of this clause be:-
 - (i) The average of the f.o.b. price at which the Purchaser whether operating alone or in association with or by licence to others has during the period of six months immediately preceding the date of sale or other disposal sold iron ore of the same grade quality and physical condition for shipment from the State of Western Australia.
 - (ii) If the Purchaser alone or in association or by licence as aforesaid has not during that period sold iron ore as aforesaid such price as the parties agree or failing agreement as is determined by arbitration in accordance with the Arbitration Act 1895 of Western Australia as representing the then price f.o.b. from such port as that from which the Purchaser alone or in association or by licence as aforesaid has usually shipped or proposes to ship iron ore won from the Temporary Reserve land.
- (f) For the purposes of this clause a sale of iron ore C.I.F. shall be deemed to be a sale F.O.B. at a price equal to the difference between the C.I.F. price and the sum of insurance freight and other charges taken into account in determining such C.I.F. price."

The appellants' first argument was that the relevant beneficiation began for the purpose of subparagraph (b) of clause 9 when the iron ore passed through the grizzly. This argument found no favour in either court below. Alternatively the appellants contended that the relevant beneficiation began at the moment when a part of that process which was not properly to be regarded either as crushing or screening first took place. This argument was accepted by Olney J. at first instance and in the Full Court by Wallace J. It was rejected in the Full Court by Kennedy and Rowland JJ.

Olney J. described that moment as when the ore was "fed into the feed chute of the wet screening plant". Kennedy J. in the passage from which their Lordships have already quoted described that moment as when "the ore falls down through a pulping box, approximately 1.5 metres in height, by which time water is jetted on to it". That pulping box is sometimes in the evidence called a vertical chute. If reference is made to the diagram in the appendix to their Lordships' judgment, the relevant moment is that numbered 3.

The respondents on the other hand contended that the relevant beneficiation did not begin until much later in the process namely at the moments respectively specified for streams A and B when the ore entered the heavy media drums, for stream C when the ore entered the heavy media cyclones and for stream D when the ore entered the hydrocyclones. The respondents contended that until those respective moments nothing other than crushing and screening took place.

The foundation of the view of Olney J., with which Wallace J., agreed was that when the ore passed into the vertical chute or pulping box it was for the first time subjected to what he called "deliberate and violent flooding" and that this "effects an immediate change in the physical characteristics of the ore and it is at that time that the beneficiation begins for the purposes of clause 9(b)".

In other words the learned judge drew a clear distinction between dry and wet screening. The former was expressly excluded from consideration when the beneficiation process began. The latter was part of that process.

It was this reasoning of Olney J. which was the principal subject of criticism by Kennedy and Rowland JJ. This criticism is best expressed in the former learned judge's own words:-

" With respect, the learned trial Judge appears to me to have centred his attention too much upon

the actual act of screening, without paying sufficient regard to the total process which, in this case, was wet screening. The process of wet screening began, in my view, upon the evidence before his Honour, with the addition of water in the pulping box. Prior to that, beyond any doubt, there had been no beneficiation of the ore, other than by crushing and screening.

The fact that wet screening was chosen in preference to dry screening by reason of there being some later process in view, appears to me to be quite immaterial. Wet screening is naturally adopted when wet processes follow. It may readily be accepted that, when water is added to the -80mm ore, a form of beneficiation results which is quite independent of any upgrading resulting from the screening according to size alone; but it occurs as an inevitable consequence of wet screening. ... Once it is accepted that screening includes wet screening, then everything which is a necessary consequence of wet screening is excluded from beneficiation for the purpose of determining when beneficiation within the meaning of para. (b) of the proviso to cl. 9 begins. Put in the negative, the question is whether there is anything else occurring which is not a necessary part of the process of wet screening. In my view, nothing has been identified in the course of screening the -80mm ore which is not an integral part of wet screening. Such a conclusion does not, as it appears to me, involve interfering with any finding of primary fact by the learned trial judge.

The question which then arises is as to when beneficiation for the purpose of para. (b) of the proviso to cl. 9 does begin. On the basis of the foregoing reasoning, it appears to me that it begins in relation to the ore in the respective streams on entry to the heavy media drums, the heavy media cyclones and the hydrocyclones, only wet screening or screening by sieve bends having taken place prior to those points. There is nothing to indicate that the process taking place on the various preparatory screens is other than wet screening."

Before considering these rival views in more detail their Lordships turn back to consider the structure of clause 9. Certain matters at least seem clear to their Lordships.

First, under the substantive part of clause 9, the 2½% royalty is to be paid on the proceeds of sale or other disposal of iron ore "in unrefined and unmanufactured form", those sales or other disposals being f.o.b. the first port of shipment.

Second, sub-paragraph (a) envisages that some iron ore will or may be "upgraded" and will as a result be of a higher quality and thus receive a higher f.o.b. price.

Third, sub-paragraph (a) also envisages that the relevant "upgrading" will be by "crushing and/or screening". No other process is mentioned and the word "upgraded" is used in this sub-paragraph and not "beneficiated or otherwise treated", a phrase which in clause 9 makes its first appearance only in sub-paragraph (b).

Fourth, it is undisputed on the evidence that the process of "upgrading" by "crushing and/or screening" is a dry process, no water whatever being used at that stage save sometimes for damping down dust.

Fifth, the parties also envisaged that in addition to iron ore sold f.o.b. in its unrefined and unmanufactured stage or after "upgrading" by "crushing and/or screening", some iron ore would or might be sold after it had been "beneficiated or otherwise treated" by the appellants.

Sixth, it was also envisaged that this process would involve considerable expenditure by the appellants.

Seventh, it was also envisaged that royalties would be payable on ore sold f.o.b. "after beneficiation or other treatment" since the substantive part of clause 9 envisaged royalties being payable on "all ore produced by the purchaser". Clearly therefore there was a problem how the royalty on the sales of beneficiated iron ore was to be calculated. If it were calculated either as the substantive part of clause 9 provided or as sub-paragraph (a) provided and the royalty were payable only by reference to the f.o.b. price at the port of shipment, there would or might be no reflection in that f.o.b. price and therefore in the resultant calculation of the royalty of the extra beneficiation costs which the appellants alone would have borne.

Eighth, the parties therefore agreed that the relevant calculation of the royalty should be made by reference to "the assumed f.o.b. price". See sub-paragraph (c). Taking sub-paragraphs (b) and (c) together, they agreed that the beneficiated iron ore should "be deemed to have been disposed of at the time when the beneficiation or other treatment begins" (see sub-paragraph (b)) "at the assumed f.o.b. price and that price should be deemed to have been received by the purchaser" (see sub-paragraph (c)).

Ninth, thus far however the parties have not agreed how that "assumed f.o.b. price" is to be arrived at. This they do in sub-paragraph (e)(i) and (ii). The former enjoins reference to an average f.o.b. price of sales of iron ore of the same grade, quality and condition during the preceding six months. The second provides that in the absence of such sales the assumed f.o.b. price shall be the subject either of agreement or determination by an arbitrator in accordance with the concluding part of sub-sub-paragraph (ii).

If the foregoing analysis of clause 9 be correct, as their Lordships believe it to be, it follows that it is essential for the arbitrator to know what is "the time beneficiation ... begins". The answer to that depends upon the true construction of sub-paragraph (b) in the context of clause 9 as a whole. Their Lordships have not in this analysis mentioned sub-paragraph (d) which was much referred to by learned counsel for the appellants. They have not done so because they have not derived assistance from that sub-paragraph which seems to their Lordships to be directed solely to ensuring that the respondents do not suffer in the calculation of the royalties payable by the appellants from any internal arrangements between companies within the group to which the appellants belonged for sales at artificial f.o.b. prices, whether those arrangements were made for fiscal or for some other reasons.

Their Lordships have already mentioned that the crushing and screening referred to in sub-paragraph (a) is a dry process. It may take place without more as the only process involved in the upgrading to which sub-paragraph (a) refers. The purpose of crushing is obvious. The purpose of screening is to grade for size. Neither process in any way alters the physical characteristics of the iron ore so crushed or screened or subjected to both processes. But it is apparent that crushing or screening or both may also take place as part of the beneficiation process - sub-paragraph (b) clearly envisages this. No doubt, as a matter of construction as the majority of the Full Court held, the word "screening" can include both wet screening and dry screening. But with profound respect to the two learned judges concerned, the fact that it does so does not necessarily involve that the "screening" referred to in sub-paragraph (b) is wet screening. The screening referred to in sub-paragraph (a) is on the evidence as to practice plainly dry screening and in the absence of some clear indication to the contrary the word "screening" is to be expected to bear the same meaning in both sub-paragraphs especially as the word is used in each place in association with the word "crushing", another dry process.

It therefore seems to their Lordships, taking sub-paragraphs (a) and (b) together, that the parties envisaged "upgrading" by and only by crushing or screening or both and also beneficiation by a process of which crushing or screening or both was or at least might be a part but only a part. In both cases those processes were dry. In neither did those processes alter the physical characteristics of the ore. Such alteration did not take place until the wetting took place which is so vividly described by Olney J. at the end of his judgment. The learned judge accepted as correct the evidence given by Dr. Batterham that "the falling ore is subjected to a deliberate and violent flooding". The final fifteen words of sub-paragraph (b) seem to their Lordships to make it plain that processes of dry crushing and screening which are essential to upgrading and are also a part, albeit only a preliminary part, of the process of beneficiation are in the latter case to be excluded from being brought into the determination of the question when "beneficiation ... begins" and therefore from determining when the ore being beneficiated is to be deemed to be disposed of.

This reasoning is of course fatal to the appellants' first submission, namely that the relevant time is when the iron ore passes through the grizzly. Olney J. described this submission as appealing because of its simplicity. But in respectful agreement with the learned judge and the Full Court, their Lordships agree that this submission is unsound for the reasons the learned judge himself gave and they did not find it necessary to hear argument from learned counsel for the respondents upon this matter. They gratefully adopt the reasoning of Olney J. when he said:-

"But to adopt this view would be to ignore the words 'or any part thereof'. Those final words must have been intended to have some meaning and in my opinion they recognised that crushing and screening may form part of a total process of beneficiation and they say that in this contract, should the plaintiff choose to beneficiate ore by such process, then there is to be no deemed disposal of the ore until it has been subjected to some process other than crushing and screening."

Their Lordships therefore return to the appellants' second submission. As both courts below clearly recognised, the crucial issue is whether the screening referred to in sub-paragraphs (a) and (b) is wet or dry screening. With profound respect to those who have taken the opposite view, their Lordships are unable to accept that because screening may and sometimes clearly does include wet screening, everything which is a necessary consequence of that

wet screening is excluded from the determination of when beneficiation begins for the purpose of sub-paragraph (b). This view seems to their Lordships to involve ignoring that the screening referred to in sub-paragraph (a) is clearly dry screening and does not alter the physical characteristics of the ore in the way in which the later wet screening does.

Their Lordships would therefore allow this appeal and subject to one minor matter restore the declaration granted by Olney J.

The learned judge declared that the appellants were obliged to pay an amount equal to $2\frac{1}{2}\%$ of the assumed f.o.b. price of "all low-grade iron ore" (emphasis added) "fed into the feed chute of the wet screening plant" of the appellants' beneficiation plant. The respondents objected to the inclusion of the words "low-grade" in this phrase, saying that the relevant phrase should be "all ore fed into the feed chute" etc. The judgment of Olney J. stated that the respondents sought to argue that sub-paragraph (b) did not apply to iron ore which did not require to be beneficiated or otherwise treated to enable it to be disposed of. The learned judge refused to allow this question to be argued before him on the ground that it was not raised by the originating summons by means of which the present proceedings were instituted. He added however that he thought that the answer was "obvious" but would refrain from further comment. The respondents wished to keep this point open and learned counsel for the appellants did not object. Their Lordships will therefore, also without further comment, vary the learned judge's declaration by deleting the two words "low-grade" but are otherwise in respectful agreement with his judgment and the reasons he gave. They will therefore humbly advise Her Majesty that this appeal should be allowed and that with that minor alteration the declaration granted by the learned judge restored. The respondents must pay the appellants' costs of the appeal to the Board.

As regards costs in the courts below, it was agreed that that question should be remitted to the Full Court of Western Australia to enable that court to determine what order should properly be made regarding costs in both courts below having regard to the fact that the appellants' appeal to the Board has succeeded.

OUTLINE OF STEPS IN APPELLANT'S BENEFICIATION
PLANT AS PRESENTLY ORGANIZED

1. Iron Ore → grizzlies → +200mm crush, screen,
blend, sell
-200mm
2. -200mm → scalping screens → -80mm → -80mm
+80mm → secondary crushers → +80mm
-80mm → pulping box → screens → 30mm to 80mm → Stream A
6mm to 30mm → Stream B
-6mm
3. -80mm → sieve bend and screens → .5mm to 6mm → Stream C
-.5mm → Stream D
4. Stream A (30mm to 80mm)
→ preparatory screens → -6mm → send to Stream C
30mm to 80mm → heavy media drums
(heavy) concentrate - dewater, crush, screen,
blend, sell
(light) tailings - discard
5. Stream B (6mm to 30mm)
→ preparatory screens → -6mm - send to Stream C
6mm to 30mm
(heavy) concentrate - dewater, screen,
blend, sell
(light) tailings - discard
6. Stream C (.5mm to 6mm)
→ preparatory screens → -.5mm - send to Stream D
.5mm to 6mm
(heavy) concentrate - dewater, screen,
blend, sell
(light) tailings - discard
7. Stream D (-.5mm)
→ hydro-cyclones → -.04mm - discard
.04mm - to .5mm
WHIMS
(magnetic) concentrate - dewater,
blend, sell
other - discard





