IN THE WARDEN'S COURT
HOLDEN AT SYDNEY
ON 8TH MAY, 1989
BEFORE J.L. McMAHON,
CHIEF MINING WARDEN.

MR. & MRS. BURGESS
v.
AJAX JOINERY PTY. LIMITED & GOLDRIM MINING AUSTRALIA

This has been an application by Mr. Boyd Pratt, Consulting Geologist, for and on behalf of Joint Venturers, Ajax Joinery Pty. Limited and Goldrim Mining Australia, who are conducting prospecting activities pursuant to Prospecting Licence No. 892 in the parish of Ponsonby, County of Bathurst, in the Bathurst district of New South Wales. The respondents to the application are K.C. & C.M. Burgess who occupy the land for grazing purposes. The matter involves the assessment of compensation under Section 122 of the Mining Act and an application for approval to fell trees under Section 94(1)(b) of the same Act.

Evidence before the Court suggests that there was held on behalf of the Joint Venturers a signed agreement dated 4th July, 1985 in which the parties agreed that the Joint Venturers would conduct prospecting operations on the land. Rates of compensation were set, as is the normal practice with such agreements, and figures for costeaning were agreed to. Subsequently Mr. Burgess in evidence has said that he did not know when he signed the document what costeaning meant but I find some difficulty in accepting that he would have executed such a document without first checking out the full ramifications of it. Nevertheless that is the effect of his sworn evidence.

Mr. Boyd Pratt for the Joint Venturers has submitted that as a valid document having been signed between the parties, all of them are bound to give force and effect to it. There is, it seems to me, however, a major problem in

accepting that proposition. That relates to the form of agreement signed between the parties. Two forms of agreement are in evidence. It will be seen by Exhibit 1 on the top of the second page that certain descriptions in portions numbers 99, 68 and 69 were agreed to be the subject of prospecting. However subsequently tendered in evidence was an agreement which for all intents and purposes was identical to Exhibit 1. This was another form of agreement which is now Exhibit 6. Surprisingly this document does not include any reference to portion 99 although portions 68 and 69 are set out therein. The question is when was that additional description added to the agreement and why are there two agreements with the same date each signed between the same parties purporting to cover the same situation but different in such a material particular? I must confess some inability to answer these questions and I have not been guided in my task by the sworn evidence given before me.

In the circumstances I find that the agreements dated 4th July, 1985 are invalid by reason of uncertainty. I declare them thus. On that basis I find that I should now assess compensation pursuant to the Act.

I turn now to that assessment of compensation, pursuant to the dictates of Section 124(1)(b) of the Act which provides as follows:-

"Where compensation is by this Act directed to be assessed by the warden the assessment -

(b) shall, except where the assessment is to be made for the purposes of section 117A (14) or 123, be of the loss caused or likely to be caused by -

(i) damage to the surface of land, and damage to the crops, trees, grasses or other vegetation on land, or damage to buildings and improvements thereon, being damage which has been caused by or which may arise from prospecting or mining operations;

(ii) deprivation of the possession or of the use of the surface of land or any part of the surface;

(iii) severance of land from other land of the owner or occupier of that land;

(iv) surface rights-of-way and easements;

(v) destruction or loss of, or injury to, or disturbance of, or interference with, stock on land; and

(vi) all consequential damages;"

There is evidence that some of the land the subject of the prospecting by the Joint Venturers had been prospected before but there is also evidence that certain additional activities of a major kind have been conducted by the Joint Venturers. Mr. Burgess gave evidence by means of photographs of damage done to his land and the proposition was advanced on his behalf by Mr. Crennan, Solicitor, that I should calculate compensation to take into account factors which are important to any landowner. On the other hand, I must be guided by the dictates of the Act. There is no evidence before me as to the actual monetary damage suffered by Mr. Burgess and I feel that I am bound, in the circumstances, to make an assessment of compensation although the evidence about quantum is far from adequate.

With all due respect to the basis upon which Mr. Crennan approached an assessment, I cannot accede to his submissions.

It is quite a common and industry accepted practice that the number of boreholes reflects the amount of activity or proposed activity on land and accordingly I resolve that compensation should be based upon the number of boreholes whether they be diamond, percussion or rotary airblast already sunk or to be sunk and the number of pads which have been prepared to allow for access to the drilling rig. Compensation therefore will be in the sum of $150 per diamond drill hole,

$30 per percussion drill hole and $5 per rotary air blast hole and the sum of $150 per pad prepared but not used for diamond drilling. As to the surface of land disturbed, by means of costeaning, I assess that it shall be 50¢ per square metre and there shall be payable the sum of $100 per kilometre or part thereof for access roads.

I direct that a figure calculated on the above formula be paid by the Joint Venturers to the respondents, Mr. & Mrs. Burgess, within three months from today and every three months thereafter until completion of the prospecting operations. Such payments are to be made within fourteen days of the end of each three monthly period.

The further matter is the application to fell trees. Photographs produced show a number of stringy bark trees which have been pushed over and there is evidence about at least one large white gum tree which has fallen apparently because its roots were undermined by the prospecting operations. Mr. Burgess felt that the fallen trees were not of any commercial value either for timber products or for fuel and again I am in some doubt on the evidence as to what value I should put upon the trees for the purposes of assessing compensation under Section 94(1)(b). As the windrows of trees now stand they are constituting a considerable impediment to the usage of the land and possibly the better way of disposing of them in due course would be to attempt to destroy them by fire at a safe time of the year. This work would represent a considerable consumption of time. On the other hand, if they are left in their present position it will take many years for these large trees to rot down and allow for normal usage for grazing purposes of the land currently occupied by them. It seems to me that it would be both impractical and unsatisfactory to allow for a set figure in money for each tree destroyed or to be destroyed in

connection with the prospecting operations for they vary in size, there are a large number of them and counting of them would present a problem. A fairer and more practical way would be for me to assess a figure intended to cover the trees lost or to be lost and/or the time and cost of removing them and so restoring land to its former state. In the circumstances I assess a figure of $1250 as being an appropriate one.

I grant the application under Section 94(1)(b) to fell trees and I direct that the additional figure of $1250 be paid by the Joint Venturers to the respondents and that it be paid to them within six months from today.

I note that the evidence was that already $2410 had been paid by the Joint Venturers and received by the respondents under the previous agreement. The figure arrived at by means of use of the above assessment shall therefore have extracted from it the said sum of $2410.