IN THE WARDEN'S COURT, SYDNEY
ON 23RD DECEMBER, 1981
BEFORE J.L. McMAHON,
CHIEF MINING WARDEN.

The Shell Company of Australia Limited

v.

Caldera

WARDEN:- This has been the hearing under Part VIII of the Mining Act, 1973 in order that compensation be assessed in respect of Exploration Licence No. 1253 held by The Shell Company of Australia Limited, which is referred to as Shell, the applicant in this matter. Mr. Maxim Caldera, referred to as the respondent, owns approximately 25% of the land covered by the licence in the form of a property known as "Doradilla Station" in the Bourke district in western New South Wales.

Evidence adduced on behalf of the applicant is that it is conducting exploration for group one minerals, as set out in the schedules to the Mining Act, on the area of the licence. That area was originally 256 square kilometres but has now been reduced to 128 square kilometres. The licence was due to expire on 16th November, 1981 but application for renewal has been made. Earlier in 1981 the respondent obtained title to "Doradilla" and on 21st September last he and Mr. Rangott, a senior geologist with the applicant, had had discussion towards concluding an agreement relative to compensation. A so-called standard form of agreement had been submitted to the respondent who had subsequently contacted Mr. Rangott and indicated that the agreement would be accepted in general but that a sum of $3,000 would be required as key money. The applicant was unwilling to pay this sum although willing to pay the sum of $2 per line kilometre in respect of certain clearing activities and $50 per drillhole. Evidence has been that the proposed exploration operations necessitate the clearing of stripe about 3 metres wide over distances of 3 kilometres on "Doradilla" for the purposes of allowing the drilling rig access to sink as many drillholes as are deemed necessary for geological exploration.

Some discussion was had between Mr. Rangott and the respondent as to the value of the land for goat carrying, which activity is a new farming concept in this district.

Mr. Caldera gave evidence in relation to his proposed activities on "Doradilla". Although he had signed a Contract for Sale in respect of the property in 1980 it was not until August, 1981 that he was able to obtain possession. Shortly after that time he had caused some inquiries to be made and on 21st September, 1981 at a dinner at the City Tattersalls Club he met Mr. Rangott. Discussion took place between them as to the various conditions attaching to a compensation agreement. In effect, the respondent was willing to permit the applicant to continue exploration activities on "Doradilla" but had sought an annual fee of $3,000 from the applicant in addition to an amount payable in respect of drillholes and line kilometres. The payment of the fee of $3,000 was subsequently discussed by Mr. Rangott with other personnel of the applicant company and in a series of telexes, which are exhibits 12 to 14 and 17, it is demonstrated that negotiations had broken down. In exhibit 14 the applicant had indicated that it was not prepared to pay the $3,000 fee for so-called key money but confirmed other offers for payment of an amount of $2 per line kilometre.

During his evidence the respondent gave details of his proposals in respect of goat farming on the property. It has an area of slightly in excess of 52,000 acres and at the moment carries some 700 to 800 head of ferrel or wild goats which roam at will in and out of the property because it is un-fenced. The respondent intends to construct a goat proof fence on the perimeter of the property at a cost of approximately $1,100 to $1,200 per kilometre and then to construct a holding paddock within it and goat traps around the various water tanks. Combined with the process of introduction of approximately 150 head of new goat blood into the area, the respondent intends to set up a goat farming business which combined with his expertise and knowledge in the export of fancy meat, he envisages that he will create a viable business because of his investment. It is clear that the respondent paid something slightly less than 68¢ per acre for the property on purchase, stating that 52,000 acres cost him in the vicinity of $35,000.

Since 20th November, 1981 he has lived on the land and he intends, on his sworn evidence, to remain there until such time as the perimeter fence is constructed along with the holding paddock and tank traps. This may take two to three years. The respondent states that the value of the land with the improvements which are at present being undertaken has risen to $2.70 an acre, mainly because of the improvements which have already taken place to the land, namely, clearing of the perimeter line with a view to fence construction.

The Mining Act lays down the criteria under which a Warden shall assess compensation. These provisions are contained in Part VIII. Section 124(1)(b) provides that the Warden in making an assessment shall take into account 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.

Section 124(1)(d) provides that the amount of compensation assessed shall not exceed in amount the market value for other than mining purposes of the land and the improvements thereon. It is clear from what the applicant's representatives have said that they propose to lay down a series of grid lines to permit exploration holes to be drilled over distances of some 3 kilometres. It will

be necessary to clear some 3 metres in width along these lengths which would normally be between 100 and 200 metres apart and it was put to me by Mr. Gunner on behalf of the applicant that the amount of compensation assessed had to be limited to the value of the land which was disturbed by the proposed exploration activities. The exploration licence covers the area of some 128 square kilometres and I am of the view that I must look at the value of the whole of the area in assessing compensation if Section 124(1)(d) is being relied upon. I come to this conclusion for, notwithstanding the stated intentions of the exploration company and their practice, that company would be able to go on any of the land the subject of the licence within the terms of the licence. I do not think therefore that I should be excluded from looking at the value of the whole of the subject land within the area of the licence when making an assessment.

In claiming a fee of $3000 which, in subsequent negotiations was reduced to $1,000, the respondent has said that he considers himself entitled to that because of the need to inspect the activities of the licence holder and this would take up his time and effort and he should be entitled to recompense for that. The various groups of photographs tendered as exhibits 5, 6, 8 and 9 indicate land of typical vegetation and terrain of that in the Western Lands Division of this State with a qualification, as Mr. Caldera puts it, that the land has not been stocked for the last 5 or 6 years and this had led to a fairly dense growth of mulga and other trees and scrub on it. However, it is not as though a landowner would be forced to supervise the activities of a licence holder within the confines of a property on which there are substantial improvements, machinery and other valuable items. To say the least, this area is in the wide open spaces and the need for supervision of responsible personnel of an exploration company is negligible. However, I would expect that a company holding an exploration licence would ensure that those going onto any property would obey the terms of the licence and otherwise respect the rights and wishes of the landowner or occupier. Again, this is an exploration licence, entitling the holder merely to prospect, explore, test and analyse. I am not considering a mining lease.

From a reading of the section I am satisfied that there is no place in it for, nor indeed did the legislatorsever envisage, the payment of any lump sum as front or key money. Even if the $3,000 or $1,000 or some lesser sum were claimed by the respondent to recompense him for the trouble that he has to go to to inspect the activities of the licence holder and his employees, and I could speculate that this could well come within paragraph (vi) of such subsection 124(1)(b), "all consequential damages", there has been insufficient satisfactory evidence tendered to me to induce me to conclude that there should be such a sum payable and in view of the nature of the terrain which I have discussed in the previous paragraph, I decline to make any order for compensation on the question of supervision.

I turn then to the proposed goat farming activities as described by the respondent. While the respondent presents himself as a young man with sound ideas and sufficient energy and expertise to lift the goat farming project to a viable state, I am still by no means satisfied that it will be as he envisages it. At the moment he proposes to muster some male goats in March, 1982 thereby to establish his first product for export and also to give him an avenue to introduce male animals of a better strain. However, none of these things has yet been done and at the present time he has simply purchased the land recently and moved onto it and his project is merely at the planning stage. He agrees that it is unique in the area and I feel that I should have more satisfactory evidence than that presently before me to the effect that:-

(1) his project will be viable in view of the nature of the terrain, lack of water and market situation; and

(2) the project will end up as the respondent says it will when he completes work upon it.

The section contains the words "loss caused or likely to be caused" which among other things envisages an assessment by the Warden of a future loss. However, in order to do that a Warden would need, in my view, satisfactory evidence of a likely outcome before awarding the respondent compensation to which he considers himself entitled. That evidence I have not yet received.

Evidence was given by Mr. Rangott that the agreement, copy of which is exhibit 2, is one typical of that adopted in the mining industry and accepted by landowners. On the legal side I would have serious reservations about paragraph 3 which is the consent-giving clause and state that a landowner would be most unwise in appending his signature to such a document especially when some of the consents therein given are irrevocable. As to the rates, however, it seems to me that the figures set out in exhibit 2 are such that they can be said to be a fair reflection of what I know to be generally accepted in the mining industry relative to exploration licences and by affected land holders, in the relevant district.

However, I must go further and apply the section to the land as it will be affected by the activities of the licence holder. Dealing firstly with paragraph (i) damage to the surface of land, etc. and to crops and grasses, it is apparent that the applicant will clear these grid lines of vegetation and that this may have the effect of depriving goats and other grazing or browsing animals of the benefit of vegetation. Evidence suggested that there would be 1 goat carried to every 3 acres or 1.21 hectares on some portions of "Doradilla" and 1 goat to every 5 acres on other portions. This assessment is just that - it has to be an approximation. In the circumstances on an average, I say that the carrying capacity is 1 goat every 4 acres or 1.62 hectares. 1 grid line represents 9,000 square metres approximately, or .9 hectares, so 1 goat is being deprived of its annual grazing or browsing facilities by every 1.8 lines approximately. There has been some conjecture as to profitability, and here again no firm figures have been produced to show what, if anything, can be made from these ferrel animals. Again, while profitability and stocking has been mentioned in theory, this is not to say that there will be an actual loss caused; indeed at this experimental stage, while the land will be cleared, there may still be more than sufficient vegetation to carry the herd. However, I must also look at the likely loss. I think therefore that the sum of $5 per line kilometre is fair and appropriate under the heading of damage to the surface of land and vegetation, etc.

In relation to the deprivation of possession or use of the surface and land as this is an exploration licence only there would not be any loss of use. Indeed, the fact that the applicant will cut the grid lines will give the respondent a means of access to his property which may have otherwise been unavailable to him.

Looking at paragraphs (iii) to (v) inclusive, I apply a similar criterion. I cannot see where there would be any severance of lands, any surface rights-of-way affected or any disturbance of stock of any consequence by reason of the operations of the applicant.

As to consequential damage, I have already discussed and disallowed any claim for supervision of the activities of the applicant by the respondent. During his evidence the respondent made mention of erosion being caused by the cutting of the grid lines. This land is basically flat but it is possible that some erosion could take place. I note that Mr. Mitchell of the Department of Agriculture in exhibit 7 mentions the possibility of erosion, and I am of the opinion this is a likelihood. I think that the situation could be adequately covered if I assess on account of all consequential damages figures for drill holes as envisaged by the applicant and as agreed to basically by the respondent. I am of the view that this would adequately cover all the rights of the parties and be an assessment within the spirit of the legislation.

In the circumstances, I assess compensation herein at the rate of $50 per diamond drillhole exceeding 50 metres in depth; $25 per percussion drillhole exceeding 50 metres in depth; 80¢ per auger drillhole; $5 per line kilometre.

Costeaning or trenching are not approved methods of operations and no assessment is made in respect of these two activities.

I direct that a sum calculated upon the above assessment be paid quarterly by the applicant to the respondent, the first of such payments to take place on or before 15th April, 1982 and thereafter in the first 15 days of the months of July, October and January.