

IN THE MINING WARDEN'S COURT
HOLDEN AT GLEN INNES
ON 25TH FEBRUARY, 1982
BEFORE J.L. McMAHON.

Reginald Blunt

v.

Malcolm Potter

BENCH: This has been the hearing of an application by the holder of Mining Lease No. 643, Mr. Potter, to assess compensation in relation, firstly to the use of the land the subject of that lease, and then to make determinations in accordance with Section 175 of the Mining Act, including compensation, relevant to a right-of-way over lands owned by the respondent, Mr. Blunt. It is apparent that in 1972 an assessment was made in respect of the identical lands although Mr. Blunt was not then the owner. Therefore, in relation to the application for assessment of compensation as to the user of the land, pursuant to Section 124, no assessment is made.

I turn then to the right-of-way. Section 175 of the Act provides that, subject to that section, the holder of an authority is entitled to access to and from the land the subject of his authority to the nearest practicable point of a public road. Subsection (4) provides that the exercise of a right-of-way conferred is subject to such conditions as to its exercise, as to such exceptions over land which it may be exercised, which may be prescribed or as may be imposed or stipulated by the Warden in any particular case. Regulation 40 provides for the marking out of a right-of-way while Regulation 41 of the Act provides that the exercise of a right-of-way shall be subject to such conditions as to its exercise including the payment of rent and compensation as the Warden may impose. Sub-regulation 2 excludes certain lands which are subject to specialised use for purposes other than mining from the area of a right-of-way.

The parties agreed to a right-of-way by means of an access track which was marked in green on exhibit 1 and for the purpose of this exercise I adopt that access

track as being the right-of-way. Further, it is suggested that the right-of-way had a width of 5 metres and a length of 450 metres approximately and I accept this to be the case. A gate will be provided at least at one end of the right-of-way and this will be a condition to the approval of terms attaching to the right-of-way.

In evidence, Mr. Potter stated that he would not be interfering with any stock running on the land and that his use of the right-of-way would be limited to taking a vehicle in and out only once a day with the exception of special circumstances such as breakdowns when he may have to use the access route on slightly more frequent occasions. As far as mining plant was concerned, he envisaged only rare use.

I accept the proposition as put to the court by Mr. Potter as being reasonable and practicable in the circumstances.

On the other hand, Mr. Blunt has stated that the route proposed for the right-of-way traverses a neck of land which is a means by which stock running on this area of his land get access to permanent water. He was concerned that these animals would be disturbed and interfered with by the fact that vehicles were coming and going over the right-of-way. He estimated that the carrying capacity of the land was $2\frac{1}{2}$ sheep per acre or approximately $6\frac{1}{2}$ sheep per hectare. The area was adequately fenced.

Valuations were produced into evidence from persons who I am satisfied have sufficient expertise in the practice of valuations, to come to reasonable conclusions. Mr. M.J. Williams, in separate valuations, arrived at a possible compensation of \$70 per acre per year with further guarantees of fencing and the supplying of safe and permanent water (exhibit 7). In a subsequent communication (exhibit 8) Mr. Williams concluded that the land was worth some \$320 per acre. On the other hand, Mr. Harry Kent, in a valuation dated 23rd

February, 1982 concluded that the land of Mr. and Mrs. Riley closeby was worth \$40,000 and as it has an area of some 929 acres approximately, the value per acre is deduced at something in the vicinity of \$43. Therefore, there is quite a divergence in the opinions between the two valuers as to land valuation. I make no finding as to the correctness or otherwise about the valuations, excepting to conclude that the recent comparable sale criteria is, generally speaking, a satisfactory basis upon which to make reasonable valuations.

I turn however to a practical application of my knowledge and experience to the evidence and the circumstances as will exist in regard to the exercise of the right-of-way. Notwithstanding the fact that stock may be going to water and a vehicle may be inclined to disturb them and move them about, I could not envisage them being put off to the extent that they would be driven from the water. If they are moved to any great extent, again I could not envisage them running very far before the vehicle passed and therefore I think the disturbance to stock by the vehicle coming merely once a day and going once a day early in the morning and in the evening is minimal. Mr. Blunt in his evidence claimed the sum of \$500 per annum as being an appropriate figure to compensate him for use of this right-of-way by the applicant, Mr. Potter, but I cannot see in the circumstances, as I indicated at the hearing, where this amount is objectively justified. I believe, however, contrary to what was propounded on behalf of the applicant, Mr. Potter, that there should be an annual figure paid.

I am of the opinion that the circumstances will be met by the court concluding that a just and reasonable figure representing rent and compensation in these circumstances is \$80 per annum. A document evidencing right-of-way is being prepared and will be available to the parties in due course.

MINING ACT, 1973

SECTION 175

DOCUMENT EVIDENCING RIGHT-OF-WAY

I, John Lindsay McMahon, Chief Mining Warden, for the State of New South Wales, hereby certify that Malcolm Potter (herein called the holder) is entitled to a right-of-way over the land as set out in the plan attached and marked exhibit 1, relative to Mining Lease No. 463.

Such right-of-way is subject to the following conditions:-

1. All proper precautions are to be taken by the holder, his agents and employees so as not unreasonably to interfere with the environment.
2. The holder or any person claiming a legal or equitable interest in the land the subject of the right-of-way has the right to apply to the Chief Mining Warden for additional conditions to, or variations or suspension of, the conditions of the right-of-way, or for cancellation of it.
3. The Chief Mining Warden may at his discretion add conditions, vary the conditions herein or cancel any part or the whole of the right-of-way or the conditions thereof.
4. The holder is not to suffer, to be done, or to do, anything which would lead to an introduction of noxious weeds and shall take all necessary steps to eradicate such noxious weeds should any be introduced on the course of the right-of-way.
5. The holder shall provide and construct a gate at the end of the access to the right-of-way, in a position as required by the landowner.
6. The holder shall pay in advance on or before 31st March each year to the landowner the sum of \$80 per acre by way of rent and compensation.

DATED at SYDNEY this FIRST day of MARCH, 1982.


J.L. McMahon,
Chief Mining Warden.

MPL Appn No 1107, 1112, 1187 Mining Division Glen Innes

Applicant M. Potter

Parish Gordon County Gough

Area 19.5 ha Date of Appn 22/10/69 Papers T69/772 T69/5756
18/5/70

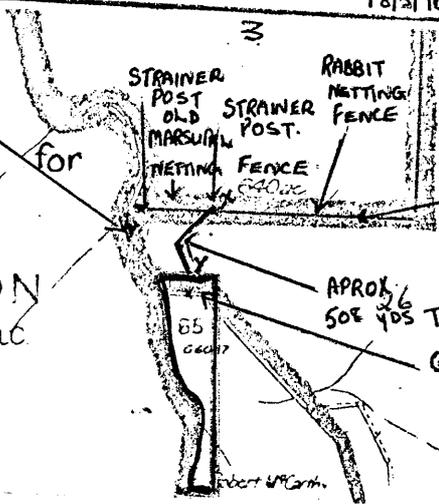
T70/1202

PERMANENT WATER HOLE

Part R.73806
Area Set apart for

Robert Drew
P.A.C.L. 29-20

PROTECTION
e C.V. 6/8 per ac
Sale generally
per 1929



WELLINGROVE

DISTRICT

W L BU
CSL 48

ESTATE

1107, 1112, 1187