

IN THE PRIVY COUNCIL

NO. 18 of 1977

O N A P P E A L
FROM THE SUPREME COURT OF QUEENSLAND

B E T W E E N :

BRISBANE CITY COUNCIL and
MYER SHOPPING CENTRES PROPRIETARY
LIMITED

Appellants
(Defendants)

- and -

HER MAJESTY'S ATTORNEY-GENERAL FOR
THE STATE OF QUEENSLAND (AT THE
RELATION OF ARTHUR THOMAS SCURR
and WILLIAM PERCIVAL BOON)

Respondent
(Plaintiff)

RECORD OF PROCEEDINGS

Coward Chance,
Royex House,
Aldermanbury Square,
London EC2V 7LD

Maxwell Batley and Co.,
27 Chancery Lane,
London WC2A 1PA

Solicitors for the Appellants

Solicitors for the Respondent

O N A P P E A L
FROM THE SUPREME COURT OF QUEENSLAND

B E T W E E N :

BRISBANE CITY COUNCIL and
MYER SHOPPING CENTRE PROPRIETARY
LIMITED

Appellants
(Defendants)

- and -

HER MAJESTY'S ATTORNEY-GENERAL
FOR THE STATE OF QUEENSLAND (at the
Relation of Arthur Thomas Scurr and
William Percival Boon)

Respondent
(Plaintiff)

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

No.	Description of Document	Date	Page
	<u>IN THE SUPREME COURT OF QUEENSLAND</u>		
1.	Writ of Summons	18th March 1976	1
2.	Amended Statement of Claim	22nd April 1976	3
3.	Defence of First Defendant	11th May 1976	7
4.	Joinder of Issue on Defence of First Defendant Note: Inclusion of this document objected to by Respondent	18th May 1976	11
5.	Amended Defence of Second Defendant	12th August 1976	11
6.	Joinder of Issue on Defence of Second Defendant Note: Inclusion of this document objected to by Respondent	18th May 1976	15
7.	Further and Better Particulars of Second Defendant	31st May 1976	15
8.	Amended Reply to Defence of First Defendant	26th August 1976	16

No.	Description of Document	Date	Page
9.	Reply to Defence of Second Defendant	26th August 1976	18
10.	Further and Better Particulars of Defence of First Defendant	27th October 1976	19
11.	Transcript of Proceedings	18th, 19th, 22nd, 23rd, 24th, 25th and 26th November 1976	21
<u>Plaintiff's Evidence</u>			
12.	<u>Alan James Mansfield</u>		
	Examination-in-Chief		24
	Cross-examination on behalf of First Defendant		31
	Cross-examination on behalf of Second Defendant		32
13.	<u>Arthur Thomas Scurr</u>		
	Examination-in-Chief		35
	Cross-examination on behalf of First Defendant		56
	Cross-examination on behalf of Second Defendant		73
	Re-examination		79
14.	<u>Eric Ian Ferguson</u>		
	Examination-in-Chief		86
<u>Defendants Evidence</u>			
15.	<u>Raymond Victor Mylchreest Hackwood</u>		
	Examination-in-Chief		90
	Cross-examination		92
16.	Ruling of Trial Judge on admissibility of evidence	7th December 1976	102
17.	Judgment	7th December 1976	106
18.	Formal Judgment	7th December 1976	115

No.	Description of Document	Date	Page
	<u>IN THE FULL COURT OF THE SUPREME COURT OF QUEENSLAND</u>		
19.	Notice of Appeal by First Defendant	16th December 1976	117
20.	Notice of Appeal by Second Defendant	20th December 1976	120
21.	Judgment of Mr. Justice Hanger, C.J.	18th March 1977	123
22.	Judgment of Mr. Justice Stable	18th March 1977	124
23.	Judgment of Mr. Justice Campbell	18th March 1977	129
24.	Formal Order	18th March 1977	140
25.	Final Order granting leave to appeal to Her Majesty in Council	5th April 1977	142

EXHIBITS

Exhibit No.	Description of Document	Date	Page
	Affidavit of Sir Alan James Mansfield and Exhibit A	10th April 1976	144
1.	Bundle of documents containing:		
	<u>Pages 1 to 4</u> Certified copy Certificate of Title	8th January 1896	148
	<u>Pages 5 to 9</u> Certified copy Nomination of Trustees	11th November 1919	151
	<u>Pages 10 to 16</u> Portion of certified copy Bill of Mortgage from Glindeman Clarke and Trim to Bank of New South Wales	7th May 1920	156
	<u>Page 17</u> Resolution of Mount Gravatt A.H. & I. Society & Progress Association	27th March 1928	159
	<u>Pages 18 to 23</u> Certified copy Deed of Appointment of New Trustees	19th November 1928	159

Exhibit No.	Description of Document	Date	Page
	<u>Page 24</u> Extract from Valuation Roll	20th September 1938	166
	<u>Pages 25 and 26</u> Unsigned Memorandum from Lord Mayor's Office	Undated	167
	<u>Page 27</u> Certified copy Minutes of Brisbane City Council	19th October 1937	169
	<u>Page 28</u> Letter, Town Clerk Brisbane City Council to Will. H. Clarke	25th October 1937	171
	<u>Page 29</u> Minutes of Annual Meeting	15th December 1937	172
	<u>Pages 30 & 31</u> Portion of Minutes of Show Committee Meeting	17th February 1938	173
	<u>Pages 33 & 34</u> Portion of Minutes of Show Committee Meeting	21st April 1938	174
	<u>Pages 35 & 36</u> Letter, Mount Gravatt Show Society to Brisbane City Council	21st April 1938	176
	<u>Page 37</u> Letter, Mount Gravatt Show Society to Brisbane City Council	4th May 1938	177
	<u>Page 38</u> Letter, Mount Gravatt Show Society to Brisbane City Council	5th July 1938	179
	<u>Page 39</u> Certified copy Minutes of Brisbane City Council	12th July 1938	180
	<u>Page 40</u> Unsigned Agreement between Brisbane City Council and Mount Gravatt A.H.I. Society	Undated	181
	<u>Page 41</u> Letter, Brisbane City Council to Commissioner of Taxes	22nd July 1938	182
	<u>Page 42</u> Letter, Brisbane City Council to Deputy Federal Commissioner of Taxes	22nd July 1938	182
	<u>Page 43</u> Letter, Bank of New South Wales to Mount Gravatt A.H.I. Society	23rd July 1938	183
	<u>Page 44</u> Letter, Mount Gravatt Show Society to Brisbane City Council	26th July 1938	184
	<u>Page 45</u> Unsigned Nomination of Trustees	Undated	185
	<u>Page 46</u> Schedule of Trusts	Undated	186
	<u>Pages 47 & 48</u> Letter, Brisbane City Council to Mount Gravatt A.H.I. Society	24th August 1938	187

Exhibit No.	Description of Document	Date	Page
	<u>Pages 49 to 52</u> Declaration by William Henry Clarke and Resolution annexed thereto	15th September 1938	189
	<u>Pages 54 to 56</u> Certified copy Memorandum of Transfer, William Henry Clarke and Reginald MacDonnell King to Brisbane City Council	20th September 1938	192
	<u>Page 57</u> Notice of Sale or Purchase of Land	21st September 1938	196
	<u>Page 58</u> Unsigned Memorandum Mr. Ludwig's Values	Undated	197
	<u>Page 59</u> Minutes of Brisbane City Council	7th March 1939	197
	<u>Pages 60 & 61</u> Extract from Brisbane City Council's Financial Journal	30th June 1939 to 1st July 1944	198
	<u>Page 62</u> Minutes of Brisbane City Council	27th February 1940	200
	<u>Page 63</u> Letter, Mount Gravatt Show Committee to Alderman W.R.Howard	8th August 1940	200
	<u>Page 64</u> Letter, Brisbane City Council to Mount Gravatt Show Committee	4th September 1940	201
	<u>Pages 65 to 67</u> Letter, Mount Gravatt Show Society to Brisbane City Council	11th September 1940	202
	<u>Page 68</u> Minutes of Brisbane City Council	1st October 1940	204
	<u>Page 69</u> Letter, Brisbane City Council to Mount Gravatt Show Society	14th October 1940	207
	<u>Page 70</u> Letter, Brisbane City Council to Mount Gravatt Show Society	14th August 1945	208
	<u>Page 71</u> Letter, Mount Gravatt Show Society to Brisbane City Council	16th August 1945	209
	<u>Pages 72 & 73</u> Letter, Mount Gravatt Show Society to Brisbane City Council	9th February 1948	211
	<u>Pages 74 to 77</u> Letter, Mount Gravatt A.H.I.Society to Brisbane City Council	11th February 1954	212

Exhibit No.	Description of Document	Date	Page
	<u>Pages 78 to 97</u> Portion of Lease, Brisbane City Council to Trustees of Mount Gravatt A.H.I. Society	15th March 1956	217
	<u>Pages 98 to 117</u> Portion of Lease, Brisbane City Council to Trustees of Mount Gravatt A.H.I. Society	1st April 1964	225
	<u>Pages 118 & 119</u> Memorandum by Property & Insurance Officer to Town Clerk, Brisbane City Council	2nd January 1970	235
	<u>Note:</u> The inclusion of final seven paragraphs of this Memorandum objected to by the Appellants		
2.	Reasons for Judgment of Full Court of Queensland pronounced by Hanger C.J. in Appeals Nos. 1 and 2 of 1972	27th April 1972	238
3.	Portion of Reasons for Judgment of Full Court of Queensland pronounced by Hoare J. in Appeals Nos. 1 & 2 of 1972	27th April 1972	242
4.	Extract from transcript of Proceedings in Appeals Nos. 1 & 2 of 1972		244
5.	Reasons for Judgment of Lucas J. in application by Brisbane City Council to strike out Plaintiff's amended Statement of Claim	9th August 1976	254
6.	Notice of Objection, Arthur Thomas Scurr to Brisbane City Council	17th July 1970	261
	<u>Note:</u> Inclusion on grounds of objection 1 to 7 (both inclusive) and grounds 9 and 10 objected to by Appellants.		
7.	Notice of Appeal by Arthur Thomas Scurr to Local Government Court (No.182 of 1976)	30th September 1970	263
	<u>Note:</u> Inclusion of the grounds of the Appeal and the paragraph following 9 down to (but not including) the final paragraph objected to by Appellants.		

Exhibit No.	Description of Document	Date	Page
8.	Interrogatory No. 2 by Plaintiff and answers to Clauses (d)(e),(f) and (l) on behalf of Brisbane City Council		267
9.	Portion of Memorandum, Brisbane City Council, Department of Parks, to Property & Insurance Officer	1st May 1970	268
10.	Interrogatory No. 7 by Plaintiff (in action 1598 of 1971) and answer on behalf of Brisbane City Council		269
11.	Admission by Brisbane City Council	Undated	269
12.	Transcript of evidence of John Grono Bateman in Appeals Nos. 182,183,184, 185 and 186 of 1970 to the Local Government Court	27th October 1971	270
13.	Portion of Notice of Appeal to High Court of Australia (No.33 of 1972)	21st June 1972	274
14.	Notice of Objection, Arthur Thomas Scurr and Ailsa Dorothy Scurr to Brisbane City Council <u>Note:</u> Inclusion of grounds of objection 1,2,3,5 to 15 (both inclusive), 18,19,20,21 and 23 objected to by the Appellants.	11th November 1974	276
15.	Notice of Objection, William Percival Boon to Brisbane City Council <u>Note:</u> Inclusion of grounds of objection 1,2,3 and 5 to 15 (both inclusive) 18,19,20, 21 and 23 objected to by the Appellants.	9th November 1974	282
16.	Notice of Appeal by Arthur Thomas Scurr to Local Government Court (No. 11 of 1975) <u>Note:</u> Inclusion of the grounds of Appeal and the following down to (but not including) the final paragraph before the "Schedule" as therein set out objected to by the Appellants.	10th January 1975	288

Exhibit No.	Description of Document	Date	Page
17.	Notice of Appeal by William Percival Boon to Local Government Court (No. 25 of 1975) <u>Note:</u> Inclusion of the grounds of Appeal and the paragraphs following down to (but not including) the final paragraph before the "Schedule" as therein set out, objected to by the Appellants.	16th January 1975	292
18.	Portion of amended Statement of Claim and Order in Action No.1598 of 1971		295
19.	Letter, Plaintiff's Solicitors to Brisbane City Council	4th November 1975	307
20.	Letter, Solicitor for Brisbane City Council to Plaintiff's Solicitors	11th November 1975	309
21.	Answer by Relator William Percival Boon to Interrogatory No. 10 of Brisbane City Council		310
22.	Answer by Relator Arthur Thomas Scurr to Interrogatory No. 9 of Brisbane City Council		311
23	Answer by Relators to Interrogatory No. 2 of Brisbane City Council		311

DOCUMENTS TRANSMITTED TO PRIVY COUNCIL BUT NOT REPRODUCED

Description of Document	Date
Conditional Order granting leave to appeal to Her Majesty in Council	5th April 1977
Certificate of Registrar of Supreme Court of Queensland certifying the Transcript of the Record of Proceedings	

DOCUMENTS NOT TRANSMITTED TO PRIVY COUNCIL

No.	Description of Document	Date
1	Resolution of Mt. Gravatt Agricultural, Horticultural and Industrial Society annexed to Bill of Mortgage to Bank of New South Wales	3. 3.1920
2	Requisition from the Registrar of Titles annexed to Bill of Mortgage	
3	Clauses 1 to 24 of Bill of Mortgage	
4	Portion of Minutes of Show Committee Meeting commencing with "The Secretary was instructed to convey" to the conclusion of those Minutes held on	17. 2.1938
5	Portion of Minutes of Show Committee Meeting being that portion up to marginal notation to Mr. Klumpp and the portion dealing with alterations to the Show Schedule held on	21. 4.1938
6	Undated backsheet to the Declaration by William Henry Clarke	15. 9.1938
7	<p>Portion of Lease between Brisbane City Council and Trustees of Mt. Gravatt Agricultural, Horticultural and Industrial Society as follows:</p> <p>Clause 1 (e), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (ac), (ad), (ae), (af) and (ag)</p> <p>Clause 2</p> <p>Clause 3 (a), (d), (e), (f), (g), (h) and (i)</p> <p>Clause 4</p> <p>Clause 5</p> <p>Clause 6</p>	15. 3.1956
8	<p>Portion of Lease between Brisbane City Council and Trustees of Mt. Gravatt Agricultural, Horticultural and Industrial Society as follows:-</p> <p>Clause 1 (h), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), (ae), (aj), (ak), (al) and (am)</p>	1.10.1964

No.	Description of Document	Date
	Clause 2	
	Clause 3 (d) and (e)	
	Clause 4	
	Clause 5	
	Clause 6	
9	All of Judgment of Hoare J. save heading, ground of appeal 11, paragraph at page 16 between lines 25 and 40 pronounced	27. 4.1972
10	All of the memorandum, Brisbane City Council, Department of Parks to Property and Insurance Officer save heading* "Development of the Existing Showground Area as Sportsfields" and execution	1. 5.1970
11	That portion of the Notice of Appeal to the High Court of Australia containing the grounds of appeal, with the exception of ground No. 6	21. 6.1972
12	That portion of the office copy Writ, Pleadings and Formal Order in action No. 1598 of 1971 in the Supreme Court of Queensland being paragraphs 20 to 29 (both inclusive) of the amended Statement of Claim, the Defence of the Defendant Myer Shopping Centres Proprietary Limited, the Defence of the Defendant Brisbane City Council and all of the Further and Better Particulars of the Amended Statement of Claim save the particulars given in relation to paragraph 6 thereof	
13	Entry of Appearance of Brisbane City Council	25. 3.1976
14	Summons by Myer Shopping Centres Proprietary Limited	30. 3.1976
15	Affidavit of Richard Perry Clarke with Exhibits "A" to "F" (both inclusive) thereto	30. 3.1976
16	Affidavit of Arnold Douglas Bennett with Exhibits "A" and "B" thereto	9. 4.1976
17	Order	9. 4.1976
18	Entry of Appearance of Myer Shopping Centres Proprietary Limited	23. 4.1976
	*Paragraph 7 under heading	

No.	Description of Document	Date
19	Affidavit o Documents of Arthur Thomas Scurr and William Percival Boon	28. 5.1976
20	Affidavit of Documents of Andrew Finlay Nisbet McCallum (on behalf of Brisbane City Council)	3. 6.1976
21	Affidavit of Documents of Victor Newell Upson (on behalf of Myer Shopping Centres Proprietary Limited)	26. 5.1976
22	Summons by Myer Shopping Centres Proprietary Limited	21. 6.1976
23	Affidavit of Richard Perry Clarke with Exhibits "A" to "D" (both inclusive) thereto	21. 6.1976
24	Summons by Brisbane City Council	22. 6.1976
25	Affidavit of Rodney Norman Metcalfe with exhibits "A" to "H" (both inclusive) thereto	22. 6.1976
26	Affidavit of Arnold Douglas Bennett with Exhibits "A" to "E" (both incl sive) thereto	24. 6.1976
27	Order (on Summons) by Brisbane City Council	9. 8.1976
28	Order (on Summons by Myer Shopping Centres Proprietary Limited)	9. 8.1976
29	Interrogatories on behalf of Brisbane City Council for the examination of the Plaintiff (with the exception of Interrogatories numbered 2, 9 and 10)	17. 9.1976
30	Summons (by Brisbane City Council)	22. 9.1976
31	Affidavit of Rodney Norman Metcalfe with Exhibits "A" to "I" (both inclusive) thereto	22. 9.1976
32	Affidavit of Arnold Douglas Bennett with Exhibits "A" and "B" thereto	23. 9.1976
33	Order	24. 9.1976
34	Interrogatories on behalf of the Plaintiffs for the examination of the Brisbane City Council (with the exception of Interrogatory number 2)	1.10.1976
35	Entry of Cause for Trial	5.10.1976

No.	Description of Document	Date
36	Summons (by Plaintiff)	8.10.1976
37	Affidavit of Arnold Douglas Bennett with Exhibits "A" to "C" (both inclusive) thereto	8.10.1976
38	Affidavit of Arnold Douglas Bennett (being Answers to Interrogatories) with Exhibit "A" thereto	8.10.1976
39	Affidavit of Arnold Douglas Bennett with Exhibit "A" thereto	11.10.1976
40	Summons by Brisbane City Council	11.10.1976
41	Affidavit of Rodney Norman Metcalfe with Exhibit "A" thereto	11.10.1976
42	Affidavit of Arnold Douglas Bennett with Exhibits "A" and "B" thereto	13.10.1976
43	Order (on Summons by Brisbane City Council)	13.10.1976
44	Order (on Summons by Plaintiff)	13.10.1976
45	Affidavit of Barry Edward Joyce (Supplementary Affidavit of Documents on behalf of Brisbane City Council)	27.10.1976
46	Answers to Interrogatories by Brisbane City Council (Affidavit of Peter Francis Thorley) save Answers Numbered 2(d), (e), (f) and (h)	
47	Answers to Interrogatories by Plaintiff (Affidavit of Arthur Thomas Scurr and William Percival Boon) save Answers 2, 9 and 10	
48	Subpoena Duces Tecum	15.11.1976
49	Notice of Motion by Brisbane City Council	1. 4.1977
50	Affidavit of Rodney Norman Metcalfe	1. 4.1977
51	Notice of Motion by Myer Shopping Centres Proprietary Limited	4. 4.1977
52	Affidavit of Richard Perry Clarke	4. 4.1977
53	Notice of Payment of Security into Court	5. 4.1977

1.

IN THE PRIVY COUNCIL

No. 18 of 1977

O N A P P E A L

FROM THE SUPREME COURT OF QUEENSLAND

B E T W E E N :

BRISBANE CITY COUNCIL and
MYER SHOPPING CENTRES PROPRIETARY
LIMITED

Appellants
(Defendants)

- and -

HER MAJESTY'S ATTORNEY GENERAL
FOR THE STATE OF QUEENSLAND (at
the Relation of Arthur Thomas Scurr
and William Percival Boon)

Respondent
(Plaintiff)

RECORD OF PROCEEDINGS

No. 1

Writ of Summons

In the
Supreme Court
of Queensland

IN THE SUPREME COURT OF QUEENSLAND

No. 673 of 1976

No. 1

BETWEEN

Writ of
Summons

HER MAJESTY'S ATTORNEY-GENERAL
FOR THE STATE OF QUEENSLAND (AT
THE RELATION OF ARTHUR THOMAS SCURR
AND WILLIAM PERCIVAL BOON)

18th March
1976

Plaintiff

- AND -

10

BRISBANE CITY COUNCIL

Defendant

ELIZABETH THE SECOND, by the Grace of God, Queen of
Australia and Her other Realms and Territories,
Head of the Commonwealth:

To: BRISBANE CITY COUNCIL
of City Hall Adelaide Street
Brisbane in the State of
Queensland

In the
Supreme Court
of Queensland

No. 1

Writ of
Summons

18th March
1976

(continued)

We command you that within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in Our Supreme Court of Queensland, at Brisbane, in an action at the suit of

Her Majesty's Attorney-General for the State of Queensland (at the relation of Arthur Thomas Scurr and William Percival Boon);

and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

10

WITNESS - The Honourable Sir Mostyn Hanger, K.B.E. Chief Justice of Queensland, at Brisbane, the 18th day of March, in the year of Our Lord One thousand nine hundred and seventy-six.

For the Registrar,

(L.S.)

ALAN PARRY
Senior Clerk

The plaintiff's claim is for:-

20

1. A declaration that the land described as Subdivisions 2 and 3 of Portions 332 and 333 in the County of Stanley Parish of Bulimba is presently held by the Defendant on trust for showground, park and recreation purposes or other public charitable trusts.

2. An injunction to restrain any sale by the Defendant of the said land.

3. In the alternative to 1 a declaration as to the trusts on which the said land is held.

30

4. Further or other relief.

5. Costs.

THIS WRIT was issued by Kinsey Bennett & Gill of 127 Creek Street, Brisbane whose address for service is the same place, solicitor for the relators who reside at 1122 Cavendish Road Mt.Gravatt and of Lay Street, Mt. Gravatt respectively.

No. 2

Amended Statement of Claim

In the
Supreme Court
of Queensland

IN THE SUPREME COURT OF QUEENSLAND No.673 of 1976

No. 2

Writ issued the Eighteenth day of March 1976

Amended
Statement
of Claim

22nd April
1976

BETWEEN:

HER MAJESTY'S ATTORNEY-GENERAL
FOR THE STATE OF QUEENSLAND (AT
THE RELATION OF ARTHUR THOMAS
SCURR AND WILLIAM PERCIVAL BOON) Plaintiff

*Consented Pt
MT process*

process

10

AND:

Union & Co

BRISBANE CITY COUNCIL First Defendant

AND

MYER SHOPPING CENTRES
PROPRIETARY LIMITED Second Defendant

AMENDED STATEMENT OF CLAIM

Delivered the Twenty-second day of April 1976

20

1. In the year 1920 there was formed an unincorporated association called the Mount Gravatt Agricultural, Horticultural & Industrial Society and the same functioned continuously until there was incorporated in the year 1962 under the Religious Educational and Charitable Institutions Acts 1861 to 1959 a corporate body of the same name.

30

2. The Relator Scurr became a member of the said unincorporated association in or about the year 1953 and remained such a member at all material times thereafter. The Relator Boon became a member of the said unincorporated association in or about the year 1951 and remained such a member at all material times thereafter.

3. Brisbane City Council is a body corporate capable of being sued in that name.

4. On the eleventh day of November 1919 one Robert Grieve as registered proprietor executed a nomination of trustees transferring to Andrew Harry Glindemann John Trim and William Henry Clarke as

In the
Supreme Court
of Queensland

No. 2

Amended
Statement
of Claim

22nd April
1976
(continued)

trustees land described as Subdivisions 2 and 3
of Portions 332 and 333 in the County of Stanley
Parish of Bulimba containing 20 acres 1 rood
27 perches.

5. The schedule of trusts forming part of the
said nomination of trustees included the following
provisions:-

" It is agreed that the above land shall be
held by the abovenamed Trustees upon the
Trusts following that is to say:-

10

UPON TRUST for the use enjoyment and
benefit of the members of the Mount Gravatt
Progress Association with power of selling
mortgaging and leasing by the direction of
and in such manner as the members for the
time being of the said Mount Gravatt Progress
Association in a meeting specially called
as hereinafter set out may direct in writing
and any such direction shall be sufficient
if it purports to be signed by a majority of
the members of the said Mount Gravatt Progress
Association for the time being assembled in a
special meeting of which seven days' notice
setting out in detail the objects for which
the special meeting is called shall have been
given by a notice signed by the Secretary for
the time being of the said Mount Gravatt
Progress Association

20

PROVIDED ALWAYS that the members of the Mount
Gravatt Progress Association may by resolution
of its members in special meeting summoned as
aforesaid from time to time revoke alter or
vary any of the trusts herein declared and
declare any new or further trusts either in
substitution for or in addition to all or any
of the trusts hereby declared

30

AND IT IS FURTHER AGREED AND DECLARED that
should the said Mount Gravatt Progress Associ-
ation as at present constituted at any time
hereafter be dissolved or cease to exist then
and immediately thereupon the above trusts
shall be altered and take effect as if the
Mount Gravatt Agricultural Horticultural and
Industrial Association had been named therein
in place of the Mount Gravatt Progress
Association wherever the said Mount Gravatt
Progress Association occurs therein."

40

6. On the seventeenth day of January 1920 a meeting of the Mount Gravatt Progress Association (which was an unincorporated association) was held at the State School Mount Gravatt at which meeting it was resolved that the Mount Gravatt Progress Association be abolished.

In the
Supreme Court
of Queensland

—
No. 2

Amended
Statement
of Claim

22nd April
1976

(continued)

7. On the thirtieth day of January 1920 the said nomination of trustees was registered in the office of the Registrar of Titles at Brisbane.

10 8. By resolution of the nineteenth day of October 1937 the First Defendant adopted a recommendation of its finance committee that a proposal made to the Right Honourable the Lord Mayor be approved namely that "the Show Society will hand over to the Council the fee simple of" the said land in consideration among other things of the First Defendant "setting the land apart permanently for showground, park and recreation purposes."

20 9. On the twentyfifth day of October 1937 the First Defendant by its Town Clerk wrote to the said William Henry Clarke (one of the then trustees of the said land) a letter reading as follows:-

" I refer to your letter of the 6th instant, relative to the proposed taking over by the Council of the Mount Gravatt Showground.

30 In reply I have to inform you that provision is to be made in the estimates for the next financial year for a sum, not exceeding 450, for the liquidation of the overdraft on the property, the Council to then take over the fee simple of the land under the following conditions:-

- 40 (a) The area to be set apart permanently for Showground, park and recreation purposes;
- (b) The Show Ring to be levelled off;
- (c) The Show Society to be granted the exclusive use of the Ground without charge for a period of two weeks in each and every year, for the purposes of and in connection with the District Annual Show."

In the
Supreme Court
of Queensland

—
No. 2

Amended
Statement
of Claim

22nd April
1976

(continued)

10. On the fourth day of May 1938 the said William Henry Clarke wrote to the said Town Clerk agreeing to the said conditions referred to in the immediately preceding paragraph hereof.

11. On the twentieth day of September 1938 the said William Henry Clarke and one Reginald MacDonnell King, who were then the trustees under the said nomination of trustees, transferred the said land to the First Defendant. The consideration expressed in the transfer, the sum of 475.1.6, was in fact the amount for which the said land was then mortgaged. The value of the said land was at 20th September 1938 to the knowledge of the said Clarke and King and to the knowledge of the First Defendant much greater than the said sum of 475.1.6.

10

12. The said transfer was made on the conditions referred to in paragraph 9 hereof and the First Defendant thereby came under an obligation to set apart the said land permanently for showground, park and recreation purposes.

20

13. At a special meeting of the Mount Gravatt Agricultural, Horticultural and Industrial Society held on the fifteenth day of December, 1937, fourteen members out of a then total membership of two hundred and twenty were present and purported to direct the said transfer.

14. The First Defendant presently intends to sell the said land, together with other land, to Myer Shopping Centres Proprietary Limited a company duly incorporated for a sum of \$1,010,000.00 to be used as the site of a shopping centre.

30

15. The Plaintiff's claim is for:-

(a) A declaration that the land described as Subdivisions 2 and 3 of Portions 332 and 333 in the County of Stanley Parish of Bulimba is presently held by the First Defendant on trust for showground, park and recreation purposes or other public charitable trusts.

40

(b) An injunction to restrain any sale by the First Defendant of the said land.

(c) In the alternative to (a) a declaration as

to the trusts on which the said land is held.

(d) Further or other relief.

(e) Costs.

Place of Trial: Brisbane.

The Plaintiff requires the action to be tried by jury.

KINSEY BENNETT & GILL

Solicitors for the Plaintiff

10 The Defendants are required to plead to the within Statement of Claim within twentyeight days from the time limited for appearance or from the delivery of the Statement of Claim whichever is the later, otherwise the Plaintiff may obtain judgment against them.

No. 3

Defence of First Defendant

IN THE SUPREME COURT OF QUEENSLAND No.673 of 1976

BETWEEN:

20 HER MAJESTY'S ATTORNEY-GENERAL
FOR THE STATE OF QUEENSLAND (AT
THE RELATION OF ARTHUR THOMAS
SCURR AND WILLIAM PERCIVAL BOON) Plaintiff

AND;

BRISBANE CITY COUNCIL First Defendant

AND:

MYER SHOPPING CENTRES
PROPRIETARY LIMITED Second Defendant

30 DEFENCE OF THE FIRST DEFENDANT TO THE AMENDED
STATEMENT OF CLAIM OF THE PLAINTIFF

Delivered the Eleventh day of May 1976

1. The first Defendant Brisbane City Council

In the
Supreme Court
of Queensland

No. 2

Amended
Statement
of Claim

22nd April
1976
(continued)

No. 3

Defence of
First
Defendant

11th May 1976

In the
Supreme Court
of Queensland

No. 3

Defence
of First
Defendant

11th May 1976
(continued)

admits:-

- (a) That it is a body corporate capable of being sued in the name Brisbane City Council;
- (b) That on 20th September 1938 William Henry Clark and Reginald MacDonnell King were registered proprietors of the land described in the amended Statement of Claim; and
- (c) That on that day the said Clark and King transferred the land to the first Defendant Brisbane City Council. 10
2. The land was purchased by the first Defendant Brisbane City Council for valuable consideration and Brisbane City Council is and at all material times was registered as proprietor of the land and entitled to be so registered and to sell and transfer the land.
3. The land was sold by the first Defendant Brisbane City Council to the second Defendant by a contract entered into in or about the month of September 1970. 20
4. If, which is denied, the first Defendant Brisbane City Council, upon transfer of the land to it came under any such obligation as is alleged in paragraph 12 of the amended Statement of Claim then there was not thereby created a valid public charitable trust and/or other valid trust as alleged or claimed in paragraphs 12 and 15 of the amended Statement of Claim and such obligation (if any, which is denied) was not and is not valid or legally enforceable by the Plaintiff. 30
5. Further and in the alternative the Plaintiff is barred with respect to its present claim by laches and/or acquiescence.

PARTICULARS

- (a) The sale by the first Defendant Brisbane City Council to the second Defendant took place subsequent to and consequent upon the calling of public tenders by the first Defendant by advertisements in the "Courier Mail" newspaper of 30th May 1970 and the 40

"Sunday Truth" newspaper of 7th June 1970;

In the
Supreme Court
of Queensland

—
No. 3

Defence
of First
Defendant

11th May 1976
(continued)

- (b) The Plaintiff and the relators have at all material times known of the sale;
- (c) From in or about September 1970 until 2nd March 1976 by objections to the first Defendant Brisbane City Council and by proceedings in the Local Government Court of Queensland, the Supreme Court of Queensland, the Full Court of the Supreme Court of Queensland, and the High Court of Australia, the Plaintiff and/or the relators have attempted to attack the sale and/or a condition to which the sale was subject namely the first Defendant's consent to the use of the land by the second Defendant as a shopping centre;
- (d) By reason of such proceedings the first Defendant Brisbane City Council has incurred heavy expenditure in respect of costs and other expenses and has been without the sale price or the use thereof (as the Plaintiff and the relators at all material times knew would be the case);
- (e) This action was not commenced until 18th March 1976 after such attempts have finally failed.

6. Further and in the alternative the Plaintiff is estopped from seeking the relief claimed in the present action by the judgment of the Supreme Court of Queensland delivered on 30th November 1972 in Action No. 1598 of 1971 dismissing the claim by the Plaintiff (at the relation of the relator Arthur Thomas Scurr) for the following relief:-

1. As against the first Defendant Brisbane City Council -

- A. Declarations that the first Defendant in purporting to agree to sell the subject land to the second Defendant acted ultra vires and in bad faith, and that its resolution of the first day of September 1970 purporting to accept the tender of the second Defendant and all subsequent proceedings in relation to or arising out of such resolution, are null and of no effect.

In the
Supreme Court
of Queensland

No. 3

Defence
of First
Defendant

11th May 1976
(continued)

B. A declaration that the resolution of the first Defendant of the thirtyfirst day of August 1971 purporting to extend the period during which the Second Defendant was required to obtain the consent of the first Defendant to the proposed use of the subject land for the purposes of a Target Discount Shopping Centre was passed ultra vires and in bad faith, and is null and of no effect.

10

C. An injunction to restrain the first Defendant by itself its servants or agents from selling to the second Defendant or to any nominee of the second Defendant the subject land.

D. An injunction to restrain the first Defendant by itself its servants or agents from implementing or attempting to implement the resolutions of Brisbane City Council dated the eighteenth day of May 1970, the first day of September 1970 and the thirtyfirst day of August 1971 which are more particularly described in the Statement of Claim.

20

E. Further or other relief.

F. Costs.

2. As against the second Defendant Myer Shopping Centres Proprietary Limited -

30

A. Such declarations, orders, injunctions and other relief as are necessary to give full relief to the Plaintiff and to conclude all questions arising herein between the parties to this action.

B. Costs.

7. Save as aforesaid the Defendant Brisbane City Council denies each and every allegation expressed or implied in the amended Statement of Claim.

40

P. P. O'BRIEN
City Solicitor,
Solicitor for the First Defendant.

The Plaintiff is required to reply to the within defence within seven (7) days otherwise the pleadings will be deemed to be closed and all material statements of fact in the defence will be deemed to have been denied and put in issue.

In the
Supreme Court
of Queensland

No. 3

Defence
of First
Defendant

11th May 1976
(continued)

This pleading was settled by G. E. Fitzgerald,
Queen's Counsel, and J. Gallagher of Counsel.

TO: The Plaintiff

AND TO His Solicitors -

10

Messrs. Kinsey Bennett & Gill,
127 Creek Street,
Brisbane.

No. 4

Joinder of Issue on Defence of First
Defendant

DELIVERED THE EIGHTEENTH DAY OF MAY 1976

The Plaintiff joins issue on the defence of
the First Defendant.

Solicitors for the Plaintiff

No. 4

Joinder of
Issue on
Defence
of First
Defendant

18th May 1976

20

No. 5

Amended Defence of the Second Defendant

Delivered the Twelfth day of August 1976

Amended
Defence of
the Second
Defendant

12th August
1976

1. The second Defendant admits the facts alleged
in paragraphs 3 and 14 of the Statement of Claim
and the execution and delivery of the transfer
alleged in paragraph 11 of the Statement of Claim.

30

2. The second Defendant does not know and there-
fore does not admit the facts alleged in paragraphs
1, 2, 4, 5, 6, 7, 8, 9, 10 and 13 of the Statement
of Claim and save as admitted in paragraph 1 hereof
the allegations in paragraph 11 of the Statement
of Claim.

In the
Supreme Court
of Queensland

—
No.5

Amended
Defence of
the Second
Defendant
12th August
1976
(continued)

3. The second Defendant denies the facts alleged in paragraph 12 of the Statement of Claim.

4. Further or alternatively the second Defendant says that if the transfer referred to in paragraph 11 of the Statement of Claim was made on the conditions referred to in paragraphs 9 and 12 of the Statement of Claim (which is not admitted) there was not thereby created a valid public charitable and/or other valid trust as alleged or claimed in paragraphs 12 and 15 of the Statement of Claim. 10

5. Save as aforesaid the second Defendant denies each fact alleged in the Statement of Claim.

6. Further and in the alternative the Plaintiff is barred with respect to its present claim by laches and/or acquiescence.

PARTICULARS

- (a) The sale by the first Defendant Brisbane City Council to the second Defendant took place subsequent to and consequent upon the calling of public tenders by the first Defendant by advertisements in the "Courier Mail" newspaper of 30th May 1970 and the "Sunday Truth" newspaper of 7th June 1970; 20
- (b) The Plaintiff and the relators have at all material times known of the sale;
- (c) From in or about September 1970 until 2nd March 1976 by objections to the first Defendant Brisbane City Council and by proceedings in the Local Government Court of Queensland, the Supreme Court of Queensland, the Full Court of the Supreme Court of Queensland and the High Court of Australia, the Plaintiff and/or the relators have attempted to attack the sale and/or a condition to which the sale was subject namely the first Defendant's consent to the use of the land by the second Defendant as a shopping centre; 30
- (d) In Action No. 1598 of 1971 in the Supreme Court of Queensland the Plaintiff (at the relation of the relator Arthur Thomas Scurr) sought as against the second Defendant Myer 40

Shopping Centres Proprietary Limited such declarations, orders, injunctions and other relief as are necessary to give full relief to the Plaintiff and to conclude all questions arising herein between the parties to this action;

In the
Supreme Court
of Queensland

—
No. 5

Amended
Defence of
the Second
Defendant
12th August
1976
(continued)

- 10 (e) By reason of the proceedings referred to in subparagraphs (c) and (d) of this paragraph the second Defendant Myer Shopping Centres Proprietary Limited has incurred heavy expenditure in respect of costs and other expenses and has been without the sum of \$101,000.00 paid to the first Defendant Brisbane City Council by way of deposit and the use thereof and will be put to heavy increased costs of building (as the Plaintiff and the relators at all material times knew would be the case).
- 20 (f) This action was not commenced until 18th March 1976 after such attempts have finally failed.

7. Further and in the alternative the Plaintiff is estopped from seeking the relief claimed in the present action by the judgment of the Supreme Court of Queensland delivered on 30th November 1972 in Action No. 1598 of 1971 dismissing the claim by the Plaintiff (at the relation of the relator Arthur Thomas Scurr) for the following relief:-

1. As against the first Defendant Brisbane City Council -

- 30 A. Declarations that the first Defendant in purporting to agree to sell the subject land to the second Defendant acted ultra vires and in bad faith, and that its resolution of the First day of September 1970 purporting to accept the tender of the second Defendant and all subsequent proceedings in relation to or arising out of such resolution, are null and of no effect.
- 40 B. A declaration that the resolution of the first Defendant of the Thirtyfirst day of August 1971 purporting to extend the period during which the second Defendant was required to

In the
Supreme Court
of Queensland

No. 5

Amended
Defence of
the Second
Defendant

12th August
1976
(continued)

obtain the consent of the first Defendant to the proposed use of the subject land for the purposes of a Target Discount Shopping Centre was passed ultra vires and in bad faith, and is null and of no effect.

C. An injunction to restrain the first Defendant by itself its servants or agents from selling to the second Defendant or to any nominee of the second Defendant the subject land. 10

D. An injunction to restrain the first Defendant by itself its servants or agents from implementing or attempting to implement the resolutions of Brisbane City Council dated the Eighteenth day of May 1970 the First day of September 1970 and the Thirty-first day of August 1971 which are more particularly described in the Statement of Claim. 20

E. Further or other relief.

F. Costs.

2. As against the second Defendant Myer Shopping Centres Proprietary Limited -

A. Such declarations, orders, injunctions and other relief as are necessary to give full relief to the Plaintiff and to conclude all questions arising herein between the parties to this action. 30

B. Costs.

8. Further and in the alternative all the matters which the Plaintiff and the relators are seeking to raise in the present proceedings are matters which could and should have been litigated in earlier proceedings namely the said Action No. 1598 of 1971 and the Plaintiff and the relators are thereby precluded from bringing the present proceedings by virtue of the said matters being res judicata and the present proceedings are thereby an abuse of the process of the Court. 40

MORRIS FLETCHER & CROSS
Solicitors for the Second Defendant

In the
Supreme Court
of Queensland

Dear Sirs,

re: Mount Gravatt Showgrounds

No. 7

We refer to your letter of 18th instant. In response to it we advise as follows:-

Further and
better
particulars
of Defence
of Second
Defendant

31st May 1976
(continued)

The particulars of the facts and circumstances on which our client intends to rely to substantiate the allegation in paragraph 4 of the Defence, that there was not a valid trust created by the transfer upon the conditions referred to in paragraphs 9 and 12 of the Statement of Claim, are as follows:-

10

(a) that the trust alleged is -

- (i) void for uncertainty;
- (ii) void for perpetuity;
- (iii) not within the Statute 43 Elizabeth 1, Chapter 4.

(b) the said conditions are not such as to give rise to, or to create, a valid trust even if it be held that there was a transfer as alleged upon such conditions.

20

(c) there is no or no sufficient writing to support and/or to evidence the alleged trust.

Yours faithfully,
MORRIS, FLETCHER & CROSS

R. P. Clarke

No. 8

No. 8

Amended Reply
to Defence
of First
Defendant

26th August
1976

*AMENDED

Reply of Plaintiff to Defence of First
Defendant delivered the Twenty-sixth day
of August 1976

30

1. As to paragraph 2 of the said defence the plaintiff admits that the first defendant has at all material times since taking the land therein referred to been registered as proprietor of it but otherwise does not admit the allegations therein.

2. As to paragraph 3 thereof the plaintiff says that the first defendant has purported to enter a contract to sell the said land to the second defendant.

In the
Supreme Court
of Queensland

No. 8

3. The Plaintiff denies the allegations in paragraphs 4, 5 and 6 of the said defence.

Amended Reply
to Defence
of First
Defendant

4. Further to his denial of the applicability of the doctrine of estoppel alleged in paragraph 6 of the defence, the plaintiff says as follows:-

26th August
1976

(continued)

10 (a) On 9th August, 1976 the Honourable Mr. Justice Lucas dismissed a summons filed herein on behalf of the first defendant and in relation to which all parties were heard seeking an order that the amended statement of claim herein be struck out as against the first defendant on the ground that this action is vexatious and oppressive or is an abuse of the procedure of this Honourable Court.

20 (b) A finding upon which His Honour based the dismissal of the said summons was that the determination of action 1598 of 1971 did not entitle the defendants to raise the plea of res judicata in defence to the plaintiff's claim in this action in that the said actions raised quite different issues.

30 5. Alternatively, the estoppel alleged as afore-said by the first defendant has no application because:-

(a) the issues in and parties to action 1598 of 1971 and this action are different;

(b) when action 1598 of 1971 was instituted and tried neither the plaintiff nor the relators had sufficient knowledge of the trust now alleged to enable them to raise it as an issue in that action.

40 6. *The Plaintiff says that the First Defendant had at all material times either actual knowledge or means of knowledge of the existence of the trust alleged in the Statement of Claim and that the First Defendant formed and at all material times persisted in an intention to sell to the Second

*AMENDED this Eighteenth day of October, 1976 pursuant to an Order of the Honourable Mr. Justice Stable dated the thirteenth day of October, 1976.

In the
Supreme Court
of Queensland

No. 8

Amended Reply
to Defence
of First
Defendant

26th August
1976
(continued)

Defendant the land the subject of this action in
deliberate disregard of such trust.

KINSEY BENNETT & GILL

SOLICITORS FOR THE PLAINTIFF.

This pleading was settled by Mr. C.W. Pincus of
Queen's Counsel and Mr. P. de Jersey of Counsel.

No. 9

Reply to
Defence
of Second
Defendant

26th August
1976

No. 9

Reply of Plaintiff to Defence of Second
Defendant

DELIVERED THE TWENTY-SIXTH DAY OF AUGUST, 1976

10

1. The plaintiff denies the allegations in paragraphs 4, 6, 7 and 8 of the said defence.
2. Further to his denial of the applicability of the doctrine of estoppel alleged in paragraph 7 of the said defence, and the applicability of the plea of res judicata set out in paragraph 8 thereof, the plaintiff says as follows:-

(a) On 9th August, 1976 the Honourable Mr. Justice Lucas dismissed a summons filed herein on behalf of the first defendant and in relation to which all parties including the second defendant were heard, seeking an order that the amended statement of claim herein be struck out as against the first defendant on the grounds that this action is vexatious and oppressive or is an abuse of the procedure of this Honourable Court.

20

(b) A finding upon which His Honour based the dismissal of the said summons was that the determination of action 1598 of 1971 did not entitle the defendants to raise the plea of res judicata in defence to the plaintiff's claim in this action in that the said actions raised quite different issues.

30

3. Alternatively, neither the estoppel nor the plea of res judicata set up by the second defendant has any application because:-

- (a) the issues in and parties to action 1598 of 1971 and this action are different;
- (b) when action 1598 of 1971 was instituted and tried neither the plaintiff nor the relators had sufficient knowledge of the trust now alleged to enable them to raise it as an issue in that action.

In the Supreme Court of Queensland

No. 9

Reply to Defence of Second Defendant

26th August 1976

10

4. Save as aforesaid the plaintiff denies the allegations in the said defence.

KINSEY BENNETT & GILL

SOLICITORS FOR THE PLAINTIFF

This pleading was settled by Mr. C. W. Pincus of Queen's Counsel and Mr. P. de Jersey of Counsel.

No. 10

Further and better particulars of Defence of First Defendant

BRISBANE CITY COUNCIL

Department of City Administration

RNM: DR

The City Hall, Brisbane
QUEENSLAND

Telephone
32 0201
Extension

In reply, please quote:
364/154/TH055-21

514
When calling or phoning, please ask for Mr. Metcalfe

All correspondence to be addressed to the Town Clerk

27th October, 1976

Messrs. Kinsey Bennett & Gill,
Solicitors,
127 Creek Street,
BRISBANE, Q., 4000.

No.10

Further and better particulars of Defence of First Defendant

27th October 1976

20

30

In the
Supreme Court
of Queensland

No.10

Further and
better
particulars
of Defence
of First
Defendant

27th October
1976
(continued)

Dear Sirs,

re: Brisbane City Council and Myer Shopping
Centres Proprietary Limited ats Her
Majesty's Attorney-General for the State
of Queensland (at the relation of Arthur
Thomas Scurr and William Percival Boon)-
Supreme Court Action No. 673 of 1976

Particulars of the allegation that such
obligation (if any, which is denied) was not and is
not valid or legally enforceable by the plaintiff
furnished pursuant to Order dated 13th October,
1976, are as follows:-

10

(a) Any such obligation would be and always
has been -

(i) void for uncertainty;

(ii) void by reason of the rule against
perpetuities;

(iii) void as an attempt wholly to
restrain alienation;

(iv) one in respect of which the
plaintiff has and had no interest
and no locus standi to seek its
enforcement.

20

(b) The first defendant pleads and relies
upon S. 79 of the Real Property Act
1861 as amended.

Yours faithfully,

P. P. O'Brien

(P. P. O'Brien)
CITY SOLICITOR.

30

SOLICITOR FOR THE FIRST DEFENDANT.

Further & better particulars provided pursuant to
an order of The Honourable Mr. Justice Stable
Dated the thirteenth day of October, 1976

No. 11

Transcript of Proceedings

In the
Supreme Court
of Queensland

IN THE SUPREME COURT OF QUEENSLAND
CIVIL JURISDICTION

No.11

BEFORE MR. JUSTICE HOARE

Transcript of
Proceedings

BRISBANE, 18 NOVEMBER 1976

18th November
1976

(Copyright in this transcript is vested in
the Crown. Copies thereof must not be made
or sold without the written authority of the
Chief Court Reporter, Court Reporting Bureau.)

10

BETWEEN:

HER MAJESTY'S ATTORNEY-GENERAL
FOR THE STATE OF QUEENSLAND
(AT THE RELATION OF ARTHUR THOMAS
SCURR AND WILLIAM PERCIVAL BOON) Plaintiff

- and -

BRISBANE CITY COUNCIL First Defendant

- and -

MYER SHOPPING CENTRES
PROPRIETARY LIMITED Second Defendant

20

Mr. Pincus, Q.C., with him Mr. Row (instructed
by Messrs. Kinsey, Bennett & Gill), for the
plaintiff.

Mr. Fitzgerald, Q.C., with him Mr. Gallagher
(instructed by City Solicitor), for the
first defendant.

Mr. Gifford, Q.C., with him Mr. Callinan
(instructed by Messrs. Morris, Fletcher &
Cross), for the second defendant.

30

HIS HONOUR: I mentioned to the list clerk
yesterday, and I suppose it was conveyed to you,
that I did not and do not desire to take this case
for the reason that my wife is a shareholder in
Myers, and I am a shareholder in David Jones, who,
I understand, in another case has some opposite
interest, but I prefer not to take it. On the

In the
Supreme Court
of Queensland

—
No.11

Transcript of
Proceedings

18th November
1976
(continued)

other hand I realise the position of the list, I realise that I had to take it. That is the situation, but if you wish me to take it I will proceed. Was that conveyed to you?

MR. PINCUS: I did not hear the second bit about David Jones; that does not disturb me.

HIS HONOUR: They have some opposite interest, I understood, in some way. It does not matter whether it does or does not.

MR. PINCUS: I did not hear the part about your not wanting to hear it. 10

HIS HONOUR: I made it very clear to the list clerk that I did not want to hear it, but there is an intermediary, another judge, and perhaps some went off the rails since then.

MR. PINCUS: If I may say so, as far as the plaintiff is concerned we are perfectly happy to have Your Honour hear it.

HIS HONOUR: It is a matter of all counsel agreeing. 20

MR. FITZGERALD: Might I be unqualified; we certainly wish Your Honour to hear the case.

MR. GIFFORD: We express precisely the same view.

HIS HONOUR: I will proceed. I would have been much happier right out of it, but, however. I have read the pleadings.

MR. PINCUS: Your Honour has the particulars as well as the pleadings, I take it.

HIS HONOUR: I have a set of particulars dated 31 May and another set of particulars dated 27 October. Would that complete it? There appear to have been some other amendments made - there are amendments. 30

MR. PINCUS: I am told that my solicitors have checked them, and they seem to be right.

HIS HONOUR: I think it is probable - perhaps if we make sure about this. Your statement of

claim is headed "as emended statement of claim", so unless it has been amended since the date for trial that would be the situation. There are particulars to the -----

In the
Supreme Court
of Queensland

No.11

Transcript of
Proceedings

18th November
1976
(continued)

MR. PINCUS: What date is this?

HIS HONOUR: There are particulars for 27 October, that is comprising a letter from the solicitors for the first defendant to the solicitors for the plaintiff.

10 MR. PINCUS: Have you particulars of 31 May 1976?

HIS HONOUR: Yes. There is an amendment to the reply of the first defendant, and the only amendment there appears to be - incidentally, is that in substitution for the original paragraph 6, or should there be a renumbering there? You have two 6's, because there was already a paragraph 6.

MR. PINCUS: On my copy that becomes 6 and the last one becomes 7.

20 HIS HONOUR: That is not the way you have it. I have two 6's.

MR. PINCUS: Could Your Honour make the last one 7?

HIS HONOUR: That should be paragraph 7?

MR. PINCUS: Yes.

HIS HONOUR: There is no objection to that, so I suppose I will make that 7.

MR. CLIFFORL: No, Your Honour.

MR. FITZGERALD: No, Your Honour.

30 MR. PINCUS opened the case for the plaintiff.

The Court adjourned at 4.16 p.m. till
9.45 a.m. the following day.

In the
Supreme Court
of Queensland

SECOND DAY

19 NOVEMBER 1976

No.12

The Court resumed at 9.46 a.m.

Plaintiff's
evidence

MR. PINCUS continued opening the case for the
plaintiff.

Alan James
Mansfield

ALAN JAMES MANSFIELD, sworn and examined:

Examination-
in-Chief

BY MR. ROW: Is your full name Alan James
Mansfield? -- Yes.

19th November
1976

You reside at 81 Monaco Street, Florida
Gardens? -- Yes.

10

Sir Alan, in 1954, were you then President of
the Mount Gravatt Agricultural, Horticultural and
Industrial Society? -- I was.

And in your capacity then as President of that
Society, did you with other members of your society
have a meeting with a deputation of council
officers at the site of the Mount Gravatt
Showground in about October of 1954? -- That is
right.

Do you recollect who at that time represented
the Brisbane City Council? -- Yes, Mr. Slaughter,
Mr. Greening and Mr. Oakman.

20

The discussion was on the Mount Gravatt
Showground site itself? -- Yes.

BY HIS HONOUR: The second name you mentioned
-- ? -- Mr. Greening, who was the property officer.

BY MR. ROW: Mr. Oakman was then the park
superintendent? -- Yes.

In relation to matters in this court, have
you sworn an affidavit which I think is dated
10 April 1976? -- Yes.

30

MR. ROW: May Sir Alan be shown the affidavit?

HIS HONOUR: Yes, it would be Exhibit 5.
What is the date, again?

MR. ROW: 10 April 1976. The filing date is

probably later than that. The filing date is 24 June 1976.

In the
Supreme Court
of Queensland

No.12

HIS HONO UR: Oh, well.

MR. ROW: Is there an annexure with it?

HIS HONOUR: Yes. Hand that, please, with it.

BY MR. ROW: Is that your signature? -- It is.

MR. ROW: I tender the affidavit.

MR. GIFFORD: I object.

HIS HONOUR: On what basis?

Plaintiff's
evidence

Alan James
Mansfield

Examination-
in-Chief

19th November
1976

(continued)

10 MR. GIFFORD: The annexure which is what is really sought to be tendered is a note or memorandum of a conversation which is presumably this conversation to which Sir Alan has referred. The conversation contains certain statements by council officers. We submit, first of all, that none of these officers was even the Town Clerk. Mr. Slaughter was not a Town Clerk at that time. It appears from - I am sorry, the Town Clerk at the time of the transfer of the land to the council.

20 Mr. Slaughter, as it appears from that document, was not the Town Clerk in 1938, but even if he had been the Town Clerk at the time - he certainly was in 1954, of course - even if he had been then, an officer's statement is not binding on the council. There is a long series of authorities for that proposition. I am sorry, I thought my instructing solicitor had them in court. I will have to refer to them and send for them. The first of the

30 authorities to which we refer is the case of Kuring-Gai Municipal Council against Edwards in 1956, volume 2 of the Local Government Reports of Australia, page 181 at page 185. That was the case of a prosecution for breach of the conditions of the Town Planning Permanent - I am sorry, the Building Permanent - it was held that the defendant to that prosecution could not call evidence of comments made to him by the building inspector because the building inspector was not in a position to bind the council. They were seeking to raise

40 that what he had done was in accordance with what had been said to him by the building inspector. That evidence was rejected. The court held it to be inadmissible because an officer cannot bind the council.

In the
Supreme Court
of Queensland

—
No.12

Plaintiff's
evidence

Alan James
Mansfield

Examination-
in-Chief

19th November
1976
(continued)

The second case to which we refer is Bradford Investments Limited against Ryde Municipal Council in 1958 volume 3 of the Local Government Reports of Australia at page 347 and particularly at page 351. That was a case in which before the applicant had bought the particular site, the town planning officer and the local council had pointed out the site as suitable, and that was held to be a statement that was not binding on the council. The third case to which we refer is Southend-on-Sea Corporation against Hodgson Wickford Limited, which is reported in 1961 volume 1 of the Queen's Bench Reports, page 416.

10

HIS HONOUR: Yes.

MR. GIFFORD: That was an enforcement order because, Your Honour will recall, an enforcement order is a notice given requiring an activity to cease, or building to be demolished, or part of a building to be changed, as the circumstances require in the particular order. The case arose because a company which wished to buy the premises for a builder's yard wrote to the local authority concerned and asked to be informed whether non-conforming use rights were available in respect of that land. The land had been used previously, though not at the time of purchase, for a builder's yard. The letter was dealt with by the city engineer, and he replied that there were non-conforming use rights, and that no permit was necessary. I am sorry, the reference is incorrect. I had a Weekly Law Report reference - we will have to get that checked.

20

30

HIS HONOUR: Let me know when you have it.

MR. GIFFORD: I will, as soon as I get it. The local authority's engineer replied that no permit was necessary, and the company bought in reliance on that representation. It was a double-barrelled representation, (a) nonconforming use rights and (b) no permit necessary. The company acted on the faith of the letter. Subsequently - the gentleman instructing me has given me the correct reference; it should be 1962 1 Queen's Bench.

40

HIS HONOUR: Very well.

MR. GIFFORD: The same page reference. The

actual terms of the letter that the company had written are set out at page 418, "We have been looking for a builder's yard for some time until the death of the owner.", so the letter was disclosing there was a yard there, "Although we hope there would be no objection for your information," and then the terms of the reply, "Dear Sirs: Proposed Builder's Yard ... and no planning permit is therefore necessary. Yours faithfully, T. B. Hill, Borough Engineer." May I pass this up to Your Honour?

HIS HONOUR: Thank you.

MR. GIFFORD: So one has the situation of a clear statement by a borough engineer that (a) there were nonconforming use rights, and (b) no permit necessary, and then we have a company, acting on the faith of that, and buying the premises. Subsequently the council served an enforcement order on the company requiring it to cease use of the premises on the grounds that there were no nonconforming use rights. One might have thought that if an officer's statement can be used against the council, that that was a particularly strong case in which to use it.

HIS HONOUR: It would really have to be a case where the council would be stopped from taking - I think there are Australian authorities on that point?

MR. GIFFORD: There are quite a number.

HIS HONOUR: I can understand that - I have not read this yet, but it seems to me to be different if it is a matter of the knowledge of the council, because the council can only act through its officers. I would have thought it would be different, perhaps.

MR. GIFFORD: We come to that aspect of it in a moment. I am first of all dealing with it as if it was an admission on the part of the council, and we are submitting it cannot be an admission on behalf of the council, because whatever is said on the part of an officer cannot estop the council. As Your Honour has rightly said, there are other Australian authorities, in point, the A.M.P. Society against Bankstown Municipal Council in 1963 New South Wales Reports at pages 1069 and 1070 and, so

In the
Supreme Court
of Queensland

—
No.12

Plaintiff's
evidence

Alan James
Mansfield

Examination-
in-Chief

19th November
1976

(continued)

In the
Supreme Court
of Queensland

—
No.12

Plaintiff's
evidence

Alan James
Mansfield

Examination-
in-Chief

19th November
1976

(continued)

far as I have been able to trace, that is the only series in which that particular case appears - that was the fairly short-lived Butterworth series. In that particular case the Town Clerk had pointed out three sites to the society as being ones where they could see no reason why the society should not go there, and the council was held not to be estopped by that representation. The next case is Holroyd Municipal Council against Rogers in 1969 volume 17 of the Local Government Reports of Australia, page 389 at pages 392 to 393.

10

HIS HONOUR: I see in the Southend case Lord Parker, in the judgment of the court, seems to sum up on this aspect, "There is a long line of cases... to hinder the exercise of discretion. I think that is a clear principle, I do not think it could be disputed.

MR. GIFFORD: In that case I will merely give Your Honour the references to the other Australian authorities, I will not take you through them. In Holroyd Municipal Council and Mangano in 1971 volume 24 of the Local Government Reports of Australia, page 152, at page 161 - this was a case in which an officer had misinterpreted the legal position and it was again the estoppel principle was applied, and it was held that the council was not estopped by what the officer had done. The next and last of the Australian authorities or last of the authorities to which we refer on this branch of the proposition is J. M. Watson and Associates against Auburn Municipal Council in 1972 28 Local Government Reports of Australia, page 145, again a case in which an officer had given an assurance to an intending developer, and the intending developer had acted on the faith of the assurance - that was held not to be binding on the Local Government Authority. We submit, therefore, it is clear that whatever is said by Mr. Slaughter to Sir Alan Mansfield and others cannot in any way estop the council from denying that there was no trust, and it therefore is evidence which is inadmissible in this court.

20

30

40

HIS HONOUR: There is a distinction, of course, between evidence which would amount to estoppel and evidence which might be admissible for other purposes.

MR. GIFFORD: Yes, but if the sole ground on which it was put is proving a trust, then it would be, in our submission, inadmissible.

HIS HONOUR: Could it not be put on the basis of knowledge? I do not know, I have not heard other counsel - on the basis of knowledge by responsible officers of the corporation, that indicating or constituting evidence of knowledge by the corporation.

10 MR. GIFFORD: That is the second basis; I have only, so far, dealt with the first. As to the second basis, then we submit it is not admissible on that basis at all, because it amounts to no more than an officer's attempt to interpret the legal effect of the transaction between the parties. This is a transaction which is evidenced in writing. We submit it is approved by the transfer and the statutory declaration, but if the court is entitled to look any further, then there is the council resolution, and if one is entitled to look beyond that, as we submit the court is not, then there are the letters. What-
20 ever the officers are saying in this conversation with Sir Alan Mansfield can be no more than their interpretation of what the legal position is, and we submit that no witness, be he council officer or otherwise, can give evidence as to the legal position. That is a matter for this court on the proper interpretation of the relevant documents so, on both grounds, we submit that this evidence is wholly inadmissible.

(Argument ensued.)

30 HIS HONOUR: Yes, Mr. Fitzgerald?

MR. FITZGERALD: One could take it a stage further, Your Honour, and say that if this evidence was technically relevant its probative value is nil.

HIS HONOUR: I think that might well be. Mr. Pincus, you'd better deal with that briefly, with the manner of tendering.

40 MR. PINCUS: Your Honour, it is not a matter of great consequence, but I understood my learned friend, Mr. Fitzgerald, to say that it is not right to simply hand the affidavit to him and say, "Is that your signature?", but he did not seem to have any objection to Sir Alan adopting the course that you mentioned, and that is, to refresh his memory from the document and then say, "This document appears to be an accurate summary of it,"

In the
Supreme Court
of Queensland

—
No.12

Plaintiff's
evidence

Alan James
Mansfield

Examination-
in-Chief

19th November
1976

(continued)

In the
Supreme Court
of Queensland

—
No.12

Plaintiff's
evidence

Alan James
Mansfield

Examination-
in-Chief

19th November
1976
(continued)

and in that way verify it. That with respect is a perfectly acceptable course to us. Moving on to the substance of the matter, I am afraid it involves a bit of law, as we see it. That is, firstly-----

HIS HONOUR: Is it possible - I do not want to hold Sir Alan up while we debate law at great length - would it be possible to adduce this evidence which you suggest and let Sir Alan go.

MR. PINCUS: IT is a matter for Mr. Gifford. 10

MR. GIFFORD: My difficulty is that I have certain questions to put to Sir Alan in cross-examination, and necessarily I cannot cross-examine until Your Honour has ruled, unfortunately, otherwise I may be making it relevant.

HIS HONOUR: That is true.

MR. GIFFORD: As long as it was understood---

MR. PINCUS: Mr. Gifford can cross-examine provisionally.

HIS HONOUR: That has been done on occasions, and also it has been frowned on on occasions. 20

MR. PINCUS: So have most courses.

HIS HONOUR: I would be prepared to do that, so that any cross-examination you might make would not find you in the event of a ruling that it is inadmissible. On that basis I do think your interests can be protected.

MR. GIFFORD: As long as our interests can be protected in that regard.

BY MR. ROW: Have a look at the exhibit?-- (Handed to witness.) Yes. 30

Have you read that through recently? -- Yes, I have.

And does that indicate on your refreshing your memory from it, a correct summary of the discussions that took place? -- Yes, it does, to the best of my recollection.

MR. ROW: I tender that, Your Honour, or does Your Honour regard the previous tender ----

HIS HONOUR: I will treat it on the previous tender. I will reserve the question of admissibility on argument and any cross-examination on it will be treated as provisional only and will not bind your conduct of your case in the event of my ruling that the evidence is not admissible.

10 MR. GIFFORD: And I take it Your Honour would not render that part of the document admissible, and any cross-examination would be provisional on our continuing to object?

HIS HONOUR: Yes.

CROSS-EXAMINATION:

BY MR. FITZGERALD: You have said that this meeting took place in October 1954? -- Yes.

20 Approximately that time. Do you recall calling on the Town Clerk a short space of time before that, 10 days or a fortnight before? -- Yes, there was some discussion with the Town Clerk before the meeting, I think that was when the meeting was arranged.

I was going to suggest to you that the meeting had been arranged on an earlier occasion? -- Yes, that is right.

When you personally called on the Town Clerk? -- Yes, that is right.

30 And you recall then that at that meeting you suggested that this land be transferred back to the Show Society? --- Yes.

And that suggestion was rejected? -- Yes.

Were you a member of the society at the time the land was transferred to the council? -- No, I was not, I only became a member in 1952, I think it was.

MR. FITZGERALD: Nothing further, Your Honour.

In the
Supreme Court
of Queensland

No.12

Plaintiff's
evidence

Alan James
Mansfield

Examination-
in-Chief

19th November
1976

(continued)

Cross-
examination
on behalf
of First
Defendant

In the
Supreme Court
of Queensland

—
No.12

Plaintiff's
evidence

Alan James
Mansfield

Cross-
examination
on behalf
of Second
Defendant

19th November
1976

(continued)

CROSS-EXAMINATION:

BY MR. GIFFORD: You were aware of the sort of activities that went on in showgrounds around Brisbane, I suppose? -- Yes.

It was common in those days, was it not, for, for example, an encyclopaedia salesman to have stands at these local shows? - Many people had stands, probably they would have - I don't know.

Many people in fact had stands at local shows around Brisbane for the purpose of selling wares? 10
-- That is right.

And that covered a wide range of merchandise?
-- Yes.

And that was true for a very long time before this conversation in 1964, was it not? -- It was true at all the shows that were held at Mount Gravatt, yes.

And not only at Mount Gravatt, but around Brisbane generally, the various other local shows?
-- I do not think I ever went to any other local 20
show.

I suppose you did go to the Brisbane Showground?
-- Yes, the Brisbane Show.

And so it was true of the Brisbane Showground?
-- I think so.

And that was true of the Brisbane Showground for many years before 1954? -- Yes.

So that if one were to look, for example, at the Brisbane Showground in 1938, we would have found many people selling many types of merchandise? 30
-- I can't recall 1938, but that would probably be the position.

Without recalling a specific year, let us say, in mid-1930's, that would have been true, would it not? -- I would think so.

And also true at Mount Gravatt? -- Well, I suppose it was, I really have no knowledge at all of Mount Gravatt in those years.

BY HIS HONOUR: Until when you went in in 1952, about that time? -- I went to live at Mount Gravatt early in 1952, and it was some time during 1952 I became a member of the society.

BY MR. GIFFORD: The people who were selling things were people selling such things as not only just encyclopaedias, but, for example, motor-cars? -- Yes, that is right.

10 And the Brisbane Showground has also been used for that and for holding wool auctions? -- Yes, demonstrating - I do not know about the auctions being held there, but they have the wool store in the pavilions of the showgrounds where they are inspected by the buyers.

Inspected by the buyers with a view to their subsequent purchase at auction? -- That is right.

And the Brisbane Showground is also used, is it not, for various forms of racing? -- Racing?

20 Yes? -- Motor-cycle racing, I think, yes - and trotting.

And trotting, yes. Thank you, Sir Alan. And it is also used, is it not, for various sporting activities? -- Yes.

Such as cricket? -- It was used for cricket until - I do not know whether it was used for local cricket - but there was a test match there until it changed to Woolloongabba.

30 And when did that change occur? -- I know Chaplin was the captain of the English team, I do not know what year it was.

1928? --

BY HIS HONOUR: I think they were there until early post-war years, at the Exhibition. I remember seeing it there in the early post-war years, and then they went to Woolloongabba about that time? -- It may have been, I'm not quite sure.

BY MR. GIFFORD: And football was also played there? -- Yes.

In the
Supreme Court
of Queensland

—
No.12

Plaintiff's
evidence

Alan James
Mansfield

Cross-
examination
on behalf
of Second
Defendant

19th November
1976
(continued)

In the
Supreme Court
of Queensland

—
No.12

Plaintiff's
evidence

Alan James
Mansfield

Cross-
examination
on behalf
of Second
Defendant

19th November
1976
(continued)

And this football and cricket we have heard -- the cricket goes back to 1928, and the football also goes back a very long period? -- Yes, I believe so.

And so do the racing years? -- Yes, the speedway and the trotting.

HIS HONOUR: Any re-examination?

MR. ROW: No re-examination, Your Honour.

HIS HONOUR: We can deal with this question of admissibility.

10

MR. PINCUS: I was going to try to test your patience a bit further and get Mr. Scurr through. Mr. Scurr has nothing to say on this point. He will be fairly long. He is anxious because he has had a holiday planned with his family and four children, going overseas tomorrow.

HIS HONOUR: Do not hold him up. You have no objection, gentlemen?

MR. FITZGERALD: No, Your Honour.

MR. GIFFORD: I think I indicated the situation that I was agreeing, Your Honour.

20

MR. PINCUS: While he is coming, Mr. Fitzgerald is prepared to admit that Mr. J. C. Slaughter, although he was not a Town Clerk in 1970 was then the executive adviser of the council, and remained so until September 1971.

HIS HONOUR: You do not suggest that he was Town Clerk or in the council even in 1937 or 1938?

MR. PINCUS: I do not know, but I am quite prepared to accept what he says about that.

HIS HONOUR: To my own knowledge he was not. I'm not sure when he did come, but he came from Bundaberg to Brisbane around about the war years, as I remember.

30

MR. FITZGERALD: September 1940, Your Honour.

ARTHUR THOMAS SCURR, sworn and examined:

BY MR. PINCUS: What is your full name? --
Arthur Thomas Scurr.

And you are one of the relators at whose instance a fiat was granted by the Honourable the Attorney-General in respect of the commencement of this action, is that so? -- Yes.

You reside at 1128 Cavendish Road, Mt. Gravatt, Brisbane? -- Yes.

10 You are by occupation a company director? --
Yes.

You are the managing director of Scurr Bros. Pty. Ltd., which carries on business as a hardware merchant at Logan Road and Garry Street, Mt. Gravatt? -- That is correct.

You have been in that position now for 17 years? -- Yes.

You are now how old? -- I am 48.

20 And you have lived at Mt. Gravatt since when? -- Since I was four.

At the age of four how far was your residence from the Mt. Gravatt Showground? -- Something of the order of three-quarters of a mile.

Subsequently you have moved further away from the showground, have you? -- Yes, I now live approximately a mile and a half to two miles away.

Have you ever lived at any greater distance from the Mt. Gravatt Showground than that? -- No, I have not, since I was four, I have not.

30 Prior to that you lived elsewhere? -- Prior to that I lived at Seventeen Mile Rocks.

You are, in addition to your position of managing director, you are a director of the Building Industry Credit Bureau? -- Yes.

Chairman of Directors of Mitre 10 Australia Pty. Ltd.? -- Yes.

In the
Supreme Court
of Queensland

No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Examination-
in-Chief

19th November
1976
(continued)

In the
Supreme Court
of Queensland

—
No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Examination-
in-Chief

19th November
1976

(continued)

Which is a co-operative owned by some 300 hardware stores? -- Correct.

You are a former president of the Mt. Gravatt Central Chamber of Commerce, and a member of it currently? -- Correct.

Prior to that you were president of the Mount Gravatt Chamber Association from which the Central Chamber of Commerce evolved, were you? -- Yes.

You have been involved in a number of other community organisations, without going into great detail? -- I have. 10

For example, you are a member of the Council of the Mt. Gravatt College of Advanced Education? -- Correct.

Committee member of the Mt. Gravatt Meals on wheels organisation, and charitable organisations of that sort? -- Correct.

Coming to more directly pertaining matters, are you the secretary of the Mt. Gravatt Community Centre Planning Committee? -- Yes, I am. 20

Are you a member of a committee which raised funds to establish the Mt. Gravatt Ambulance Centre? -- Yes, I was.

You were chairman of the committee which was formed to secure a council library for Mt.Gravatt? -- Correct.

A member of the Property Board of the Methodist Church, Mt. Gravatt? -- Correct.

And that is not all, there are other matters? -- Yes, there are other matters. 30

Have you ever been a member of the Mt.Gravatt Agricultural, Horticultural and Industrial Society? -- Yes, I have been.

When did you become a member of that body? -- I couldn't be precise.

Roughly when, be as precise as you can? -- I would think, personally, approximately 1954, around about then.

Did you become an ordinary member or a member of the committee then? -- I became an ordinary member first, and then I became a member of the committee.

In the
Supreme Court
of Queensland

No.13

When did you become a member of the committee?
-- I think it was around about 1955 - '56.

Plaintiff's
evidence

And who was the president then? -- Gosh!

Arthur
Thomas Scurr

Do you recall? -- I think it was Leith Vence, I think it was Leith Vence.

Examination-
in-chief

10 And how long did you remain on the committee?
-- I was not on the committee very long. I think I stayed on it for about a year.

19th November
1976
(continued)

And after your term on the committee did you remain a member of the society or not? -- To my knowledge I remained a member of the society - to my recollection.

20 Why is there some doubt about it? -- It is just that over a large span of years it is hard to be precise whether one's membership was entirely or absolutely continuous over all of those years. Certainly the start of the show society was continuous, but whether it was continuous membership, I can't produce a definite statement on that.

Until what time did you remain a member of the society so far as you know? -- Well, I'm a member of the society now, still a member.

Never resigned? -- Never resigned, no.

30 Could you give His Honour a description as far back as your memory goes of what this showground has been used for since - it takes us back to 19-- ? -- My recollection?

1932? -- Yes, well-----

Your recollection does not go back that far?
-- Not really. I can remember being there as a small child, and my most vivid recollection there would be, of course, toffee apples and fairy floss, that is about it.

At the show? -- Yes, about it, that is the earliest recollection, but later on, of course,

In the
Supreme Court
of Queensland

Plaintiff's
evidence

Arthur
Thomas Scurr

Examination-
in-chief

19th November
1976
(continued)

there were such things as exhibits in school competitions, and later on my brother and I rode horses in events.

At the show? -- At the show.

And tell us of your earliest recollections, what sort of show was it? There are three things mentioned; were there any agricultural displays there? -- Yes, there were.

What sort of agricultural displays? -- Well, in the front pavilion, that is the one-storey pavilion, a large area was laid out with all sorts of locally grown fruits and produce and flowers. Flowers, I guess, are horticultural. The farms from the Rochedale and the Sunnybank area used to enter competitions for the best carrots or best cabbages.

10

Were prizes given? -- Prizes were given.

Were there farms in the vicinity of the show-ground itself? -- There was a poultry farm next door to it, separated by a street, over the other side of Wishart Road, and there was a dairy farm adjoining it on the rear boundary.

20

Was there any cultivation within a mile or so of the showground, or was it mainly paddocks? -- Mainly paddocks, but the dairy farm, I think, had some small amount of cultivation.

MR. GIFFORD: It is not really clear of what period we are speaking.

BY MR. PINCUS: What period are you speaking of when there was paddocks and a chicken farm? -- The paddocks were there until well after the last World War, they were there until almost up to the sixties, in that era, because the development of the district did not actually get under way until 1961, that is in a spreading way it was developed from around about the old tram terminus, from 1947 to 1951, and the trams came out in 1951.

30

You are going too fast for me at least. Now, how far away was the tram terminus from the showground? -- Half a mile, or thereabouts.

40

Let us concentrate on the period before the

Second World War, that is before September 1939. Up to that period was there any close settlement within, say, two miles of the showground? -- No, no close settlement as we think of it today.

These agricultural displays that you were talking about, what is your earliest recollection of them, was it before the Second World War, or during, or after it? -- Before the Second World War, very definite recollections of them.

10 Can you remember what sort of produce was displayed, agricultural produce? -- Yes, as I say, there were pumpkins and melons and cabbages and carrots.

Stock, were they displayed? -- There was stock there as well.

What sort of stock? -- Fowls, cattle, horses, dogs.

20 Were those things sometimes sold at the show, or just all displayed for prizes? -- I have no idea, I thought they were there for prizes.

MR. FITZGERALD: I object, Your Honour.

BY MR. PINCUS: How do you know the prizes were there? -- I have seen the Grand Parade.

MR. FITZGERALD: I am sorry. I do not mean to be rude, but Your Honour is still resolving something and my friend asked about four more questions.

MR. PINCUS: What is the problem?

30 HIS HONOUR: You have objected on the question of the selling of stock, and he said he thought so.

MR. FITZGERALD: He said he did not know whether it was there for sale or for exhibit, but then he went on to express some conjecture about whether it was or not.

BY HIS HONOUR: Do you know of your own knowledge whether the stock was there for sale or not? -- No, I don't know if it was for sale.

As it was on show, I imagine it would be there

In the
Supreme Court
of Queensland

—
No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Examination-
in-chief

19th November
1976

(continued)

In the
Supreme Court
of Queensland

—
No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Examination-
in-Chief

19th November
1976

(continued)

for display? -- I do know it was for display and prizes were given.

You don't know whether they were sold? -- No, I don't.

BY MR. PINCUS: How do you know prizes were given? -- Because every exhibit that won a prize had a ticket. The first prize I think was blue and the second prize was a red and something of that kind.

Which period is this? -- The stock had 10
ribbons.

What period are you speaking of? -- Till - well, up until recently, until the sixties, that sort of thing went on.

Starting when? -- It started back in 1915. The first show was 1915 and my father won the first prize in it and we have still got the certificate at home.

You mentioned agricultural displays. Were there any horticultural displays? -- Yes. 20

When? -- At the same time when the show was being held.

BY HIS HONOUR: You are speaking of now running from the thirties when your recollection would go back to? -- Of my recollection, including most recent ones including displays of flowers. I understand. I am a little confused of the distinction between agriculture and horticulture, but I know that flowers are horticulture and I am not too sure how far horticulture goes beyond that. 30

BY MR. PINCUS: I don't follow you? -- I am not sure of the distinction between horticulture and agriculture absolutely.

There were flower displays and flower prizes? -- Right.

The last thing mentioned in the title is industry. Were there any industry displays? -- Well, the local car dealers in the area - they were not local car dealers, there were none - there were car dealers from town always took the opportunity 40

of putting the new cars on show. Inside the grand pavilion they would show machinery. They showed something like a knitting machine or that sort of domestic type of thing, but I don't recall. If that is industry, I guess that is the sort of thing that was there.

Encyclopaedias have been mentioned. Did you see encyclopaedias on display there? -- Yes.

10 When was this? -- I think it was since the war. It would have been in the sixties, I would imagine. I have seen encyclopaedias there, now you mention it.

May I mention first of all all the things which you say - did you see furniture on display there? -- In a minor way, yes.

When? -- Since the war.

Do you remember the war? -- Well, no, my recollection would not run to before the war.

Tractors? -- Tractors, yes.

20 When did you see them? -- I think at all times before the war and after the war. I think tractors were a regular component.

Were they on display or for sale or what, the tractors? -- I would imagine-----

You can't tell us what you imagine? -- To my knowledge, I don't know. I can only make assumptions.

There were tractors there? -- Yes.

30 Any other agricultural implements apart from tractors there? -- Oh yes, ploughs and harrows and all sorts of things.

Where were these ploughs housed? Where did they come from? -- They came-----

Who was displaying them, I mean? -- Such firms as - I may name a firm that didn't display - but the sort of thing like H.V. Massey Harris, Queensland Pastoral Supplies - people like that or their agents.

In the
Supreme Court
of Queensland

—
No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Examination-
in-chief

19th November
1976

(continued)

In the
Supreme Court
of Queensland

No.13

Plaintiff's
evidence

Arthur Thomas
Scurr

Examination-
in-chief

19th November
1976
(continued)

Was your family involved with any of these implements? -- Our family used to manufacture implements.

What sort of implements? -- We used to manufacture ploughs and scarifiers, harrows, passionfruit graders - all that sort of thing.

Were they displayed? -- I don't believe they ever were. In later years we used to enter in the show but we had given up with the manufacturing aspect at that time.

10

When did your family start to put on displays of any sort? -- Well, in the early days they used to enter the grand parade at the request of the Show Society with any new horse-drawn vehicles that they had built or later on motor vehicles that they had built, but that was just to liven up the grand parade to make it look something.

Who used to do this in your family? -- My father and my uncles at that time.

Was this the family business which became Scurr Bros.? -- Yes, it was Scurr Bros. and in 1952 it became Pty. Ltd.

20

Could you tell me, at least so far as you can recall, to your personal knowledge, in what years this show was held? -- The first one was held in 1915.

MR. GIFFORD: I object to this. This was to his personal knowledge and the witness was not born in 1915.

WITNESS: I was answering there in the sense that I had read the minutes referring to the 1915 show. To my personal knowledge, I cannot be precise. It would have been before the war, the first show that I went to and then I know to my personal knowledge that there was a break of continuity through the war when the army and Indonesians and all sorts, and the Americans, to some extent, used the showground. Then I can recall how they opened it after the war and I think that was when the first two-day show was opened. That was after the war. During the war there were rodeos held and all sorts of trick entertainment sort of thing and there were Americans and Australians involved in these rodeos. They had the grand show after the war.

30

40

After this grand show did shows continue or not? -- Shows continued.

Annually or only sometimes? -- Annually, regularly every year without a miss.

At what time of the year? -- Always at the end of July.

Before the Brisbane show? -- Before the Brisbane show. It was known as a pipe opener.

10 Apart from the Show Society(s annual show, did any other organisations during the time you have been living at Mt. Gravatt, use the showground area? -- Yes, they did.

Could you give us some examples, please? ---

MR. FITZGERALD: Can we have this clear whether it is to his own personal knowledge?

20 BY HIS HONOUR: Only state to your own personal knowledge? -- Yes, I can do that. I can remember Sunday School picnics being held there of which I was a participant. I can remember school sports being held there of later years.

BY MR. PINCUS: What years are you speaking of now? -- I am going right back to the Sunday School picnics.

You said in later years? -- Sorry -----

I am just asking you what you mean by "later years". Later than what? -- Well, now, they pulled it down in about 1974, I think.

30 Pulled what down? -- The building, thinking back. There was quite a long span of years probably in the sixties up until the early seventies the Mt. Gravatt Pony Club used it, to my knowledge. The Mt. Gravatt Judo Club used it and the Lapidary Society had used one show room.

What Lapidary Society? -- The Mt. Gravatt Lapidary Society. The photographic club used it regularly.

Which photographic club? -- I believe they were called the Mt. Gravatt Photographic Club.

In the
Supreme Court
of Queensland

—
No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Examination-
in-chief

19th November
1976

(continued)

In the
Supreme Court
of Queensland

No.13

Plaintiff's
evidence

Arthur
Thomas Scurr
Examination-
in-chief

19th November
1976
(continued)

Go on? -- The Rural Youth Organisation or the Junior Farmers - I think it was the Rural Youth.

Are they the same thing? -- They are different. I think it was the Rural Youth.

What did they use it for? -- Meetings.

When? -- Right up until the use of the show-ground stopped except for shows. That was, I think, about 1970 that everything stopped except the shows which were held by some kind of arrangement which I don't know about.

10

When was the last show held, do you know? -- The last show on the ground, I take it you mean?

Yes? -- There has just been one held in 1973. I believe that would have been the last show on the ground.

You were telling us of some of the local bodies who used the showground. Now, you have mentioned, I think, the Judo Club, ponies, photographic, Lapidary Society, Rural Youth. Now, try to think of any others which used it earlier - Sunday School picnics, school sports? -- There was one church group or two church groups used to meet there.

20

What churches were they? -- I am not sure.

Where did they meet, precisely? -- They met in the two-storey pavilion.

Are the people you have mentioned an exhaustive list of those who used the showground or are there others? -- There are others.

Could you try to remember some of the others? -- The Mt. Gravatt Marching Girls used it. The Mt. Gravatt Youth Club.

30

What part did the marching girls use? -- The part below the ring.

The open space or the building? -- The open space between the ring and Broadwater Road. The Mt. Gravatt Youth Club used it and still use part of it. Then again, other organisations such as the Lions Club, and the Rotary Club held special events every year.

40

On the showground? -- On the showground.
There was an April Fair that was held every April
and there was a September Fair.

When were these fairs held? -- What years? --
The April Fairs were held for a number of years and
only discontinued at the time the ground was
offered for sale.

1970? -- 1970, yes.

10 What about the September Fair, when was that
held? -- It didn't last as long. I am guessing.
I recollect probably two or three years that lasted.

Apart from the use by organisations, just
ordinary people, that is people of the public, did
they use the area? -- It was used a lot.

What for? -- People used to train their horses
there in an informal way.

Train them for what? -- Just train them, in
some cases I imagine, for events, but also just for
the sheer joy of training them.

20 Apart from horses being trained, did anybody
go there other than with their horses? -- Yes,
there was a lot of bike riding went on there and a
lot of cricket - informal cricket. I should have
mentioned before there was a cricket club there as
well. There was a lot of informal sport went on,
football and cricket.

Could you ride a bike in there or weren't you
allowed? -- No one worried. Yes, I am sorry, you
could.

30 Did the people do that? -- Yes, they did.

What about kites? -- Yes, I saw only about
two or three weeks ago a lot of kite flying going
on there.

Do you remember the first occasion when you
heard that the ground might be sold for the erection
of commercial premises on it? -- I haven't got a
precise recollection of when I heard it because I
treated it as a rumour. I didn't believe it. I
don't know where I first heard it.

In the
Supreme Court
of Queensland

No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Examination-
in-chief

19th November
1976

(continued)

In the
Supreme Court
of Queensland

No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Examination-
in-chief

19th November
1976
(continued)

What year was it when you first heard it? --
It would have been late 1969 or early 1970.

Did you subsequently hear more about it? --
There were rumours cropping up regularly sufficient
to spur me to telephone the chairman of the Show
Society.

Mr. Hamlyn-Harris? -- Yes.

Did you have a conversation with Mr. Hamlyn-
Harris? -- Yes, I did.

Did you have more than one conversation with
Mr. Hamlyn-Harris about the subject of the proposed
sale, or only one? -- Over the years I have had---

10

No, from the time you heard about the sale
which is 1970? -- Yes.

Have you had more than one conversation with
Hamlyn-Harris about the subject of the proposed
sale or only one? -- I had one conversation with
him on the evening of the day I rang him. I am not
sure when I spoke again to him. It was not for
some little time.

20

Months, days or years? -- I cannot be sure of
this. I did discuss with him on other occasions
but it is a matter of time. There have been many
discussions since but this is probably the only
time I saw him out in that 1970 era.

You were a relator in another action in this
court, No. 1598 of 1971 in which the Attorney-
General sued the Brisbane City Council and Myers
Shopping Centre Pty. Ltd., were you not? -- Yes.

That case was heard by Mr. Justice Lucas in
1972? -- Yes.

30

Your counsel being Mr. Dunn, Q.C. and Mr.
Row? -- Yes.

HIS HONOUR: I will have a short adjournment
as I understand some extension has been arranged
and it is ready now.

The Court adjourned at 11.3 a.m.

The Court resumed at 11.9 a.m.

ARTHUR THOMAS SCURR, further examined:

BY MR. PINCUS: The other relator was Mr. Boon; has he been involved in any previous litigation? -- I don't think so.

Who is Mr. Boon? -- Mr. Boon is a resident of Mt. Gravatt who has, for many years, been either ring master or announcer at the show and was also an official of the Upper Mt. Gravatt Progress Association.

Have you heard of a society called the Mt. Gravatt Show Society? -- Yes.

Is that a different body from the Mt. Gravatt Agricultural, Horticultural and Industrial Society? -- No.

Which is the right name? -- The Mt. Gravatt Agricultural, Horticultural and Industrial Society, I believe to be the proper, or registered name of the society.

BY HIS HONOUR: The other is the popular name? -- The other is the colloquial popular name.

BY MR. PINCUS: What is it usually called by you, the Mt. Gravatt A.H. and I Society, or the Show Society? -- I normally refer to it as the Mt. Gravatt Show.

Would you tell His Honour what is the current state of affairs. You mention that there is a building, or buildings which have been demolished? -- Yes.

When were they demolished? -- They were demolished in about June 19 - there was a big flood - I think that the flood was '74, and if that's true, they were demolished in about June '75.

The big Brisbane flood, you mean? -- Yes.

That was January '74? -- Right, they were demolished in '74, about June '74.

Was the ground flooded? -- No.

In the
Supreme Court
of Queensland

No.13

Plaintiff's
evidence

Arthur
Thomas Scurr
Examination-
in-chief

19th November
1976
(continued)

10

20

30

In the
Supreme Court
of Queensland

—
No.13

Plaintiff's
Evidence

Arthur
Thomas Scurr

Examination-
in-Chief

19th November
1976

(continued)

What buildings were demolished? -- All the buildings; there were two pavilions, a toilet block or two, there was a fence around the ring and cattle enclosures and other structures for handling cattle and horses.

Are there any buildings on the showground now? -- Not on the part that is proposed to be sold but, yes, on the part that is not proposed to be sold there are buildings.

What buildings; are they showground buildings? 10
-- No, they are buildings which have been erected by the Mt. Gravatt Youth and Recreational Club.

The showground is, apart from those buildings, fair? -- It has no other buildings, it has trees.

Is it being used currently? -- It is being used informally and the rear section is being used intensively for sporting activities.

You say "informally"; in what fashion - by whom? -- It is being used by various members of the public, it seems to me, of all ages for - well, 20
I saw kite flying the other day, but there are often children riding bikes there or people walking. It is in a good state of upkeep.

Who keeps it up? -- The City Council, I presume.

Have you seen the City Council people there or not? -- No, I have not.

Someone keeps it up? -- Someone keeps it up.

It is asserted on behalf of the Attorney-General in this case that the land in question, 30
that is, subdivisions 2 and 3, is subject to a trust; you know that, do you not? -- Yes, I do.

And more specifically it is being said on behalf of the Attorney-General that the council acquired the land pursuant to a resolution of 19 October 1937 which said, among other things, that the land would be set apart permanently for showground, park and recreation purposes; you know that now?-----

MR. GIFFORD: I am not sure of what the question 40
is; is he saying that he knows there was a resolution?

HIS HONOUR: No, he is not saying that.

MR. PINCUS: Perhaps-----

HIS HONOUR: Could we have it read back?

(Shorthand notes of relative passage read.)

HIS HONOUR: It is being asserted; the witness is not affirming the correctness of it.

MR. GIFFORD: As long as that is so, I have no objection.

10 BY MR. PINCUS: You know this is being asserted in this action by the Attorney-General?
-- Yes, I do.

When did you first become aware of the existence of that resolution? -- Subsequent to a search being made.

What year? -- It was 1975, late '75.

20 It is also being asserted that on 25 October 1937 the council, by its Town Clerk, wrote to a Mr. William Henry Clarke, one of the trustees, a letter which, in substance, informed Mr. Clarke of the terms of the resolution. You know this is being asserted on your behalf? -- Yes, I do.

When did you first become aware of the existence of such a letter; what year? -- At the same time - no, just before-----

Just tell me the year? -- 1975. Could I add something to a previous reply?

30 All right; if it was not an accurate or complete reply? -- It was incomplete to this extent; the question I was asked was the one about who was mowing the showground. For some considerable time some agency unknown has been mowing the showground, but the committee of which I am secretary did mow the showground on a number of occasions when there was no one else keeping it in repair at all, but that has not happened for some years.

MR. PINCUS: It might be convenient if at this stage I tender some documents which may be material to this question of laches. I tender pages 131 to

In the
Supreme Court
of Queensland

No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Examination-
in-chief

19th November
1976

(continued)

In the
Supreme Court
of Queensland

—
No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Examination-
in-chief

19th November
1976

(continued)

137 of the record of proceedings in Appeals Nos. 1 and 2 of 1972 in this court. These are tendered, perhaps unnecessarily but for this reason - Your Honour will recall having been reminded by me that you and the Chief Justice held in that case that the question of a trust was immaterial, from which one might infer that it was sought in that case to raise the question of a trust and that the attempt was resisted by counsel. Now, the relevant passage is contained in these pages and is, indeed, specifically referred to in the judgment of Your Honour. Your Honour refers to the evidence in question in setting out the grounds of appeal. We have thought it best to-----

10

HIS HONOUR: I suppose it is a convenient way of doing it. I suppose the strictly correct way would be to have the Registrar of the Court produce the formal reasons as recorded, and so on, but I imagine-----

MR. PINCUS: Your formal reasons?

20

HIS HONOUR: My own or anybody else's. I am just dealing with the way it has been done, but I do not imagine that counsel would object to this, they know what the record is.

MR. PINCUS: As Your Honour mentions it, I would hand to Your Honour the judgment of the Chief Justice in that case and Your Honour's judgment. I do not know if it is necessary to tender them.

HIS HONOUR: The reasons for judgment of the Chief Justice will be Exhibit 2 and Exhibit 3 will be my reasons for judgment.

30

Ex. 2

(Admitted and marked "Exhibit 2".)

Ex. 3

(Admitted and marked "Exhibit 3")

MR. GIFFORD: I thought that the pages of the transcript had been tendered.

MR. PINCUS: I have them here.

MR. GIFFORD: I take it in that case that the former Chief Justice's affidavit has not been marked as an exhibit?

40

HIS HONOUR: No. I will not mark that as an exhibit until I have heard the argument and determined the matter. Pages 131 to 137 of the transcript will be Exhibit 4.

In the
Supreme Court
of Queensland

No.13

Ex.4 (Admitted and marked "Exhibit 4".)

Plaintiff's
evidence

10 MR. FITZGERALD: In relation to that, it is obviously a convenient way of doing it but I take it it must be that there would be some matters in those pages that cannot possibly be relevant to these proceedings.

Arthur
Thomas Scurr

Examination-
in-chief

HIS HONOUR: Yes, only to the extent that it is relevant.

19th November
1976

(continued)

20 MR. PINCUS: Attempts were made, as those pages showed and your judgment shows, to raise the question of trust there and they were resisted and successfully so. None of the statements of fact in them are reliable. Might I tender an interlocutory judgment of His Honour, Mr. Justice Lucas? An application was made on an interlocutory proceeding to strike the matter out.

HIS HONOUR: For the matter of convenience I will mark it Exhibit 5.

Ex.5 (Admitted and marked "Exhibit 5".)

30 MR. FITZGERALD: Before I commence, might I mention this: my learned friend has asked this witness whether he telephoned a Mr. Hamlyn-Harris and whether there was a conversation. He did not try to take it any further. I do not know if that is because Your Honour made a ruling in relation to the question.

40 HIS HONOUR: I said I would be prepared to allow that much of the evidence. It was pursuant to my ruling that he could give evidence of having had the conversation with Hamlyn-Harris but not the substance of it. But, of course, that did not preclude counsel cross-examining and suggesting that that had nothing to do with the inference one might draw that the conversation was in relation to the sale. But if counsel sought to adduce any evidence from the witness they are quite at liberty to do so to suggest that he had nothing to do with it.

In the
Supreme Court
of Queensland

—
No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Examination-
in-chief

19th November
1976
(continued)

MR. FITZGERALD: I was not here in relation to it and it does concern me a little. I would have thought - and I do not want to argue the case for the plaintiff - but I would have thought that that evidence might well be admissible to establish something was said, not the truth of what was said.

HIS HONOUR: That is quite so. It was dealt with in a rather offhanded way. Do you wish to get it? 10

MR. PINCUS: Yes.

(Argument ensued.)

HIS HONOUR: I am inclined, unless you can persuade me to the contrary, that the better course is to allow the evidence to be given and reserve the matter of the admissibility. Again, if it is sought to cross-examine on that, I will hold that it does not prejudice your right to continue to assert its inadmissibility.

MR. GIFFORD: At this stage, until I have heard what the question is, I am not in a position to say whether I am objecting to it. 20

MR. FITZGERALD: That extends to me also.

HIS HONOUR: Yes. In a case like this I think it is preferable to adopt that course. I have not heard any argument. I allow it on that basis and I do not think anyone will be prejudiced then.

MR. GIFFORD: I take it we do not have to rise to object to any particular question?

HIS HONOUR: No. I accept that. 30

BY MR. PINCUS: You telephoned Mr. Hamlyn-Harris in 1970 when you heard rumours about a sale? -- Yes.

Was he in a position in the Show Society then? -- He was Chairman of the Show Society.

What did you say to him? -- I said to him, "I am hearing repetitive rumours that the show-ground is up for sale. Is there any truth in it?"

What did he say? -- He said, "Well, I do not wish to speak about it over the phone but if you will come around to my place tonight I will fill you in, give you the full story."

Did you go to his home? -- I did.

Did you have a conversation with him there?--
Yes.

10 What was the substance of the conversation so far as you can recall it? What did he say and what did you say? -- In effect, I imagine I said, "Would you please now give me the facts as you intended?"

20 Did he? -- He told me certain things which proved to be facts later. He told me that the showground was in fact being offered for sale. He told me that the purchaser or the intending purchaser was Myers Shopping Centres and that the Show Society was to be accommodated as part of their arrangement on a piece of land known as Mount Gravatt Park at Upper Mount Gravatt. That's the bones of the conversation.

Did he tell you who had made this arrangement? -- He told me he had had conversations with a number of people: the Lord Mayor at the time, a Mr. Ken Steel and a Mr. Dennis Pie.

Did he tell you whether these matters were to be made public? -- No. He has told me that the Show Society was in a fairly delicate position and that I would be doing him a favour and the Show Society if I kept quiet about it.

30 And did you keep quiet about it? -- Yes, I did.

Why? -- Because I respected Mr. Hamlyn-Harris. I have known him for a long time and I respect him. I still do.

40 Did you on that occasion have any conversation with him about the question of an agreement between the society and the council? -- I can't remember whether I talked about that aspect of it with him at the time. I certainly talked about it later. I can't be sure.

You are not sure whether you talked about the question of an agreement on that occasion, but are

In the
Supreme Court
of Queensland

—
No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Examination-
in-chief

19th November
1976

(continued)

In the
Supreme Court
of Queensland

No.13

Plaintiff's
evidence

Arthur
Thomas Scurr
Examination-
in-chief

19th November
1976
(continued)

you sure you talked about these matters you just mentioned? -- Yes, quite certain. They were the prominent things.

If it was not, you say it was later that you talked about an agreement. How much later? -- I wish I could be more specific, but on a number of occasions I said to him -----

What year is this? -- I would have spoken to him at the Mount Gravatt Show in 1970. I had quite a conversation with him then. 10

BY HIS HONOUR: That would be about the end of July? -- End of July 1970.

BY MR. PINCUS: What was the conversation you had with him - the substance of it, if you cannot remember the precise words? -- This might sound a little colloquial but I said, "It's like playing a game of cards and your card is going to end up under the table and you will get nothing." That was the sort of thing. And then I asked him if, when the Show Society made the arrangement with the council back in 1937 or 1938 - how it had been sealed and documented, and he used these precise words which stick in my mind. He said, "The minutes of the Show Society are defective and if this were not so we would have contested the matter further but our advice is that no trust was completed and that the matter as recorded in our minutes defectively states the situation." 20

Yes, anything further said about that? Was the Lord Mayor mentioned? -- The Lord Mayor was mentioned. 30

Was it that occasion or some other occasion that the Lord Mayor was mentioned? -- No, on that occasion he was mentioned.

Who mentioned him? -- Guy Hamlyn-Harris mentioned him.

What did he say? -- He said that the Lord Mayor felt the Show Society had a moral right, but it could not be substantiated by any legal action. 40

Did you have any further conversation then or later with Hamlyn-Harris about what the minutes

disclosed? -- No, after discovering the minutes and after finding out -----

When did you discover the minutes? -- In 1975. I then spoke to him -----

You had a conversation after discovering the minutes with him? -- Yes, I rang him up -----

Do not worry about that -----

10 MR. GIFFORD: I am sorry, the witness has referred to two different minutes as I understand it, in his evidence, the minutes of the Brisbane City Council and the minutes of the Show Society, I think.

HIS HONOUR: I think he only spoke of the minutes of the Show Society.

WITNESS: Yes, in this conversation.

MR. GIFFORD: Previously he referred to the minutes of the Brisbane City Council, as finding these in 1975. I am anxious to find out which one he is referring to now.

20 BY HIS HONOUR: You are referring to the minutes of the Show Society in your discussion with Mr. Hamlyn-Harris? -- Yes, definitely, Your Honour.

BY MR. PINCUS: I want to get back - in those early years, 1970, did you see the society's minutes of 1970? -- No.

Did you obtain any knowledge of their contents other than what Mr. Hamlyn-Harris told you? -- No.

30 HIS HONOUR: So that we have this clear, what objection is there to the admissibility of this conversation? It is put forward not in any way as proof of the facts stated by Mr. Hamlyn-Harris, but of the fact that a conversation had actually occurred at that time, that is the basis. Is it objected to by any counsel, so that I will know for the future, you see?

MR. FITZGERALD: My only concern - unfortunately, I had not expected to debate this further at this stage, and I thought I might look at the transcript before I did it. My concern is whether the entire

In the
Supreme Court
of Queensland

No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Examination-
in-Chief

19th November
1976
(continued)

In the
Supreme Court
of Queensland

—
No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Examination-
in-chief

19th November
1976

(continued)

conversation is relevant, even on the limited basis it is put forward, but the fact of the conversation, and I would have thought, indeed, some parts of the conversation, probably are relevant.

HIS HONOUR: I would have thought so. Perhaps some of it might take it outside, but I would have thought that some parts were relevant on the issue at this stage.

MR. FITZGERALD: Perhaps if I indicate at this stage I thought Your Honour would not hear the debate on it now and rule on it now. 10

HIS HONOUR: I was not, but I thought if we could clear it up now, the better.

MR. FITZGERALD: My first attitude is probably the same, that the fact of the conversation is probably admissible.

MR. GIFFORD: I would prefer, if it is possible, to look at the transcript, because I find myself very much in the situation as my learned friend. Clearly part of this conversation would seem to be admissible; equally, it is possible that other parts are not. I would prefer to argue that by reference to the transcript rather than by reference to notes. 20

HIS HONOUR: Have you any objection to that standing over?

MR. PINCUS: No, Your Honour.

MR. GIFFORD: It may stand on particular words.

HIS HONOUR: Yes, maybe. You can cross-examine on the basis that I indicated earlier. 30

Cross-
examination
on behalf
of First
Defendant

CROSS-EXAMINATION:

BY MR. FITZGERALD: The Mount Gravatt show has been held every year since 1930, except during the war years, is that the idea? -- Except during the war years and except 1973.

Except 1973? -- Except - not all the war years, it was held during some of the war years, but there was a break in the continuity.

It was, I take it, intended - presented in such a way as to attract as large a crowd as possible? -- Yes, it was.

And to cater to all tastes? -- Cater to a lot of tastes. I think there would be people who would not go.

10 But it was a family sort of show, there was intended to be something there for not just the poultry farmer, but something there for the general family and the members of the family? -- Yes, true.

20 I am going to put to you various things or suggest to you various things that it would have comprised at time to time, not necessarily in any particular year, but on the basis that there would be some variation from time to time, would there, as to what might be there or what might not be there? -- Minor variations. People used to commonly say it did not vary much from year to year, see one you have seen them all; but there must have been minor variations.

I take it there was expansion over the years? -- Yes, it grew.

You have told us about, for example, the vegetable and flower exhibits? -- Yes.

And there were amusements? -- Yes.

Sideshowes? -- Yes.

Refreshments? -- Yes.

Including alcohol? -- Including alcohol, yes.

30 Various competitions? -- Chocolate wheels, that type of thing.

And ring events? -- Yes. Guess the beans in the bottle, that type of thing.

Sporting events? -- Not sporting events like football, horse sports, woodchopping.

Trotting and woodchopping? -- Yes.

Woodchopping, you say, trotting also? -- Yes.

In the
Supreme Court
of Queensland

No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Cross-
examination
on behalf
of First
Defendant

19th November
1976
(continued)

In the
Supreme Court
of Queensland

—
No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Cross-
examination
on behalf
of First
Defendant

19th November
1976

(continued)

Fireworks? -- On occasions there were fire-
works shown but they were not a regular feature.

Merry-go-rounds? -- Yes.

You have told us about chocolate wheels and
toffee apples and fairy floss? -- Yes, true.

There was a section of it, not necessarily
physically divided from the rest, but the show
provided an amusement area as well as anything
else? -- Yes, that was very definitely a part of
it.

10

Its composition from year to year would depend
on what the show committee for that year arranged
and brought there, would that be the idea? -- Yes.

It would be much the same as any other show
although there might be differences of scale? --
Very similar to any other show, yes.

You told us that it was described, for example,
as a pipe-opener to the Brisbane show? -- Yes.

I take it from that that people such as the
sideshow people and so forth would go there in
late July and on to the Brisbane show in August?
-- They commonly actually used to live there for
a while before they moved to the Brisbane show.

20

But they were participating in the Mount
Gravatt Show while living there - lived there
between the two shows? -- Some would.

As well as organising the annual show the Show
Society functioned as an organiser of other events
in the area, did it not? -- Yes.

It organised sports carnivals? -- Yes, it did. 30

And it participated in the organisation of the
fairs you have spoken about? -- Yes.

Rodeos occasionally? -- Rodeos, yes.

Social events including social balls? --
There used to be a show ball, yes.

I think on occasions it even organised talent
and beauty quests, did it not? -- Yes, I believe
it did.

And trotting events as such? -- Yes, I believe there was a few.

Did it also function as a letting agent, as it were, of the ground; is that correct - the ground and the various facilities there? -- Yes, I believe that you had to see the secretary, or there was a caretaker there for a while. I wouldn't be sure that he had the letting book, but you certainly had to see somebody if you wished to make formal bookings for a function.

10

And the Show Society organised that? -- Yes, they did.

You have told us about some of the groups that use it? -- Yes.

And I think you said to our learned friend Mr. Pincus that you were not intending to be comprehensive, and there were others? -- There were many others.

20

For example, the A.L.P. Branch of Mount Gravatt used to have its meeting there? -- I don't know.

You are, of course, the past president of the society? -- A past president.

How long have you been an office bearer of this? -- I find it hard to be definite about things like that, but my belief is that I have been a vice president for many years. I would be thinking in terms of, something of the order of over 10 years.

30

And you have seen various records of the society; they are now available to you? -- Yes.

And you see various periods and in various ways which the society has functioned over the years from those? -- Yes.

40

It, for example, gained revenue from the letting of the ground or the facilities on the ground on various occasions? -- I cannot speak for the financial statement and the allocation of money, I do not know what happened to the money. I assume they had an auditor and so on, but where the money went is not known to me.

In the
Supreme Court
of Queensland

—
No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Cross-
examination
on behalf
of First
Defendant

19th November
1976

(continued)

In the
Supreme Court
of Queensland

No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Cross-
examination
on behalf
of First
Defendant

19th November
1976
(continued)

You have seen in fact, that it earned money, for example, from letting the ground or letting the facilities? -- Yes, that is right.

And one thing we can be sure of, anyway, is that some money would have been expended in relation to trophies or for prize money, for example, competitions and sports carnivals and so forth? -- Yes, certainly.

The ground, and I use that in the comprehensive sense, in relating to the facilities on the ground, was also let through the society for private social functions? -- They may have been, but I couldn't give a definite answer on that. 10

You have not observed that as you have gone through the minutes? -- I have a feeling, but I would not like to make a statement on it.

Perhaps you can tell us if you believe that to be true? -- I have a dim recollection that somebody or other used it for a wedding reception once, but it is pretty dim. 20

It was an isolated occasion on your recollection? -- Yes I think so.

The society has organised night trotting meetings there? -- Well, I wouldn't be sure about that. They hold trotting meetings and they do have lights, or they did have lights. I am not interested in night trotting, I can't recall any. It could have happened - not to my positive knowledge.

You know that there were trotting meetings? -- Yes. 30

And you know the society organised them? -- No, I don't know that. They may have for all I know sublet the occasion to some trotting club, I wouldn't know that. Trotting was held there.

So the society's participation would have been restricted to whatever revenue they got from the trotting club? -- I think so - I don't know.

And it was used for go-kart racing? -- Yes, I think it happened once or twice, and there was a great outcry and it stopped. 40

Midget car racing was a part of the show? -- Yes, at one stage to gain crowds. Yes, I think on an isolated occasion or two. It didn't last.

Apart from the fairs, carnivals and so on that the society organised it was also let to outside competitive sporting clubs from time to time by the society? -- There was a cricket club. Yes, other people used it.

10 Australian Rules football at some stage? -- I wouldn't know about that. I know about the cricket club, I don't know about the Australian Rules, unless you are talking about the rear half of the showground.

Perhaps all the details aren't necessary just as long as we see some part of the picture at least. In addition to the revenue it got from its lettings, the Show Society also earned revenue for its general purpose from the show gate receipts? -- Yes.

20 Entrants in the show and the booths and so forth? -- Yes.

So far as privilege at the show, does that encompass the rentals by the side show and amusement people? -- Yes.

It would have the bar trade? -- I don't know if they got any income from the bar trade.

Unless it is moneys from indirect income from the bar trade? -- The bar was a permanent building. I don't know what the arrangement was.

30 We can be fairly sure someone would have made a profit out of the bar? -- I would assume that.

If it was not the Show Society, I take it that they had leased it to someone else? -- I believe the Holland Park Hotel were on most occasions the people that leased the bar.

One thing, the Show Society is incorporated now, isn't it? -- I understand it to be incorporated.

It adopted a written constitution prior to its incorporation in 1962? -- Yes.

In the
Supreme Court
of Queensland

No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Cross-
examination
on behalf
of First
Defendant

19th November
1976
(continued)

In the
Supreme Court
of Queensland

—
No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Cross-
examination
on behalf
of First
Defendant

19th November
1976
(continued)

I suppose other ways in which it spends its money would have been - I think you have told us about produce and prize money, for example of competitions and ring events and so forth and being for the fireworks and so forth? -- I would not know that.

And perhaps to be fair to you, you did say you were not too sure of too much of the details of the expenditure? -- No.

What favours is one entitled to as a member of the Show Society? -- Very little. You get a membership badge which entitles you and your wife and your children to free entrance to the show on show day and there may be other benefits but I don't know what they would be. 10

You have never exercised them for yourself, by the sound of it? -- I have quite happily accepted the free entry.

Whatever others there are, you have never exercised them for yourself? -- There is an official afternoon tea and I have been a guest at that which I think would be a membership prerogative. 20

Free entry to other events organised by the Show Society? -- I am not aware of it.

You don't know whether this is so or not? -- I don't know whether it is so or not.

The public, I suppose, in the sense -----?
-- Could I add to the last reply?

Yes? -- I can remember being at a meeting where a statement was given saying, "At these functions there will be no free lease". I imagine whether or not people were admitted there was a matter of which they might be there by invitation or not. 30

The Show Society made up their mind? -- Yes.

That is whether the general members of the Show Society would be admitted free or not. It is for the discretion of the Show Committee? - Yes.

The public, as distinct - using that in the sense of the public who were not members of the Show Society - who of course paid to enter the showgrounds and a member of the public once inside would pay to participate in the various amusements and so forth? -- Yes, member or not.

Members and the public both had to pay for amusements etc.? -- Yes.

10 Just going back to the show for a moment, there would obviously have been a variety of things on sale at the show? -- Well, there would have been, yes.

There would have been a variety of advertising carried on at the show? -- Yes.

20 For example, much of the non-agricultural and non-horticultural displays would have been of objects which were for sale which were being put on show in order to put them for sale rather than because they were competing one against the other for a prize? -- Yes.

There was no ---? -- Could I elaborate on that?

Yes? -- They formed two categories. There would be the goods that were immediately for sale such as hot consumables and people who had tractors and so forth there or motor-cars to show, they would hope to sell them. I would not know whether the sale was conducted at the grounds or whether the initial contact was made at the ground.

30 There was no prize for motor-cars, was there? -- No, but they used to be in the grand parade.

I suppose especially in the early days when they were something of a novelty? -- Yes, very much so.

The machinery and so forth would be there by the agents for the owners or the vendors of them in order to put them that way as something that was available for purchase? -- Yes, definitely.

40 Just in relation to that - perhaps it is clear enough - but it was the industrial produce, if one might describe it as so - there was no suggestion of that being locally manufactured or locally

In the
Supreme Court
of Queensland

No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Cross-
examination
on behalf
of First
Defendant

19th November
1976

(continued)

In the
Supreme Court
of Queensland

No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Cross-
examination
on behalf
of First
Defendant

19th November
1976
(continued)

produced in any way. It was just locally available. Is that the idea? For example, the motor-cars were not made at Mount Gravatt nor the tractors? -- No.

There was just general produce put in - just general articles put on show for the purpose of advertising and so forth for sale? -- Yes, it was a minor part of the operation but that is certainly true.

It was, I suppose, a significant part of the operation? -- Yes, it was certainly people were showing the centre of their particular commercial enterprise. It was significant to them.

10

It was significant to the people who went to the show, isn't that right? -- Yes, everyone looked, at least.

It was a consistent part of the show? -- Yes.

Not everyone bought but everyone looked? -- Yes.

And it was part of the purpose of the whole event? -- Correct.

20

One thing you told us about was the Mount Gravatt Youth and Recreation Club building. Do you recall that? -- Yes.

That building - did the Mount Gravatt Youth and Recreation Club build their own building? -- Yes, and raised their own money and that for the building.

It was a facility provided for that club? -- Yes, it would be.

Was there also a Girl Guides hut which fell into the same category? -- Yes, it is still there in the same category.

30

It is a private facility of theirs? -- Yes, it stands on the part of the ground which is not proposed to be sold.

It still, nevertheless, is part of the showground? -- Yes.

One thing, probably not ambiguous, but to clear up the rodeos you mentioned as something which happened during the war? -- Yes.

They were not confined to that period? -- No, but during the war there was a joint committee of the Australian and U.S. Forces -----

Really, what I ----? -- And they -----

10 Do not worry about it; all I want to know is, you told me, volunteered in cross-examination that there were rodeos organised by the Show Society?
-- Yes.

And I just want to bring out that it was not confined to the war period? -- No, it was not. There was one held in '66 or '67.

That is the last one? -- That's the last rodeo I remember.

20 One thing you said in evidence in chief, and my learned friend cut you off and said, "Just tell us the date." You were telling us when you first became aware of the resolution of the Brisbane City Council on 19 October 1937; you told us eventually that you first became aware of that in 1975? -- Yes.

You started to say, and did not finish, that you first became aware of it subsequent to a search being made? -- Yes.

You made a search of the council minutes? -- It goes a little further back than that; we had been proceeding upon the basis that -----

30 No; just answer the question? -- Right.

Did you mean to refer to a search of the council minutes? -- That was part of the search, yes.

Did you conduct that search? -- No, not personally.

Did you cause it to be conducted? -- Yes, I did, yes.

In the
Supreme Court
of Queensland

No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Cross-
examination
on behalf
of First
Defendant

19th November
1976
(continued)

In the
Supreme Court
of Queensland

No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Cross-
examination
on behalf
of First
Defendant

19th November
1976
(continued)

And by whom was it conducted? -- It was conducted by - that particular discovery was made by two clerks, I understand, of my solicitors.

At what time in '75 was that? -- Subsequent to the discovery of the Show Society minutes.

I am sorry, if you understand, I don't know when that was? -- It was late - of the order of October, November in that area.

And so far as you are aware, is that the first occasion on which anyone on your side, shall we say, made any attempt to search the council minutes? -- Yes, well, -----

10

Is that a fact or not? -- That is the fact.

There was no earlier attempt by anyone, of which you were aware, to search the council minutes? -- No.

And was there any difficulty in getting the relevant minutes when the search was made? -- I wasn't there, I could not answer that.

A search was made and it resulted in the minute? -- Yes.

20

And we know there was a letter from Mr. Clarke - a letter from the council to Mr. Clarke, and you told us that that also was discovered in 1975? -- Yes.

At what stage of 1975 was that, much the same time? -- The trail to that came from the minutes of the Show Society, and that led to the copy being obtained from the City Council. I can't recall the technicalities of how it happened.

30

That was also obtained from the City Council subsequent, or in about October 1975? -- Yes.

When was it that you got access to the Show Society minutes for the first time? -- It was '75, but it would have been earlier than the council search, obviously - September, October, but there is a bit of an element of guess in that. I have not a record of the exact date - it would exist somewhere.

Middle to late '75? -- Yes.

When did you first attempt to see the Show Society minutes? -- I can't tell you, I just don't remember just when I first attempted to see them precisely.

Just before you, in fact, saw them? -- Very close to when I, in fact, saw them. There was no great delay.

10 You suspected prior to the earlier action brought by the Attorney-General on your relation that the land, the Mount Gravatt Showground, was held subject to a public trust; is that the position? -- I suspected that there was some kind of arrangement. I didn't understand it in the terms of your question.

Just bear with me for a moment; do you remember that there was an application this year before Mr. Justice Lucas to strike out the claim: -- Yes.

20 And you have seen the judgment tendered; you were here when that was done.

On that occasion your solicitor, Mr. Arnold Douglas Bennett - he is your solicitor? -- Yes.

30 Swore in these terms, that at the time of the prior action he - that is referring back to you - I will go back a bit, "I am informed by the said Arthur Thomas Scurr and verily believe that at the time of the prior action he suspected that the Mount Gravatt Showground may be the subject of a trust."; is that true? -- Yes.

Firstly, did you inform him of that? -- I informed him of that, yes.

Yes? -- I informed him that I thought - this is back in 1970 - this is 19 -----

Try and get it clear because it is certainly not an attempt to trick you but, as you know, an affidavit was sworn in about July of this year? -- Yes, right.

40 Perhaps June? -- Yes.

Perhaps June? -- Yes.

In the
Supreme Court
of Queensland

—
No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Cross-
examination
on behalf
of First
Defendant

19th November
1976

(continued)

In the
Supreme Court
of Queensland

—
No.13

Plaintiff's
evidence

Arthur Thomas
Scurr

Cross-
examination
on behalf
of First
Defendant

19th November
1976
(continued)

And in that affidavit he said as follows -
the prior action in this contest, I think you can
take it, refers to the earlier relator action,
and he says, "I am informed by the said Arthur
Thomas Scurr and verily believe that at the time
of the prior action he suspected that the Mount
Gravatt Showground may be the subject of a trust."
did you so suspect at that time? -- I suspected
the Mount Gravatt Showground should have been the
subject of a trust or an arrangement to secure it.

10

Mr. Justice Lucas refused to strike out this
claim and he had this affidavit read before him?
-- Yes.

What I want you to do -----

MR. PINCUS: I object; the witness is not
obliged to be lectured; he is entitled to be
questioned.

HIS HONOUR: He may be reminded of the
matters; it is just a matter of degree, I think.

BY MR. FITZGERALD: What I want you to tell
us is whether the statement which was made in that
affidavit is true -----

20

MR. PINCUS: I object; he has answered that
question. He is not obliged to answer it two or
three times, and he is not obliged to answer
"Yes" or "No" as everyone seems to insist.

MR. FITZGERALD: We must be getting close to
the meat of the matter.

HIS HONOUR: The witness has answered, I
think.

30

MR. FITZGERALD: I am entitled to press him to
answer a quite different question, although direct
it to the same point.

HIS HONOUR: I am not going to stop you;
repeat it.

BY MR. FITZGERALD: What I want to know is
whether the statement in that affidavit was true?
-- Could I have a copy of it.

Yes? -- (No answer)

MR. FITZGERALD: Perhaps a copy from our files rather than from the court file?

HIS HONOUR: Yes, it is more convenient.

BY MR. FITZGERALD: You see at the bottom of the first page? -- (Witness looks.) Yes.

And over at the top? -- (Witness looks.)

10 "I am informed by the said Arthur Thomas Scurr and verily believe that at the time of the prior action he suspected that the Mount Gravatt Showground may be the subject of a trust.", did you say that to Mr. Bennett) -- Yes, that is what I purported.

BY HIS HONOUR: You are saying, not perhaps in the precise words, but that is the general effect? -- That's the general effect of it, yes.

20 BY MR. FITZGERALD: Go back to 1970 for a moment; you told us that the original conversation with Mr. Hamlyn-Harris - the telephone conversation followed by the meeting at his home, was late 1969 or early 1970? -- I thought it would have been early 1970.

It was prior to the tenders being called? -- It was prior - immediately prior to the City Council election, that was the thing it was immediately prior to.

And do you remember that the tenders were subsequently called? -- Oh, yes, I do.

And then do you remember that - I take it as a result of some advertisement - you lodged an objection? -- Yes.

30 And that objection was to the council's proposal to grant consent to use the subject land for the purpose of a Target Discount Shopping Centre by Myers? -- Yes.

Do you remember that to be in the objection? -- Yes.

And then do you remember that, nonetheless, the council proposed to grant the objection? -- Yes.

In the
Supreme Court
of Queensland

—
No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Cross-
examination
on behalf
of First
Defendant

19th November
1976
(continued)

In the
Supreme Court
of Queensland

No.13

Plaintiff's
Evidence

Arthur
Thomas Scurr

Cross-
examination
on behalf
of First
Defendant

19th November
1976

(continued)

Sorry - to grant the consent? -- Yes, the
consent, sorry.

I am trying to put before His Honour, firstly,
the broad history of the matter? -- Yes.

And then you appeal? -- Yes.

Do you remember that the objection was 17 July
1970; do you remember that? -- Not precisely, no.

I think we will get you to identify - have a
look at that and see whether that is the original
objection? -- (Witness looks.) Yes, well, there
is no doubt at all that that is my letter and my
signature.

10

MR. FITZGERALD: I tender that.

HIS HONOUR: Notice of Objection dated 17 July
1970, Exhibit 6.

Ex. 6

(Admitted and marked "Exhibit 6".)

BY MR. FITZGERALD: And then the appeal; see
if you can identify that for us, please, as being
an office copy from the Local Government Court of
the Notice of Appeal lodged on your behalf conse-
quent upon that objection not succeeding? -- I
have no reason to suspect that it is not.

20

MR. FITZGERALD: It is an office copy.

HIS HONOUR: There is no objection to this?

MR. PINCUS: No.

HIS HONOUR: Exhibit 7 will be the office copy
notice of appeal to the Local Government Court,
dated 30 September 1970.

Ex. 7

(Admitted and marked "Exhibit 7".)

BY MR. FITZGERALD: Another objector in
respect of the same matter at that time was Garden
City Traders' Association Limited; is that right?
-- Yes.

30

And it also objected? -- Yes.

And it also appealed? -- Yes.

And you and it at that stage were represented by the same solicitors and counsel? -- Yes.

And there was an application for discovery in those proceedings? Do you remember that? -- Not precisely, I am sorry.

MR. PINCUS: If you could state the facts.

10 MR. FITZGERALD: The facts appear to be this: an application for further and better discovery was made on 29 January 1971. It was refused by His Honour Judge Mylne, and that is reported in 25 L.G.R.A.341. It is reported Scurr and Ors. versus Brisbane City Council and Anor., No. 1, and it appears from part of the headnote that part of what was sought was discovery of documents relating to the acquisition of the land in the local authority or documents relating to the sale of the land to the Myer Company.

HIS HONOUR: That was refused?

20 MR. FITZGERALD: Yes. Then there was an appeal to the Full Court which is reported at 25 L.G.A.344, and that is the one in respect of which you have those reasons for judgment. There was a notice of appeal to the High Court on 18 August 1971, and apparently leave was refused, and that was on 13 October 1971 that that came to an end. Then on 15 December 1971 judgment was given in the Local Government Court on the substantive matter and that was a judgment upholding the granting of the consent, or I suppose I should probably say dis-

30 missing the appeal. On that same day, 15 December 1971, the writ of summons in the first relator action was issued and that is 1598 of 1971. In January 1972 there was an appeal to the Full Court against the Local Government Court's judgment dismissing the appeal against the granting of consent. That appeal was dismissed on 27 April 1972. Leave was granted to appeal to the High Court on 2 June 1972 and a notice of appeal to the High Court was lodged on 21 June 1972. Before

40 that appeal came on for hearing, the first relator action was tried before Mr. Justice Lucas in November 1972, concluding on 10 November 1972, and judgment was given dismissing the first relator action on 30 November 1972 and that is reported in 1973 Queensland Reports, 53. We will put a copy of that judgment before you.

In the
Supreme Court
of Queensland

—
No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Cross-
examination
on behalf
of First
Defendant

19th November
1976
(continued)

In the
Supreme Court
of Queensland

—
No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Cross-
examination
on behalf
of First
Defendant
19th November
1976
(continued)

HIS HONOUR: Is it necessary?

MR. FITZGERALD: One of the issues here is estoppel per rem judicatem. I will put that in later in order. Then the High Court gave judgment allowing the appeal on 24 September 1973. I think it is in 1973 47 Australian Law Journal Reports. Your Honour will recollect as to that that that was on the technicality that the advertisement was insufficient.

HIS HONOUR: Yes. 10

MR. FITZGERALD: On 23 October 1974 there was a further application for consent by Myers. It was to use the subject land for the purpose of a Target Discount Shopping Centre. There was a further objection by Mr. Scurr and Ors. on 11 November. There was a further appeal by Mr. Scurr and Ors., but Mr. Scurr was a separate appellant on 10 January 1975. The appeals were heard in the Local Government Court in proceedings which concluded on 5 December 1975. The appeals were dismissed on 12 December 1975. On 24 December 1975 Mr. Scurr was the sole appellant to the Full Court. I will be corrected if I am wrong as to the actual form of this, but the appeal was either dismissed by consent or withdrawn. 20

MR. GIFFORD: Dismissed.

MR. FITZGERALD: My learned friend tells me the appeal was dismissed on 2 March 1976. The site approval was then granted by the Council Registration Board on 4 March 1976, and on 18 March 1976 the present writ of summons was issued. Subject to any objection, I will state to Your Honour that a deposit was paid by Myers to the council for the purchase of this land and in connection with that purchase on 30 September 1970, and that deposit was 10 per cent of \$1,010,000. I can add - I suppose it would not be a matter of any dispute - that we still have that. Of course, the sale is still alive. That notice of objection has been tendered and I think it is Exhibit 6. Your Honour will notice - I think it is convenient to draw it to Your Honour's attention now - paragraph 8, remembering that this is July 1970 and that the first relator action was not commenced until December 1971 and was not concluded until November 1972. Then Your Honour 40

will see that the grounds for objection were backed up by the notice of appeal which is Exhibit 7 by reference or incorporation.

HIS HONOUR: I see that.

10 MR. FITZGERALD: And then I have referred to the judgment of Judge Mylne in the Local Government Court at 25 L.G.A. 131 of the notice of appeal to the Full Court, that makes further reference to the fact, and if I might, rather than clutter the record, I will read out that it simply refers to the fact that the - Your Honour, perhaps I have overlooked that Mr. Scurr wants to be cleared. Some of these things -----

HIS HONOUR: I wondered about that. Could they be left?

MR. FITZGERALD: Obviously we are co-operating. I think I can put them in, we do not really need him for the purpose.

HIS HONOUR: Yes.

20 MR. FITZGERALD: Might I say this, and I do not think there is any room for misunderstanding, I will look over the lunch hour at any of the documents that I want to get in, and I take it Mr. Scurr will be available after lunch for me to get them in through him, rather than my taking time over them now.

HIS HONOUR: Yes, that might be best.

MR. FITZGERALD: Thank you, Your Honour.

CROSS-EXAMINATION:

30 BY MR. GIFFORD: In your business capacity you have had to develop a familiarity with the building trade, have you not? -- Yes.

And you have had that familiarity over a considerable number of years now? -- Yes.

It is fair to say that the building trade is a trade which has had a considerable problem with inflation over recent years? -- Yes.

In the
Supreme Court
of Queensland

No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Cross-
examination
on behalf
of First
Defendant

19th November
1976
(continued)

Cross-
examination
on behalf
of Second
Defendant

In the
Supreme Court
of Queensland

No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Cross-
examination
on behalf
of Second
Defendant

19th November
1976
(continued)

Inflation in respect of the cost of buildings has been very considerable over, particularly, the last eight years? -- Yes.

And if one looks at the period from, say, 1970 to the present day, it has been well over 100 per cent inflation? -- Yes, it would be in that period.

In fact, building materials during that period would have been well over the 100 per cent? -- Yes, they would be. That would be an approximately correct estimate. 10

And building labour in that period would be over 150 per cent, would it not? -- I couldn't answer definitely yes or no without checking facts. There has been a greater escalation, undoubtedly.

And that has been true in respect of classes of buildings, has it not? -- And everything else, yes.

You were present in court when Sir Alan Mansfield gave his evidence? -- No. 20

You have no doubt been to the Brisbane show, have you not? -- Yes.

And at the Brisbane showground for very many years there have been various things sold during the course of the show? -- Yes.

And that is including such things as encyclopaedias? -- That is so.

And motor-cars? -- Yes, definitely.

And tractors? -- Yes.

And, in fact, a wide range of products of an industrial nature and for home use? -- Yes, but I qualify that. I do not know whether the sale is negotiated, completed, or what section is done. I have never bought anything at the show. Certainly the goods are offered for sale. 30

And the stands where they are offered for sale were obviously busy, were they not? -- Yes.

Your earliest recollection, you told us, was in common with such matters as toffee apples and fairy floss? -- That is correct.

In other words, these were stalls at which such delectables were being offered for sale? -- True.

And that is typical for shows? -- One of the aspects of shows.

10 You told us specifically that encyclopaedias were on display for sale in 1960 at Mount Gravatt? -- Yes.

But they were also on display for sale before that, were they not? -- I don't know, I -----

That is sufficient if you do not know - that is sufficient? -- I have a recollection, I think, of encyclopaedias being for sale.

You have a recollection? -- Yes, but I will accept the suggestion, it is quite -----

20 It is consistent with the type of show that was always run? -- Yes, certainly consistent.

And similarly the furniture sales, it is consistent with that type of show that was there pre-war? -- Exhibition, or Mount Gravatt?

Mount Gravatt? -- The furniture was there. Very minor. They sold radiograms and things of that nature. Furniture as such very minor indeed, there was not the room for much.

30 But radiograms and that sort of thing, they went back pre-war also, did they not? -- I don't know.

Remember the old 78 records, the thick ones? -- Yes, I do.

They were on display at the show in these days, I suppose? -- I don't remember. I would have only been, before the war, 11 years of age. I don't remember.

Ploughs and harrows and tractors, that type of equipment, you do remember those there before the war at Mount Gravatt? -- Yes, I do.

In the
Supreme Court
of Queensland

No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Cross-
examination
on behalf
of Second
Defendant

19th November
1976

(continued)

In the
Supreme Court
of Queensland

No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Cross-
examination
on behalf
of Second
Defendant

19th November
1976
(continued)

And do you remember that they were there displayed by companies engaged in the sale of that type of equipment? -- Yes.

You told my learned friend Mr. Fitzgerald about various clubs that have made use of the showgrounds? -- Yes.

And of the building? -- Yes.

Let us take, for example, the Lapidary Society? -- Yes.

That would be a society with its own membership, would it not? -- Yes. 10

And the meetings would be meetings for members of that society? -- Yes.

And that is also true of the photography club, is it not? -- Yes.

And the pony club? -- Yes, sure.

So it is fair to say, is it not, that over a long period in the history of the showground it was being used by various clubs each with their own membership? -- Yes. 20

When you refer to use of the building by two church groups? -- Yes.

To qualify it, that was not for church services, was it? -- Yes, it was.

The April and September fairs, they were as the name suggests for selling products? -- Yes, the church groups, of course, were very active at these fairs too. The church groups sold products there, but the church had it for church services.

I am talking about fairs. The fairs were for selling products? -- Fairs were fund-raising fairs. 30

They were for sale of products? -- They sold products at the fairs.

And they were busy fairs, were they not? -- Hopefully. They were not all busy fairs. Good ones were.

BY HIS HONOUR: What else did they do besides selling things - things there to collect the crowd? -- Yes, they would have some minor horse events at the fairs and they would have tug-of-war competitions between various people, and even greasy pig races, things of that kind, sort of country fair type of thing.

10 And at these fairs I suppose there were the usual showmen, were there? -- No, not so much at the fairs, because the showmen moved on an itinerary and they follow the shows. There were a few things. You can hire things like merry-go-rounds at any time of the year, but the main showmen, no.

There were merry-go-rounds and that type of thing at those fairs? -- Yes, there was.

20 You have referred to the Show Society. The Show Society by that name - I am not talking about the A.H. & I. Society, the Show Society by that name had its own letterhead? -- I have seen a photostat of a letter on a Show Society letterhead, I believe, in the last little while. I had no idea.

But you know now of your own knowledge that it did have its own letterhead? -- Yes.

And had that letterhead back in 1938? -- That was the time - I would have to be refreshed to be definite about that. I believe that was the date of the letter. It was written on this Mount Gravatt Show Society letterhead, but to be quite definite I would really like to sight it.

30 Now, you were a member of the Show Society itself, or the A.H. & I. Society in 1970? -- Yes, I think I was - pretty sure I was.

40 The various amusements and side-shows that you have told us about were at the Mount Gravatt show, they were conducted by showmen for their own profit, were they not? -- Not universally. A number of them were, but there was other amusement that was conducted by people like church clubs, for instance, the Lions Club always had a chocolate wheel, and there were a number of that sort of thing, and they usually tied it into some specific charity.

The travelling showmen, they had shows at the Mount Gravatt Showground, did they not? -- Yes.

In the
Supreme Court
of Queensland

—
No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Cross-
examination
on behalf
of Second
Defendant

19th November
1976

(continued)

In the
Supreme Court
of Queensland

—
No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Cross-
examination
on behalf
of Second
Defendant

19th November
1976
(continued)

Side-shows? -- Yes.

They were conducting the side-shows for their own profit? -- Yes.

And in point of fact there was a substantial area occupied by side-shows and merry-go-rounds and that sort of thing at the Mount Gravatt Show? -- Expressed as a percentage of the grounds -----

I have not asked you for a percentage. It was a substantial area? -- It was a substantial area.

10

BY HIS HONOUR: That does not help me very much, so I will ask you what percentage of the ground was it? -- The grounds were 27 acres, and I would think that the side-show aspect of it would have been contained within 2 acres, Your Honour.

HIS HONOUR: Anyone can clear that up if they wish.

The Court adjourned at 12.45 p.m. till 2.15 p.m.

20

The Court resumed at 2.22 p.m.

ARTHUR THOMAS SCURR, further cross-examined:

MR. GIFFORD: I did say I would be some time but going through the questions over lunch-time I noted that the majority of the questions I did intend asking Mr. Fitzgerald has already asked so I will be very brief.

BY MR. GIFFORD: The Australian Labour Party had sports days at this land at Mount Gravatt, did it not? -- I don't remember that.

30

There was also, by the way, a cricket club concert from time to time there, was there not? -- I don't have personal knowledge of it. I have no reason to doubt it, but no personal knowledge.

This is the sort of activity that would have been conducted there? -- I don't really know of many parties or parties held there. I know the cricket was played there but I have no knowledge of their social activities. I was not a member of the club.

40

RE-EXAMINATION:

BY MR. PINCUS: You told His Honour you were vice president of the society. Were you the only one? -- I don't think so.

You referred to some football on the rear part of the showground. I don't quite follow that. Can you explain that? -- By saying "the rear part" I mean that that was the part furthest removed from Logan Road.

10 Is it part of subs 2 and 3, do you know? -- I am not familiar. I know the old survey ran at right-angles from Logan Road and parallel to Broadwater Road. If this is the case, yes, it certainly is part of those subs, yes.

My learned friend Mr. Fitzgerald asked you whether the Mount Gravatt Agricultural, Horticultural and Industrial Society was incorporated and you said it had been incorporated in 1962. Do you remember telling him that? -- Yes.

20 Can you tell His Honour whether there was any transfer or vesting of rights of the property unincorporated in the incorporated section? -- I cannot state authoritatively on that.

Do you know if any document was executed about it? You either know or you don't? -- No, I don't know.

MR. PINCUS: There is one matter which does not arise out of cross-examination. It is perhaps a minor matter.

30 HIS HONOUR: You have the right to cross-examine, of course.

BY MR. PINCUS: Mr. Clarke and Mr. King, are they still alive? -- No - Mr. Clarke is dead.

Mr. R. M. King? -- I heard a rumour and that is all that he was alive in Greece, of all places.

HIS HONOUR: Mr. King is dead.

MR. FITZGERALD: Does Your Honour know he is dead?

HIS HONOUR: Yes.

In the
Supreme Court
of Queensland

—
No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Re-
examination

19th November
1976

In the
Supreme Court
of Queensland

—
No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Re-
examination

19th November
1976
(continued)

MR. FITZGERALD: I admit that he is dead.

HIS HONOUR: At least 20 years he has been
dead. He would be about 110 if he were alive, at
least.

WITNESS: With regard to the previous question,
I have sighted the constitution of the 1962 Show
Society.

BY MR. PINCUS: You mentioned that in answer
to Mr. Fitzgerald? -- Yes, I have seen that.

MR. PINCUS: There is nothing further I wish 10
to ask this witness.

MR. FITZGERALD: I do not think he will be
required for anything else. All the documents I
am going to try to put in in relation to the things
I was going to ask him really are either court
documents or extracts from evidence and I am sure
we are not going to have any technical problems
with those, Your Honour.

HIS HONOUR: There is no need for you to wait, 20
witness.

MR. PINCUS: I tender as one exhibit some
answers to interrogatories. The exhibit will
consist of the whole of interrogatory No. 2 and
some answers to parts of that interrogatory. The
reason this is being done is that some of the
answers were, if I can put it neutrally, not
responsive. They turned out to be unnecessary to
answer or he said he didn't know. In so far as the
answers give information, they have been included
so I will tender interrogatory No. 2 with answers 30
to parts thereof and I will inform Your Honour
that document No. 45 mentioned in it is in the
book and it is No. 27 in the book.

MR. FITZGERALD: What page in the book? I
just don't have a copy of the book.

MR. PINCUS: It is Mr. Ludwig's values. It
is called, "Following up Mr. Ludwig's values."
It has not got a date. It is a manuscript document.

HIS HONOUR: You have nothing to say? It is 40
only part of these answers but presumably it has
good reason.

(Admitted and marked "Exhibit 8".)

MR. PINCUS: I intend to tender - I will mention it now - I thought it was typed but it is not yet - as part of our case, the answer given in action No. 1598 of 1971 and perhaps I could mention what it is. The question was "At or about the time" It won't be necessary for Your Honour to write these down because we will be tendering it in typed form.

MR. GIFFORD: Question by whom?

10 MR. PINCUS: "At or about the time the Brisbane City Council purchased or acquired the Mount Gravatt showground or any part thereof? 'Yes trust or document.'" The answer which was made was as follows, "I refuse to answer the 7th interrogatory ... between the parties." As I say, I would have it in typed form except that my desires in the matter were not quite understood and I will inform Your Honour that I propose to tender that as part of my case.

20 HIS HONOUR: I will not mark it.

MR. PINCUS: I am afraid there is nothing to mark except handwriting.

HIS HONOUR: Don't forget, Mr. Pincus, that it is not yet in evidence. I won't do anything about it until I have got the document.

30 MR. PINCUS: Yes. There are a couple of other matters. I would ask my learned friend Mr. Fitzgerald for some admissions concerning the documents and I understand they are still being considered. In the event of admissions not being able to be made, it will be necessary to call a gentleman from the council who, I understand, is available at short notice. I would mention also that it is desired to tender a document being - I will mention what it is - it is part of a file, the reference of which is 364/98/SGOG5 21, and it contains a memorandum by one R. J. Steward, as manager of the council's Department of Parks, dated on or about 1 May 1970.

MR. GIFFORD: I ask how this is put?

HIS HONOUR: I do not know.

In the
Supreme Court
of Queensland

—
No.13

Plaintiff's
evidence

Arthur
Thomas Scurr
Re-examination
19th November
1976
(continued)

In the
Supreme Court
of Queensland

—
No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Re-
examination

19th November
1976
(continued)

MR. PINCUS: It is put as being relevant on a similar basis to the other documents which are being reserved. I do not want to be repetitious, but it is going to be urged in address by me that that comes to laches. The authorities require the courts to arrive at a conclusion as to whether it is just or not to hold defendants to trust or whatever is sought to be set up in the whole of the circumstances. The circumstances which are relevant it will be contended, are here that the council, or, indeed, anyone who bothers to inquire at the council could easily have ascertained from the documents the council itself has that there was good reason to think a trust existed. It is not a case in which one could readily infer that a simple mistake has been made by the council, because there are documents, some old and some new which would have showed a person examining the council file that the position is as we assert it to be.

10

20

HIS HONOUR: Yes, that appears to have some relevance to the matter of laches.

MR. GIFFORD: Would Your Honour note that we object to it on the ground, again, that it is simply a statement by a council officer which cannot be in any way binding on the council.

HIS HONOUR: It cannot bind the council in any way to the extent that it constitutes an estoppel. There is no question about that, but it seems to be that it would be relevant on what information was available to the council as to the previous state of affairs.

30

MR. GIFFORD: At this stage, of course, the document is not before Your Honour. We have not seen it, but in any event we submit that it could not show what is the true state of affairs.

HIS HONOUR: Perhaps I should say the likely state of affairs rather than the true state of affairs. It is not very obvious.

MR. GIFFORD: With respect, we would argue to the contrary of that also because at the most all it can amount to is an attempt by a particular officer, whoever he may be, to form his own conclusion of law.

40

HIS HONOUR: That may well be.

MR. GIFFORD: Perhaps the safest course would be, first of all, if my learned friend puts the document before Your Honour.

HIS HONOUR: I have to see it before I finally rule on it, but that is my preliminary impression but, of course, I must see the document.

MR. PINCUS: It is still coming.

10 MR. FITZGERALD: I am not going to produce it if my learned friend is waiting for it.

MR. PINCUS: Perhaps you had better produce Mr. Joyce under subpoena. I had understood it might not be necessary for Mr. Joyce to come, but I understand he is on call. In other words, would Your Honour adjourn for five minutes.

(Argument ensued.)

During the argument -

MR. PINCUS: Is it going to be produced or not?

20 MR. FITZGERALD: My learned friend does not have to get aggressive; we are trying to do two things for him at the moment.

MR. PINCUS: Just produce Mr. Joyce; it really might be shorter in the long run.

MR. FITZGERALD: It will not be; if he wants him here, we will get a person here to say, "I produce the file." There is the file.

HIS HONOUR: You had better show it to Mr. Pincus.

30 MR. FITZGERALD: With respect, my friend does not necessarily get the file.

HIS HONOUR: All right, you had better call your witness. If you are not ready, I will go to my Chambers.

MR. FITZGERALD: It is not simply a matter of being obstructive; this witness is only an officer from the Central Records and cannot do anything but produce the files pursuant to subpoena duca tecum.

In the
Supreme Court
of Queensland

—
No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Re-
examination

19th November
1976

(continued)

In the
Supreme Court
of Queensland

—
No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Re-
examination

19th November
1976
(continued)

MR. PINCUS: I tender from the file which has been produced a document - a memorandum or report in the writing of Mr. Steward, as manager of the council's Department of Parks, dated on or about the first day of May 1970, and bearing the title, "Park Development Mount Gravatt" or similar title.

HIS HONOUR: Very well, we will see it. You are now producing it?

MR. FITZGERALD: I am producing the file that is going to you, as I understand it. 10

HIS HONOUR: Yes.

MR. FITZGERALD: If it comes to the point where Your Honour decides to exhibit, you may consider a copy rather than -----

HIS HONOUR: Yes.

MR. FITZGERALD: In order that the matter might be properly debated, we have given a copy, for that limited purpose, to our friend.

HIS HONOUR: I think this has been helpful, your having taken this course, because it will enable Mr. Pincus to put forth an argument based on the particular parcel. 20

MR. PINCUS: I hope I do so succinctly; the date of it is significant, in our submission. Your Honour has become aware it was in 1970, and I think in May, that the tenders were called in respect of the sale of the land. This document is, roughly, contemporaneous, and the most important part of it for our purpose, is the sixth paragraph, on the first page, which says, "It is considered that there is -----" 30

HIS HONOUR: Seventh.

MR. PINCUS: "The use of this area from the people forever.". Omd does not know what the council's evidence will be, if any, on the question of laches, but in that sense it may be anticipatory, but one does know that there are authorities which suggest that the position of someone in a position on the council has to be considered fairly and, in particular, the question of whether it is unreasonable now to hold the council to the trust, if Your Honour holds one to exist, which has to be looked at. 40

(Argument ensued.)

10 HIS HONOUR: With regard to this document sought to be tendered counsel for the plaintiff concedes that no part of it is probative of the issue as to whether or not the trust was in fact created, but he submits that it is relevant to the defence of laches which has been raised. The plaintiff is not in a position to know what evidence if any will be tendered by the defendants or either of them in support of this defence. It seems to me that the statement in the seventh paragraph of this document in relation to land being referred to as "public lands" could be relevant to the question as to whether or not any action or lack of action by the relator induced the first defendant to believe that the plaintiff was not insisting on the rights of the public. It may well be that this piece of evidence would be extremely slight, but depending on what evidence may be adduced by either defendant it could have relevance on the issue as to whether or not some particular inference should be drawn from other evidence which may be admitted. On this basis I hold that this document is admissible on the issue of lache.

20

MR. FITZGERALD: Might I mention something? I take it Your Honour is only holding that the relevant part of the document -----

HIS HONOUR: Yes, to that extent, of course.

30 MR. FITZGERALD: In particular, there is another statement in that sentence or in that paragraph that there is a great lack of sports fields in the immediate vicinity and that has been, for example, one of the findings in the Local Government Court or contrary to that.

HIS HONOUR: No, but subject to anything that Mr. Pincus can submit.

40 MR. PINCUS: The only part that is relevant is to identify what it is all about. I didn't put it forward as seeking to contradict the Local Government Court or anything like that.

HIS HONOUR: On that basis you were going to substitute another document.

MR. FITZGERALD: I was going to put in a copy, if that is all right rather than the original.

HIS HONOUR: You don't object to that Mr. Pincus?

MR. PINCUS: No.

(Admitted and marked "Exhibit 9".)

In the
Supreme Court
of Queensland

No.13

Plaintiff's
evidence

Arthur
Thomas Scurr

Re-
examination

19th November
1976

(continued)

In the
Supreme Court
of Queensland

No. 14

ERIC IAN FERGUSON, sworn and examined:

No.14
Plaintiff's
evidence
Eric Ian
Ferguson
Examination-
in-chief
19th November
1976

BY MR. ROW: Is your full name Eric Ian
Ferguson? -- Yes.

Do you reside at 54 Sandford Street, St.Lucia?
-- Thirty-four.

Are you presently retired? -- Yes.

Did you commence duties as a clerk in the
Stamp Duties Office in the year 1924? -- Correct.

Did you pass through various positions until
in 1967 you were appointed Commissioner of Stamp
Duties? -- Yes.

10

Did you retire from the position of
Commissioner of Stamp Duties on 30 June 1969? --
Yes.

Over that period of service did you work in
various fields in the Stamps Office? -- Every
field.

Did you become familiar with the parts of the
Stamp Duties Office? -- I would hope so.

In relation to documents in that office, is
there any practice adopted at the time when you
retired as to the duration during which documents
were kept? -- Documents or requisitions? In the
documents, the documents were released after
stamping.

20

Requisitions or other material, were they
kept for what period of time? -- Well, for many
years they were kept intact, until about 15 or 20
years ago. The storage problem became so acute
that they had to be destroyed. Certain evidence
on files were retained but the majority of files
were put through the stringer- shredder.

30

Going back to what period of time, approxi-
mately, regarding the documents? -- We hold the
documents intact for about 10 years.

Could the witness be shown Exhibit 1 which is
the book, at page 54? -- (Shown to witness.)

Have you been shown a copy of that document before? -- I have.

I direct your attention to the notation which appears at the top thereof stamped under declaration, date and certificate of value £1350? -- Yes.

Would you mind just explaining the procedure adopted in the Stamps Office in relation to such a notation? -- Particularly in regard to the Brisbane City Council?

10 Yes? -- The Brisbane City Council had a good policy. They would produce - practically all their documents were produced to a senior assessor who went over the documents and okayed those that were of no great problem and then told the City Solicitor representing them what was required and anywhere that further evidence was required before something could be valued such as inadequate consideration or something like that in a case.

20 In the face of that document there is a consideration expressed in the sum of £475-odd? -- Yes, I gather that is the mortgage which was realised.

MR. FITZGERALD: I don't think this should be given.

BY HIS HONOUR: You have been told something about this. Only if you examine the document can you tell us that. It is shown as a consideration of the £475 and it is stamped under declaration of value of £1350? -- Yes.

30 That would convey, I take it, that the stamp duty had been based on the value, not on the consideration? -- That is right.

That would mean that the Commissioner of Stamp Duties at the time treated the value of the property at £1350 and not £475 which was the state of consideration? -- That is correct.

HIS HONOUR: I was a solicitor myself. I understand these things. I really don't need to be told some of the things.

40 BY MR. ROW: With reference to "Stamped under Declaration", what does that mean? -- That

In the
Supreme Court
of Queensland

—
No.14

Plaintiff's
evidence

Eric Ian
Ferguson

Examination-
in-chief

19th November
1976
(continued)

In the
Supreme Court
of Queensland

—
No.14

Plaintiff's
evidence

Eric Ian
Ferguson

Examination-
in-chief

19th November
1976

(continued)

declaration is the declaration as to value, as we would call it - evidence of value by some competent independent person - not necessarily an approved valuer.

In about that year, 1938, did you know Mr. Ludwig? -- Yes, he was the council valuer.

Had you had professional dealings with him in relation to valuation of lands? -- I came across valuations he had made.

Were you able to assess his competence? -- I think he was looked upon as an able valuer. 10

MR. FITZGERALD: I have no questions.

MR. GIFFORD: I have no questions.

MR. ROW: May the witness be excused?

MR. PINCUS: I now tender, as previously foreshadowed, the interrogatory number 7 asked of the council by the plaintiff in the 1971 action and the answer to that interrogatory, on the one sheet, Your Honour.

Ex.10

(Admitted and marked "Exhibit 10".)

20

HIS HONOUR: Show it both to Mr. Fitzgerald and Mr. Gifford.

(Exhibit 10 shown to counsel)

MR. PINCUS: It is Mr. Justice Lucas's action in the Supreme Court.

HIS HONOUR: I am told this was in the action before Mr. Justice Lucas.

MR. PINCUS: Yes.

HIS HONOUR: This was an answer on behalf of the Brisbane City Council?

30

MR. PINCUS: Yes. There is only one other matter. My learned friend Mr. Fitzgerald is prepared to make certain admissions as to the physical state of the council file. The admission has just been agreed on and perhaps I should read it out. The only purpose of the document really

is to avoid the necessity of tendering the physical file which is rather a bulky thing and we would agree on what it says. Perhaps I could tell Your Honour what we have agreed on.

(1) The following documents are in a council file relating to the land;

(2) They bear the folio numbers indicated, such folio numbers appearing would have been written thereon many years ago.

10 (3) They are physically present in the file in the order shown.

They follow two columns, one headed "number of documents from Exhibit 1" and the other headed "Folio number". I mentioned that this was going to be placed before you in typed form but I thought I should read it out. I also say that in some cases there is a number of document shown in Exhibit 1 which has no folio number and in other cases there is a folio number with no corresponding document in the Exhibit 1. The first document mentioned is number 14 in Exhibit 1 and it has folio number 15. The second has number 15 in Exhibit 1 and its folio number is 16. The third document is not in Exhibit 1 and its folio number is 17. The fourth document is number 2 in Exhibit 1 but it consists only of the schedule of trusts being part of number 2 in Exhibit 1. The fourth document is folio number 18 except that the first page only is numbered. The second page of the schedule trusts is not
20 numbered. The fifth document is number 16 in Exhibit 1 and number 19 in the council file, folio number 19. The seventh document is number 17 in Exhibit 1 and folio number 20. The eighth document is number 18 in Exhibit 1 and has no folio number but is present in the council file between folios 20 and 21. The next document is not in Exhibit 1 and is number 21 and its folio number is 21. The next document is number 19 in Exhibit 1 and its folio number is 22. The next document is number 20
30 in Exhibit 1 and its folio number is 23. Various other documents then follow in consecutively numbered folios, the details of which are not to be stated because they are unnecessary. The next document is number 21 in Exhibit 1 which has no folio number in the council file but is just before folio number 30. The next document is number 22 in Exhibit 1 and is folio number 30.
40

In the
Supreme Court
of Queensland

—
No.14

Plaintiff's
evidence

Eric Ian
Ferguson

Examination-
in-Chief

19th November
1976

(continued)

In the
Supreme Court
of Queensland

No.14

Plaintiff's
evidence

Eric Ian
Ferguson

Examination-
in-chief

19th November
1976
(continued)

Your Honour, the purpose of mentioning these matters is that it may be that some inference may be drawn as to the time at which documents came into the council's possession from the fact of their being physically located and numbered in the council file and apparently haven't been numbered a long time ago. This relates, of course, to the documents which are in Exhibit 1 and are undated and as Your Honour will recall there are a number of them.

10

I have just been reminded that Folio 30 is also undated. It has been pointed out to me that it does not matter much or it does not help to give you the date of document 21 because we haven't given you the date of document 22. That can be overcome. The date of folio 32 is 24 August, 1938, and the date of folio 29 is 29 August 1938, and I ask my learned friend to admit those matters also.

MR. FITZGERALD: Yes, I admit them.

MR. PINCUS: Subject to placing that before you, as we propose to do, in written form.

20

HIS HONOUR: Very well.

MR. FITZGERALD: Apart from one short witness, I propose simply to put some documents before the court. Might I call him straight away.

MR. FITZGERALD opened the case for the first defendant.

Defendants
Evidence

No.15

Raymond
Victor
Mylchreest
Hackwood

Examination-
in-chief

19th November
1976

DEFENDANTS EVIDENCE

No. 15

RAYMOND VICTOR MYLCHREEST HACKWOOD, sworn
and examined:

30

BY MR. FITZGERALD: Is your full name Raymond Victor Mylchreest Hackwood? -- Yes.

And you reside at 21 Newhaven Street, Everton Park? -- Yes.

You are the manager of the Department of Finance and Management Services, Brisbane City Council? --Yes.

And a qualified accountant? -- Yes.

You are familiar with the subject matter of this litigation? -- Yes.

I want you to tell His Honour, very briefly, the set up in respect of the council's finances, distinguishing between funds, if there is any distinction to be made, between the general fund and trust fund, and then tell His Honour whether moneys which the council has received in respect of the land the subject of this litigation, or expended in respect of that land, is, from your perusal of the records, and so forth, from the general fund or trust fund? -- There are three funds, which are the city fund, the loan fund and the trust fund. The city fund and the loan fund would be referred to as general funds. The transactions, from the perusal of the accounts in this exercise, have come from the general fund.

10

From the original purchase price? -- Yes.

All subsequent expenses? -- Yes.

20

All from general funds? -- Yes.

And all receipts have been into the general fund? -- Yes.

The council's trust fund, as I understand it, is like any other trust fund? Although it may be one single fund, it is divided, notionally, into funds for specific purposes? -- Correct.

And none of the money has come from any part of the trust fund? -- That's correct.

30

Or paid into the trust fund? -- That's correct.

Are you able to indicate to His Honour any disadvantages which have accrued financially to the council from the delays in settling the contract and the subsequent litigation, from your knowledge of the records? -- Yes, there have been approximately \$12,000 in legal fees to date.

Are they recoverable or irrecoverable? -- These are the things that we have paid out. I would presume they are irrecoverable.

In the
Supreme Court
of Queensland

—
No.15

Defendants
Evidence

Raymond
Victor
Mylchreest
Hackwood

Examination-
in-chief

19th November
1976
(continued)

In the
Supreme Court
of Queensland

No.15

Defendants
Evidence

Raymond
Victor
Mylchreest
Hackwood

Examination-
in-chief

19th November
1976

(continued)

Cross-
examination

Taking that a step further, they are fees paid out in respect of which there is no order for recovery of costs against any other party? -- That's right.

Despite the fact - if you look at the figures in relation to this, do some of these relate to steps where the council has been successful? -- I'm not too sure, I can't answer that question.

Anything else you can tell us? -- Well, the scheme, of course, allows for, out of the purchase price moneys, to be expended on relocation of the Showgrounds, and also development of sports fields in the balance area. 10

Is that part of the tender arrangement? -- That was part of the tender arrangement. These estimates amounted to \$300,000 and \$200,000 respectively. If they have to be done today it would be considerably dearer. I would estimate that possibly the majority of the purchase price would be eaten up in providing those facilities. 20

I think it is probably common ground: but the amount of the purchase price was \$1,010,000?-- \$1,010,000.

CROSS-EXAMINATION

BY MR. PINCUS: Has the council any property which it holds in trust? -- Yes.

What property is that? -- Trusts for various things.

No; have you any land which it holds in trust? -- Yes. 30

Where? -- All around Brisbane. I don't know the exact parcels, but there would be parcels.

Tell me one? -- (No answer.)

One piece of land it holds in trust? -- I can't swear to it, but I think there are probably two which are, sort of, trust lands, One would be Gregory Terrace, reserved for electricity purposes. There would be one at Toowong, which is for transport purposes. These are reserves which are held by the council for the purpose of those particular functions. 40

And you regard them as trust lands, do you? -- Well, it is reserved for - specifically allocated for this purpose,. You could define them, I suppose, as trusts.

In the
Supreme Court
of Queensland

—
No.15

One has something to do with electricity? -- Yes.

Defendants
Evidence

10 Where does the money come from that is spent on that land? -- Money comes from the same sources as I have outlined here, from the general fund, which would be either the loan or city fund.

Raymond
Victor
Mylchreest
Hackwood

So even the land which you regard as being held on trust is turned out of that general fund? -- Yes; if you considered reserve as a trust land - these lands are reserved for these particular purposes.

Cross-
examination
19th November
1976
(continued)

Are you the, sort of, head accountant of the council? -- Yes, I am the manager, Department of Finance.

Does that make you the boss of the accounting function? -- Yes.

20 All I want to know really is this: you told us this particular piece of land has been dealt with out of the general fund; all I want to know is, is there any piece of land you can point to which has not been dealt with in that particular way? Any one particular piece of land in the city which has been dealt with by moneys to and from the trust fund? -- No, I am not - not without perusal of the records.

Is there any? -- I would not be sure.

30 Is it the practice to make expenditures in respect of land which is vested in the council out of the general fund? -- Yes.

Do you know of any exceptions to that practice, whatever the status of the land? -- No.

What was your position in the council in 1970? -- I think I was Assistant Town Clerk at that time.

Did you have anything to do with the decision to sell the Mt. Gravatt Showground? -- No.

40 Were you involved in any discussion with Myers about it? -- No.

In the
Supreme Court
of Queensland

No.15

Defendants
Evidence

Raymond
Victor
Mylchreest
Hackwood

Cross-
examination

19th November
1976
(continued)

Was your opinion asked about it? -- No.

Do you know why the decision was taken? -- No.

Did you assist in any of those things? -- No.

Do you know who made the decision? -- It would be a council decision.

But you do not know who, administratively, was involved in that decision? -- I imagine the Town Clerk.

Certainly not you? -- Not me.

You had nothing to do with it? -- No.

10

Never looked at the question of whether it was trust land, or directed your mind to it at all? -- No.

You mentioned a figure of \$12,000, and I thought you suggested - maybe it was Mr. Fitzgerald - that there were costs which were irrecoverable; is that what you said? -- (No answer.)

I do not quite follow? -- These are moneys that have been expended by the council in legal costs.

20

Are you including the proceedings which terminated in the High Court, which the council lost? -- Yes.

They went through three levels; Local Government Court, the Full Court, and the High Court, and the council ultimately lost? -- Yes.

And that is in the \$12,000? -- Yes.

It was ordered to pay both sides' costs in that case? -- I couldn't say that for sure.

MR. GIFFORD: No questions.

30

MR. FITZGERALD: No re-examination.

MR. PINCUS: Might I take the opportunity of formally placing before Your Honour material which I read into the record earlier. I do not know whether it is done by way of tendering or not, but

it is more convenient than having it in the record, perhaps. This is actually the document that Mr. Fitzgerald and I, or rather the solicitors, agreed on. I explained it.

In the
Supreme Court
of Queensland

—
No.15

HIS HONOUR: It might be convenient to put that in as Exhibit 11.

Defendants
evidence

Ex.11

(Admitted and marked "Exhibit 11".)

Raymond Victor
Mylchreest
Hackwood

10

MR. FITZGERALD: I do not know whether it will be necessary to call him, but Mr. Metcalfe, a solicitor, from the City Solicitor's office, is able to tell Your Honour that in respect of the Local Government Court proceedings there have been substantial costs incurred which are not recoverable, one party from the other.

Cross-
examination

19th November
1976

(continued)

HIS HONOUR: I do not think there is any argument about that.

MR. PINCUS: I do not dispute that.

HIS HONOUR: Do you agree with that?

MR. PINCUS: Yes.

20

HIS HONOUR: We will put that into the record.

MR. FITZGERALD: Your Honour, this morning I put in the original objection by Mr. Scurr and the original Notice of Appeal, and I think they are respectively 6 and 7. What I propose again, and I hope we can do this by co-operation, is that rather than put in reasons for judgment, we can regard them, where necessary, as part of the material.

30

MR. PINCUS: Which reasons are you referring to?

MR. FITZGERALD: I was going to put in Mr. Justice Lucas's reasons.

MR. PINCUS: I thought you had put his reasons in already. I do not mind either course.

MR. FITZGERALD: We would have a big record of stuff we do not need. The original judgment by Judge Mylne is reported in 25 Local Government Reports, 341, which shows there was an application for discovery. I thought I read into the record

In the
Supreme Court
of Queensland

—
No.15

Defendants
evidence

Raymond
Victor
Mylchreest
Hackwood

Cross-
examination

19th November
1976
(continued)

this morning part of the Notice of Appeal to the Full Court which related to that. That is also shown by the reasons for judgment to the Full Court which appeared in the same volume in the Local Government Reports of Australia at 348, and we will be relying on all those matters. Then the Notice of Appeal to the High Court also-----

HIS HONOUR: There would be an application for leave to appeal, would there not?

MR. FITZGERALD: It was, in fact, an appeal. I take it leave must have been granted, and there is a Notice of Appeal. 10

HIS HONOUR: What you told me this morning was that leave was refused on 13 October 1971. It was told to me that there was an appeal on 18 August, but I assumed it was only an application, and leave was refused.

MR. GIFFORD: My learned junior and I were in it. There was an application for leave to appeal in relation to the interlocutory matters. That application was dismissed. The matter came back and was heard and there was a full hearing on the substance of it before Judge Mylne, then there was an appeal to the Full Court which was dismissed, then there was an application for leave to appeal to the High Court which was heard in June 1972, from memory, That was granted and subsequently there was a hearing of the appeal and that is the appeal that succeeded in relation to the advertising. 20 30

MR. FITZGERALD: Anyway, that seems to be common ground to the extent of the first application to the High Court, then at the hearing in the Local Government Court - some evidence was put in this morning by tendering part of the record book, I think.

HIS HONOUR: That is so.

MR. FITZGERALD: We would like to put a little more of that in. What was put in was some evidence from, I think, pages 131 to 137 of the record book. 40

HIS HONOUR: Was that marked as an exhibit?

MR. ROW: It was Exhibit 4.

HIS HONOUR: Yes, that is right.

MR. FITZGERALD: Your Honour, the pages that we want to put in, in addition, are pages 122 and 123 of the transcript.

HIS HONOUR: Show that to Mr. Pincus.

MR. FITZGERALD: I will indicate where it is in the book. It is Mr. Bateman in the book at pages 142 and 143. May we remind Your Honour that this date was 27 October 1971 and that this was in the Local Government Court and that this was before the first writ in the first relator action was even issued and this was in proceedings in which Mr. Scurr was one of the appellants and you were told that Mr. Dunn, Q.C., as he then was, appeared for him. He called Mr. Bateman, the secretary of the Agricultural, Horticultural and Industrial Society, which was the Mt. Gravatt society, and he says later on that he was the treasurer of that society. Mr. Dunn said, "Did you have custody of those records and minutes..... later on this week," and it goes on to establish that on that occasion those documents were present before the court before the first writ was issued, and they were not admitted into evidence, but they were there.

(Admitted and marked "Exhibit 12".)

MR. FITZGERALD: We will also tender the Notice of Appeal from that judgment. Perhaps we can tender it as part of the book. There is probably no need to put it in. I am conscious that Your Honour's reasons for judgment in the Full Court set out the grounds of appeal, and one of those grounds was the alleged wrongful exclusion of this evidence, so we would be referring to those reasons. It is about that time or just before the Notice of Appeal to the Full Court that the first relator writ was issued, but I will come back to that because I am going to tender the writ and the pleadings and the formal judgment. We have certified copies of those from the Registry, so we will put them in as one exhibit. The judgment of the court from the Local Government Court is in and the Notice of Appeal to the High Court is in the book at pages 762 to 766. We will tender that. We will have to arrange to get copies of that to put it in, but we tender a copy of the Notice of Appeal to the High Court from the decision of the Full Court from the original

In the
Supreme Court
of Queensland

—
No.15

Defendants
evidence

Raymond
Victor
Mylchreest
Hackwood

Cross-
examination

19th November
1976
(continued)

Ex.12

In the
Supreme Court
of Queensland

judgment of the Local Government Court on the
merits and again that raises the question of this
evidence that was sought to be introduced.

No.15

HIS HONOUR: That will be Exhibit 13 when it
is produced.

Defendants
evidence

(Admitted and marked "Exhibit 13".)

Ex.13

Raymond
Victor
Mylchreest
Hackwood

MR. FITZGERALD: Paragraph 6 of that, in
particular, Your Honour will need to refer to.

HIS HONOUR: What was paragraph 6?

Cross-
examination
19th November
1976
(continued)

MR. FITZGERALD: "The Full Court of the
Supreme Court of Queensland was wrong.....Mount
Gravatt Showgrounds." What Your Honour will see
when you turn to these documents is that right
throughout, this was known to be an issue by Scurr
and being raised by him everywhere except where it
mattered. It is only that he has been divided this
way in the first relator action, as it were; as an
afterthought this was brought up. There is a
further notice of objection by Scurr, if I might
give Your Honour the point in history where I am at.
Scurr succeeded in the technicality and there has
been a fresh application, and here is his further

10

20

HIS HONOUR: What do you call it?

MR. FITZGERALD: Objection to application to
the council by Myers for consent for the shopping
centre, and that document - the objection is dated
11 November 1974.

(Admitted and marked "Exhibit 14".)

Ex.14

MR. FITZGERALD: And there is also one by
Boon, the other relator, William Percival Boon
dated 9 November 1974.

30

(Admitted and marked "Exhibit 15".)

Ex.15

MR. FITZGERALD: We tender an office copy of
the notice of appeal by Scurr against the council
proposal to grant the consent despite the objection,
that is Local Government's appeal number 11 of 1975.

(Admitted and marked "Exhibit 16".)

Ex.16

MR. FITZGERALD: We tender a notice of appeal by Boon, an office copy once more, Local Government Appeal No. 25 of 1975.

In the
Supreme Court
of Queensland

Ex.17 (Admitted and marked "Exhibit 17".)

No.15

MR. FITZGERALD: We think it would be convenient to tender as one the writ - this is an office copy of the writ - the pleadings and formal judgment said to be an order in Action No. 1598 of 1971.

Defendants
evidence

Raymond
Victor
Mylchreest
Hackwood

10 HIS HONOUR: They will be Exhibit 18 together.

Cross-
examination

Ex.18 (Admitted and marked "Exhibit 18".)

MR. FITZGERALD: And of course, we rely upon the reasons for judgment, either tender them, or if there is no reason to they are reported at 1973 Queensland Reports, 53.

19th November
1976
(continued)

HIS HONOUR: I will make it that that be tendered, in fact, as part of Exhibit 18.

20 MR. FITZGERALD: We tender a letter of 4 November 1975 from the plaintiff's solicitor to the Town Clerk.

Ex.19 (Admitted and marked "Exhibit 19".)

MR. FITZGERALD: And we call for a letter in reply from the City Solicitor to the plaintiff's solicitors, dated 11 November 1975.

HIS HONOUR: What is the last one?

MR. FITZGERALD: The letter of 11 November 1975 from the City Solicitor to the plaintiff's solicitors. We tender that letter. It is produced, Your Honour.

Ex.20 (Admitted and marked "Exhibit 20".)

MR. FITZGERALD: We tender an answer by Boon, it is answer number 13 in the plaintiff's answers to interrogatories delivered on behalf of the plaintiff, the interrogatories having been delivered by the first defendant, and it is an answer to interrogatory number 10. If that sounds confusing, I am sorry, Your Honour.

Ex.21 (Admitted and marked "Exhibit 21".)

In the
Supreme Court
of Queensland

—
No.15

Defendants
evidence

Raymond
Victor
Mylchreest
Hackwood

Cross-
examination

19th November
1976

(continued)

Ex.22

HIS HONOUR: I think it might be answer to
interrogatory number 13.

MR. GIFFORD: No, I think it is answer to
interrogatory number 10.

HIS HONOUR: Yes, that is right. In what
proceeding?

MR. FITZGERALD: In this action, Your Honour.

HIS HONOUR: That is Exhibit 21.

MR. FITZGERALD: This may be out of order but
it is an answer by Scurr to the preceding interro-
gatory which asked him some questions which he
answered in the same way.

10

(Admitted and marked "Exhibit 22".)

MR. FITZGERALD: I do not think there is any
dispute to that although he could not be precisely
aware of the date - it was about May 1970. That
was the way the evidence fell in fact this morning.
I suppose I should formally close my case but I
haven't put in yet that photostat document and I
have been shuffling a bit through the papers while
I have been on my feet. I am sure I am not
going to take up much time finishing my case on
Monday morning.

20

The Court adjourned at 4.15 p.m. till 10 a.m.
the following Monday, 22 November 1976.

22nd November
1976

THIRD DAY

The Court resumed at 10.53 a.m.

MR. FITZGERALD: I think on Friday I had
tendered a copy of a notice of appeal but I did
not have a copy available of it in this appeal to
the High Court. I do not know what exhibit
number it was.

30

HIS HONOUR: Was that Exhibit 13?

MR. FITZGERALD: I think that is so. I provide
that copy document now, Your Honour. When I
tendered Exhibit 18 - it was the writ and pleadings

and the formal order in the previous relator action - I omitted to tender it. I now wish to add to that office copy of the particulars furnished by the plaintiff to the second defendant in that action.

In the Supreme Court in Queensland

—
No.15

Defendants evidence

HIS HONOUR: That is part of Exhibit 18?

MR. FITZGERALD: That is so.

Raymond Victor Mylchreest Hackwood

HIS HONOUR: I will add that to Exhibit 18.

Cross-examination

10

MR. FITZGERALD: I wish to tender one further exhibit which is an answer to an interrogatory. It is answer number 5 to interrogatory number 2. That is in this current action. The heading really shows its full description.

22nd November 1976

(continued)

Ex.23 (Admitted and marked "Exhibit 23")

MR. FITZGERALD: That is our case.

MR. FITZGERALD addressed His Honour.

The Court adjourned at 4.15 p.m. till 9.45 a.m. the following day.

FOURTH DAY

20

23 NOVEMBER 1976

23rd November 1976

The Court resumed at 9.45 a.m.

MR. FITZGERALD continued addressing His Honour.

MR. PINCUS addressed His Honour.

MR. GIFFORD addressed His Honour

The Court adjourned at 4.15 p.m. till 9.45 a.m. the following day

FIFTH DAY

24th November 1976

24 NOVEMBER 1976

The Court resumed at 9.47 a.m.

30

MR. GIFFORD continued addressing His Honour.

MR. PINCUS further addressed His Honour.

In the
Supreme Court
of Queensland

No.16

Ruling of
Trial Judge
on
admissibility
of evidence
24th November
1976

MR. GIFFORD further addressed His Honour.

During the address -

HIS HONOUR: I reserved the question of the admissibility of certain documents, and I think it is convenient now to make a ruling, having heard submissions on the point. Before dealing with the specific documents on which counsel have addressed me this morning, it is, I think, important to bear in mind that the impugned documents are not tendered for the purpose of establishing the terms of what the plaintiff asserts to be a trust. The contemporaneous documents are tendered, as I understand it, for the purpose of endeavouring to establish the intention of the parties at the time the transaction was entered into. The later documents for the most part are not tendered on this basis at all, but for the purpose of refuting the defence of laches. 10

Now, there is no doubt that contemporaneous declarations and documents of the parties are admissible for the purpose of throwing light on the intention of the parties at the time the transaction was entered into, so that where a document is consistent with the existence of a trust sought to be set up, it is of relevance in supporting the case as to the existence of the trust, just as another document which would be inconsistent with the existence of a trust but consistent with some other transaction, would be equally admissible for the purpose of throwing light on the intention of the parties as to the creation of the trust or otherwise. 20 30

So far as concerns the documents at pages 45 and 46 of Exhibit 1, it is clear that these documents do not in any way establish whether or not there was a trust as set up by the plaintiff, but it seems to me that they have relevance in throwing some light on the intention, or presumed intention, of the parties at the time the transaction was entered into. If the circumstances are such that it should be inferred that these documents were prepared by the transferors, then they certainly throw light on what the intention of the transferors was as to the general nature of the transaction. On the other hand, if they were prepared by the transferee - the Brisbane City Council - then it seems to me equally that they 40

are indicative of the view of the solicitor for the City Council who was, after all, required to put into legal form the transaction agreed to be entered into between the trustees of the Show Society and the council.

In the
Supreme Court
of Queensland

—
No.16

10 It is quite true that, as counsel for the second defendant has submitted, there is no evidence that these documents came to the knowledge of the council itself, but it seems to me that this is not a pre-requisite of admissibility for the purpose of assisting in drawing inferences as to the intention of the parties. The fact that different inferences would be open, depending upon which party to the transaction prepared the drafts, does not determine their admissibility, because other circumstances may point to the probable authorship.

Ruling of
Trial Judge
on
admissibility
of evidence

24th November
1976
(continued)

In my opinion, these documents are admissible, and I rule accordingly.

20 Now, so far as concerns the document at page 58 of Exhibit 1, this document in itself establishes nothing, but when considered in the light of the evidence tendered on behalf of the plaintiff it supports the inference that the value of £1,350, on which stamp duty was paid, was the value placed on the property by the then valuer of the transferee, the first defendant.

30 I think, in the circumstances, it does throw some light on the transaction with which the court is now concerned and, although its evidentiary value is slight, in my opinion it is admissible, and I rule accordingly.

40 So far as concerns the draft notice of sale at page 57 of Exhibit 1, this is a document in the files of the first defendant. It purports to be signed by the transferors. It is, I think, of very slight weight. It is, I think, admissible as being a document prepared for the purpose of carrying out the transaction which tends to support the proposition that the total moneys paid by the first defendant, the Brisbane City Council, namely £475, did not represent the full value of the land being transferred. So, although the evidence is extremely slight I think it should not be rejected and it is admissible for that purpose.

In the
Supreme Court
of Queensland

—
No.16

Ruling of
Trial Judge
on
admissibility
of evidence

24th November
1976
(continued)

So far as concerns the document at pages 118 and 119 of Exhibit 1, namely the report of Mr. Masterton, the property and insurance officer, of the defendant, this document is of course not admissible as in any way showing the terms of the transaction with which the court is now concerned. It is completely irrelevant for any such purpose. It is, however, not tendered on that basis; it is tendered on the basis of being relevant to the defence of laches.

10

Now, it has been urged that the actions and knowledge of the first defendant are quite irrelevant on the defence of laches and it is only the actions or inactions of the plaintiff or the relators which are relevant for that purpose. I do not accept this proposition. The knowledge and means of knowledge of the first defendant and the actions of the first defendant are, in my opinion, relevant on the defence of laches, anyway, to the extent that they bear upon the actions or inactions of the plaintiff and the relators.

20

Now, this document is tendered, as I understand it, for the purpose of showing that the defendant had the knowledge or means of knowledge that this property and insurance officer had been able to refer to documents of the council in relation to the acquisition of the land in 1937. Now, it is perfectly true that there is no evidence that the council itself ever had knowledge of that particular report. However, I do not think that this is a factor which is diminutive or otherwise of its admissibility. The proper inference is that this document was available to the Town Clerk, the principal executive officer of the defendant, and it indicates that the defendant had knowledge or means of knowledge as to the circumstances of the acquisition.

30

Now, this it seems to me does bear on the defence of laches because at least in some circumstances the defence of laches might well prevail if the party setting up that defence was unaware of some particular circumstances of which the party against whom laches is set up was aware or should have been aware. It is, of course, quite obvious that the document is not in any way admissible as an admission on behalf of the council that there was a trust.

40

Now, similarly, it seems to me that the evidence of Sir Alan Mansfield which in effect incorporated the minutes of the meeting with Mr. Slaughter, the then Town Clerk in 1954, is admissible. It is admissible on a similar basis. Certainly it is not admissible as an admission made by an officer who could bind the council that there had been a trust. It is certainly not admissible on that basis. But, on the limited basis which I have indicated, I think it is admissible and I rule accordingly. I think that covers everything.

In the
Supreme Court
of Queensland

—
No.16

Ruling of
Trial Judge
on
admissibility
of evidence

24th November
1976
(continued)

I am sorry that your address was interrupted but I thought it was more convenient so that then in your address you could proceed on the basis of what the ruling is rather than leave it in the air.

MR. GIFFORD further addressed His Honour.

The Court adjourned at 4.15 p.m. till
9.45 a.m. the following day.

SIXTH DAY

25th November
1976

25 NOVEMBER 1976

The Court resumed at 9.51 a.m.

MR. GIFFORD continued addressing His Honour.

MR. PINCUS addressed His Honour, in reply.

MR. FITZGERALD addressed His Honour, in reply.

The Court adjourned at 4.15 p.m. till
9.45 a.m. the following day.

SEVENTH DAY

26th November
1976

26 NOVEMBER 1976

The Court resumed at 10.47 a.m.

MR. FITZGERALD continued addressing His Honour, in reply.

MR. CALLINAN addressed His Honour, in reply.

HIS HONOUR: Thank you for your assistance. It certainly raises some difficult matters, and I will consider these and let you know.

The Court adjourned at 10.48 a.m.

In the
Supreme Court
of Queensland

No. 17

JUDGMENT - HOARE J.

No.17
Judgment
7th December
1976

As I think it is more important that I deliver judgment in the action as quickly as possible rather than deal in detail with all matters argued before me, I shall not refer to all matters which have been raised by counsel in the course of the hearing.

For some years prior to the year 1937 an area of land situated at Mount Gravatt on the outskirts of Brisbane was registered in the name of certain trustees under a nomination of trustees. The schedule of trusts required that the land be held by the trustees "upon trust for the use, enjoyment and benefit of the members of the Mount Gravatt Progress Association....." There was a further provision in the schedule "should the said Mount Gravatt Progress Association as at present constituted at any time hereafter be dissolved or cease to exist then and immediately thereupon the above trust, shall be altered and take effect as if the Mount Gravatt Agricultural, Horticultural and Industrial Association had been named therein in place of the Mount Gravatt Progress Association"

10
20

It would appear that for some years prior to the year 1937 the Progress Association had been linked with the Agricultural Association but by the year 1937 the Progress Association had become defunct. Accordingly, the land was then held by the trustees in trust for the Mount Gravatt Agricultural, Horticultural and Industrial Association.

30

Following negotiations between the representatives of the association and the Brisbane City Council the land was transferred to the Brisbane City Council. The plaintiff in this relator action asserts that the land is held on certain trusts by the Brisbane City Council. It appears that during the month of December, 1970 the first defendant entered into a contract to sell the land to the second defendant and a substantial deposit was paid. This accounts for the presence of the second defendant in the action.

40

Appropriate declarations are sought against each defendant. The plaintiff's claim is based

upon the proposition that following the negotiations between the representatives of the Mount Gravatt Agricultural Horticultural and Industrial Association and the Brisbane City Council the latter body constituted itself a trustee of the land, having undertaken inter alia "to set the land apart permanently for showground, park and recreation purposes." The plaintiff asserts that the trust was for a purpose beneficial to the community within the scope of the fourth head of charity as stressed in Pensel's case (189 1 A.C. 531).

In the
Supreme Court
of Queensland

—
No.17

Judgment

7th December
1976

(continued)

10

It is clear that if a trust was constituted it would infringe the rule against perpetuities unless it was a charitable trust.

Each defendant defends the action on broadly similar bases. The following are the main propositions:-

1. That in fact no trust was created.
2. That if a trust was created it was invalid because it was not a charitable trust.
3. That the plaintiff's claim is barred by laches.
4. Further and in the alternative the plaintiff and the relators are precluded from bringing the present proceedings because they seek to raise in the present proceedings matters which could and should have been litigated in an earlier action number 1598 of 1971 brought by the plaintiff at the relation of the relator Scurr.

20

30

Other matters were raised but I do not think it is necessary to refer to them.

It is clear that the first matter for determination is whether or not the arrangement entered into between the representatives of the Mount Gravatt Agricultural Horticultural and Industrial Association and the first defendant created a valid trust. If the plaintiff fails to establish that a valid and enforceable trust was created then the action fails and there is no necessity to consider the other defences raised.

40

It is clear from the evidence and the inferences which should be drawn from the evidence and

In the
Supreme Court
of Queensland

No.17

Judgment

7th December
1976
(continued)

exhibits that the representatives of the Mount Gravatt Agricultural Horticultural and Industrial Association in negotiations with the Brisbane City Council, intended to enter into a transaction which was legally binding on both parties. It is equally clear that the Brisbane City Council indicated its intention to hold the land for the purposes set out in its resolution of the 19th day of October, 1937 being folio 27 of exhibit 1.

These minutes state inter alia:-

10

"The proposal is that the show society will hand over to the Council the fee simple of the land comprising the showground at Mount Gravatt in consideration of the Council

- a. Setting the land apart permanently for showground, park and recreation purposes;
- b. Levelling off the show ring;
- c. Granting the Society the exclusive use of the grounds without charge for a period of two weeks in each and every year for the purposes of and in connection with the District Annual Show; and
- d. Liquidating the present bank overdraft of £450 on the property"

20

The Council minutes reveal that the show society's proposal was accepted by the Council.

Accruing interest increased the overdraft to £475 and this was paid off by the Council. It is I think clear that the consideration of £475 was much less than the value of the property which was estimated to be £1350. That was the value accepted by the Commissioner of Stamp Duties for Stamp Duty purposes. The fact that even a substantial sum of money has been paid for property acquired is not necessarily inconsistent with an intent that the property be held on trust (Smith v. Kerr (1900) 1 Ch. 511, on Appeal (1902) 1 Ch. 774).

30

The fact that a nomination of trustees was drafted but not executed is not conclusive one way or the other. It seems to me that Mr. King, one of the trustees (who was a solicitor), clearly enough thought that the Council would be bound

40

without the execution of any further documents.

It is perfectly true that the word trust is not mentioned but that is in no way determinative of the matter. (See eg. Goodman v. Mayor of Saltash (1882) 7 A.C. 633 at 642). It seems to me that there was a clear intention by both parties to the transaction that the Brisbane City Council undertook to hold the land permanently for the purposes expressed in that resolution. (cp. re Smith (1967) V.R. 341.) In the circumstances I hold that the first defendant declared itself a trustee of the land in the terms of that resolution.

It is perfectly clear from the evidence and the exhibits that the Mount Gravatt Agricultural Horticultural and Industrial Association was also known as the Mount Grava+t Agricultural Horticultural and Industrial Society and it was also known as the Mount Gravatt Show Society. While the names are variously used, it is abundantly clear that it was the same organisation and not separate organisations as contended for by counsel for the second defendant.

The resolutions put to the meeting of members of the association should not be construed in the way in which an act of Parliament might properly be construed. It is true that the letter of 21st April, 1938 did seek to raise another matter not referred to in the council's resolution but the letter of 4th May, 1938 (folio 37 of exhibit 1) has confirmed that the parties to the transaction were "ad idem" and I see no reason for doubting that, when the trustees executed the transfer in favour of the council, they acted in a way which was authorised by the members of the association. I do not overlook the various other matters which were submitted as indicative of there having been no trust created. While recognising that while much can be said in support of many of those submissions, I am comfortably satisfied that a trust has been established.

The next matter for consideration is whether or not the trust was valid and enforceable. The onus is on the plaintiff of establishing that there was a charitable trust.

The determination of this matter is one of very great difficulty. As pointed out in many of the cases eg. re Nottage (1895) 2 Ch. 649 "it is

In the
Supreme Court
of Queensland

—
No.17

Judgment

7th December
1976

(continued)

In the
Supreme Court
of Queensland

No.17

Judgment

7th December
1976
(continued)

most difficult to draw a line separating charitable gifts from gifts not charitable (per Lopes L.J. at p.656). Certainly one can draw upon many observations in decided cases in support of either contention.

It has been held that the promotion of industry, commerce and art for the public benefit is a charitable purpose (re Town and Country Planning Act 1947 Crystal Palace Trustees v. Minister of Town and Country Planning (1951) Ch.132). Likewise it has been held the promotion of agriculture is a charitable purpose (I.R.C. v. Yorkshire Agricultural Society (1928) 1 K.B. 611). Barwick C.J. in Incorporated Council of Law Reporting (Q) v. Federal Commissioner of Taxation (1967-71) 125 C.L.R. 659 at p.669 has accepted the correctness of this decision and that of re Pleasants (1923) 39 T.L.R. 675. He observed at p.669 "Agriculture partakes of that fundamental social quality which can give a charitable nature to a trust or purpose relating thereto which is beneficial to the community. So it would seem does horticulture." While it is true that the Imperial Act of 1888 has been referred to in English Cases as to whether a particular trust is charitable or not, I think that one can say with some confidence that if it is established that the purpose of a trust is for the promotion of agriculture, horticulture and industry then such a broad purpose is charitable. It is a purpose which is not only beneficial to the community but is also within the equity or intendment of the Statute of Elizabeth.

It is also well established that if the main object or purpose is charitable then the purpose does not cease to be charitable because there are incidental objects which are not charitable. (cp. Thistlewaite (1952) 87 C.L.R. 375 at p.442). Thus the fact that some members of the association incidentally derived some individual benefit did not cause the overall purpose to cease to be charitable in the Yorkshire case (supra). Likewise in Monds v. Stackhouse (1948) 77 C.L.R.232 the fact that the public hall might well be used for purposes other than charitable, did not prevent the bequest from being a charitable bequest. It seems to me reasonably clear that if a voluntary association is set up for the purpose of promoting agriculture horticulture and industry and holds an annual show or exhibition for these purposes (which are

charitable), the purposes do not cease to be charitable merely because every activity at the annual show cannot be shown to directly promote agriculture horticulture or industry. For example it is obvious that the people attending such a gathering will require food and drink and the provision of such food and drink either by the organizers themselves or by some person authorised by the organizers will not affect the overall purposes of the show or exhibition. The fact that some person will or may make a substantial profit in the provision of such food and drink is quite beside the point. Again, assuming the general purpose to be as I have indicated, the committee organizing the gathering or show might very well conclude that the purposes of the gathering or show will be assisted by providing relaxation or amusement for persons who can be expected to attend it. Provided the main purposes are as I have indicated, it seems to me clear enough that it does not matter that every activity which goes on at the show is not conducive of those purposes.

The word "show" is used in many different contexts. It may mean a spectacle, exhibition, pageant or display. It may mean a collection of things held for competition purposes eg. a "dog show" or "flower show" or "motor show". However in Queensland the term "showground" has I think acquired a more or less definite meaning. It is of course common knowledge that voluntary associations exist in scores of towns and districts of Queensland for the purpose of holding an annual "show" or exhibition. The "showground" is the area where that show or exhibition is held. The voluntary associations which organize these shows are usually known as The Agricultural Horticultural and Industrial Society (or Association) or some such title. The activities of the "shows" according to the evidence in this case are broadly similar. To the extent that there is an exhibition of agricultural and horticultural produce it would scarcely be disputed that this activity would probably operate to encourage agriculture and horticulture in the region and thus would be a charitable purpose.

So far as concerns the exhibition and sale of articles at such a show it was submitted by counsel for the defendants that it was necessary that the industry be a local one before it could

In the
Supreme Court
of Queensland

—
No.17

Judgment

7th December
1976

(continued)

In the
Supreme Court
of Queensland

—
No.17

Judgment

7th December
1976
(continued)

be said to be within the ambit of the purpose of "promoting industry". This I think is too restrictive. Local industry might well be encouraged by exhibiting the products of industry from other parts of the country or other parts of the world.

Thus I would think that the kind of show of which the Mount Gravatt show would appear to be typical, if held for the main object of encouraging agriculture horticulture and industry was an activity of which the purpose could be said to be charitable within the decided cases. 10

On the other hand I would readily agree that if some organisation decided to hold some kind of a "show" for purely commercial purposes, even though some of the activities entered into could be shown to tend to promote agriculture horticulture or industry the inclusion of these activities would not change the main purpose or object.

Between these two extremes there is no doubt room for many kinds of activity and it is pointless to try to categorise them. 20

When considering whether a particular organisation has or has not a charitable object it is important to have regard to what has actually been done or is being done by that organisation. The fact that an association has no constitution as such, is not necessarily determinative. Likewise the non-existence of a provision in the constitution, that on dissolution, the property will not pass to the members while important is not necessarily determinative. 30

In the present case the evidence shows that the association conducted an annual show at Mount Gravatt for many years. It would appear that that "show" was of a similar type to the various agricultural shows held throughout the State. One would have preferred to have had more positive evidence of the precise objects of the association. However it is well known that the various associations throughout the State which hold an annual "show" are each conducted by a voluntary association. These voluntary associations are managed by committees. The members of the various committees give much time and effort to the association. In the bigger towns there is often a paid secretary but the overall 40

management is in the hands of a voluntary committee. It is difficult to imagine that the enormous amount of voluntary work done by the various "show" societies would be given so freely if the main object of these societies was for some commercial purpose. In the absence of proof to the contrary I would readily infer that the main object of these societies is for the promotion of agriculture horticulture and industry in the various areas of the State. It is perfectly true that all the activities carried on at the various shows do not directly relate to any of these purposes but if one assumes for the moment that the original purpose of the various societies was for promoting agriculture horticulture or industry in the area, then one can readily understand how all the various activities which today serve to make up a "show" came to be added to the activities directly relating to the broad overall purpose. They were I think intended to assist in ensuring a successful "show".

In the
Supreme Court
of Queensland

—
No.17

Judgment

7th December
1976

(continued)

Accordingly I conclude that it is more probable than not that the main object of the Mount Gravatt Agricultural Horticultural and Industrial Association in holding its annual shows during the years leading up to 1937 was for the promotion of agriculture horticulture and industry in the Mount Gravatt area. Accordingly I hold that any activity for the purpose of assisting it to hold such a show was "charitable".

It is well established in England that the provision of the means for public outdoor recreation can be a charitable purpose. (Re Hadden (1932) 1 Ch. 133; re Morgan (1955) 1 W.L.R. 738; (1955) 2 All E.R. 632; Alexander Park Trustees v. Haringey London Borough (1967) 66 L.G.R. 306 at 316 and see also re Shillington v. Portadown U.D.C. (1911) 1 I.R.247. This appears to have been accepted in I.R.C. v. Baddeley (1955) A.C. 752, by Viscount Simonds at p. 589, by Lord Somerwell at p. 615 and by Lord Reid at p. 594). I do not think that any of the applicable Imperial Acts of Parliament have led to a result that our law is now different in this respect. As stated by Lord Greene M.R. when delivering judgment in re Strakosch (1949) 1 Ch.529 at p. 537 "It is obvious that as time passed and conditions changed common opinion as to what is covered by the word charitable also changed. This has been recognized by the courts as the most cursory examination of the cases shows."

In the
Supreme Court
of Queensland

—
No.17

Judgment

7th December
1976

(continued)

So far as concerns the defence of laches I am well satisfied that the relator Scurr did not in fact know of the minutes of the Brisbane City Council (which greatly supported the proposition that a trust existed) until he searched the council's minutes about the month of October 1975. Of course he had had some suspicion that there was a trust. It is probable that to an extent he was misled when he had a conversation with Mr. Hamlyn-Harris as to the minutes of the association not establishing the existence of a trust. It is, I think, clear that the relator did not in fact know of what had transpired between the City Council and the association at the time the land was taken over by the Council until the Council minutes were searched. One cannot draw any unfavourable inference against the first defendant by its resistance to discovery of the Council Minutes in the Local Government Court proceedings but the relevant point is that it is clear that Scurr was trying to obtain some evidence indicative of a Trust and the abortive efforts made on his behalf to obtain this information in those proceedings, were known to both defendants who were parties to those proceedings. Accordingly, it is reasonably clear that when no action was instituted by Scurr, either by himself or by the Attorney-General at his relation, to establish the existence of a trust, neither defendant would have believed that the reason why no proceedings were taken was that, while Scurr knew of the circumstances which might have created a trust, he had deliberately decided not to set up such a case. Indeed they each knew that Scurr was trying to obtain information which might disclose the existence of the trust.

10

20

30

I do not deem it necessary to deal with all the arguments raised on this issue but in all the circumstances I consider that laches has not been established against Scurr. It is not necessary to consider whether the Attorney-General might be in a somewhat different position from that of the relator.

40

So far as concerns the defence of Estoppel per rem Judicatam, it is clear that the decision of Lucas J. was an interlocutory one and this issue is of course still open. The circumstances of the present case are I think distinguishable from that of Yat Tung Investment Co. Ltd. v. Dao Heng Bank Limited (1975) A.C. 581. The issues in the first

relator action (no.1598 of 1971) are very clearly quite different from the issues in the present case. In all the circumstances I do not consider that the issues "are so clearly part of the subject matter of the litigation and so clearly could have been raised (in the earlier action) that it would be an abuse of the process of the Court to allow a new proceeding to be started in respect of them." I agree with the reasoning of Lucas J. in the determination of the interlocutory application.

In the
Supreme Court
of Queensland

—
No.17

Judgment

7th December
1976

(continued)

10

In my opinion the plaintiff is entitled to the following declarations:

1. That the land described as subdivisions 2 and 3 of Portions 322 and 323 in the County of Stanley Parish of Bulimba is presently held by the first defendant on trust for showground, park and recreation purposes.
2. The first defendant is bound by the terms of the resolution of 19th October, 1937.

20

The defendants must pay the costs of the action, including reserved costs.

No. 18

Formal Judgment

BEFORE THE HONOURABLE MR. JUSTICE HOARE
THE SEVENTH DAY OF DECEMBER, 1976

No.18

Formal
Judgment

7th December
1976

30

THIS ACTION having been tried before The Honourable Mr. Justice Hoare without a jury on the 18th, 19th, 22nd, 23rd, 24th, 25th and 26th days of November, 1976 MR. PINCUS of Queen's Counsel with him, MR. ROW of Counsel having been heard for the Plaintiff, MR. FITZGERALD of Queen's Counsel with him MR. GALLAGHER of Counsel having been heard for the First Defendant and MR. GIFFORD of Queen's Counsel with him MR. CALLINAN of Counsel having been heard for the second Defendant

IT IS THIS DAY DECLARED pursuant to the order of the said Mr. Justice Hoare:-

40

1. That the land described as subdivisions 2 and 3 of Portions 322 and 323 in the County of Stanley Parish of Bulimba is presently held

In the
Supreme Court
of Queensland

—
No.17
Formal
Judgment

7th December
1976
(continued)

by the First Defendant on trust for showground,
park and recreation purposes.

2. The First Defendant is bound by the terms of
the resolution of 19th October, 1937 accepting
the proposal as follows:-

"The proposal is that the show society will
hand over to the Council the fee simple of
the land comprising the showground at Mount
Gravatt in consideration of the Council

- a. Setting the land apart permanently for
showground, park and recreation purposes; 10
- b. Levelling off the show ring;
- c. Granting the Society the exclusive use of
the grounds without charge for a period
of two weeks in each and every year for
the purposes of and in connection with
the District Annual Show; and
- d. Liquidating the present bank overdraft
of £450 on the property"

AND IT IS THIS DAY ORDERED that the Defendants 20
pay the Plaintiff's costs of the action including
reserved costs.

(L.S.)

By the Court,

E. R. KEMPIN

DEPUTY REGISTRAR

No.19

Notice of Appeal by First Defendant

In the Full
Court of the
Supreme Court
of Queensland

No.19

Notice of
Appeal by
First
Defendant

16th December
1976

10 TAKE NOTICE that the Full Court of the Supreme Court of Queensland will be moved by way of appeal on Wednesday, the Second day of February, 1977 or as soon thereafter as Counsel can be heard by Counsel on behalf of the first defendant BRISBANE CITY COUNCIL for an Order that the whole of the judgment of the Honourable Mr. Justice Hoare pronounced herein on the Seventh day of December, 1976 whereby it was declared:

1. That the land described as subdivisions 2 and 3 of Portions 322 and 323 in the County of Stanley Parish of Bulimba is presently held by the First Defendant on trust for showground, park and recreation purposes.
2. The First Defendant is bound by the terms of the resolution of 19th October, 1937 accepting the proposal as follows:-

20 "The proposal is that the show society will hand over to the Council the fee simple of the land comprising the showground at Mount Gravatt in consideration of the Council

- a. Setting the land apart permanently for showground, park and recreation purposes;
- b. Levelling off the show ring;
- 30 c. Granting the Society the exclusive use of the grounds without charge for a period of two weeks in each and every year for the purposes of and in connection with the District Annual Show; and
- d. Liquidating the present bank overdraft of £450 on the property"

40 and the defendants were ordered to pay the plaintiff's costs of the action including reserved costs MAY BE SET ASIDE and in lieu thereof judgment may be given dismissing the action with costs including reserved costs to be taxed and the plaintiff may be ordered to pay the first defendant the costs of this Appeal to be taxed

In the Full
Court of the
Supreme Court
of Queensland

—
No.19

Notice of
Appeal by
First
Defendant
16th December
1976
(continued)

AND TAKE FURTHER NOTICE that the grounds of
this Appeal are:-

1. The judgment of the learned primary judge is contrary to and wrong in law;
2. The judgment of the learned primary judge is unsupported by evidence and is contrary to the evidence and the weight of evidence;
3. The learned primary judge erred in holding that the terms of the transaction whereby the first defendant acquired the land the subject of the action were those referred to in the resolution of the first defendant of 19th October, 1937; 10
4. Further the learned primary judge erred in holding that the first defendant declared itself a trustee of the land the subject of the action in the terms of its resolution of 19th October, 1937 and in holding that such conclusion followed from the "intention by both parties to the transaction that the Brisbane City Council undertook to hold the land permanently for the purposes expressed in that resolution"; 20
5. Even if the learned primary judge was correct in holding that the first defendant declared itself a trustee of the land the subject of the action in terms of its resolution of 19th October, 1937 he erred in holding that such a trust was a public charitable trust and therefore valid and enforceable; 30
6. The learned primary judge erred in failing to hold that the plaintiff's claim was barred by laches and/or acquiescence;
7. The learned primary judge erred in failing to hold that the plaintiff was estopped by the judgment in Action 1598 of 1971 in the Supreme Court of Queensland from seeking and being granted the relief claimed in this Action;
8. The learned primary judge erred in failing to hold that in any event the first defendant has an absolute power of alienation in respect of the land the subject of the action 40

by virtue of S.79 of the Real Property Act of 1861;

9. The learned primary judge erred in admitting into evidence statements by officers or servants of the first defendant as to the nature or effect or terms of the transaction whereby the first defendant acquired the land and/or documents from the files of the first defendant or between the first defendant and the other party to the transaction which do not bear upon the intention of those parties as to whether the land was to be held upon trust by the first defendant.

In the Full Court of the Supreme Court of Queensland

No.19

Notice of Appeal by First Defendant

16th December 1976
(continued)

DATED this sixteenth day of December, 1976

P. P. O'Brien
(P. P. O'Brien)
City Solicitor,
Solicitor for the Appellant.

TO: The Plaintiff, (Respondent)
HER MAJESTY'S ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND (AT THE RELATION OF ARTHUR THOMAS SCURR AND WILLIAM PERCIVAL BOON)

AND TO: The Solicitors for the Plaintiff, (Respondent)
MESSRS. KINSEY, BENNETT & GILL,
127 Creek Street,
BRISBANE.

AND TO: The Second Defendant in the Action,
MYER SHOPPING CENTRES PROPRIETARY LIMITED

AND TO: The Solicitors for the Second Defendant,
MESSRS. MORRIS, FLETCHER & CROSS,
T. & G. Building,
Corner Queen and Albert Streets,
BRISBANE.

In the Full Court of the Supreme Court of Queensland

No. 20

Notice of Appeal by Second Defendant

No.20
Notice of Appeal by Second Defendants
20th December 1976

TAKE NOTICE that the Full Court will be moved by way of appeal on Wednesday, the second day of February, 1977, or so soon thereafter as Counsel can be heard by Counsel on behalf of the above-named appellant (second defendant) for an order that the whole of the judgment of the Honourable Mr. Justice Hoare, given on the Seventh day of December, 1976, whereby His Honour made declarations as follows:-

10

"1. That the land described as Subdivisions 2 and 3 of Portions 322 and 323 in the County of Stanley Parish of Bulimba is presently held by the First Defendant on trust for show-ground, park and recreation purposes".

"2. The first Defendant is bound by the terms of the resolution of 19th October, 1937 accepting the proposal as follows:

'the proposal is that the show society will hand over to the Council in fee simple of the land comprising the showground at Mt. Gravatt ... in consideration of the Council

20

(a) Setting the land apart permanently for showground, park and recreation purposes;

(b) Levelling off the show ring;

(c) Granting the society the exclusive use of the grounds without charge for a period of two weeks in each and every year for the purposes of and in connection with the District Annual Show; and

30

(d) Liquidating the present bank overdraft of \$450 on the property

and ordered that the defendants pay the Plaintiffs' costs of the action including reserved costs be set aside, and that in lieu thereof it may be ordered that the Plaintiffs' action be dismissed, and that the Plaintiff pay the Appellant's costs

40

of and incidental to the action including reserved costs to be taxed and the appellant's costs of and incidental to this appeal to be taxed.

AND TAKE FURTHER NOTICE that the grounds of this Appeal are as follows:-

(1) that on the evidence the learned trial judge should have held that no trust was created;

10 (2) that if a trust was created, it was invalid because it was not a charitable trust;

(3) that the plaintiff's claim is barred by laches;

20 (4) further and in the alternative that the plaintiff and the relators are precluded from bringing the present proceedings because they seek to raise in the present proceedings matters which could and should have been litigated in an earlier action number 1598 of 1971 brought by the plaintiff at the relation of the relator Scurr;

(5) that on the evidence the learned trial judge should have held that the transfer of the land, the subject of the action, was an unconditional transfer;

30 (6) that the learned trial judge failed to give any or any proper weight to the fact that there was consideration for the transfer passing from the 1st defendant other than the sum of 475 pounds, namely the acceptance of obligations to perform work on and about the said land;

(7) that there was no evidence to support the finding of the learned trial judge that Mr. King, one of the trustees, thought that the first defendant would be bound without the execution of any further documents;

40 (8) that there was no evidence and it was not established that showground purposes and the objects of the Mt. Gravatt Agricultural, Horticultural and Industrial Association or indeed, of any such other similar association were charitable purposes or objects;

In the Full Court of the Supreme Court of Queensland

—
No.20

Notice of Appeal by Second Defendants

20th December 1976
(continued)

In the Full
Court of the
Supreme Court
of Queensland

No.20

Notice of
Appeal by
Second
Defendants

20th December
1976
(continued)

(9) that it was not established and there was no evidence to support the finding that an enormous amount of voluntary work was and is done by "show" societies;

(10) that the learned trial judge erred in holding that the plaintiff had satisfied the onus of proof (by reason of the fact that there may have been an absence of proof to the contrary) that the main object of show societies is for the promotion of agriculture, horticulture and industry;

10

(11) that the learned trial judge erred in law in holding that the defence of laches had not been made out by having regard to the fact that one of the relators may not have searched Council Minutes until October, 1975, and to no other facts;

(12) that the learned trial judge should have held that the defence of estoppel per rem judicatum had been made out;

20

(13) that the learned trial judge failed to have regard to the fact that in relation to the defence of estoppel per rem judicatum the plaintiff never pleaded, never sought to show, and never established any such special circumstances as would entitle him to relief;

(14) that the declarations made by the learned trial judge are inconsistent each with the other;

(15) that the learned trial judge erred in law in admitting as evidence of the intention of the first defendant statements made from time to time of various employees of the first defendant.

30

DATED this 20th day of December, 1976.

Morris Fletcher & Cross

MORRIS FLETCHER & CROSS.
Solicitors for the Appellant
(Second Defendant)

TO: The Respondent (Plaintiff)
HER MAJESTY'S ATTORNEY-GENERAL FOR THE
STATE OF QUEENSLAND (AT THE RELATION OF
ARTHUR THOMAS SCURR AND WILLIAM PERCIVAL
BOON)

In the Full
Court of the
Supreme Court
of Queensland

No.20

AND TO: The Solicitors for the Respondent
(Plaintiff)
MESSRS. KINSEY, BENNETT & GILL,
127 Creek Street,
BRISBANE.

Notice of
Appeal by
Second
Defendants

20th December
1976
(continued)

AND TO: The First Defendant in the Action,
BRISBANE CITY COUNCIL
City Hall,
BRISBANE.

AND TO: The Solicitor for the First Defendant,
P.P. O'BRIEN
CITY SOLICITOR
2nd Floor,
Brisbane Administration Centre,
69 Ann Street,
BRISBANE.

No. 21

No.21

Judgment of Mr. Justice Hanger C.J.

Judgment of
Mr. Justice
Hanger C.J.

BRISBANE, 18 MARCH 1977

18th March
1977

(Copyright in this transcript is vested in
the Crown. Copies thereof must not be
made or sold without the written authority
of the Chief Court Reporter, Court
Reporting Bureau.)

30 BETWEEN:

Her Majesty's Attorney-General for the State
of Queensland (at the relation of Arthur
Thomas Scurr and William Percival Boon)

(Plaintiff) Respondent

- and -

BRISBANE CITY COUNCIL (First Defendant)

- and -

MYER SHOPPING CENTRES PROPRIETARY
LIMITED (Second Defendant)

Appellant

40

In the Full
Court of the
Supreme Court
of Queensland

JUDGMENT

THE CHIEF JUSTICE: I agree with the reasons which have been prepared by my brother Mr. Justice D.M. Campbell and with the order which he proposes.

No.21

Judgment of
Mr. Justice
Hanger C.J.

I am authorised by my brother Mr. Justice Stable to say that in his opinion the appeal should be allowed. I publish his reasons.

18th March
1977
(continued)

MR. JUSTICE D.M. CAMPBELL: I am of the opinion that the appeal should be dismissed with costs. I publish my reasons.

10

THE CHIEF JUSTICE: In the circumstances the order will be that the appeal is dismissed with costs.

No.22

Judgment of
Mr. Justice
Stable

18th March
1977

No. 22

Judgment - Stable J.

This appeal is another step in the prolonged litigation which has related to the 20 acres 1 rood 27 perches of land known as the Mount Gravatt Showground. In this particular action the plaintiff, the Attorney-General (at the relation of Scurr and another) claimed that in 1938 the defendant Council acquired the land in such circumstances that it held and holds it "on trust for showground, park and recreation purposes or other public charitable trusts." The defendant company was joined because the defendant Council intended to sell the land to it for use as the site of a shopping centre. The learned trial judge, putting it shortly, found that the Council did take the land impressed with a trust and that the trust is charitable. He stated quite rightly that if a trust was constituted it would infringe the rule against perpetuities unless it was a charitable trust.

20

30

The facts found by the trial judge show shortly that before 1937 the land was registered in the name of trustees under a Nomination of Trustees, the schedule of trusts requiring that the land be held upon trust for the use enjoyment and benefit of the members of the Mount Gravatt Progress Association. It was provided in the same instrument that if the Association as then constituted should be dissolved or cease to exist then immediately the trust should

40

be altered and take effect as if the Mount Gravatt Agricultural, Horticultural and Industrial Association had been named therein in place of the Progress Association. He found that by 1937 the Progress Association had become defunct and accordingly the land was then held by the trustees in trust for the Mount Gravatt Agricultural, Horticultural and Industrial Association.

In the Full Court of the Supreme Court of Queensland

—
No.22

Judgment of Mr. Justice Stable

18th March 1977
(continued)

10 It seems that this latter body became afflicted with money problems. It is recorded that on about 5th October, 1937, a deputation from the Mount Gravatt Show Society attended upon the Lord Mayor with proposals regarding the Council taking over the land. Alternative proposals were put forward the former being (shortly) that certain improvements be done by relief labour. This was not practicable. The other proposal was that the land be handed over under conditions which included that the ground
20 should be held by the Council in perpetuity as a recreation reserve and showground and further that for two weeks in each year the Show Committee, elected each year, be allowed the free use of the ground entirely for the purpose of holding the annual district show.

On 19th October, 1937, the Council adopted a proposal that the Show Society would hand over to the Council the fee simple of the land comprising the Showground at Mount Gravatt in consideration of the Council -

- 30 (a) setting the land apart permanently for Showground, park and recreation purposes;
- (b) levelling off the show ring;
- (c) granting the Society the exclusive use of the grounds without charge for a period of two weeks in each and every year for the purposes of and in connection with the District Annual Show; and
- (d) liquidating the present bank overdraft of £450 on the property.

40 This was followed by a letter of 25th October, 1937, from the Council to Mr. W.H. Clarke, the secretary of the Show Society, saying that provision was to be made in the ensuing Council estimates for the liquidation of the overdraft on the property and

In the Full
Court of the
Supreme Court
of Queensland

—
No.22

Judgment of
Mr. Justice
Stable

18th March
1977
(continued)

that the Council was then to take over the fee simple on the conditions:-

- (a) The area to be set aside permanently for Showground, park and recreation purposes;
- (b) The Show Ring to be levelled off;
- (c) The Show Society to be granted the exclusive use of the Ground without charge for a period of two weeks in each and every year, for the purposes of and in connection with the District Annual Show.

10

The letter was signed by the Town Clerk.

On 4th May, 1938, the secretary of the Show Society wrote to the Council:-

"On behalf of the Mount Gravatt Show Society I herewith agree to the conditions embodied in your letter dated the 28th" (It was agreed by counsel that this should be 25th) "Oct. 1937 relative to the taking over of the Mount Gravatt Showground by the Brisbane City Council. Trusting that this acknowledgment will be considered satisfactory and quite in order."

20

On 12th July, 1938, the Council adopted the Finance Committee's recommendation that the necessary steps be taken forthwith to take over the land.

The necessary steps, it seems, were put in train by a letter signed by the Town Clerk to the secretary of the Show Society dated 24th August, 1938. This letter was headed, "Re purchase by Brisbane City Council of land known as the 'Mount Gravatt Showground'" and commenced with the words, "I refer to previous correspondence relative to the above purchase." Memorandum of Transfer and associated documents were enclosed for completion by the trustees, and certain machinery matters were mentioned. Then came a paragraph containing the words:-

30

"The Council undertakes to hold the land for the purposes of a Public Park, Recreation Reserve or Show Ground or other purposes not inconsistent therewith."

40

10 It went on to say that there was granted to the Society without any charge the exclusive right to use the land and all buildings and erections thereon for a period of three weeks in each and every year for the purposes of the Mount Gravatt Annual Show, provided that the Show take place during the months of July or August. The quoted part of the letter varies the order of purposes set out in the Council's resolution (a) of 19th October, 1937, and, further adds the "other purposes not inconsistent therewith." It does not appear by what authority this variation and addition took place. It is inconsistent with the Council's said resolution and with the Council's letter of 25th October, 1937. I therefore do not accept it as a formal act of the Council. I accept that any trust is embodied in the terms of the resolution itself and in the letters of 25th October, 1937, and 4th May, 1938, which I have quoted.

In the Full Court of the Supreme Court of Queensland

—
No.22

Judgment of Mr. Justice Stable

18th March 1977

(continued)

20 It seems clear that there was an intention to create a trust. Of course the intention does not have to be expressed in any formal language. It may even be inferred from conduct. The intention being there the next step is the matter of certainty as to the property upon which the trust is to operate. In this case it is the twenty or so acres of land at Mount Gravatt. What of the clarity or certainty of the object or purpose of the trust? Any uncertainty in this respect in the case of a non-charitable trust means that the trust fails. And if the trust is good but non-charitable then it is subject to the rule against perpetuities. In the present case I agree with the trial judge, who cited re Smith (1967) V.R. 314, that the Council took the land as a trustee in terms of the resolution to which I have referred.

30

40 So, in my view, the matter resolves itself into an inquiry whether the purpose is charitable so as to defeat the rule against perpetuities. The onus is on the respondent plaintiff to establish this.

In Trustees of Sir Howell Jones Williams' Trusts -v- Inland Revenue Commissioners (1947)
A.C.447, (1947) 1 All E.R. 513 Lord Simonds opinion was concurred in by Viscount Simon, Lord Wright and Lord Porter. Lord Normand in a short opinion also agreed. At p. 518 of the latter report Lord Simonds is recorded as saying:-

In the Full
Court of the
Supreme Court
of Queensland

—
No.22

Judgment of
Mr. Justice
Stable

18th March
1977
(continued)

"My Lords, there are, I think two propositions which must ever be borne in mind in any case in which the question is whether a trust is charitable. The first is that it is still the general law that a trust is not charitable and entitled to the privileges which charity confers unless it is within the spirit and intendment of the preamble to 43 Eliz.c.4, which is expressly preserved by s.13(2) of the Mortmain and Charitable Uses Act, 1888. The second is that the classification of charity in its legal sense into four principal divisions by Lord Macnaghten in Pemsel's case (1891) A.C. 583 must always be read subject to the qualification appearing in the judgment of Lindley L.J. in Re Macduff (1896) 2 Ch.466: 'Now Sir Samuel Romilly did not mean, and I am certain that Lord Macnaghten did not mean to say, that every object of public utility must necessarily be a charity. Some may be and some may not be.'

10

20

This observation has been expanded by Viscount
Cave -

"L.C. in this House in A.G. v. National Provincial Bank (1924) A.G. 265 in these words: 'Lord Macnaghten did not mean that all trusts beneficial to the community are charitable, but that there were certain beneficial trusts which fall within that category: and accordingly to argue that because a trust is for a purpose beneficial to the community it is therefore a charitable trust is to turn round his sentence and to give it a different meaning. So here it is not enough to say that the trust in question is for public purposes beneficial to the community or is for the public welfare; you must also show it to be a charitable trust.'"

30

In my view that above excerpt contains much of what was embodied in the numerous authorities cited to us. The case was applied by this court in Queensland Trustees Ltd. -v- Halse and Others (1949) St. R. Qd. 270. The diversity of the authorities is illustrated by the dissenting judgment of Mansfield S.P.J. (as he then was) in that case. Indeed, in Williams Trusts -v- I.R.C. (sup) Lord Simonds remarked at p.519 of the All England Report:-

40

" My Lords, the cases in which the question of charity has come before the courts are legion, and no one who is versed in them will pretend that all the decisions, even of the highest authority, are easy to reconcile....."

He went on to discuss several cases, some of which were mentioned in Queensland Trustees Ltd. -v- Halse & Ors. (sup).

In the Full Court of the Supreme Court of Queensland

No.22

Judgment of Mr. Justice Stable

18th March 1977
(continued)

10 The purported trust here is "for Showground Park and recreation purposes". Does this convey a concept wholly within the meaning of a charitable trust, making due allowance for little ancillary matters such as those mentioned in evidence before the learned trial judge -sports carnivals, rodeos, talent quests, beauty quests, trotting events, midget car racing? What are "Showground purposes"? As I see the record there was no definitive evidence of the scope of the activities associated with a "showground" - a word for which, by the way, 20 I can find no definition in any dictionary to which I have access, including the 1976 edition of the Concise Oxford Dictionary and the 1976 Australian Pocket Oxford Dictionary. The latter, however, has a definition of "show" which is "annual exhibition of livestock, produce etc. with ring events, side shows etc. usually lasting several days." This seems to me to be a fairly apt description of an event with which most of us are more or less familiar. The showground logically would be the 30 venue for such activities. Coming right to the point I find it more than hard to bring this major use of the land at Mount Gravatt within the spirit and intendment of the Statute of Elizabeth. The expression relied on as constituting an obligation of trust is in my view too vague and uncertain to satisfy the onus of showing that it falls within the Statute.

I would allow the appeal.

No. 23

40

Judgment - D.M. Campbell J.

This was an action brought by the Attorney-General ex relatione for a declaration that certain land, being Subdivisions 2 and 3 of Portions 332 and 333, County of Stanley, Parish of Bulimba,

No.23

Judgment of Mr. Justice Campbell

18th March 1977

In the Full
Court of the
Supreme Court
of Queensland

—
No.23

Judgment of
Mr. Justice
Campbell

18th March
1977
(continued)

known as the Mt. Gravatt showgrounds, is held by the appellant, Brisbane City Council, in trust for charitable purposes. The relators are Arthur Thomas Scurr and William Percival Boon, members of the Mount Gravatt Agricultural, Horticultural and Industrial Society. They think that in engaging to sell part of the showgrounds to the other appellant, Myer Shopping Centres Proprietary Limited, as the site for a shopping centre the Council has abused its trust. The Council claims that it purchased the land for valuable consideration, and denies that there is any valid charitable trust. Both respondents plead laches, and rely on a judgment of the Supreme Court in an earlier action in which they were parties brought by the Attorney-General at the relation of Scurr, as constituting an estoppel. The appeal is from a judgment of the Court that there is an enforceable trust in existence. 10

The Mount Gravatt Agricultural, Horticultural and Industrial Society was formed in 1920, and took over the activities of the Mount Gravatt Progress Association. It was incorporated in 1962 under the Religious, Educational and Charitable Institutions Acts 1861-1967. For many years (with a break during the second world war) it held an annual district show - the sort of show that the name of the society indicates; the show as held at the Mt. Gravatt showgrounds. The land comprising the showgrounds had been transferred by one Robert Grieve by Nomination of Trustees dated November 11, 1919, to trustees upon trust for the use, enjoyment and benefit of the Mount Gravatt Progress Association. Soon afterwards the Progress Association was dissolved, and under the terms of the trust in the Schedule the trust took effect as if the Mount Gravatt Agricultural, Horticultural and Industrial Society (which I will refer to hereafter as "the Show Society") had been named in place of the Progress Association. 20 30 40

A proposal to transfer the showgrounds to the Council was made on September 2, 1937, when a deputation from the Show Society waited on the Lord Mayor. From then on events moved quickly.

The proposal was referred to the Finance Committee who reported as follows:

" Consideration has been given by your

Committee to the report of a deputation from the Mount Gravatt Show Society, which waited on the Right Honourable the Lord Mayor, on the 2nd September, 1937, relative to a proposal for the taking over by the Council of the Showground, for park and recreation purposes. The present improvements on the land are valued by the Society at £1,500.

In the Full Court of the Supreme Court of Queensland

—
No.23

Judgment of Mr. Justice Campbell

18th March 1977
(continued)

10 The proposal in effect is that the Show Society will hand over to the Council the fee simple of the land comprising the Showground at Mount Gravatt, described as subs 2 and 3 of portions 332 and 333, Parish of Bulimba, containing an area of 20 acres, 1 rood 27 perches, in consideration of the Council -

- (a) setting the land apart permanently for Showground, park and recreation purposes;
- (b) levelling off the show ring;
- 20 (c) granting the Society the exclusive use of the grounds without charge for a period of two weeks in each and every year for the purposes of and in connection with the District Annual Show; and
- (d) Liquidating the present bank overdraft of £450 on the property.

30 Your Committee desires to report that the Council has no power to take over the property subject to the existing overdraft, which is secured by way of a mortgage. It would be necessary in the event of the Council deciding to acquire the land to liquidate the overdraft forthwith.

Although no funds are at present available for the purpose, your Committee is of the opinion that the proposal is one worthy of the favourable consideration of the Council, as it would be the means of acquiring an area of land eminently suitable as a local park and recreation ground at a minimum cost.

40 It accordingly submits the following recommendation for adoption by the Council.

RECOMMENDATION: That the proposal be approved,

In the Full
Court of the
Supreme Court
of Queensland

No.23

Judgment of
Mr. Justice
Campbell

18th March
1977

(continued)

and provision for a sum not exceeding £450 (in order to liquidate the overdraft on the property) be made in the estimates for the next financial year."

The whole report of the Finance Committee was adopted at a Council meeting on October 19, 1937; and a letter was forthwith sent to the Show Society informing it of the conditions on which the Council would take over the fee simple of the land.

10

The matter came before the annual meeting of the Show Society on December 15, 1937. There are two related minutes to which reference should be made. The first reads:

" The secretary then submitted the proposal that the showground be handed over to the Brisbane City Council on condition that the overdraft at the bank be liquidated, and that the Council take immediate steps to improve the ground, particularly in regard to the ring".

20

The note is that this motion was carried unanimously. The other minute reads:

" It is agreed that the secretary draft out an agreement in accordance with letter received from the Brisbane City Council dated 25th Oct. 1937".

The note is that this also was carried unanimously.

It may be mentioned here that a draft agreement was drawn up by the secretary and submitted to a meeting of the committee of the Show Society on February 17, 1938, but was not signed by the Council; and that the secretary wrote to the Council on April 21, 1938, bringing to its notice (inter alia) that the £450 quoted as being the amount to be provided in the estimates for the liquidation of the overdraft would be plus interest from the date of the letter intimating the Council's intention.

30

On May 4, 1938, the secretary wrote to the Town Clerk in these terms:

40

" On behalf of the Mount Gravatt Show Society, I herewith agree to the conditions embodied in your letter, dated the 28th (25th) Oct. 1937 relative to the taking over of the Mount Gravatt Showground by the Brisbane City Council."

In the Full Court of the Supreme Court of Queensland

—
No.23

On July 5, 1938, the secretary wrote again:

Judgment of Mr. Justice Campbell

10 " I herewith make application that the Brisbane City Council now take the necessary action to give effect to the taking over of the Mt. Gravatt Showground under the conditions embodied in your letter dated the 25 Oct.1937 and endorsed MCT:GH.

18th March 1977
(continued)

In addition to the amount mentioned in your letter, the interest which has been met by my Association, since the date of your letter will, I trust be reimbursed to my Society."

On July 12, 1938, the Council adopted a recommendation of the Finance Committee reading:

20 " A proposal for the taking over of the Mount Gravatt Showground was before the Council on the 19th October, 1937, and approved.

The proposal provides, inter alia, that the Council liquidate the bank overdraft on the property, amounting to £450 plus interest.

30 A letter has recently been received from the Show Society requesting that as the new financial year has commenced the matter be now finalised. Your Committee desires to report that provision for the liquidation of the overdraft has been made in the current year's estimates, and therefore it can see no reason why the matter should not be finalised forthwith, and recommends accordingly.

RECOMMENDATION: That the necessary steps be taken forthwith to take over the above area."

40 Up to this point there seems no doubt about what the general intention was. It was a matter of deciding how the land should be conveyed to the Council. This was not a matter which required a resolution of the Council; a draft Nomination of Trusts is among the agreed documents in the case.

In the Full
Court of the
Supreme Court
of Queensland

—
No.23

Judgment of
Mr. Justice
Campbell

18th March
1977

(continued)

Finally it was done as if it were a transfer on sale. The consideration for the transfer was stated to be £475/1/6 in the memorandum of transfer which was lodged. However, it is not so much on this as on the contents of a letter from the Town Clerk to the secretary of the Show Society dated August 24, 1938, that the Council has relied in asserting that it holds the land free of any trust. The letter which is headed "Re purchase by Brisbane City Council of land known as the 'Mt. Gravatt Show Ground' was as follows (and I will set it out in full):

10

" I refer to previous correspondence relative to the above purchase, and now submit herewith the undermentioned documents for completion by the Trustees -

- (1) Memorandum of Transfer,
- (2) Stamp Office Declaration as to value,
- (3) Notices to State and Federal Land Tax Departments,
- (4) Notice to Rates Department, Brisbane City Council.

20

Will you kindly advise me when these documents have been executed in order that the matter may be finalised.

A search at the Real Property Office discloses that this land is held under a Nomination of Trustees, and I would be pleased to have your advice with reference to the following matters -

30

- (1) The Registrar of Titles will require proof that the Mt. Gravatt Progress Association has been wound up by a resolution of its members. Kindly let me have a certified copy of such resolution.
- (2) Was a special meeting of the Mt. Gravatt Agricultural Horticultural and Industrial Society called to consider the sale of this property to the Council? Would you kindly let me have a certificate certifying that such meeting was validly summoned and validly held.

40

- (3) Will you kindly let me have a certified copy of the resolution passed at the special meeting of the members of the Mt. Gravatt Horticultural and Industrial Society and signed by a majority of the members present, directing the trustees to sell the land to the Council.

In the Full
Court of the
Supreme Court
of Queensland

—
No.23

Judgment of
Mr. Justice
Campbell

18th March
1977
(continued)

10 The Council undertakes to hold the land for
the purposes of a Public Park, Recreation
Reserve or Show Ground, or other purposes not
inconsistent therewith. It will also grant to
your Society without any charge whatsoever the
exclusive right to use the land and all build-
ings and erections thereon for a period of
three weeks in each and every year for the
purposes of the Mt. Gravatt Annual Show,
provided such show shall take place during
the months of July or August. It will also be
20 necessary for your Society to give one month's
written notice of its intention to hold such
show. The Council will also as soon as practi-
cable take all necessary steps to level and
fence that part of the land known as the Show
Ring."

30 The reasons which the trial judge gave for
holding that a trust was created were assailed on
the ground that he made no reference to the above
letter. It was submitted that he ignored variations
in the terms on which the Council undertook to hold
the land. The inclusion of the words "or other
purposes not inconsistent therewith" was said to
invalidate any trust by authorising uses which
could be non-charitable. I do not find it
necessary to consider whether this is so, because
I share the views of His Honour that the terms on
which the Council took the land are set out in
the resolution of October 9, 1937. These terms
constituted the Council's proposal which went
before the annual meeting of the Show Society, and
40 the Town Clerk could not assume authority to alter
them.

There are two questions, whether a trust was
created and, if so, whether it is a valid charitable
trust. No particular words are necessary to create
a trust. It may be created by the general tenor of
an instrument. As Underhill states, Law of Trusts
and Trustees 12th Ed. at p.19, "It is sufficient if
the settlor evinces an intention to create a trust,

In the Full
Court of the
Supreme Court
of Queensland

—
No.23

Judgment of
Mr. Justice
Campbell

18th March
1977
(continued)

and points out with reasonable certainty (*italics mine*): (a) the trust property; (b) the beneficiaries and (c) the purpose of the trust". To constitute a charitable trust, the purpose must be directed to the public benefit. This is what Lord Simonds described in Gilmour v. Coats (1949) A.C. 426 at p. 442 as "the necessary condition of legal charity". It was held to apply equally to religious as to other charities. By the operation of s. 3 of the recent Trusts Act 1973, the Statute of Elizabeth 43 Elz. 1 c. 4 is repealed. But it is expressly provided by s. 103 (1) that the repeal of the statute does not affect the established rules of law relating to charity.

10

It is clear that the intention of the Show Society in its dealing with the Council was to have the showgrounds set apart permanently for showground, park and recreation purposes. This was the principal aim. The other matters, the matter of levelling the ring, the matter of the use of the showgrounds for the annual district show, and the matter of having the bank release its security over the property were all incidental matters. The argument that these matters were subsidiary objects did not strike me as valid. If they were subsidiary objects, of course, being non-charitable, a trust could not be declared: Stratton v. Simpson (1970) 125 C.L.R. 138; but I do not regard them as such.

20

Strangely enough, the word "showground" is not defined in Heinmann's Australian Dictionary or in the Australian Pocket Oxford Dictionary, but I fully endorse the remarks of Hoare J. that the word has a more or less definite meaning in Queensland. The word is used both in the singular and in the plural in connection with land occupied by show societies throughout the State. It would not have occurred to me to doubt that a gift of land to a City, Town or Shire for "showground, park and recreation purposes" was a charitable gift. In In re Spence; Barclay's Bank Ltd. v. Mayor, etc. of Stockton-on-Tees (1938) 1 Ch. 96 at p. 102 Luxmoore J. remarked that the fact that land is to be conveyed to a municipal corporation appears to be of first importance in considering the validity of the gift.

30

40

The phrase "showground, park and recreation purposes" is not a vague phrase, though it is a

compendious phrase which covers a lot of uses in its concept; the possible uses are not the criteria for determining whether the trust is charitable. The gift was for the improvement of Brisbane for the benefit of the general public, and not a select few. It seems to me to fall into the same class of charitable gift as the bequest to the City of Launceston in Monds v. Stackhouse (1948) 77 C.L.R. 233 of a fund to provide a suitable hall and theatre for the holding of concerts to provide music for the citizens of the City and for the production of drama entertainments and the holding of meetings of a cultural or educational value. In my opinion, it falls under the fourth head of Lord Macnaghten's well-known classification - trusts for other purposes beneficial to the community not falling under any of the preceding heads. See also Schellenberger v. The Trustees Executors and Agency Co. Ltd. (1952) 86 C.L.R. 454, particularly at p.459.

In the Full Court of the Supreme Court of Queensland

No.23

Judgment of Mr. Justice Campbell

18th March 1977
(continued)

The alternative defence of laches is based on the fact that the writ in the present action was not issued until March 18, 1976, and on the supposition that the Attorney-General knew or should have known in September 1970 of the Council's proposal to sell the land to Myer. Between these dates, there was an appeal to the Local Government Court against the Council's proposal by the relator, Scurr, and a number of other objectors under s.22 of the City of Brisbane Town Planning Act's 1964-1969. The case went on appeal to the Full Court, and eventually to the High Court which gave judgment in favour of the objectors on September 24, 1973. A report of these proceedings is in 47 A.L.J.R. 532. There was a Supreme Court action (No. 1598 of 1971) brought by the Attorney-General on the relation of Scurr against the Council. Myer was joined as a defendant in the action at its own election. The questions were whether the Council had acted ultra vires in purporting to accept Myer's tender to purchase the land and in extending time, and whether it had acted in bad faith. Judgment was given for the defendants on November 30, 1972. The case is reported in 1973 Qd.R. 53. There was another appeal to the Local Government Court brought by the relators and other objectors against a renewed proposal by the Council to sell the land to Myer. The hearing of the appeal was commenced on November 24, 1975, and judgment was delivered on December 12. An application by the relator, Scurr, to enlarge the time for setting down the

In the Full
Court of the
Supreme Court
of Queensland

—
No.23

Judgment of
Mr. Justice
Campbell

18th March
1977
(continued)

appeal to the Full Court from the decision of the Local Government Court approving the Council's proposal was refused by the Full Court on March 2, 1976. Both the Council and Myer plead that, by reason of the delay, they have incurred and will incur heavy expenditure or loss, so far as the Council is concerned in respect of costs and other expenses and in being without the sale price of \$1,010,000 and so far as Myer is concerned in respect of costs and other expenses and in being without the sum of \$101,000 paid by way of deposit and as the result of increased building costs.

10

In Attorney-General v. Proprietors of The Bradford Canal (1886) L.R. 2 Eq. 71 at p. 81, Sir William Page Wood V.C. said that he did not doubt that there may be cases "in which laches might be imputed to the public through the medium of the Attorney-General, cases of large expenditure incurred in buildings which are seen by the public and are allowed to go on without the slightest complaint of anyone". On the other hand, in Attorney-General v. Scott (1905) 2 K.B. 160 at p.169 Jelf J. expressed doubt whether laches by itself could ever be set up against the Attorney-General. The most recent pronouncement on the topic is by the Privy Council in Associated Minerals Consolidated Ltd. v. Wyong Shire Council (1975) A.C. 535 at p. 560 where their Lordships said:

20

"However, it is necessary to take into account that the plaintiff is acting on behalf of the public and in the public interest. It is necessary therefore to base the granting or denial of equitable relief on broader grounds than would normally apply as between private citizens. As was said in Attorney-General and County Council of Down v. Newry No. 1 Rural District Council (1933) N.I. 50, 71, the courts are somewhat slower to deny the Attorney-General, as the custodian of the public rights, relief on this ground (sc. delay) than in the case of an individual. The injury to a public interest by denial of relief, its extent and degree of irremediability, must be weighed against any loss which the defendant may have sustained by the plaintiff standing by while the defendant incurs expense or, if such is the case, misleading the defendant into supposing that its activities were or would

30

40

be permitted: see Lindsay Petroleum Co. v. Hurd (1974) L.R. 5 P.C. 221, 240; and Brickworks Ltd. v. Warringah Shire Council (1963) 108 C.L.R. 568."

In the Full Court of the Supreme Court of Queensland

No.23

Judgment of Mr. Justice Campbell

18th March 1977
(continued)

10 The learned trial judge considered that laches had not been established against Scurr or the Attorney-General. He said that "it is reasonably clear that when no action was instituted by Scurr, either by himself or by the Attorney-General at his relation, to establish the existence of a trust, neither defendant would have believed that the reason why no proceedings were taken was that, while Scurr knew of the circumstances which might have created a trust he had deliberately decided not to set up such a case". I look at the matter in rather a different way. Following the decision of the High Court the Council caused the application by Myer to erect a building on the land to be re-advertised. It was as the result of the Council's proposal to approve the application that the matter came before the Local Government Court again on appeal by the relator and other interested persons. The contract for the sale of the land to Myer has not been performed and the Council is still registered as the proprietor. I do not think there has been any delay, but if there has I would agree that the delay is not such as would make it practically unjust, to use Sir Barnes Peacock's phrase in Lindsay Petroleum v. Hurd (at p. 239), to allow a trust of a public character such as this to be enforced.

20

30

The other alternate defence was res judicata. It is pleaded in para. 8 of the amended defence of Myer in these terms:

40 "Further and in the alternative all the matters which the plaintiff and the relators are seeking to raise in the present proceedings are matters which could and should have been litigated in earlier proceedings namely the said Action No. 1598 of 1971 and the plaintiff and the relators are thereby precluded from bringing the present proceedings by virtue of the said matters being res judicata and the present proceedings are thereby an abuse of the process of the Court."

In Yat Tung Investment Co. Ltd. v. Dao Heng Bank Ltd. (1975) A.C. 581 it was stated to be an abuse of the process of the Court to raise in subsequent proceedings

In the Full
Court of the
Supreme Court
of Queensland

matters which could and should have been litigated
in the earlier proceedings. Lord Kilbrandon in
delivering the judgment of the Privy Council said
(at p.590):

No.23

Judgment of
Mr. Justice
Campbell

18th March
1977
(continued)

"The shutting out of a 'subject of litigation'
- a power which no court should exercise
but after a scrupulous examination of all the
circumstances - is limited to cases where
reasonable diligence would have caused a
matter to be earlier raised; moreover,
although negligence, inadvertence or even
accident will not suffice to excuse, neverthe-
less 'special circumstances' are reserved in
case justice should be found to require the
non-application of the rule."

10

It appears that the relator, Scurr, did not have a
search made of the Council's minutes until October
1975. We were referred to s.16(1)(ii) of the
Local Government Act 1936-1975 which provides that
the minute books shall be open for inspection.
Action No. 1598 of 1971 was concerned with the
construction of s. 19(4) of the Local Government
Act and with an allegation of improper motive in
preferring Myer. The issues in that case were not
clearly related to the issue in the present case,
as they would have to be for the Attorney-General
to be met by a plea of res judicata : Hoystead v.
Commissioner of Taxation (1926) A.C. 155 at p. 170;
Greenhalgh v. Mallard (1947) 2 All E.R. 255 at
p. 257. Indeed, that is why no discovery was made
in the first action of minutes and correspondence
which are material in the present action.

20

30

For the reasons I have outlined I think that
the appeal should be dismissed.

No.24

Formal Order
18th March
1977

No. 24

Formal Order

FULL COURT BEFORE THEIR HONOURS, THE
CHIEF JUSTICE, MR. JUSTICE STABLE AND
MR. JUSTICE D.M. CAMPBELL

THE EIGHTEENTH DAY OF MARCH, 1977

40

This action having on the seventh eighth and
ninth days of February, 1977 come on for hearing

by way of appeals from the Judgment of the Honourable Mr. Justice Hoare pronounced at Brisbane on the seventh day of December, 1976, whereby it was declared -

In the Full
Court of the
Supreme Court
of Queensland

No.24

Formal Order
18th March
1977
(continued)

1. That the land described as subdivisions 2 and 3 of Portions 322 and 323 in the County of Stanley Parish of Bulimba is presently held by the first defendant on trust for showground, park and recreation purposes;
- 10 2. The first defendant is bound by the terms of the resolution of 19th October, 1937 accepting the proposal as follows:-

"The proposal is that the show society will hand over to the Council the fee simple of the land comprising the showground at Mount Gravatt ... in consideration of the Council

- 20 a. Setting the land apart permanently for showground, park and recreation purposes;
- b. Levelling off the show ring;
- c. Granting the Society the exclusive use of the grounds without charge for a period of two weeks in each and every year for the purposes of and in connection with the District Annual Show; and
- d. Liquidating the present bank overdraft of £450 on the property ..."

30 and ordered that the defendants pay the costs of the action including reserved costs: AND UPON HEARING Mr. Fitzgerald of Queen's Counsel with him Mr. Gallagher of Counsel for the appellant, Brisbane City Council and Mr. Callinan of Counsel for the Appellant, Myer Shopping Centres Proprietary Limited and Mr. Pincus of Queen's Counsel with him Mr. Row of Counsel for the Respondent.

40 IT IS THIS DAY ORDERED that the appeals by Brisbane City Council and Myer Shopping Centres Proprietary Limited be dismissed with costs.

By the Court,
(Sgd.) J.A. MOORE
Senior Deputy Registrar.

In the Full
Court of the
Supreme Court
of Queensland

No. 25

Final Order for Leave to Appeal to
Her Majesty in Council

No.25

IN THE SUPREME COURT OF QUEENSLAND

No.673 of 1976

Final order
granting
leave to
Appeal to
Her Majesty
in Council

IN THE MATTER of rules regulating appeals to
Her Majesty in Council from Queensland
(Imperial Order in Council of 18th October
1909)

- and -

5th April
1977

IN THE MATTER of a consolidated Application 10
for Leave to Appeal to Her Majesty in
Council by BRISBANE CITY COUNCIL and MYER
SHOPPING CENTRES PROPRIETARY LIMITED

BETWEEN:

HER MAJESTY'S ATTORNEY-GENERAL
FOR THE STATE OF QUEENSLAND (AT
THE RELATION OF ARTHUR THOMAS
SCURR AND WILLIAM PERCIVAL BOON

(Plaintiff)
Respondent 20

AND:

BRISBANE CITY COUNCIL (First Defendant)
Applicant

AND:

MYER SHOPPING CENTRES PROPRIETARY
LIMITED (Second Defendant)
Applicant

FULL COURT BEFORE THE ACTING CHIEF JUSTICE
(SIR CHARLES WANSTALL), MR. JUSTICE D.M.CAMPBELL
AND MR. JUSTICE WILLIAMS 30

THE FIFTH DAY OF APRIL, 1977

UPON MOTIONS this day made unto the Court by
Mr. Fitzgerald of Queen's Counsel with him Mr.
Gallagher of Counsel for Brisbane City Council and
Mr. Ambrose of Counsel for Myer Shopping Centres
Proprietary Limited (hereinafter referred to as
"the Applicants") AND UPON HEARING the Solicitors
for Her Majesty's Attorney-General for the State of
Queensland (at the relation of Arthur Thomas Scurr

and William Percival Boon) (hereinafter referred to as "the Respondent")

In the Full
Court of the
Supreme Court
of Queensland

No.25

Final order
granting
Leave to
Appeal to
Her Majesty
in Council
5th April
1977
(continued)

10 AND UPON READING the Affidavit of Rodney Norman Metcalfe filed herein on the 1st day of April, 1977 and the Affidavit of Richard Perry Clarke filed herein on the 4th day of April, 1977 and the Writ, Statement of Claim, Defence and other documents before the Full Court of Queensland in action number 673 of 1976 in this Honourable Court between the Applicants as Defendants and the Respondent as Plaintiff and the Judgment and the Order and the Reasons for Judgment of the Full Court of Queensland in the said action and the Applicants having entered into security in the sum of One thousand dollars (\$1,000.00) by the payment of such sum into this Honourable Court by the Applicant Brisbane City Council

20 THIS COURT DOTH ORDER that the consolidated appeal to Her Majesty in Council from the Judgment and Order of the Full Court of Queensland made in the said action number 673 of 1976 in this Honourable Court on the 18th day of March, 1977 whereby Appeals by the Applicants against the Order of the Supreme Court of Queensland made by the Honourable Mr. Justice Hoare on the 7th day of December, 1976 were dismissed with costs and it was adjudged that the Respondent recover against the Applicants its costs of the said Appeal be allowed to be made

30 AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the costs of and incidental to these Motions abide the event unless Her Majesty in Council should otherwise order

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the said costs be paid by the Applicants in the event of the said consolidated appeal not being proceeded with or being dismissed for non-prosecution.

BY THE COURT

(Signed) R. Hore

Exhibits

Affidavit of
Sir Alan
James
Mansfield
10th April
1976 and
Exhibit A

E X H I B I T S

Affidavit of Sir Alan James Mansfield
and Exhibit A

IN THE SUPREME COURT
OF QUEENSLAND

No. 673 of 1976

WRIT ISSUED THE EIGHTEENTH DAY OF MARCH 1976

BETWEEN:

HER MAJESTY'S ATTORNEY-GENERAL FOR
THE STATE OF QUEENSLAND (AT THE
RELATION OF ARTHUR THOMAS SCURR
and WILLIAM PERCIVAL BOON)

Plaintiff

10

AND:

BRISBANE CITY COUNCIL

Defendant

I, ALAN JAMES MANSFIELD, A Knight Commander
of The Most Distinguished Order of Saint Michael
and Saint George, of 81 Monaco Street, Florida
Gardens in the State of Queensland, Retired Governor
of the State of Queensland, make oath and say as
follows:-

1. In the month of October 1954 I was President
of Mt. Gravatt Agricultural Horticultural and
Industrial Society (hereinafter called "the
Society").

20

2. I was a member of the deputation of office
bearers of the Society which met with officials
of Brisbane City Council on the site known as Mt.
Gravatt Showground on or about 3rd October 1954.
I remember that one of the officials of Brisbane
City Council then present was the Town Clerk,
Mr. J. C. Slaughter.

30

3. The document now produced and shown to me and
marked with the letter "A" is to the best of my
knowledge and belief an accurate record of the
discussions which took place at that conference.

SWORN by the abovenamed Deponent)
at Surfers Paradise in the State) Sd. A.J.Mansfield
of Queensland this Tenth day of)
April 1976 before me:

Sd. W.N. Bridle J.P.
A Justice of the Peace.

40

IN THE SUPREME COURT
OF QUEENSLAND

No. 673 of 1976

WRIT ISSUED THE EIGHTEENTH DAY OF MARCH, 1976

BETWEEN:

HER MAJESTY'S ATTORNEY-GENERAL
FOR THE STATE OF QUEENSLAND (AT
THE RELATION OF ARTHUR THOMAS
SCURR AND WILLIAM PERCIVAL BOON) Plaintiff

Exhibits

Affidavit of
Sir Alan
James
Mansfield
10th April
1976 and
Exhibit A
(continued)

AND:

10 BRISBANE CITY COUNCIL Defendant

This is the copy document marked "A" referred to in the affidavit of ALAN JAMES MANSFIELD sworn herein before me this tenth day of April 1976.

W.N. Bridle J.P.

A Justice of the Peace

DEPUTATION

Sunday 3rd October, 1954

20 Between Mt. Gravatt A.H. & I. Society officials -
The Hon. Mr. Justice A.J. Mansfield, S.P.J.
President, Mr. D.L. Bence (Chairman of Committee),
S.R.Lanham, L.D.Greer (Hon. Treasurer) G.E.Lawlor
(Hon.Organiser) Mr.C.P. Hine and the Hon.Secretary
(Geo.S.Marshall)

AND

Brisbane Council Officials - The Town Clerk (Mr.
J.C.Slaughter) Property Officer (Mr. Grening) and
Parks Supt. (Mr. Oakman)

30 Mr. Justice Mansfield effected the introductions
and briefly outlined the Society's reacton and
attitude towards the terms of the proposed lease,
and also mentioned the recent letter from the
Health Dept. In reply to a question by the Town
Clerk, he was advised that the Society would have
no control: Mr. Slaughter stated that this
Society could not be granted complete control of
the entire Grounds as these constituted a park
or recreation ground, call it what you will, and
consequently the public had rights. It was fully
explained to him by Mr. Lawlor what our intentions

Exhibits

—
Affidavit of
Sir Alan
James
Mansfield
10th April
1976 and
Exhibit A
(continued)

were and how much we expected to spend: Mr. Lawlor also submitted figures as to what we had already spent over the past five years: Mr. Slaughter pointed out that if we had complete control then the entire responsibility was ours; he stated that we should consider securing complete control of what he termed the "built up area", that is the section in which are all the buildings over which we could get full control and a separate lease without full control over the oval. Mr. Lawlor pointed out that whilst we spent much money on the running track, certain trotter owners used the track and put work into it which was not suitable and it cost us money to put it right. Mr. Slaughter queried the right of any horse owner or user to be on the track and Mr. Lawlor advised that in one instance the owner had a permit from the Council. Mr. Grening replied that no one had any permit to be on any park in Brisbane and that if we found anyone using the track for any purpose other than at a show or sports meeting, we could immediately ring the police; definitely no permits had been issued. Mr. Slaughter stated we could close the double gates, as members of the public could still get in, and we could lock the gates into the ring. He stated that even now we had all the control we want; he agreed that seven years was too short a period in view of the expenditure and when Mr. Lawlor asked for 20 years, Mr. Slaughter came back with 14 years. Mr. Slaughter stated that it could be possible that the Health Dept. would soft pedal a bit, as if their suggestions were put into effect, it would close up every small show in the place. He agreed that if we accepted a lease, then he may be able to do something by way of building lavatory accommodation and helping paint. He stated that there was little difference between a Trusteeship comprising members of this Society and one comprising the City Council and stated that it is better for the Council to retain Trusteeship of these grounds. Mr. Slaughter repeatedly asked us not to throw away the lease, but to consider what he had said and to submit amendments or alterations to the clauses which caused us concern. Both Mr. Slaughter and Mr. Grening admitted that this Showground was something they could not handle; they further admitted that if it were not for this Society staying as virtual caretakers, the entire buildings would be carted away. They agreed that they did not have a lot of money to spend on the Grounds; they did not want to separate the recently acquired 6 acres from

10

20

30

40

50

the whole but appeared not to be unduly concerned with this aspect. Mr. Slaughter spoke on the drainage and did not seem to think that this would cause us any undue distress. Mr. Slaughter and his colleagues stressed the fact that this Society has really done a good job in looking after the Show grounds and in adding to the amenities.

10 At all times the Town Clerk seemed to be quite keen for us to submit proposals upon which we could arrive at some decision suitable and agreeable to both parties, and in this was supported by Mr. Grening. The Clause stating we had to abide by all Council regulations, ordinances, bylaws etc., was stated to be a stock clause in all Council leases. The Town Clerk said he did not quite know what we wanted but felt that we more or less had full control now and could restrain anyone from damaging or destroying property, whilst of course we could not stop a
20 youngster from kicking a football around.

Summing up, the concensus of opinion was that the Council are with us, they will listen to any proposals we may submit within reason and it is more than likely that they will undertake to erect lavatory accommodation and maybe supply some paint if not the labour to paint the buildings.

IN THE SUPREME COURT
OF QUEENSLAND

No. 673 of 1976

WRIT ISSUED THE EIGHTEENTH DAY OF MARCH 1976

BETWEEN:

30 HER MAJESTY'S ATTORNEY-GENERAL
FOR THE STATE OF QUEENSLAND (AT
THE RELATION OF ARTHUR THOMAS
SCURR AND WILLIAM PERCIVAL BOON) Plaintiff

AND:

BRISBANE CITY COUNCIL Defendant

EXHIBIT "A"

to

AFFIDAVIT

of

40 ALAN JAMES MANSFIELD
(Filed on behalf of the Plaintiff)

KINSEY BENNETT & GILL,
SOLICITORS for the Plaintiff,
14TH FLOOR, 127 CREEK STREET,
BRISBANE.
Tel. 229-2961

Exhibits

—
Affidavit of
Sir Alan
James
Mansfield
10th April
1976 and
Exhibit A
(continued)

Exhibits

Exhibit No. 1 (Pages 1 to 4)

Exhibit No. 1
(Pages 1 to 4)
Certified
copy of
Certificate
of Title
8th January
1896

Certified copy of Certificate of Title

No.233881 Q U E E N S L A N D No.145579
No.OF PREVIOUS COAT OF REGISTER BOOK,VOL.
Certificate ARMS 902 FOLIO 69
of Title 116517 CERTIFICATE OF TITLE

ROBERT GRIEVE

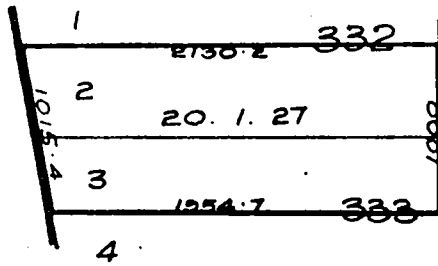
of --

pursuant to Memorandum of Conveyance No.293638 10
produced the (6th) Sixth day of December 1895,
registered the Sixth day of January 1896 is now
seized of an Estate in Fee-simple, subject neverthe-
less to such encumbrances, liens, and interests, as
are by memorandum notified hereon, in All that piece
of Land situated in the County of Stanley Parish of
Bulimba Being Subdivisions Two and Three of Portions
332 and 333 containing by admeasurement Twenty acres
one rood twenty seven perches more or less, commen-
cing at the Southwest corner of Subdivision One and 20
bounded thence on the North by that Subdivision
bearing East twenty one chains thirty links and one
fifth of a link on the East by part of Subdivision
five bearing south ten chains, on the south by Sub-
division four bearing West nineteen chains fifty
four links and seven tenths of a link and on the
West by a road bearing 350° ten chains fifteen links
and four tenths of a link to the point of commence-
ment which said piece of land is part of the portions 30
marked 332 and 333 delineated in the Public Map of
the said Parish deposited in the Office of the
Surveyor-General, originally granted Portion 332 the
twenty ninth day of May 1867 and Portion 333 the
twelfth day of July 1867 by two Deeds of Grant Nos.
16894 and 17470 under the Seal of the Colony of
Queensland and the Hand of Sir George Ferguson Bowen
G.C. M.G. then Governor of the said Colony, to
Thomas Curphy and Charles Hislingbury respectively.
SAVING ALWAYS to the Crown all the rights and interests
reserved to it by the said Deed of Grant. 40
(Init.) IN WITNESS whereof, I have hereunto signed my
name and affixed my seal this Eighth day of January
One thousand eight hundred and ninety-six.
Signed, Sealed, and Delivered, the 8)
day of January 1896 in presence of) L.S.

(Sgd.) R. Mills

(Sgd.) Geo.M.Jones
REGISTRAR OF TITLES.

Parish of Bulimba



Scale, 8 Chains per inch.

Exhibit No. 1
(Pages 1 to 4)
Certified copy
Certificate of
Title

8th January 1896

FILE No. 121807A PURSUANT
 Memo. of TRANSFER NO. 376260
 Produced 4 July 1902 at 1.5 p.m. registered 30 Dec Jan 49491920 (Init.)
 Read 8 July 1902 MARY PAINE
GADBY wife of Robert Grieve of
 Bulimba is now SEISED of an
 Estate IN FEE SIMPLE in the
 WHOLE of the within land.

No. 755102 NOMINATION OF TRUSTEES
 produced 4 Dec 1919 at 3.0 pm,
 registered 30 Dec Jan 49491920 (Init.)
 from Robert Grieve to ANDREW
HARRY GLINDEMANN, JOHN TRIM and
WILLIAM HENRY CLARKE as trustees.

(Sgd.) V.E. Haseler
 DEP REGISTRAR OF TITLES.

Case: L.S.
 (Sgd.) R. Mills. (Sgd.)
 J.O' Bourne
 DEP REGISTRAR
 OF TITLES.

No. 771036 Bill of Mortgage
 produced 14 May 1920 at 10.56 am
 registered 13 Aug 1920 from
 Andrew Harry Glindemann, William

No. 646631 TRANSMISSION BY DEATH.

In consequence of the death of
 the above named Mary Paine
 Grieve on the 21 Aug 1913 an
 estate in fee simple in the
 within land became transmitted
 to ROBERT GRIEVE as devisee as
 appears by Probate Copy of Will
 and documentary evidence

Produced 19 Aug 1915 at 3.23 pm
 Entered 22 Oct 1915

(Sgd.) A.W. Bell
 DEP REGISTRAR OF
 TITLES.

No. 771036 Bill of Mortgage
 produced 14 May 1920 at 10.56 am
 registered 13 Aug 1920 from
 Andrew Harry Glindemann, William
 Henry Clarke and John Trim to
 BANK OF NEW SOUTH WALES principal
 secured by four hundred and
 fifty pounds and further
 advanced on mortgage as
 appears by mortgage produced
 with int. 1918 registered
 No. 771036 produced
 27 Oct 1918 registered
 3.54 pm. Baynes
 29 Nov 1918
 (Sgd.) John R. McPherson
 L.S. REGISTRAR OF TITLES.

No. A73618 RECORD OF DEATH of
 Andrew Harry Glindemann on
 28 Sep 1925 as appears by
 Certificate of Death and
 Declaration of Identity.
 Exhibit No. 1



Exhibit No. 1

(Pages 1 to 4)
Cert. for copy
Court House of
Tasmania

1st January 1898

Produced 22 Nov 1928 at 2.55 pm. No. B411164 LEASE produced 10 May

Entered 12 Dec 1928.

L.S.
(Sgd.) F.J. Bradfield
REGISTRAR OF TITLES.1956 at 10.49 am, registered
11 June 1956 from Brisbane City
Council to David Leith Bence,
William Pettigrew and Abe Hamid
Howson. Term 7 years from 1 July
1954. Rental £5-00 per annum
payable yearly in advance.L.S.
(Sgd.) R.J. Thomson
REGISTRAR OF TITLES.No. A73619 APPOINTMENT OF NEW
TRUSTEES. By an Indenture under
the provisions of "The Trustees
and Executors Act of 1897,"
produced 22 Nov 1928 at 2.55 pm,
registered 12 Dec 1928 Reginald
MacDonnell King is declared to
be Trustee in the place of
Andrew Harry Glindemann deceased,
and John Trim, retired and the
within land is now vested in
William Henry Clarke and
Reginald MacDonnell King as
Trustees under N/T'tees

No. 755102

L.S.
(Sgd.) F.J. Bradfield.
REGISTRAR OF TITLES.PURSUANT to Memo. of TRANSFER
No. A386948 produced 27 Oct
1938 at 3.54 pm, registered
9 Nov 1938 BRISBANE CITY
COUNCIL of is now SEISED of an
Estate IN FEE SIMPLE in the
WHOLE of the within Land.
L.S.
(Sgd.) John R. McPhie.
REGISTRAR OF TITLES.No. D104731 Lease of the whole of
the land. To William Robert
Pettigrew, Abe Hamid Howson and
Guy Ronald Hamlyn-Harris. Term
Seven Years from 1 Jan 1963
Produced 17 Apr 1964 at 9.45 am.
Registered 1 May 1964.L.S.
(Sgd.) R. McMillen
REGISTRAR OF TITLES.BY PLAN CAT. No. 140⁰27 the within
land is subdivided into Lots 1 and
2 and 876 m² has been dedicated
for road purposes. No. E739422
Produced 11 Apr 1974 at 4.15 pm.
REGD. 19 Jul 1974.Reference to New Titles,
Vol: 5233
Fol:49/50L.S.
(Sgd.) J.C. Bennett
REGISTRAR OF TITLES.

3

Exhibit No. 1

I certify what is contained on the three preceding sheets is a true copy of Certificate of Title No. 145579 Volume 902 Folio 69 in my custody and control.

Made this eleventh day of November 1976

(Sgd.) A. Byrne

DEPUTY REGISTRAR OF TITLES.

Exhibits

Exhibit No.1
(pages 1 to 4)
Certified
copy
Certificate
of Title
8th January
1896
(continued)

Exhibit No. 1 (Pages 5 to 9)

Certified Copy Nomination of Trustees

Exhibit No. 1
(pages 5 to 9)
Certified
copy
Nomination
of Trustees
11th November
1919

10 DUTY (Exact wording - see
certified copy record
STAMP (1) Queensland

NOMINATION OF TRUSTEES

20 I, ROBERT GRIEVE being registered as the proprietor of an estate in fee simple subject however to such encumbrances liens and interests as are notified by memoranda endorsed hereon in that piece of land situated in the County of Stanley Parish of Bulimba containing twenty acres one rood twenty seven perches be the same a little more or less being subdivisions 2 and 3 of portions 332 and 333 and being the whole of the land described in Certificate of Title Number 145579 Volume 902 Folio 69 in consideration of the sum of One hundred and sixty pounds this day paid to me (the receipt whereof is hereby acknowledged) do hereby transfer
30 all my estate or interest in the said land above described to ANDREW HARRY GLINDEMANN, JOHN TRIM, and WILLIAM HENRY CLARKE as Trustees of the same under the Provisions of "The Real Property Act of 1861." IN WITNESS WHEREOF I have hereunto signed my name this Eleventh day of November 1919.

(Signed) ROBERT GRIEVE
Vendor

In the presence of
(Sd.) Herbert Walker
Solicitor.

STAMP DUTIES

27525

Exhibits

ACCEPTED

Exhibit No. 1
(pages 5 to 9)
Certified
copy
Nomination
of Trustees
11th November
1919
(continued)

(Sgd.) A. H. Glindemann)
(Sgd.) John Trim)
(Sgd.) William Henry Clarke)

TRUSTEES & SETTLORS.

In the presence of

(Sgd.) Herbert Walker
Solicitor.

SCHEDULE OF TRUSTS

It is agreed that the above land shall be held by the abovenamed Trustees upon the Trusts following that is to say:- 10

UPON TRUST for the use enjoyment and benefit of the members of the Mount Gravatt Progress Association with power of selling mortgaging and leasing by the direction of and in such manner as the members for the time being of the said Mount Gravatt Progress Association in a meeting specially called as hereinafter set out may direct in writing Any such direction shall be sufficient if it purports to be signed by a majority of the members of the said Mount Gravatt Progress Association for the time being assembled in a special meeting of which seven days' notice setting out in detail the objects for which the special meeting is called shall have been given by a notice signed by the Secretary for the time being of the said Mount Gravatt Progress Association and posted by prepaid letter to each member for the time being of the said Mount Gravatt Progress Association and no proof shall be required by the said trustees or the survivor or survivors of them or any trustee or trustees for the time being or by any purchaser mortgagee or lessee or by the Registrar of Titles or other person that the signatures of the persons purporting to be a majority of the members of the said Mount Gravatt Progress Association in such special meeting assembled are those of a majority of the said members and no proof shall be required that the meeting has been validly summoned or validly held When any of them the said Andrew Henry Glindemann, John Trim and William Henry Clarke or other the trustee or trustees for the time being (hereinafter called "the said trustees") shall die or remain out of Queensland for more than twelve 20 30 40

Exhibits

Exhibit No. 1
 (pages 5 to 9)
 Certified
 copy
 Nomination
 of Trustees
 11th November
 1919
 (continued)

months or shall desire to be discharged from the trusts hereof or refuse or be unfit to act therein or be incapable of acting therein then the surviving or continuing trustee or trustees and the personal representative of the last surviving or continuing trustee shall by a direction in writing of a majority of the members for the time being of the said Mount Gravatt Progress Association in special meeting summoned as aforesaid by writing appoint any other person or other persons to be a trustee or trustees in the place of the trustee
 10
 *(sic) dead*remaining out of Queensland desiring to be discharged refusing or being unfit or being incapable as aforesaid AND in the event of no such direction being made within three calendar months of the occurrence of any such vacancy then in such manner as the surviving or continuing trustee or trustees may agree upon and until such vacancy is filled up the surviving or continuing
 20 trustees or trustee may act notwithstanding such vacancy PROVIDED ALWAYS that the members of the Mount Gravatt Progress Association may by resolution of its members in special meeting summoned as aforesaid from time to time revoke alter or vary any of the trusts hereby declared and declare any new or further trusts either in substitution for or in addition to all or any of the trusts hereby declared AS the trustees are not receiving any remuneration for acting as such trustees as aforesaid they shall not be liable for any acts
 30 omissions or defaults made by them as such trustees as aforesaid AND IT IS HEREBY FURTHER AGREED AND DECLARED that should the said Mount Gravatt Progress Association as at present constituted at any time hereafter be dissolved or cease to exist then and immediately thereupon the above trusts shall be altered and take effect as if the Mount Gravatt Agricultural Horticultural and
 40 Industrial Association had been named therein in place of the Mount Gravatt Progress Association wherever the said Mount Gravatt Progress Association occurs therein.

CORRECT FOR THE PURPOSE OF REGISTRATION

(Sgd.) A.H. Glindemann
 (Sgd.) John Grieve (sic)
 (Sgd.) William Henry Clarke

} Settlers

(Sgd.) Walker & Walker
 Solicitors for parties

Exhibits

EE Exhibit No. 1
(pages 5 to 9)
Certified
copy
Nomination
of Trustees
11th November
1919
(continued)

Init.

No.755102 DUPLICATE

NOMINATION OF TRUSTEES

R. Grieve SETTLOR
A.H. Glindemann & Ors.
TRUSTEES

Particulars entered in
the Register Book Vol.
902 Folio 69 the 30 day
of Dec Jan 1920 at
3.31

(Seal) Signature

Dep.REGISTRAR OF TITLES.

No. A386948 Transfer
of the whole ~~being-part~~
of the land described
in C/T No. 145579 to
Brisbane City Council

John R. McPhie
(Seal)

REGISTRAR OF TITLES.

MEMORANDA OF ENCUMBRANCES LIENS
AND INTERESTS WITHIN REFERRED TO

Stamp Duties
27525

No.771036 Bill of Mortgage pro-
duced 14 May 1920 at 10.56 a.m.
registered 13 Aug 1920 from
Andrew Harry Glindemann, William
Henry Clarke and John Trim----to
THE BANK OF NEW SOUTH WALES 10
principal sum secured Four
hundred and fifty pounds and
further advances repayable as
therein stated with interest.
Signature

Dep.Registrar of Titles

No.A73618 RECORD OF DEATH of
Andrew Harry Glindemann on
28 Sep 1925 as appears by
Certificate of Death and 20
declaration of Identity.
Produced 22 Nov 1928 at 2.55
p.m. Entered 12 Dec 1928.

L.Bradfield
(Seal)

Registrar of Titles

No.A73619 APPOINTMENT OF NEW
TRUSTEES By an Indenture under
the provisions of "The Trustees
and Executors Act of 1897" 30
produced 22 Nov 1928 at 2.55
p.m. registered 12 Dec 1928
Reginald MacDonnell King is
declared to be Trustee in the
place of Andrew Harry Glindemann
deceased and John Trim retired
and the within land is now vested
in William Henry Clarke and
Reginald MacDonnell King as Trus-
tees under N/T'ees No.755102. 40

L.Bradfield
(Seal)

Registrar of Titles

No. ... Transfer of
being part of the land described
in No. to
.....
(Seal)

Registrar of Titles

RELEASE No. A386947 endorsed on duplicate
Bill of Mortgage No. 771036 produced 27 Oct
1938 at 3.54 p.m. registered 9 Nov 1933
(Seal)

John R. McPhie Registrar of Titles

WALKER & WALKER

SOLICITORS

BRISBANE-AND-IPSWICH.

BK NS WALES 22/11/28

COPY

Fourth Sheet of Four Sheets.

(Sgd.) G.S. Welldon

DEPUTY REGISTRAR OF TITLES.

Exhibits

Exhibit No. 1
(pages 5 to 9)

Certified
copy

Nomination
of Trustees

11th November
1919

(continued)

I certify that this machine copy is a reproduction
of an original document being Nomination of
Trustees No. 755102 of four sheets in my custody
and control.

Made this twelfth day of November 1976.

10

(Signed) G. S. Welldon

DEPUTY REGISTRAR OF TITLES.

Exhibits

Exhibit No. 1 (Pages 10 to 16)

Exhibit No. 1
(Pages 10 to
16)

Portion of
Certified
Copy Bill of
Mortgage from
Glindemann
Clarke & Trim
to Bank of
New South
Wales
7th May 1920

Portion of Certified Copy Bill of Mortgage
from Glindemann, Clarke & Trim to Bank of
New South Wales

Stamp Office Duplicate	F	Collateral to the	
Original Stamped	BILL OF MORTGAGE	Extent of	
£ : 2/6		£450 -	
Brisbane		(Initials)	
	Stamp Office	12/5/20	10
	Duplicate		
	Original Stamped		
	£ : :		
	Brisbane		

We, ^(a) Andrew Harry Glindemann of South Brisbane in
the State of Queensland Dairyman William Henry
Clerke of Mt.Gravatt in the State of Queensland
Lithoartist & John Trim of ^(b) Mount Gravatt in the
State of Queensland ^(c) Nurseryman being registered
as proprietors under Nomination of Trustees No. 20
755102 of an estate in fee simple ^(d) subject however
to such encumbrances liens and interests as are noti-
fied by memoranda endorsed hereon ^(e) in that piece of
land containing in the aggregate twenty acres one
rood and twenty seven perches be the same a little
more or less, and described in the Schedule hereunder,
namely:-

Deed of Grant or Certi- ficate of Title and Number	Vol	Folio	County	Parish	Town	Descrip- Area tion			30	
						Allotment	Section	Portion		Acres
C/T 145579	902	69	Stanley	Bulimba		Subdivi- sions 2 & 3 { 332 333	20	1	27	

- (a) Names in full. 40
- (b) Residence.
- (c) Occupations.
- (d) If a less estate strike out the words "fee simple"
and add the required alteration.
- (e) All prior subsisting encumbrances must be endorsed
hereon.

In consideration of a cash credit in current account to the extent of (f) Four hundred and fifty pounds - being granted to us in an account styled "Mount Gravatt Agricultural Horticultural and Industrial Society" by the BANK OF NEW SOUTH WALES (hereinafter referred to as "the Bank" which expression shall include the transferees and assigns of the Bank) during its pleasure upon the security of a certain bond dated the Seventh day of May 1920, in the penal sum of (g) nine hundred pounds under (g) our hands and seals do for the purpose of collaterally securing to the Bank the payment in accordance with the terms and conditions of the said bond of all moneys now owing upon or which shall at the option of the Bank be lent or advanced to us by the Bank upon the security of the said bond or which shall become due or payable by us to the Bank either directly indirectly or contingently under or by virtue of the said bond or any other security or in any other manner whatsoever with interest thereon at the rate expressed or referred to in the said bond HEREBY COVENANT with the Bank as hereinafter mentioned AND we do and also as separate covenants every two or more of us together DO HEREBY for ourselves our ~~administrators~~ ^{executors} ~~administrators~~ and assigns jointly and also as separate covenants each and every of us DO TH HEREBY for himself his ~~heirs-executors-administrators~~ ^{SUCCESSORS} and assigns severally COVENANT with the Bank as follows:-

10

20

30

IN WITNESS WHEREOF we have hereto signed our names this 7th day of May 1920
 A. H. GLINDEMANN
 WILLIAM HENRY CLARKE } Mortgagors
 JOHN TRIM }

SIGNED by the abovenamed Andrew Harry Glindemann, William Henry Clarke & John Trim as Mortgagors this 7th day of May, 1920 in the presence of:-

H. E. Seary J.P.
 A Justice of the Peace

40

Correct for the purposes of the "Real Property Act of 1861". THE BANK OF NEW SOUTH WALES by its Attorney (signed)

Exhibits

Exhibit No.1
 (pages 10 to 16)
 Portion of Certified Copy Bill of Mortgage from Glindemann Clarke & Trim to Bank of New South Wales
 7th May 1920
 (continued)

(f) Amount in writing.
 (g) If without sureties "under our hands and seals".
 If with sureties "under the hands and seals of ourselves and (naming the sureties in full) as our sureties".

Exhibits

Exhibit No. 1
 (pages 10 to 16)
 Portion of Certified Copy Bill of Mortgage from Glindemann Clarke & Trim to Bank of New South Wales
 7th May 1920
 (continued)

BILL OF MORTGAGE
 No.771036
 355994/2
 A.H.Glindemann & Anor
 Mortgagors
 Bank of New South Wales
 Mortgagee

Particulars entered in the Register Book, Vol.902 Folio 69 the 13 day of Aug 1920 at 3.40 p.m.
 Baynes
 Dep REGISTRAR OF TITLES

Received from the Mortgagors on or before this - day of - 19-- all moneys due on the within Bill of Mortgage in full satisfaction and discharge thereof.
 Dated the - day of - 19--
 Bank of New South Wales by its Attorney
 Mortgagee

Witness A Justice of the Peace
 1 deed D/Nom
 10-0
 5-0 on nom
 15-0

Correct for the purposes of the "Real Property Act of 1861"
 Mortgagors
 Deed (indecipherable)
 Lodged

MEMORANDA OF ENCUMBRANCES LIENS AND INTERESTS

Received Duplicate hereof and one deed herein
 Bank of N.S. Wales
 (?signature)
 31/8/20 10

Received one deed mentioned herein
 Bank of N.S. Wales
 (signed)
 24/12/28 20

Correct for the purposes of the "Real Property Act of 1861"
 Mortgagors
 Deed (indecipherable)
 Lodged 30

Particulars of discharge entered in the Register Book, Vol. - Folio - the - day of - 19--
 Registrar of Titles

Received Declaration
 Bank of N.S. Wales
 (?signature)
 15/6/20 40

Received Declaration
 BANK OF NEW SOUTH WALES
 (Signed)
 15/6/20
 BANK OF NEW SOUTH WALES

Exhibit No. 1 (Page 17)

Resolution of Mount Gravatt A.H.I. Society
and Progress Association

Copy of resolutions taken from the Minute book
of the Mount Gravatt A.H.I. Society & Progress
Association.

Minutes of meeting held on March 27th 1928:

10 It was moved by Mr. A.R. Kaus & seconded by
Mr. H. Howatson, that the resignation received from
Mr. J. Trim, as Trustee of the Showground be received
& accepted with regret, & that Mr. Trim be thanked
for his services of the past.

It was resolved that Mr. R.M. King, M.L.A. be
asked to accept the position of Trustee of the
Showground. This was moved by Mr. C.F. Auger &
seconded by Mr. H.M. Howsan.

Certified as correct by

20 Will. H. Clarke,
Hon. Secretary
Mount Gravatt A.H. & I. Society

Exhibit No. 1 (Pages 18 to 23)

Certified copy Deed of Appointment of New
Trustee

30 THIS INDENTURE made the nineteenth day of
November one thousand nine hundred and twenty eight
BETWEEN WILLIAM HENRY CLARKE of Mt. Gravatt near
Brisbane in the State of Queensland Stationer of the
first part JOHN TRIM of Mt. Gravatt aforesaid
Nurseryman of the second part and REGINALD MACDONNELL
KING of Brisbane aforesaid Solicitor of the third
part WHEREAS by a certain Nomination of Trustees
registered in the office of the Registrar of Titles
at Brisbane on the thirtieth day of January one
thousand nine hundred and twenty and numbered 755102
certain lands therein described as Subdivisions 2
and 3 of Portions 332 and 333 situated in the County
of Stanley Parish of Bulimba containing twenty acres
one rood twenty seven perches and more particularly
40 described in Certificate of Title No. 145579 Volume
902 Folio 69 were transferred by one Robert Grieve
as Settlor to Andrew Harry Glindemann John Trim and
William Henry Clarke as trustees thereof under the
provisions of The Real Property Act of 1861 for

Exhibits

Exhibit No. 1
(Page 17)
Resolution of
Mount Gravatt
A.H. & I.
Society and
Progress
Association

27th March
1928

Exhibit No. 1
(Pages 18 to
23)
Certified
copy Deed of
Appointment
of New
Trustee

19th November
1928

QUEENSLAND
STAMP DUTY

Queensland
Impressed
Duty
10/-
TEN
SHILLINGS

Queensland
Impressed
Duty
10/-
TEN
SHILLINGS

Exhibits

Exhibit No. 1
(Pages 18 to
23)

Certified
copy Deed of
Appointment
of New
Trustee

19th November
1928
(continued)

the use enjoyment and benefit of the members of the Mt. Gravatt Progress Association subject to certain trusts more particularly set forth therein declared and contained concerning the same AND WHEREAS by the said Nomination of Trustees it was provided that the power of appointing new trustees should for the purposes of the said Nomination of Trustees be vested in the surviving or continuing trustee or trustees in accordance with a direction in writing as provided by the said Nomination of Trustees 10
AND WHEREAS the said Andrew Harry Glindemann died on the twenty eighth day of September one thousand nine hundred and twenty five AND WHEREAS the said John Trim is desirous of being discharged from the trusts of the said Nomination of Trustees as he doth hereby declare AND WHEREAS the said William Henry Clarke as the sole continuing trustee and in pursuance of a direction duly given to him in that behalf in terms of the said Nomination desires the said Reginald MacDonnell King to be a trustee of 20
the said Nomination of Trustees in the place of the said Andrew Harry Glindemann and John Trim and the said Reginald MacDonnell King has consented to such appointment AND WHEREAS it is intended that the said trust property shall be forthwith transferred into the names of the said William Henry Clarke and Reginald MacDonnell King NOW THIS INDENTURE WITNESSETH:-

1. In exercise of the power given to him by the said Nomination of Trustees and of all other powers enabling him in this behalf the said William Henry Clarke doth hereby appoint the said REGINALD MACDONNELL KING to be a trustee of the said Nomination of Trustees in the place of the said Andrew Harry Glindemann and the said John Trim. 30

2. The said William Henry Clarke and Reginald MacDonnell King their executors administrators and assigns shall hereinafter stand and be possessed of the said trust property hereinbefore described and the dividends interest and annual produce thereof 40
respectively upon the trusts and with and subject to the powers and provisions in and by the said Nomination of Trustees expressed declared and contained of and concerning the same or such of them as are now subsisting and capable of taking effect.

3. That in consideration of the premises the said William Henry Clarke and Reginald MacDonnell King

hereby release the said John Trim his executors and administrators and his estate and effects from all claims demands actions and proceedings in respect of the said trust property or anything done or omitted by the said John Trim in respect thereof or otherwise howsoever in relation to the premises and agree to indemnify and keep indemnified the said John Trim his executors and administrators and his estate and effects from and against all actions claims costs charges and expenses whatsoever which he may or might have incurred sustained or be subject or liable to by reason of his having acted as such trustee as aforesaid or otherwise in respect of the premises.

10

Exhibits
—
Exhibit No. 1
(Pages 18 to 23)
Certified copy Deed of Appointment of New Trustee
19th November 1928
(continued)

IN WITNESS WHEREOF the said parties have hereunto set their hands and seals the day and year first hereinbefore written.

20

SIGNED SEALED AND DELIVERED)
by the said WILLIAM HENRY CLARKE in the presence of:-) (Sgd.) Will. H. Clarke (L.S.)

Wm. Evans, J.P.

SIGNED SEALED AND DELIVERED)
by the said JOHN TRIM in the presence of :-) (Sgd.) John Trim (L.S.)

L. Howatson, J.P.

30

SIGNED SEALED AND DELIVERED)
by the said REGINALD MACDONNELL KING in the presence of:-) (Sgd.) R.M. King (L.S.)

Solicitor, Brisbane

Correct for the purpose of Registration

(Sgd.) King & Gill

Solicitors for Trustees.

162

(Pages 18 to 23)

Certified copy Deed
of Appointment of New
Trustees

19th November 1928

8

1928.

DATED

W.H. CLARKE, First part

JOHN IRLE, Second part

R.A. KING, Third part.

DEED OF APPOINTMENT
OF NEW TRUSTEES.

ADDS & VILL,
Solicitors,
Brisbane.

20

Exhibit No.1
(Pages 18 to 23)
Certified copy
Deed of Appointment
of New Trustees
19th November 1928

22 NOV 1928
25
26

21

Exhibits

Exhibit No. 1
(Pages 18 to
23)

Certified
copy Deed of
Appointment
of New
Trustee

19th November
1928
(continued)

No. A 73619

Appointment of New Trustee

W.H. Clarke

to

W.H. Clarke & R.M. King

A.B.
6/12/28

Particulars entered in
Register Book
Vol 902 Folio 69
the 12 day of Dec
1928 at 3.50 p.m.

F.J. Bradfield Seal
Registrar of Titles

Initials
92298 10-0
2 10-0
10-0 on Nom.
1-10-0

Copy resolution of Mount
Gravatt A H & I Society
& Progress Assn.
Initials 1/12/28
Pencil Notations
(Crossed Out)
initials
23/11/28

1/- Requisition Fee
Paid Vide No 78152
5/12/1928

Initials

King & Gill
Solicitors
Brisbane.

Queensland Stamp Duty

Queensland Impressed Duty
2/6

Two shillings and sixpence
Received duplicate hereof
King & Gill
Solors. for trustees
per G.H.B. Eagles
2/1/29

To: The Registrar of Titles 10

Brisbane.

Initials

Sir,

We would thank you to
have the within Appointment
of New Trustees registered
on Certificate of Title No.20
145579 Volume 902 Folio 69
and on Nomination of
Trustees No. 755102.

Dated this twenty-
first day of November, 1928.

We have the honour to be
Sir,
Your obedient Servants, 30

King & Gill.
Solicitors for trustees.

Exempt from Succession Duty
upon

Commissioner of Stamp Duties

Stamp Duties Office 40

79571 21 Nov 1928

Brisbane

165.

Seventh Sheet of Seven Sheets

(Signed) A. Byrne

DEPUTY REGISTRAR OF TITLES.

(Seal)

Exhibits

Exhibit No. 1
(Pages 18 to
23)

Certified
copy Deed of
Appointment
of New
Trustee

19th November
1928
(continued)

I certify that this machine copy is a reproduction
of an original document being Appointment of New
Trustees No A73619 of seven sheets in my custody
and control.

Made this eleventh day of May, 1976.

10

(Signed) A. Byrne

DEPUTY REGISTRAR OF TITLES.

(Seal)

Exhibits

Exhibit No. 1
(Page 24)
Extract from
Valuation
Roll

20th
September
1938

Exhibit No. 1 (Page 24) - Extract from Valuation Roll

91

.....STREET PARISH OF

Year	Assessment No.	OWNER	ADDRESS	Nature of Improvement	W. or Vol. Folio	Street No.
1933-34		Brisbane City Council				
1934-35		Mt Greaves Agricultural	W. H. Clarke	Hall &	902	69
1935-36	73	Herbicultural & Industrial Society	Logan Rd. Mt Greaves	Park		
1936-37		Station Wm Henry Clarke & Co				
1937-38		Reginald MacBennell (King) Trustees				166.

91

DISTRICT

DESCRIPTION	AREA	At Valuation	Remarks
Re-Sub sub. sub.	Re-Sub. Allot. Sect. Por. Acr. Rds. Per.	Frontage per Ft.	
Logan Rd.	2/3	332 20 1 27 669'11"	Association to B.C.C. & 475/1/6 Cash Impd. 20/9/38 Ref. 10431/38 Valuations as per W.M.L. £1350 (£550 Freehold & £800 Improvements)

Exhibit No. 1 (Pages 25 & 26)

Unsigned Memorandum from Lord Mayor's office

Exhibits

Exhibit No. 1
(Pages 25 & 26)

BRISBANE
CITY
CREST

LORD MAYOR'S OFFICE

Town Hall, Brisbane.

Conjunctus
Viribus

Mount Gravatt 16/5

Unsigned
Memorandum
from Lord
Mayor's
office

Undated

10

Alderman W.L. Dart introduced a deputation to the Right Hon. the Lord Mayor, from the Mt. Gravatt Show Society, on September 2nd, 1937. The following were present: Messrs. Clarke & Buckley.

Mr. Clarke said he desired to submit the following scheme for the development of the Mt Gravatt Show Ground, on instructions from the Show Committee:-

20

That the Show Society hand over to the Brisbane City Council for Park purposes, the freehold deeds of 20 acres of ground on the main Logan Road, with all improvements thereon, the total valuation of which is £1500.

In return for which very necessary improvements shall be at once made to the ground.

To have the control of the ground one week prior to the District Show and one week after.

The total liability on the ground is an overdraft of £450 to the Bank of New South Wales.

The Trustees are Messrs. R.M.King, R.E.Nixon Smith and Will. H. Clarke.

30

Mr. Clarke said that their first scheme as the Lord Mayor knew was, that the Council by the employment of Relief Labor or by special grant by the Council, would level the show ring. The Engineer for the Council in the Wynnum District meet the Executive Officers on the show ground with a view to estimating the cost of the proposal. This was done, but unfortunately it was found, that it could not be done by the Council with Relief Labor, but nothing further has been heard of the work being undertaken by a special grant from the Brisbane City Council.

40

Exhibits

—
 Exhibit No. 1
 (Pages 25 &
 26)
 Unsigned
 Memorandum
 from Lord
 Mayor's
 office
 (continued)

Undated

If there is no possibility of this being done, then the alternative suggestion is as follows:-

The Show Society recognising the urgent need of the proposed improvement is prepared to hand over to the Brisbane City Council the freehold rights of the Showground, consisting of 20 acres of improved land on the main Logan Road within approximately 2 miles of the Holland Park Tram terminus, under the following conditions:-

1. That the improvements as suggested by the Show Committee be undertaken immediately the deed of Gift has been effected, 10
2. That the Show Committee elected each year under the Show Society's rules shall be allowed the free use of the Showground for one week prior to and the week of the show, when it will be used entirely for the purpose of hold (sic) the District Annual Show,
3. That the ground shall be held in perpetuity as a recreation reserve and showground. 20

Under these conditions it is felt that the Show, which has now become undoubtedly the biggest suburban show could be developed along lines that would make it a much greater asset to the City of Brisbane.

To the City Council the advantages would be:
 The Show grounds and improvement would be handed over to the City Council, the only liability being £450, overdraft at Bank. The Council would be securing a very necessary Park area in a large district, where none exists at present. 30

The Lord Mayor in reply said that he understood from the remarks of Mr. Clarke that the only condition applicable to the taking over of the area would be the levelling down of the centre of the ring.

Mr. Clarke said that was so.

The Lord Mayor said that he would bring the matter before the Finance Committee today and let them have a decision during the course of the next couple of weeks. 40

Exhibit No. 1 (Page 27)

Certified copy Minute of Brisbane City Council

1,095/1937-38

Exhibits

Exhibit No. 1
(Page 27)
Certified
copy Minute
of Brisbane
City Council

19th October
1937

17. PROPOSED ACQUISITION OF MOUNT GRAVATT SHOWGROUND

10 Consideration has been given by your Committee to the report of a deputation from the Mount Gravatt Show Society, which waited on the Right Honourable the Lord Mayor, on the 2nd September, 1937, relative to a proposal for the taking over by the Council of the Showground, for park and recreation purposes. The present improvements on the land are valued by the Society at £1,500.

The proposal in effect is that the Show Society will hand over to the Council the fee simple of the land comprising the Showground at Mount Gravatt, described as subs. 2 and 3 of portions 332 and 333, Parish of Bulimba, containing an area of 20 acres 1 rood 27 perches, in consideration of the Council:

- 20 (a) Setting the land apart permanently for Showground, park and recreation purposes;
- (b) Levelling off the show ring;
- (c) Granting the Society the exclusive use of the grounds without charge for a period of two weeks in each and every year for the purposes of and in connection with the District Annual Show; and
- (d) Liquidating the present bank overdraft of £450 on the property.

30 Your Committee desires to report that the Council has no power to take over the property subject to the existing overdraft, which is secured by way of a mortgage. It would be necessary in the event of the Council deciding to acquire the land to liquidate the overdraft forthwith.

40 Although no funds are at present available for the purpose, your Committee is of the opinion that the proposal is one worthy of the favourable consideration of the Council, as it would be the means of

Exhibits

Exhibit No. 1
(Page 27)
Certified
copy Minute
of Brisbane
City Council
19th October
1937
(continued)

acquiring an area of land eminently suitable as a local park and recreation ground at a minimum cost.

It accordingly submits the following recommendation for adoption by the Council:-

RECOMMENDATION: That the proposal be approved, and provision for a sum not exceeding £450 (in order to liquidate the overdraft on the property) be made in the estimates for the next financial year.

ADOPTED.

10

The motion for the adoption of the Finance Committee's report, as a whole, was then put and carried.

WE CERTIFY that the printed matter to which this certificate is annexed and which is headed "17. PROPOSED ACQUISITION OF MOUNT GRAVATT SHOWGROUND." is a copy of an entry in a book kept by the Town Clerk relating to the proceedings of Brisbane City Council at a meeting duly convened and held on the nineteenth day of October, 1937.

20

(Signed) P. F. Thorley (Signed) W.D. Bourke

TOWN CLERK

CHAIRMAN

The Seal of BRISBANE CITY COUNCIL)
was hereunto affixed this)
Eleventh day of November 1976 by)
me, PETER FRANCIS THORLEY, I being) (Sgd.) P.F.Thorley
the proper officer to affix such)
Seal, in the presence of:-) TOWN CLERK

I. Hawes J.P.

A JUSTICE OF THE PEACE

30

Exhibit No. 1 (Page 28)

Letter, Town Clerk, Brisbane City Council
to Will. H. Clarke

361/4 Mt. Gravatt 16/5

Mt. Gravatt

25th October, 1937.

Mr. Will H. Clarke,
Buranda Studio,
STONES CORNER. S.E.2.

Exhibits

Exhibit No. 1
(Page 28)

Letter, Town
Clerk,
Brisbane City
Council to
Will H. Clarke

25th October
1937

10 Dear Sir,

I refer to your letter of the 6th instant,
relative to the proposed taking over by the Council
of the Mount Gravatt Showground.

In reply I have to inform you that provision
is to be made in the estimates for the next financial
year for a sum, not exceeding £450, for the
liquidation of the overdraft on the property, the
Council to then take over the fee simple of the
land under the following conditions:-

- 20 (a) The area to be set apart permanently for
Showground, park and recreation purposes;
- (b) The Show Ring to be levelled off;
- (c) The Show Society to be granted the exclusive
use of the Ground without charge for a period
of two weeks in each and every year, for the
purposes of and in connection with the
District Annual Show.

Yours faithfully,

(Signed) Illegible

30

TOWN CLERK.

Exhibits

Exhibit No. 1 (Page 29)

Exhibit No. 1
(Page 29)
Minutes of
Annual
General
Meeting held
on 15th
December 1937

Minutes of Annual Meeting held on
the 15th December 1937

<u>Minutes</u>			
		The minutes of the last Annual meeting were read & confirmed on the motion of Mr. Slack, seconded by Mr. Mendez. The Treasurer submitted his report & financial statement, showing the last show to be one of records in every way, this was unanimously adopted.	10
1 W.H.C. 2 Mr.Buckley		The Secretary then submitted the proposal that the Showground be handed over to the Brisbane City Council on condition that the overdraft at the bank be liquidated, and that the Council take immediate steps to improve the ground, particularly in regard to the ring. This motion was fully discussed & eventually carried unanimously.	20
1 Mr.King 2 " Buckley		It was agreed that the Secretary draft out an agreement in accordance with letter received from the Brisbane City Council dated the 25th Oct 1937 & numbered M.C.T:G.H. This was carried unanimously.	
1 Mr.Lyle 2 " Lanham		It was moved, seconded & carried that Bi-monthly meetings be held, for the purpose of discussing progress matters only. The calling of the first meeting to be left in the hands of the Secretary.	30
1 Mr.Culver- house 2 " Mendez		A claim of 13/6 being made by Mr.Fenton, against the 1934 Show Committee It was agreed that he be paid that amount, in settlement of his claim.	
1 Mr.Hickey 2 " King		It was resolved that a balance sheet be printed & circulated each year.	
		After votes of thanks had been passed to the hon.Auditor & the Show Committee, the meeting was closed.	40

Ian M. Baxter
Chairman

Exhibit No. 1 (Pages 30 & 31)

Minutes of Show Committee Meeting held on Thursday evening the 17th February 1938

Exhibits

Exhibit No. 1
(Pages 30 & 31)
Minutes of Show Committee Meeting held 17th February 1938

Minutes

The minutes of the meeting held on the 12th August were read & confirmed

1 Mr. Howatson
2 " Brown

Correspondence

The only correspondence was a letter from the Kennel Association of Queensland re affiliation.

10 1 Mr. Buckley
2 " Culverhouse

It was resolved that an affiliation be paid.

Show ground disposal

The Secretary then submitted the draft agreement he had drawn up in accordance with instructions given at the Annual Meeting. The main points in the Agreement read as follows:

20

The Mt. Gravatt A.H. & I. Society agrees to transfer, surrender & hand over to the Brisbane City Council the fee simple of the Mr. Gravatt Show-ground, consisting of 20 acres, on the following conditions

30

1. The Brisbane City Council liquidates the Bank overdraft with accrued interest.

2. The Brisbane City Council shall, after the completion of the Mount Gravatt Show of 1938, take immediate action to level & fence that portion of the ground known as the Showring.

3. The Brisbane City Council hereby affirms that the property shall be held by the Brisbane City Council in perpetuity as a Showground & Recreation Park.

40

4. The Brisbane City Council shall permit the Mt. Gravatt A.H. & I. Society, without charge, the sole use & rights of the grounds & buildings thereon one week prior, & one week following the Show week, for Annual Show purposes, on or about the months of July & August, or at such time or times as may be requisite for the holding of such Annual Show.

5. The Brisbane City Council shall permit all the building now

Exhibits

Exhibit No. 1
(Pages 30 &
31)
Minutes
of Show
Committee
Meeting held
17th February
1938
(continued)

- used for Show purposes to be retained for those purposes solely. It was moved by Mr. Culverhouse, & seconded by Mr. Howatson that the agreement as drawn up & submitted by the Secretary be ratified, this, upon being put to the meeting was declared carried unanimously.
- | | | | |
|---|-------------|--|----|
| 1 | W.H.C. | The same Patrons & Vice Presidents | |
| 2 | Mr. Buckley | were re-nominated, & Mr. King was elected President unanimously | 10 |
| | | | |
| 1 | Mr. Baxter | It was decided that the bi-monthly meetings to consider Progress matters only, should commence on the last Thursday in March, & on the last Thursday in each second month following. | |
| 2 | " Buckley | | |

F. J. Howatson

Acting Chairman

Exhibit No. 1
(Pages 33 &
34)
Minutes of
Show
Committee
Meeting held
21st April
1938

Exhibit No. 1 (Pages 33 & 34)

Meeting of Show Committee held on
Thursday the 21st April 1938 20

The Secretary apologised for the absence of the Chairman, also Messrs. Culverhouse, Anger & Peterson.

In the absence of Mr. Baxter, Mr. F. J. Howatson was elected Chairman for the evening.

- | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|----------------|-----------------------------|---|----------------|-----------------------------|---------|--|---------------|-----------|---------|--|--|-----------------|--------------------|--|--|-------------|-------|--|--|------------|-----------|--|--|-------------------|------------|----|--|--------------------|-------|--|--|
| 1. | Mr. Buckley | The minutes of the previous meeting held on the 17th February were read & confirmed. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2. | " Klumpp | The following correspondence both outward & inward was read & adopted & received respectively | 30 | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | | <table border="0"> <tr> <td style="padding-left: 20px;"><u>Outward</u></td> <td style="padding-left: 20px;">Head Teacher Mt. G. School,</td> <td style="padding-left: 20px;">Welcome</td> <td></td> </tr> <tr> <td style="padding-left: 20px;"><u>Inward</u></td> <td style="padding-left: 20px;">" " Reply</td> <td style="padding-left: 20px;">Welcome</td> <td></td> </tr> <tr> <td></td> <td style="padding-left: 20px;">G. R. Matthews,</td> <td style="padding-left: 20px;">Acceptance as V.P.</td> <td></td> </tr> <tr> <td></td> <td style="padding-left: 20px;">T. S. Hance</td> <td style="padding-left: 20px;">" " "</td> <td></td> </tr> <tr> <td></td> <td style="padding-left: 20px;">R. M. King</td> <td style="padding-left: 20px;">" " Pres.</td> <td></td> </tr> <tr> <td></td> <td style="padding-left: 20px;">R. E. Nixon Smith</td> <td style="padding-left: 20px;">" " Patron</td> <td style="vertical-align: bottom;">40</td> </tr> <tr> <td></td> <td style="padding-left: 20px;">Capt. Jos. Francis</td> <td style="padding-left: 20px;">" " "</td> <td></td> </tr> </table> | <u>Outward</u> | Head Teacher Mt. G. School, | Welcome | | <u>Inward</u> | " " Reply | Welcome | | | G. R. Matthews, | Acceptance as V.P. | | | T. S. Hance | " " " | | | R. M. King | " " Pres. | | | R. E. Nixon Smith | " " Patron | 40 | | Capt. Jos. Francis | " " " | | |
| <u>Outward</u> | Head Teacher Mt. G. School, | Welcome | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <u>Inward</u> | " " Reply | Welcome | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | G. R. Matthews, | Acceptance as V.P. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | T. S. Hance | " " " | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | R. M. King | " " Pres. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | R. E. Nixon Smith | " " Patron | 40 | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Capt. Jos. Francis | " " " | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

1.W.H.C.
2.Mr.Klumpp

It was decided that the Show date for 1938 be fixed for the last Saturday in July.

The Secretary reported that he had interviewed Mr.Travill the Town Clerk, in connection with the agreement submitted before the taking over of the Showground could be finalised. Mr. Travill had stated that while the Council could not sign the agreement, if the Secretary would write conveying the terms of the agreement in letter form, he would answer, endorsing & that would be the same thing in a different form. The Secretary then interviewed Mr. King in regard to the matter, & Mr. King had assured him that an acceptance by letter, would be just as satisfactory as the signing of agreement.

The Secretary therefore submitted the letter he had written & the Committee endorsed his action.

The following alterations to the Schedule were agreed to.

In Farm Section, put in class for
One Pie Melon, to be judged by weight.

In Apiary Section, put in class for
2 lbs of Beeswax Yellow Tablets
Make Class 172 in Apiary Section
read 3 Bottles of Honey (Light)

In Ring Classes

After Class 7, put in all children classes starting with Best Pony Hack under 13 hds to be ridden by boy or girl under 14 years & ending with Team of Four ponies.

1.W.H.C.
2.Mr. Brown
1 Mr. Klumpp
2 " Buckley

The Schedule was then adopted in its altered form.

It was agreed that the judges of last year be re-appointed.

There being no further business the meeting was declared closed.

Exhibits

Exhibit No. 1
(Pages 33 @
34)
Minutes of
Show
Committee
Meeting held
21st April
1938
(continued)

F.J. Howatson

Acting Chairman

Exhibits

Exhibit No. 1
(Pages 35 &
36)
Letter, Mount
Gravatt Show
Society to
Brisbane
City Council
21st April
1938

Exhibit No. 1 (Pages 35 & 36

Letter, Mount Gravatt Show Society to Brisbane
City Council

CITY OF BRISBANE

From: SEC. MT.GRAVATT SHOW SOCIETY, MT.GRAVATT.
Subject: RE MT. GRAVATT SHOW GROUND.

For Report

36174 - MOUNT GRAVATT SHOW SOCIETY -
MOUNNT GRAVATT

IAN M. BAXTER, Chairman W.J. BUCKLEY, Treasurer 10
WILL. H. CLARKE, Organiser and Secretary

Committee:

C.F.ANGER
G.T.BROWN
J.H.T.CULVERHOUSE
J.F.HOWATSON
S.KLUMPP
C.PETERSEN

Mount Gravatt, 21st April 1938

F. A.
22. 4.38

RECEIVED
22 APR 1938

To the
Town Clerk
Brisbane City Council.

20

Dear Sir,

In connection with your former letter dated the
25th Oct. 1937 & under reference mark of Mount
Gravatt M.C.T.:G.H., there are just one or two
matters that I think should be brought under your
notice

1 The buildings upon the ground are used for
show purposes only, & in consequence all the furni- 30
ture & fittings are permanent fixtures & therefore,
while the Show Society will be granted the sole use
of the Showground, one week prior to the show week
& one week following, the buildings would of necessity
have to be under the control of the Show Society from
Show to Show for such time as the Mount Gravatt Show
Society remains an active body.

2 The £450 quoted by you as being the amount to
be provided for in the estimates for the liquidation
of the overdraft on the property, will of course be 40

Exhibits

Committee:

Exhibit No. 1
(Page 37)
Letter, Mount
Gravatt Show
Society to
Brisbane City
Council
4th May 1938
(continued)

C.F. ANGER
G.T. BROWN
J.H.T. CULVERHOUSE
J.F. HOWATSON
S. KLUMPP
C. PETERSEN

Mount Gravatt, 4th May 1938

RECEIVED
-5 MAY 1938

To the
Town Clerk
Brisbane City Council

10

Dear Sir,

On behalf of the Mount Gravatt Show Society,
I herewith agree to the conditions embodied in your
letter dated the 28th* Oct. 1937 relative to the
taking over of the Mount Gravatt Showground by the
Brisbane City Council.

Trusting that this acknowledgment will be
considered satisfactory & quite in order.

This letter super-
sedes the one here-
under dated 21/4/38
and is written follow-
ing an interview with
the T/C. It relates
particularly to clause 1.
D.M.

I remain
Sincerely Yours

20

Will. H. Clarke

Secretary
Mt.Gravatt Show Society

Reference Note

Mt. Gravatt MCT:GH

*Pencilled notation - "25".

Exhibit No. 1 (Page 38)

Letter, Mount Gravatt Show Society to
Brisbane City Council

36174 Mt. Gravatt 16/G

CITY OF BRISBANE

From: SECTY. MOUNT GRAVATT SHOW SOCIETY, MOUNT GRAVATT
Subject: ACQUISITION BY COUNCIL OF MT. GRAVATT SHOW GROUND

Exhibits

Exhibit No. 1
(Page 38)
Letter, Mount
Gravatt Show
Society to
Brisbane
City Council

5th July 1938

10 For Report

MOUNT GRAVATT SHOW SOCIETY
MOUNT GRAVATT

IAN M. BAXTER, Chairman W. J. BUCKLEY, Treasurer
WILL. H. CLARKE, Organiser and Secretary

Committee:

C.F. ANGER
G.T. BROWN
J.H.T. CULVERHOUSE
J.F. HOWATSON
S. KLUMPP
C. PETERSEN

Mount Gravatt,
5th July 1938

20

F. A. RECEIVED
6. 7.38 -6 JUL 1938

To the
Town Clerk
Brisbane City Council

Dear Sir,

30

I herewith make application that the Brisbane
City Council now take the necessary action to give
effect to the taking over of the Mt. Gravatt Show-
ground under the conditions embodied in your letter
dated the 25th Oct. 1937 & endorsed MCT:G.H.

In addition to the amount mentioned in your
letter, the interest which has been met by my
Association, since the date of your letter will, I
trust be reimbursed to my Society.

Awaiting your early reply

I remain

Sincerely Yours
Will. H. Clarke
Secretary.

40

Exhibits

Exhibit No. 1 (Page 39)

Exhibit No. 1
(Page 39)
Certified
Copy Minute
of Brisbane
City Council

12th July
1938

Certified Copy Minute of Brisbane City Council
97/1938-39

30. PROPOSED ACQUISITION OF MOUNT GRAVATT SHOWGROUND.

A proposal for the taking over of the Mount Gravatt Showground was before the Council on the 19th October, 1937, and approved.

The proposal provides, inter alia, that the Council liquidate the bank overdraft on the property, amounting to £450 plus interest. 10

A letter has recently been received from the Show Society requesting that as the new financial year has commenced the matter be now finalised.

Your Committee desires to report that provision for the liquidation of the overdraft has been made in the current year's estimates, and therefore it can see no reason why the matter should not be finalised forthwith, and recommends accordingly.

RECOMMENDATION: That the necessary steps be taken forthwith to take over the above area. 20

ADOPTED.

WE CERTIFY that the printed matter to which this certificate is annexed and which is headed "30. PROPOSED ACQUISITION OF MOUNT GRAVATT SHOWGROUND" is a copy of an entry in a book kept by the Town Clerk relating to the proceedings of Brisbane City Council at a meeting duly convened and held on the twelfth day of July, 1938.

(Signed) P.F. Thorley (Signed) W. D. Bourke 30

TOWN CLERK

CHAIRMAN

The Seal of BRISBANE CITY COUNCIL) was hereunto affixed this)
Eleventh day of November, 1976 by) Sgd. P.F. Thorley
me, PETER FRANCIS THORLEY, I)
being the proper officer to affix) TOWN CLERK
such Seal, in the presence of:)

I. Hawes J.P.

A JUSTICE OF THE PEACE

Exhibit No. 1 (Page 40)

Unsigned agreement between Brisbane City Council and Mount Gravatt A.H. & I. Society

Agreement made this _____ day of 193____
between the Brisbane City Council and the
Mount Gravatt A. H. & I. Society

36174 Mt.Gravatt 16/G

Exhibits

Exhibit No. 1
(Page 40)
Unsigned agreement
between
Brisbane
City Council
and Mount
Gravatt A.H.&
I. Society

Undated

10

The Mount Gravatt Agricultural, Horticultural, & Industrial Society, agrees to transfer, surrender, & hand over to the Brisbane City Council, the fee simple of that property at Mount Gravatt, known as the Mount Gravatt Showground, described on Certificate of Title No.145579, Vol.902, Folio 69, as Sub-division 2 & 3 of Portions 332 & 333, Parish of Bulimba, County of Stanley, containing 20 acres, 1 rood, 27 perches, on the following conditions.

C/Solr 8.1.38

1 The Brisbane City Council liquidates the Bank overdraft with amounting to £450, with accrued interest, with all charges covered by transfer.

20

2 The Brisbane City Council shall, after the completion of the Mount Gravatt Show of 1938, take immediate action to level & fence that portion of the ground known as the Show Ring.

3 The Brisbane City Council hereby affirms that the property shall be held by the Brisbane City Council, in perpetuity as a Showground & Recreation Park.

30

4 The Brisbane City Council shall permit the Mount Gravatt Agricultural, Horticultural & Industrial Society, without charge, the sole use & rights of the grounds & buildings thereon, one week prior, & one week following the Show week, for annual show purposes on or about the months of July or August, or at such times or times as may be requisite for the holding of such Annual Shows.

5 The Brisbane City Council, shall permit all buildings now used for Show purposes to be retained for those purposes solely

Exhibits

Exhibit No. 1 (Page 41)

Exhibit No. 1
(Page 41)

Letter, Brisbane City Council to
Commissioner of Taxes

Letter,
Brisbane
City Council
to
Commissioner
of Taxes

36174 Mt.Gravatt 16/5

22nd July 1938

22nd July
1938

Sir,

I have to inform you that Brisbane City Council intends to take over from the present trustees, William Henry Clarke and Reginald Macdonnell King, the property known as the Mount Gravatt Show Ground and described as subdivisions 2 and 3 of portions 332 and 333 in the County of Stanley, Parish of Bulimba, containing an area of 20 acres, 1 rood, 27 perches, for the sum of £450:0:0 (being the amount owing under Bill of Mortgage No.771036) together with interest accrued to date of transfer.

10

Will you kindly let me know at your early convenience if there is any land tax outstanding against this property?

Yours faithfully,

20

Town Clerk

The Commissioner of Taxes,
BRISBANE.

Exhibit No. 1
(Page 42)

Exhibit No. 1 (Page 42)

Letter,
Brisbane
City Council
to Deputy
Federal
Commissioner
of Taxes

Letter, Brisbane City Council to Deputy
Federal Commissioner of Taxes

JTMcG/JI

22nd July 1938

Sir:

I have to inform you that Brisbane City Council intends to take over from the present trustees, William Henry Clarke and Reginald Macdonnell King, the property known as the Mount Gravatt Show Ground and described as subdivisions 2 and 3 of portions 332 and 333 in the County of Stanley, Parish of

22nd July
1938

30

Bulimba, containing an area of 20 acres, 1 rood, 27 perches, for the sum of £450:0:0 (being the amount owing under Bill of Mortgage No.771036) together with interest accrued to date of transfer.

Will you kindly let me know at your early convenience if there is any land tax outstanding against this property?

Yours faithfully,

Town Clerk

Exhibits

Exhibit No. 1
(Page 42)
Letter,
Brisbane
City Council
to Deputy
Federal
Commissioner
of Taxes

22nd July
1938
(continued)

10 The Deputy Federal Commissioner of Taxes,
Desmond Chambers,
Adelaide Street,
BRISBANE.

Exhibit No. 1 (Page 43)

Letter, Bank of New South Wales to Mount
Gravatt A. H. & I. Society

36174 Mt. Gravatt 16/5

BANK OF NEW SOUTH WALES

Stone's Corner,
BRISBANE.
23rd July 1938

Exhibit No. 1
(Page 43)
Letter,
Bank of New
South Wales
to Mount
Gravatt A.H.
& I.Society

23rd July
1938

20

The Secretary,
Mount Gravatt A.H. & I. Society,
c/- Mr. W.H.Clarke
Stones Corner,
BRISBANE Q

Dear Sir,

We certify that the balance of Mount
Gravatt Agricultural Horticultural and Industrial
Society account with this Bank at close of business
today is Debit £450 (Four hundred and fifty pounds).

Debt	£450
Interest from 1/4/38 to 31/7/38	£ 8:8:11
	<u>£458:8:11</u>
Interest 1/10/37 to 31/3/38	
charged on 31/3/38	12:11:4
	<u>£471: -:3</u>

Yours faithfully,

(Signed)

Manager.

30

Exhibits

Exhibit No. 1 (Page 44)

Exhibit No. 1
(Page 44)
Letter, Mount
Gravatt Show
Society to
Brisbane
City Council
26th July 1938

Letter, Mount Gravatt Show Society
to Brisbane City Council

36174 Mt. Gravatt 16/5

CITY OF BRISBANE

From SEC. MT. GRAVATT SHOW SOCIETY, MT. GRAVATT.

Subject STATEMENT OF ACCOUNT - SHOW SOCIETY WITH
BANK OF NEW SOUTH WALES

For Report

25351 - MOUNT GRAVATT SHOW SOCIETY - 10
MOUNT GRAVATT

16/5

IAN M. BAXTER, Chairman W. J. BUCKLEY, Treasurer
WILL. H. CLARKE, Organiser and Secretary

Committee:

C.F. ANGER

Mount Gravatt, 26th July 1938

G.T. BROWN

J.H.T. CULVERHOUSE

J.F. HOWATSON

S. KLUMPP

C. PETERSEN

20

To the
Town Clerk
Brisbane City Council

Dear Sir,

Enclosed please find statement received from
the Bank of New South Wales in regard to the
liability of the Show Society to that institution.

I am forwarding it to you in the hope that
it will be helpful in finalising the agreement
between the Show Society & your Council

30

Sincerely Yours

Will H. Clarke

Secretary

Mt. Gravatt Show Society.

Exhibit No. 1 (Page 45)

Unsigned Nomination of Trustees

Queensland

Nomination of Trustees

Exhibits

Exhibit No. 1
(Page 45)

Unsigned
Nomination
of Trustees

Undated

10

We, William Henry Clarke and Reginald MacDonnell King, both of Brisbane in the State of Queensland being the registered proprietors of an estate in fee simple as trustees under Nomination of trustees number 755102 in all that piece or parcel of land situate in the County of Stanley Parish of Bulimba, containing an area of twenty acres, one rood and twenty seven perches, and described as Subdivisions 2 and 3 of Portions 332 and 333 and being the whole of the land described in Certificate of Title Number 145579 Volume 902 Folio 69 ~~doth hereby trans~~ in consideration of the sum of paid to us (the receipt of which sum we hereby acknowledge) ~~doth~~ do hereby transfer all our estate and interest in the said land to Brisbane City Council to hold the same as trustee under the provisions of "The Real Property Acts of 1861 and 1877"

20

In Witness Whereof we have hereunto signed our names ~~and this~~ day of 1938.

Signed by the said)
William Henry Clarke)
in the presence of)

30

Signed by the said)
Reginald MacDonnell)
King in the presence of)

Accepted.

The Seal of B.C.C. etc.

Exhibits

Exhibit No. 1 (Page 46)

Exhibit No. 1
(Page 46)
Schedule of
Trusts

(draft)

Schedule of Trusts

36174 Mt.Gravatt 16/9

Undated

SCHEDULE OF TRUSTS

IT IS AGREED that the above described land shall be held by the abovenamed Trustee or its successors and assigns upon the trusts following, that is to say:-

UPON TRUST for the purposes of a public park, recreation reserve or show ground or for such other purposes not inconsistent therewith as the trustee may from time to time in its absolute discretion declare and appoint AND IT IS HEREBY EXPRESSLY DECLARED that the trustee shall grant to the Mount Gravatt Agricultural Horticultural and Industrial Society without any charge whatsoever the exclusive right to use the said land and all buildings and erections thereon for a period of three weeks in each and every year for the purpose of the Mount Gravatt Annual Show. Such annual Show shall take place during the months of July or August in each and every year and the Society shall give to the trustee one month's written notice of its intention to hold such Show. The trustee shall also as soon as practicable after the completion of the Mount Gravatt Show of 1938 take all necessary steps to level and fence that part of the land known as the Show ring. Subject as aforesaid the trustees shall have power to lease the said land or any part thereof for any period (but not exceeding 21 years) upon such terms and subject to such conditions as it may think fit. IT IS ALSO AGREED AND DECLARED that the trustee may sell the said land or any part thereof at any time PROVIDED HOWEVER that while the Mount Gravatt Agricultural Horticultural and Industrial Society remains in existence the trustee shall obtain the consent of such Society.

10

20

30

Exhibit No. 1 (Pages 47 & 48)

Letter, Brisbane City Council to Mount
Gravatt A.H. & I. Society

36174 Mt.Gravatt 16/G

24th August, 1938

The Secretary,
The Mt.Gravatt Agricultural, Horticultural
& Industrial Society, MOUNT GRAVATT.

Dear Sir,

Exhibits

Exhibit No. 1
(Pages 47 &
48)

Letter,
Brisbane
City Council
to Mount
Gravatt A.H.
& I. Society

24th August
1938

10 Re purchase by Brisbane City Council of land
known as the "Mt. Gravatt Show Ground".

I refer to previous correspondence relative to
the above purchase, and now submit herewith the
undermentioned documents for completion by the
Trustees -

- 20 (1) Memorandum of Transfer,
(2) Stamp Office Declaration as to value,
(3) Notices to State and Federal Land Tax
Departments,
(4) Notice to Rates Department, Brisbane
City Council.

Will you kindly advise me when these documents
have been executed in order that the matter may be
finalised.

A search at the Real Property Office discloses
that this land is held under a Nomination of Trustees,
and I would be pleased to have your advice with
reference to the following matters -

- 30 (1) The Registrar of Titles will require proof
that the Mt. Gravatt Progress Association has
been wound up by a resolution of its members.
Kindly let me have a certified copy of such
resolution.
- (2) Was a special meeting of the Mt. Gravatt
Agricultural Horticultural and Industrial
Society called to consider the sale of this
property to the Council? Would you kindly let
me have a certificate certifying that such
40 meeting was validly summoned and validly held.

Exhibits

—
Exhibit No. 1
(Pages 47 &
48)
Letter,
Brisbane
City Council
to Mount
Gravatt A.H.
& I. Society
24th August
1938
(continued)

- (3) Will you kindly let me have a certified copy of the resolution passed at the special meeting of the members of the Mt. Gravatt Horticultural and Industrial Society and signed by a majority of the members present, directing the trustees to sell the land to the Council.

The Council undertakes to hold the land for the purposes of a Public Park, Recreation Reserve or Show Ground, or other purposes not inconsistent therewith. It will also grant to your Society without any charge whatsoever the exclusive right to use the land and all buildings and erections thereon for a period of three weeks in each and every year for the purposes of the Mt. Gravatt Annual Show, provided such show shall take place during the months of July or August. It will also be necessary for your Society to give one month's written notice of its intention to hold such show. The Council will also as soon as practicable take all necessary steps to level and fence that part of the land known as the Show Ring.

10

20

Yours faithfully,

(Signed)

TOWN CLERK.

Encl.

Exhibit No. 1 (Pages 49 to 52)

Exhibits

Declaration of William Henry Clarke and Resolution annexed thereto

Exhibit No. 1 (Pages 49 to 52)

Queensland)
To Wit)

Declaration of William Henry Clarke and Resolution annexed thereto

I, WILLIAM HENRY CLARKE, of Logan Road, Mt. Gravatt, Brisbane in the State of Queensland, do solemnly and sincerely declare as follows:-

15th
September
1938

10 1. I am the Secretary of the Mt. Gravatt Agricultural Horticultural and Industrial Association as at present constituted.

2. I was an original foundation member of the Mt. Gravatt Progress Association and have held executive positions in that body from time to time from its inception.

20 3. I know of my own knowledge that the Mt. Gravatt Progress Association as constituted at the date of the creation of Nomination of Trustees registered Number 755102 has ceased to exist and has merged into the Association known as Mt. Gravatt Agricultural Horticultural and Industrial Association.

4. The Mt. Gravatt Agricultural Horticultural and Industrial Association also functions as a Progress Association and bi-monthly meetings are held for the purpose of dealing with progress matters only.

30 5. As Secretary of the Mt. Gravatt Agricultural Horticultural and Industrial Association I convened a Special Meeting of the Association in accordance with the conditions provided in the Schedule of Trusts attached to the Nomination of Trustees No. 755102.

6. The said Special Meeting was duly held on the fifteenth day of December 1937, and a Resolution was passed by the members then present as follows:-

FIRST SHEET: Brisbane this Fifteenth day of September 1938

40 Will.H. Clarke
Declarant

I. Baxter J.P.
A Justice of the Peace

Exhibits

Exhibit No. 1
(Pages 49 to
52)
Declaration
of William
Henry Clarke
and
Resolution
annexed
thereto
15th
September
1938
(continued)

"That the Show Ground be handed over to the Brisbane City Council on condition that the overdraft at the Bank be liquidated and that the Council take immediate steps to improve the ground, particularly in regard to the ring."

7. The Show Ground referred to in the said Resolution is the whole of the land described in the said Nomination of Trustees No. 755102.

8. I annex to this my declaration a copy of the said Resolution signed by the members then present at the said Special Meeting.

10

9. The word "Annual" in such copy Resolution should read "Special".

10. At the date of this Special Meeting there were 220 members entered in the Membership book of the Association.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the "Oaths Acts, 1867 to 1924".

20

SIGNED AND DECLARED by the)
above-named Declarant at)
Brisbane aforesaid this) (Sgd.) Will. H. Clarke
Fifteenth day of September)
1938, before me:)

Declarant.

I. Baxter J.P.

A Justice of the Peace.

This is the copy of the Resolution mentioned and referred to in the within Declaration.

DATED at Brisbane this Fifteenth day of September 1938.

(Signed) Will. H. Clarke (Signed) J. Baxter J.P.

Declarant

A Justice of the Peace

Copy of Resolution passed at the Annual Meeting of the Mount Gravatt A.H. & I. Society duly called according to the Constitution & held in the Mr. Gravatt Memorial Hall on the 15th December 1937.

10

Moved by Mr. Will. H. Clarke, seconded by Mr. W.J. Buckley

"That the Showground be handed over to the Brisbane City Council, on condition that the overdraft at the bank be liquidated and that the Council take immediate steps to improve the ground, particularly in regard to the Ring"

20

The motion upon being put was declared carried unanimously.

R. E. Mc. King
Ian M. Baxter
J.H.T. Culverhouse
Will. H. Clarke
G. T. Brown
L. Mendez
W. J. Buckley
F. J. Howatson
H. Narnst
R. S. Lyle
J. Stewart

30

S. Klumpp
F. Canning
C. G. Petersen

Exhibits

Exhibit No. 1
(Pages 49 to 52)

Declaration of William Henry Clarke and Resolution annexed thereto

15th September 1938
(continued)

Exhibits

Exhibit No. 1 (Pages 54 to 56)

Exhibit No. 1
(Pages 54 to 56)
Certified copy
Memorandum of Transfer,
William Henry Clarke and
Reginald MacDonnell King
to Brisbane City Council
20th September 1938

Certified copy Memorandum of Transfer,
William Henry Clarke & Reginald MacDonnell
King to Brisbane City Council

12/10/38
STAMPED UNDER DECLARATION (initials) QUEENSLAND
(W) Value £1350 STAMP DUTY

£13/10/- MEMORANDUM OF TRANSFER QUEENSLAND QUEENSLAND
IMPRESSED IMPRESSED
DUTY DUTY 10
£13- 10/-
Thirteen Ten
Shillings
WE, WILLIAM HENRY CLARKE and REGINALD MacDONNELL KING,
both of Brisbane in the State Pounds
of Queensland being the Registered
Proprietor of an Estate in fee simple, as Trustees
under Nomination of Trustees No. 755102 SUBJECT HOWEVER
to such encumbrances, liens, and interest as are
notified by Memorandum endorsed hereon in all that
piece of Land described in the following Schedule,
namely:-

Deed of Grant No.	Certificate of Title No.	Vol.	Folio	County	Parish	Description of Land	AREA		
							Acres	Roods	Perches
	145579	902	69	Stanley	Bulimba	Subdivisions 2 and 3 of portions 332 and 333	20	1	27

IN CONSIDERATION OF the sum of Four Hundred and seventyfive pounds one shilling and sixpence (£475:1:6) paid to us by Brisbane City Council the receipt of which sum we hereby acknowledge DO HEREBY TRANSFER to the said BRISBANE CITY COUNCIL an estate and interest in fee simple in the said piece of land

IN WITNESS WHEREOF we have hereunto subscribed our names this Twentieth day of September, 1938.

SIGNED on the day above-named by) Will H. Clarke
the said WILLIAM HENRY CLARKE) R. MacD. King
and REGINALD MacDONNELL KING in) Signature of Vendor 40
GRHG the presence of G.R. Howard-Gill)
Solicitor, Brisbane Signature G.L. Blyth
of Purchaser City Solr.
Solicitor for Brisbane City Council
Correct for the purpose of Registration

195.

Second sheet of two sheets

(Signed) A. Byrne

OFFICE COPY

DEPUTY REGISTRAR OF TITLES.

SEAL

Exhibits

Exhibit No. 1
(Pages 54 to
56)

Certified
copy
Memorandum
of Transfer,
William Henry
Clarke and
Reginald Mac-
Donnell King
to Brisbane
City Council

20th
September
1938
(continued)

I certify that this machine copy is a reproduction
of an original document being Transfer No. A386948
of two sheets in my custody and control.

Made this fifth day of November 1976

(Signed) A. Byrne

DEPUTY REGISTRAR OF TITLES

SEAL

Exhibit No. 1
(Page 57)

Notice of Sale
of Parcel of
Land

21st September 1938

QUEENSLAND
(STATE)

NOTICE OF SALE OR PURCHASE OF LAND.

Name of Purchaser WILLIAM HENRY CLARKE and REGINALD HENRY CLARKE
Occupation AGRICULTURIST
Postal Address Brisbane

DATE OF SALE
20 - 9 - 1938
(This date when possession was delivered.)

FILE NO. 159
RECORDS RELATIVE TO
C.A. 159-159
To be kept in the CONWIS-
SIONER OF TAXES, BRISBANE,
within one month of the
transaction.

WILLIAM HENRY CLARKE and REGINALD HENRY CLARKE,
Sellers,
MAGISTRATE KING, as Trustees for the
Mt. Gravatt Agricultural Horticultural
and Industrial Society
Occupation
Postal Address Mt. Gravatt, BRI SBANE.

LOCAL AUTHORITY TO WHICH RATES ARE PAID.	RESUBDIVISION.	SUBDIVISION.	ALLOTMENT.	SECTION.	PORTION.	COUNTY.	PARISH.	CITY AND TOWN LAND.				AREA.	REFERENCE TO REGISTERED TITLE.			PARTICULARS OF SALE. (Insert here the values making up the total sale price.)	PRESENT LOCAL AUTHORITY VALUE.
								TOWN.	STREET.	FRONTAGE.	DEPTH.		Acres	Rds.	Per.		
Brisbane City Council.	2 and 3				332 Stanley Bulimba & 333 Mt. Gravatt						20 1 27				Unimproved Value of Land .. Value of Fixed Improvements (Detailed list must be attached.) Value of Standing Crop .. Value of Live Stock .. Value of Plant .. Other Items included (Detailed list must be attached.)	196.	
TOTAL SALE PRICE ..																	

TERMS OF SALE.—Deposit £ .. Balance to be paid in instalments of £ .. per cent. per annum. extending over .. years with interest at .. per cent. per annum.

WE, WILLIAM HENRY CLARKE and REGINALD HENRY CLARKE, do solemnly and sincerely declare that the Return and the Statements therein referred to contain full and accurate details of the several matters and things set forth, and that the above described land has been ^{US} ~~ACQUIRED~~ ^{BY ME} in a bona fide manner, and not for the purpose of evading payment of LAND TAX.

DATED this Twentyfirst day of September 1938
Will H. Clarke
R. MacD. King

(Usual Signature)

NOTE.—It is essential that the information required under each heading on this Form be supplied. Any omissions will only necessitate future correspondence. The Purchaser of Land is deemed to be the Owner as soon as he obtains possession, irrespective of the amount of deposit paid, and every intending Purchaser should enquire of the Commissioner, in writing, whether there is any liability on the Land for unpaid Land Tax.

Exhibit No. 1 (Page 58)

Unsigned Memorandum - Mr. Ludwig's
Values

£550 Freehold

£800 Improvements

£1350 Total

Exhibits

Exhibit No. 1
(Page 58)

Unsigned
Memorandum -
Mr. Ludwig's
Values

Undated

Mr. Ludwig's
Values.

Exhibit No. 1 (Page 59)

10

Minute of Brisbane City Council

Minute of Brisbane City Council of 7th March, 1939

2,426 1938-39

Exhibit No. 1
(Page 59)

Minute of
Brisbane
City Council

7th March
1939

6. APPLICATION FOR USE OF MOUNT GRAVATT SHOWGROUND
FOR ANNUAL PICNIC.

Application is made by the Honorary Secretary,
St. John's Presbyterian Sabbath School, for the use
of the above showground, on Labour Day, 1st May,
1939, for the purpose of holding its annual picnic.

20

The use of the area had on previous occasions
been granted by the former trustees of the showground.

No objection to the use of the area for the
above purpose is offered by the Parks Superintendent.

RECOMMENDATION: That the area be made available
for the above purpose, subject to the picnic
committee (1) arranging for the necessary sanitary
services, and (2) leaving the reserve in a clean
and tidy condition.

ADOPTED.

BRISBANE CITY COUNCIL - CITY TREASURER'S DEPARTMENT

Mount Gravatt Show Grounds Reserve

Account No. 84^a

Sheet No.

Vote - Year 19 - £

Schedule No.

Budget Folio (Exp.)

(Rev.)

Date	C/No.	Items	Folio	£ s. d.	£ s. d.	Date	Items	Folio	£ s. d.	£ s. d.
1939 June 30		To Transfer of Expenditure Led. 9 Folio 26 Amt payable to liquidate Bank overdraft, re acquisition of the below described land for park purposes Subs 2 to 3 Por 32-33 Bulimba Bank Overdraft 450. 0. 0 Interest 24.14. 0 Bank Charges 5. 0 Stamp Duty on Mortgage 2. 6 Stamp Duty on above 13.10. 0 R.P.O. fees 2. 5. 0 Transfer of Expenditure Led. 9 Folio 47 Repairs & Improvements to Bldgs.	TJ 58 TJ 59		475. 1. 6 15.15. 0 449.11. 6 940. 8. 0	1939 June 30	By Balance	c/d	940. 8. -	
1939 June 30		To Balance " Transfer of balance from Ledger No 9 folio	TJ 68		940. 8. - 1. - 940. 9. -	1939 June 30	By Balance	Cfwd	940. 9. - 940. 9. -	
1939 July 1		To Balance Carried Forward	Bfwd		940. 9. -	July 1	By Transfer to new sheet folio Carried Forward		940. 9. -	

Exhibit No. 1

Exhibits

Exhibit No. 1 (Page 62)

Exhibit No. 1
(Page 62)
Minute of
Brisbane
City Council
27th February
1940

Minute of Brisbane City Council of
27th February, 1940

2,215/1939/40

1. APPLICATION FOR USE OF MOUNT GRAVATT SHOWGROUND
FOR ANNUAL PICNIC.

An application has been made by the Honorary Secretary, St. John's Presbyterian Sabbath School, for the use of the above Showground on Labour Day, 6th May, 1940, for the purpose of holding its annual picnic. 10

The use of the area has for a number of years past been made available by both the Council and the former trustees of the Showground.

No objection to the use of any portion of the area separate and distinct from the show ring, which is at present being reconstructed, is offered by the Parks Superintendent.

RECOMMENDATION: That a site other than the show ring in the area be made available for the above purpose, subject to the picnic committee (1) arranging for the necessary sanitary services, and (2) leaving the reserve in a clean and tidy condition. 20

ADOPTED.

Exhibit No. 1
(Page 63)
Letter, Mount
Gravatt Show
Committee to
Alderman W.R.
Howard

Exhibit No. 1 (Page 63)

Letter, Mount Gravatt Show Committee
to Alderman W. R. Howard

36174 Mt.Gravatt 16/4

3th August
1940

Mount Gravatt
8th August 1940

30

To
Alderman W. R. Howard
City Hall
Brisbane

City Treasury
9 AUG 1940
Ref. to Rents Clerk

Dear Alderman Howard,

At a meeting of the Mount Gravatt Show Committee

held last evening, I was instructed to write to you on the following matter.

Exhibits

Exhibit No. 1
(Page 63)
Letter, Mount
Gravatt Show
Committee to
Alderman W.R.
Howard

8th August
1940
(continued)

City Treasurer
DEPT. OF FINANCE
for necessary action
D.M. 16/8/40
Dep. Town Clerk

10

To make the Mount Gravatt Show ground more of a revenue producing asset to the City Council it was suggested that the following proposal be submitted to the City Council through you. That throughout the year, approximately every two months, the Show Society be allowed to conduct sports gatherings, 10% of the profits to be paid to the City Council and the balance to be devoted mainly to the improvement of the Council property for Show purposes. To make the position quite clear, I would point out, that no financial obligation would fall upon the Council, and the first proposed improvement would be the flooring of the main pavilion.

Trusting you will give this matter immediate attention, I remain, On behalf of the Show Committee

Sincerely Yours

20

Will. H. Clarke Secty.

Exhibit No. 1 (Page 64)

Letter, Brisbane City Council to
Mount Gravatt Show Committee

36174 Mt.Gravatt 16/5

JS/GH

4th September, 1940

Mr. Will. H. Clarke,
Secretary: Mount Gravatt Show Committee,
MOUNT GRAVATT. S.2.

Exhibit No.1
(Page 64)
Letter,
Brisbane City
Council to
Mount Gravatt
Show
Committee

4th
September
1940

30

Dear Sir,

I desire to acknowledge receipt of your application dated 8th ultimo for permission to use the Mount Gravatt Showground for the purpose of conducting sports gatherings approximately every two months throughout the year.

In reply thereto I have to advise you that the Council cannot approve of the proposal as submitted; but if the Association makes application

Exhibits
Exhibit No. 1
(Page 64)
Letter,
Brisbane
City Council
to Mount
Gravatt Show
Committee
4th September
1940
(continued)

from time to time, it will be considered.

Yours faithfully,
(Sgd.) Illegible
For TOWN CLERK.

(Stamped)
City Treasurer
DEPT. OF FINANCE
for necessary action
(Init.)
Dep. Town Clerk
5.9.40

(Stamped)

FOR NECESSARY ACTION

10

(Stamped) CITY TREASURY
To
Records 6 SEP 1940
(Init.)
6/9/40 Ref. to Accountant

Exhibit No. 1
(Pages 65 to
67)
Letter, Mount
Gravatt Show
Society to
Brisbane
City Council
11th
September
1940

Exhibit No. 1 (Pages 65 to 65)
Letter, Mount Gravatt Show Society to
Brisbane City Council
36174 Mt. Gravatt 16/5
City Engineer Brisbane
13076 13 SEP 1940
Societies S D/E

20

CITY OF BRISBANE

From ORGNR. & SECTY., MT.GRAVATT SHOW SOCIETY,
MOUNT GRAVATT.
Subject RE USE OF SHOWGROUND FOR BI-MONTHLY SPORTS
GATHERINGS.

For Report OFFICER'S REPORT
12.9.40 Mount Gravatt
11th Sept.1940

30

To the
Town Clerk,
Brisbane City Council.

Dear Sir,

In view of changed circumstances I have been

advised to again state the case for the Mt. Gravatt Show Society in regard to the use of the Showground for bi-monthly Sports gatherings.

The Show Committee's request is as follows:

1. During the tenure of the Showground for Show purposes, the Show Society desire to prepare Annual Schedules for bi-monthly sports gatherings, at the same time giving the Brisbane City Council a guarantee, that, at least 50% of the proceeds of these sports gatherings shall be spent upon ground improvements, & in addition 10% of the gate takings shall be paid to the City Council after each sports meeting.
2. The Show Committee seek permission to put a proper dancing floor in the centre of the main pavilion, entirely free of cost to the Brisbane City Council.
3. The Show Committee desire to properly grass the Ring portion of the Show ground, also entirely free of cost to the Brisbane City Council.
4. Any lettings of the Show grounds other than those of the Sports gatherings, will be paid over in full to the Brisbane City Council.
5. That the Show Secretary, be appointed by the Brisbane City Council as Honorary Ranger, for the Show property & as such he shall have the letting power in the interests of the Brisbane City Council.
6. That the Show Society shall have the right, through its Committee, to protect the said dancing floor from vandalism.

In return for the Show Society making the Council property, known as the Mt. Gravatt Showground, revenue producing on a sound basis, The Brisbane City Council is asked to devote 50% of the revenue derived from letting, to the upkeep of the grounds & buildings. Beyond this the proposition is based upon the assurance that the full cost of the suggested improvements will be borne entirely by the Show Society, the main desire is to develop the Mt. Gravatt & Sth. Coast District Show along

Exhibits

Exhibit No. 1
(Pages 65 to 67)

Letter, Mount Gravatt Show Society to Brisbane City Council

11th
September
1940
(continued)

Manager
DEPT. OF WORKS
for necessary action

D.M.
Dep. Town Clerk. 11/9/40

Exhibits

Exhibit No. 1
 (Pages 65 to
 67)
 Letter, Mount
 Gravatt Show
 Society to
 Brisbane
 City Council
 11th
 September
 1940
 (continued)

strong & progressive lines.

Considered from the point of view of its present financial membership of 329, it is considered that the future is full of promise.

Awaiting an early reply

On behalf of the Mt.Gravatt Show Society
 I remain,
 Sincerely Yours

Will. H. Clarke

Organiser & Secretary. 10

Exhibit No. 1
 (Page 68)
 Minute of
 Brisbane
 City Council
 1st October
 1940

Exhibit No. 1 (Page 68)

Minute of Brisbane City Council

8. APPLICATIONS FOR USE OF MOUNT GRAVATT SHOWGROUND FOR SPORTS GATHERINGS.

Repeated hereunder are your Committee's report and recommendation dealing with the above matter, which were submitted to Council on 24th September, 1940, and withdrawn for further consideration:-

"8. APPLICATIONS FOR USE OF MOUNT GRAVATT SHOWGROUND FOR SPORTS GATHERINGS.

20

An application has been made by Mr. W.H. Clarke, Organiser and Secretary, Mount Gravatt Show Society, for the Council to make available the Mount Gravatt Showground for the purpose of holding bi-monthly sports gatherings.

The above ground was taken over by the Council during the year 1937, the conditions being that the Council -

- (a) liquidate the overdraft (£450) on the property and set the land apart permanently for showground, park and recreation purposes; 30
- (b) level off the show ring;
- (c) grant the society the exclusive use of the ground without charge for a period of two weeks in each and every year for the purpose of and in connection with the district annual show.

Coupled with its present application the Show Society now requests the Council to:-

Exhibits

Exhibit No. 1
(Page 68)
Minute of
Brisbane
City Council
1st October
1940
(continued)

- 10
1. Grant it, during the tenure of the show-ground for show purposes, permission to prepare annual Schedules for bi-monthly sports gatherings at the same time giving the Council a guarantee that at least 50% of the proceeds from such sports gatherings shall be spent upon ground improvements and in addition 10% of the gate takings shall be paid to the Council after each sports meeting.
 2. Grant permission to construct a proper dance floor in the centre of the main pavilion free of all expense to the Council.
 3. Permit the Show Committee to properly grass the ring portion of the showground at its own expense.

20

 4. Grant to the Committee the right of letting the showground other than for the sports gatherings referred to, subject to all receipts being paid in full to the Council.
 5. Appoint the Show Secretary Honorary Ranger for the show property and as such to have the letting rights of the premises in the interests of the Council.

30

 6. Grant the Show Society the right through its Committee to protect the said dance floor from vandalism.

In return for the Society making the property revenue producing on a sound basis a request is made that the Council devote 50% of the revenue derived therefrom to the upkeep of the grounds and buildings.

After fully considering the proposal submitted, the Council Administration Board recommends that the Show Society be advised -

- 40
1. That applications for the use of the showground for sports gathering purposes will be fully considered from time to time; and

Exhibits
Exhibit No. 1
(Page 68)
Minute of
Brisbane
City Council
1st October
1940
(continued)

2. That when the Society is in a position to effect improvements to the buildings and showground the proposition will be considered.

RECOMMENDATION: That the recommendation of the Council Administration Board be adopted."

The matter has again been considered by your Committee, and in view of further additional information made available, it now submits the following recommendation for adoption. 10

RECOMMENDATION: That the proposals submitted by the Show Society be approved.

As an amendment, Alderman GREEN moved, seconded by Alderman GRAY, "That the recommendation contained in the above clause be deleted and that the recommendation of the Council Administration Board be adhered to."

The amendment on being put to the meeting was declared lost. 20

The clause was then adopted.

WE CERTIFY that the printed matter to which this certificate is annexed and which is headed "8. APPLICATIONS FOR USE OF MOUNT GRAVATT SHOWGROUND FOR SPORTS GATHERINGS" is a copy of an entry in a book kept by the Town Clerk relating to the proceedings of Brisbane City Council at a meeting duly convened and held on the first day of October, 1940.

(Signed) P.F. Thorley (Signed) W. D. Bourke 30

TOWN CLERK

CHAIRMAN

The Seal of BRISBANE CITY COUNCIL) was hereunto affixed this }
Eleventh day of November, 1976 } P.F. Thorley
by me, PETER FRANCIS THORLEY, I }
being the proper officer to affix) TOWN CLERK
such Seal, in the presence of:

I. Hawes, J.P.

A JUSTICE OF THE PEACE

Exhibit No. 1 (Page 69)

Letter, Brisbane City Council to Mount
Gravatt Show Society

W/G

14th October, 1940

Mr. W.H. Clarke,
Organiser and Secretary,
Mt. Gravatt Show Society,
Mt. Gravatt, S.2
B R I S B A N E.

Exhibit No. 1
(Page 69)
Letter,
Brisbane
City Council
to Mount
Gravatt
Show Society
14th October
1940

10 Dear Sir,

With reference to your letter dated 11th
ultimo, I have to inform you that the Council has
approved of the following proposals submitted by
your Society, and is agreeable to -

- 20 (1) Grant the Society during the tenure of the
Showground for Show purposes, permission to
prepare annual schedules for bi-monthly sports
gatherings, on condition that the Society will
guarantee that at least 50 per cent. of the
proceeds from such sports gatherings shall be
spent by the Society upon ground improvement,
and that, in addition, 10 per cent. of the
gate takings will be paid to the Council after
each sports meeting, such payments to be
accompanied by certified financial statements.
- 30 (2) Grant permission to the Society to construct
a proper dance floor in the centre of the main
pavilion, provided that the construction of
such dance floor is carried out free of all
expense to the Council, and to the satisfac-
tion of the City Architect.
- (3) Permit the Society to properly grass the ring
portion of the Showground, provided such work
is carried out free of all cost to the
Council.
- 40 (4) Grant the Society the right of letting the
Showground other than for sports gatherings
referred to in Clause (1) hereof, subject to
all receipts being paid in full to the
Council.
- (5) Appoint the Show Secretary as Honorary Ranger

Exhibit No. 1
(Page 69)
Letter,
Brisbane
City Council
to Mount
Gravatt
Show Society
14th October
1940
(continued)

for the Mt. Gravatt Showground property, and, as such, the Show Secretary is to have the letting rights of the premises in the interests of the Council. Particulars of letting from time to time are to be furnished to the City Treasurer.

- (6) Grant the Society the right, through its Committee, to protect the dance floor referred to in Clause (2) hereof from vandalism.

In return for your Society making the Mt. Gravatt Showground property revenue producing on a sound basis, the Council is prepared to devote 50 per cent. of the amount of revenue derived from letting the property to the upkeep of the grounds and buildings.

10

Yours faithfully,

Exhibit No. 1
(Page 70)
Letter,
Brisbane City
Council to
Mount Gravatt
Show Society
14th August
1945

Exhibit No. 1 (Page 70)

Letter, Brisbane City Council to
Mount Gravatt Show Society

JCS.BW
G.18139/45

14th August, 1945

20

Mr. W.H. Clarke,
Hon. Secretary,
Mt. Gravatt Show Society,
MOUNT GRAVATT.

Dear Sir,

I refer to the arrangement entered into between the Council and your Society, conveyed to you in writing on the 14th October, 1940, concerning the control of the Mount Gravatt Show Ground, and particularly to your letter of the 17th June last, concerning payments received by you from the Australian Army and dealt with contrary to the arrangement referred to.

30

I am directed to ask that you forward to this Council in terms of such arrangement, all money received by you in connection with the letting of the Show Ground other than for sports gatherings, without delay.

10 It is noted in your letter of the 17th June, 1945, that you state Major Fleming and yourself arranged that the amount of £1. per week paid to you by the Army was on the basis of 10/- per week for the ground and buildings, and 10/- per week for the furniture and fittings owned by the Show Society. The Department of Hirings has informed me that no such apportionment of the £1. per week rental paid by the Army was made. As the Army has now vacated the Mount Gravatt Show Ground the Council proposes to cancel immediately the arrangement made with you on the 14th October, 1940, and will make other arrangements in connection with the letting of the Show Grounds in future.

20 Please remit to me without delay all money received by you or your Society from the Army or any other source in connection with the letting or use of the area known as the Mount Gravatt Show Ground. A duly certified Audited Statement of Receipts and Payments should accompany the remittance.

Yours faithfully,

(J.C. Slaughter)
Town Clerk.

Exhibit No. 1 (Page 71)

Letter, Mount Gravatt Show Society to
Brisbane City Council

30 R/L G.20505
20 AUG 1945
CENTRAL RECORDS

Mount Gravatt
16th Aug. 1945

To the
Town Clerk
Brisbane City Council.

Dear Sir,

40 I have to acknowledge receipt of your letter dated the 14th inst. G.18139/45. In Par. 3 you state, that I said, that the basis of allotment of rent received was arranged between Major Fleming & myself, this construction was never intended. Major Fleming only dealt with the amount of rent to be

Exhibits

Exhibit No. 1
(Page 70)
Letter,
Brisbane City
Council to
Mount Gravatt
Show Society

14th August
1945
(continued)

Exhibit No. 1
(Page 71)
Letter, Mount
Gravatt Show
Society to
Brisbane
City Council
16th August
1945

Exhibits

—
 Exhibit No. 1
 (Page 71)
 Letter, Mount
 Gravatt Show
 Society to
 Brisbane
 City Council
 16th August
 1945
 (continued)

paid, the division was no concern of his. The basis of allotment was fixed by myself, as a fair & equitable division upon property used.

"A duly audited statement of receipts & payments should accompany your remittance" requires a fuller explanation. I have received no money whatever from the Military Authorities. The cheques have always been paid direct into the bank, & the slip notifying me of such payment has been posted to me, these I hold, & during that time there have been no charges, such as telephone or postage, against the account.

10

I would also point out, that there has never been any scale of charges for rent, fixed by the Council, such being left in my hands, as will be shown in past records & returns received from me, in these you will find the charges for rent have ranged from 3/6 to 10/-.

In view of the letter sent to the Lord Mayor, on behalf of the Show Society, dated the 30th July 1945, protesting against one of the Officers of the Council committing a grave breach of an agreement, your comment "That the Council proposes to cancel the letting rights immediately" comes as a surprise, not so much as it affects my position as honorary Ranger, but because it seriously affects the agreement drawn up between the Show Society & the City Council in 1937.

20

The whole matter has now been referred to the Show Society's solicitor, & a deputation is being arranged to wait upon the Lord Mayor at an early date.

30

Yours faithfully

Will. H. Clarke,

Hon. Secretary Mt. Gravatt
 Show Society.

Discussed
 with Clarke Gowan
 17.8.45

JCS
 Town Clerk.

40

Exhibit No. 1 (Pages 72 & 73)

Letter, Mount Gravatt Show Society to
Brisbane City Council

Exhibits

Exhibit No. 1
(Pages 72 &
73)
Letter, Mount
Gravatt Show
Society to
Brisbane
City Council
9th February
1948

Hon.R.M.King
President

MOUNT GRAVATT SHOW SOCIETY
Incorporating

H.E.Sargent
Chairman

The Mount Gravatt Progress Association
Established 1914

Telephones:

S.Lanham
Hon.Treasurer

Chairman XU2262
Secretary XU1957

10

T.F.L.Edwards
Hon.Secretary

Mount Gravatt 9th February 1948

~~Will.H.Clarke~~
~~Hon.Organiser~~

R/L P 2159
11 FEB 1948
CENTRAL RECORDS

The Property Officer,
City Hall,
Brisbane.

Dear Sir,

20

At the General Meeting of the above Society,
several suggestions were advanced, I was instructed
to write you and forward these suggestions to you
for consideration, they are as follows:

30

1. Suggestion "that ornamental trees be
planted along front of showground inside the fence",
(Ald. Howard has been informed of this and has
promised to do what he can, for he considers it a
good idea), if these trees can be planted the
Caretaker has given his assurance that he will look
after them.

40

2. "That the Society feels the time is oppor-
tune for the Council to stop people from camping on
the showground, as it is fast becoming what it was
originally intended to be a recreational park, as
well as a showground, we consider that if the
practice of allowing campers on the ground ceased
it would be in the best interest of all concerned,
the Society feels sure that if the Caretaker was
given some authority on this matter, he would
carry out his duties well in the interests of the
Council."

3. Other amenities requested are for the

Exhibits

Exhibit No. 1
(Pages 72 &
73)

Letter, Mount
Gravatt Show
Society to
Brisbane
City Council

9th February
1948
(continued)

installation of a Swimming Pool, Tennis Courts, Basket Ball Court, Draught Board, and Swings, we certainly understand the financial and labour, as well as material position, but we would suggest that when estimates are being prepared that something relative to the requests be done, we feel sure that if these amenities are granted, it will tend to make this recreational park cater for the fast growing needs of the district.

There is one thing I would like to tell you of and that is, "that the thanks and appreciation of the Show Society has been placed on record, relative to your co-operation, and assistance at all times."

10

Thanking you in anticipation of a favourable reply to our requests.

Yours faithfully,

L. Edwards

Hon. Secretary.

Exhibit No. 1
(Pages 74 to
77)

Letter, Mount
Gravatt A.H.
& I. Society
to Brisbane
City Council

11th
February
1954

Exhibit No. 1 (Pages 74 to 77)

20

Letter, Mount Gravatt A.H. & I. Society
to Brisbane City Council

MOUNT GRAVATT A.H. & I. SOCIETY

(Stamp)

6070
Secretary's Address: 15 Feb 1964
Cr. Broadwater Rd. & Ballarat St.,
MT. GRAVATT. Central Records
Brisbane

11th February, 1954.

30

The Town Clerk,
Brisbane City Council,
BRISBANE.

Sir:

Following a deputation to an officer of your Council - Mr. Grening - by our Mr. Gordon E. Lawlor and Mr. Frank T. Watson some considerable time ago, when these gentlemen were introduced by Alderman J.H. Trevethan, my Society now wishes to place

before you, and on record, the following facts and figures concerning this Society.

The officers controlling this Society are men of high repute and integrity and are:-

President - The Hon. Mr. Justice A.J. Mansfield
of Mt.Gravatt
Vice-Presidents - Mr. H.B.Sargeant, Paint Merchant
of Stones Corner
Mr. E.C. Knoblauch
Mr. C. Glindeman
Mr. M. Monogue
Mr. P.J. Skinner

Patrons include Hon. Jos Francis, M.H.R.,
Dr. Felix Dittmer, M.L.A., with further Patrons
and Vice-Presidents to be elected.

Chairman - Mr. D.L.Bence, Builder, Mt.Gravatt.
H Hon.Secretary - Mr. Geo. S.Marshall, of Mt.Gravatt
Hon.Treasurer - Mr.S.R.Lanham of Mt.Gravatt
Hon.Organiser & Official Compere - Mr.Gordon E.
Lawlor of Belmont

Committee: Mr. T.F.L. Edwards of Mt.Gravatt
Mr. L. B. Greer Camp Hill
Mr. A. H. Howsan Mt.Gravatt
Mr. R. J. Lusk Holland Park
Mr. S. J. Klumpp Mt.Gravatt
Mr. J. Nunn, Jnr. Mt.Gravatt
Mr. J. N. Scott Mt.Gravatt
Mr. Geo. Soden, Jnr. Camp Hill
Mr. F. T. Watson Holland Park
Mr. S. J. Watt Holland Park
Alderman J. H. Holland Park
Trevethan

With the Judge at the head of affairs, and men of the highest principles running the affairs of the Society, we now feel that we have put our house in order in no uncertain fashion.

Under the existing agreement with your Council, we are allowed the use of the show ground for a very short period each year. We are also bound to spend a certain percentage of our income on ground improvements each year. Over the last few years, here is what we have spent by way of various improvements:-

Exhibits

Exhibit No. 1
(Pages 74 to 77)
Letter, Mount Gravatt A.H. & I. Society to Brisbane City Council
11th February 1954
(continued)

1949	£ 35
1950	£ 183
1951	£ 52
1952	£ 276
1953	<u>£1060</u>
Total	<u>£1606</u>

Exhibits

Exhibit No. 1
(Pages 74 to
77)

Letter, Mount
Gravatt A.H.
& I. Society
to Brisbane
City Council

11th

February

1954

(continued)

Our all time record show was that of 1953 when our gate takings were £975, so that we feel that we have lived up to our part of the agreement.

10 The buildings and appurtenances are all in good repair and serviceable. We carry out sundry repairs to such items as cisterns, drains etc. and all this is done on an entirely voluntary basis.

One of the reasons for setting out this, is that in additions to the assets you may already have listed in your records, all these are added assets, and in the case of the new bar, the new poultry pens and the broadcasting box and dias, I take it these should be included in your cover for insurance.

20

It will be seen from the foregoing that this Society in effect really act as caretakers for the Showgrounds; we are a recognised Society, being affiliated with the Queensland Council of Agricultural Societies, the Secretary of which is the Secretary of the Royal National. We are also held in high regard by the Royal National, as at our Annual Show we have the use of their hurdles and whatever equipment we may desire.

30 This is the only body in this district that puts any effort into maintaining the showground in any sort of condition.

In the near future, we hope to be able to erect a new front fence, erect turnstiles, erect horse and cattle stalls, enlarge and improve the actual track, add to our lighting, provide seating accommodation. We also hope that the council will be able to make a road into the grounds from Broadwater Rd., via the 6 acres of land recently added to the showground. This, by the way, would greatly help in easing the traffic on show days on the main highway. A road in, a few signs leading to it, and congestion would be at a minimum.

40

Exhibits

Exhibit No. 1
(Pages 74 to 77)

Letter, Mount Gravatt A.H. & I. Society to Brisbane City Council

11th February 1954
(continued)

In the interests of your Council, and in the interests of the district generally, we feel that we should have some more control than at present granted, as whilst at present we are the sole body providing these improvements and amenities, they are open to be used by anyone who cares to approach the council.

We appreciate that as this is public property, the rights of the public and other local bodies must be protected.

We very fully appreciate that even after exerting much energy and time to improving this ground and putting almost every penny we gain back into it, under present circumstances we could be firmly told by your council that our use of the grounds for three weeks in the year has been discontinued.

My Committee do not in any way want the Council to think that we are complaining. Far from it, we are particularly proud of our community efforts; we are very happy to think that we have gathered around us a body of men enthusiastic enough to put the time and effort into it. My Committee also feel that your Council may feel disposed to give some thought to making us feel more secure in what we are doing, and what we intend - and can - do.

Following this letter, you will in due course receive a visit from our Hon. Organiser in the person of Mr. Gordon E. Lawlor to further discuss matters generally, and Mr. Lawlor will be in a position to fully answer any questions you may care to put to him.

Yours faithfully,

Deputy Town Clerk (Signed) George S. Marshall

George S. Marshall
Hon. Secretary.

P. & I.O.
What is the purpose of this letter?

(Init.)

17.2.54

Attach P/P's
PP's at.... Recalled 1
Attached 16/12/52

Exhibit No. 1 (Pages 78 to 97)

Portion of Lease, Brisbane City Council
to Trustees of Mount Gravatt A.H. & I.
Society

Exhibits

Exhibit No. 1
(Pages 78 to
97)
Portion of
Lease
Brisbane
City Council
to Trustees
of Mount
Gravatt A.H.
& I. Society
15th March
1956

QUEENSLAND

Stamp Office
DuplicateQueenslandQueensland
Impressed
DutyOriginal Stamped
£14/2/6
Brisbane

10 STAMP2/6DUTY

L E A S E

BRISBANE CITY COUNCIL a body corporate
created by and under "The City of Brisbane Acts,
1924 to 1954" (hereinafter called "the lessor"
which expression shall include its successors and
assigns) being the registered proprietor of an
estate in fee simple SUBJECT HOWEVER to such
encumbrances, liens and interests as are notified
by memorandum endorsed hereon in all that piece or
parcel of land situate in the County of Stanley,
Parish of Bulimba, City of Brisbane, being Sub-
divisions 2 and 3 of portions 332 and 333 containing
20 acres 1 rood 27 perches more or less and being
the whole of the land contained in Certificate of
Title No.145579 Volume 902 Folio 69 and also in
all that piece or parcel of land situate in the
same County, Parish and City being Resubdivision
28 of subdivision 1 of portion 332, containing
6 acres 2 roods 28 perches more or less and being
the whole of the land contained in Certificate of
Title No.548253 Volume 2721 Folio 243 DOTH HEREBY
LEASE all the said lands (which lands, together
with all buildings, structures and improvements
(including drainage) which were on the said lands
at the commencement of this lease and which may at
any time during the continuance of this lease be
made to or erected on the said lands, are herein-
after referred to as "the demised premises") to
DAVID LEITH BENICE of Broadwater Road, Mt. Gravatt,
Brisbane in the State of Queensland, WILLIAM
PETTIGREW of 1404 Logan Road, Mt. Gravatt,
Brisbane aforesaid and ABE HAMID HOWSAN of Crest
Street, Mt. Gravatt, Brisbane aforesaid as
Trustees of MT. GRAVATT AGRICULTURAL, HORTICULTURAL
AND INDUSTRIAL SOCIETY (hereinafter called "the
lessees" which expression shall include their and
each of their successors for the time being in

20

30

40

Exhibits

Exhibit No. 1
 (Pages 78 to
 97)
 Portion of
 Lease
 Brisbane
 City Council
 to Trustees
 of Mount
 Gravatt A.H.
 & I. Society
 15th March
 1956
 (continued)

the offices of Trustees of Mt. Gravatt Agricultural, Horticultural and Industrial Society and the permitted assigns of such Trustees) TO BE HELD by the lessees as tenants for the period of SEVEN YEARS commencing on the first day of July One thousand nine hundred and fiftyfour and extending to and including the thirtieth day of June One thousand nine hundred and sixtyone at the annual rental of Five pounds (£5:0:0) payable yearly in advance at the office of the Department of Finance of the lessor, Town Hall, Brisbane in the said State on the first day of July in each and every year during the said term SUBJECT, in addition to the covenants powers and provisions implied herein by "The Real Property Acts of 1861 and 1877" or such modification or alterations of any of the same as hereinafter appear, to the following covenants, conditions and restrictions.

1. The lessees HEREBY jointly and severally COVENANT with the lessor in manner following that is to say:

- (a) That they will duly and punctually pay the said rental without any formal or other demand and without any deduction whatsoever at the times and in the manner herein mentioned. 10
- (b) That they will duly and punctually pay for all gas, electric light and power consumed or used on the demised premises during the said term. 30
- (c) That they will at all times during the currency of this lease keep and maintain and at the expiration or sooner determination of the said term deliver up to the lessor the demised premises, together with all locks, keys and fastenings, in good order repair and condition fair wear and tear and damage by fire flood storm tempest white ants and other vermin riots civil disturbances Queen's enemies act of war aerial craft (hostile or otherwise) or from missiles or objects projected or falling from aerial craft or demolition (wholly or partially) by explosion or otherwise or by any Act of God not excepted. 40
- (d) That they will observe and strictly conform

to and cause all the servants, agents, licensees and invitees of the lessess to observe and strictly conform to the covenants agreements conditions and restrictions herein contained.

10 (f) That, subject to the provisions of sub-clause (b) of Clause 3 hereof, they will not assign, underlet, mortgage, charge or part with the possession of the demised premises or any part thereof or share with a person, body, firm or corporation the occupation thereof without the written consent of the lessor under the hand of the Town Clerk first obtained nor without such consents will they attempt to assign, underlet, mortgage, charge or part with possession or share possession as aforesaid. This sub-clause is hereby declared to be a condition going to the root of this lease and upon any breach thereof by the lessees in any manner whatsoever this lease shall thereupon determine and become void and of no effect and the term hereby created shall continue so long as the lessees abstain from committing a breach of the said conditions and any purported assignment under-letting mortgaging charging or parting with or sharing of possession of the whole or any part of the demised premises in any way to 20 any person body firm or corporation shall not operate to pass any estate or interest in respect of the demised premises or any part thereof to that person body firm or corporation.

40 (y) That they will not keep store supply or sell nor permit nor suffer any intoxicating liquor to be kept stored consumed supplied or sold upon the demised premises or any part thereof except with the previous written consent of the Town Clerk and in accordance with a current licence or permit issued under "The Liquor Acts, 1912 to 1954" for the period only during which each annual show is conducted by the lessees.

(z) That they will furnish to the lessor on or before the thirtyfirst day of July in each year and every year during the said term an annual financial statement, duly certified to by the Auditor and the Treasurer of the

Exhibits

Exhibit No. 1
(Pages 78 to 97)

Portion of Lease
Brisbane City Council
to Trustees of Mount Gravatt A.H. & I. Society

15th March
1956
(continued)

Exhibits

—
 Exhibit No. 1
 (Pages 78 to
 97)
 Portion of
 Lease
 Brisbane
 City Council
 to Trustees
 of Mount
 Gravatt A.H.
 & I. Society
 15th March
 1956
 (continued)

said Society showing full details of the amounts expended by them on the maintenance of, and repairs, alterations and improvements to, the demised premises and that they will furnish to the Town Clerk, within the time specified by him such additional details and information concerning each annual financial statement as he shall require.

- (aa) That they will use the demised premises for the purpose of conducting thereon annual shows by the said Society and meetings and functions in connection therewith and for the purposes of social functions, sports meetings, and games of cricket, football and tennis and not to use the same for any other purpose whatsoever except with the written permission of the lessor under the hand of the Town Clerk. 10

- (ab) That they will not in any way interfere with the rights of the general public to the lawful user of the demised premises as a park and recreation area during such times as the demised premises are not in actual use by the lessees or an approved sub-lessee or by any persons lawfully using the same in accordance with the provisions of sub-clause (b) of clause 3 of this lease. 20

- 3. The lessor and the lessees hereby mutually covenant and agree with each other as follows:-

- (b) Notwithstanding anything hereinbefore contained, the lessees:- 30
 - (i) shall have exclusive possession of the whole of the demised premises for the period only, in each year during the continuance of this lease, commencing four weeks prior to the first day of the annual show of the said Society and expiring one week after the last day of the said annual show; and

 - (ii) shall have exclusive possession of that part of the demised premises hereinbefore referred to as "the built-up area" at all times during the continuance of this lease; and 40

- 10 (iii) shall, at all times during the continuance of this lease, exercise protective control over the whole of the demised premises, such control to include, but not be limited to, the obligation to act as the lessor's honorary rangers for the whole of the demised premises and also to include the right to lock all vehicular entrances at all times and to prohibit the use of the show ring by horses and vehicles and also to include the right, unless otherwise directed by the lessor, to assign, sublet or hire the whole or any part of the demised premises for approved purposes on any day or days for sports meetings or other gatherings subject to the previous written approval of the lessor, under the hand of the Town Clerk, and to the charges for such use being in accordance with a scale of charges authorised by the lessor; in the event of a refusal by the lessees to sub-let or hire as aforesaid, the lessor shall have power to direct the lessees, by notice in writing under the hand of the Town Clerk, to sub-let or hire upon such terms and conditions as the lessor shall impose and the lessees shall comply with each such direction.
- 20
- 30 (c) The lessor will, at its own cost and at the first convenient opportunity, construct sanitary conveniences sufficient, in its opinion, to meet the needs of persons likely to patronise functions conducted on the demised premises other than the said Society's annual show.

We, DAVID LEITH BENCE, WILLIAM PETTIGREW and ABE HAMID HOWSAN DO HEREBY ACCEPT this lease of the abovedescribed land to be held by us as tenants and subject to the covenants conditions and restrictions above set forth.

40 DATED this fifteenth day of March 1956.

Exhibits
 —
 Exhibit No. 1
 (Pages 78 to 97)
 Portion of Lease
 Brisbane City Council
 to Trustees of Mount Gravatt A.H. & I. Society
 15th March 1956
 (continued)

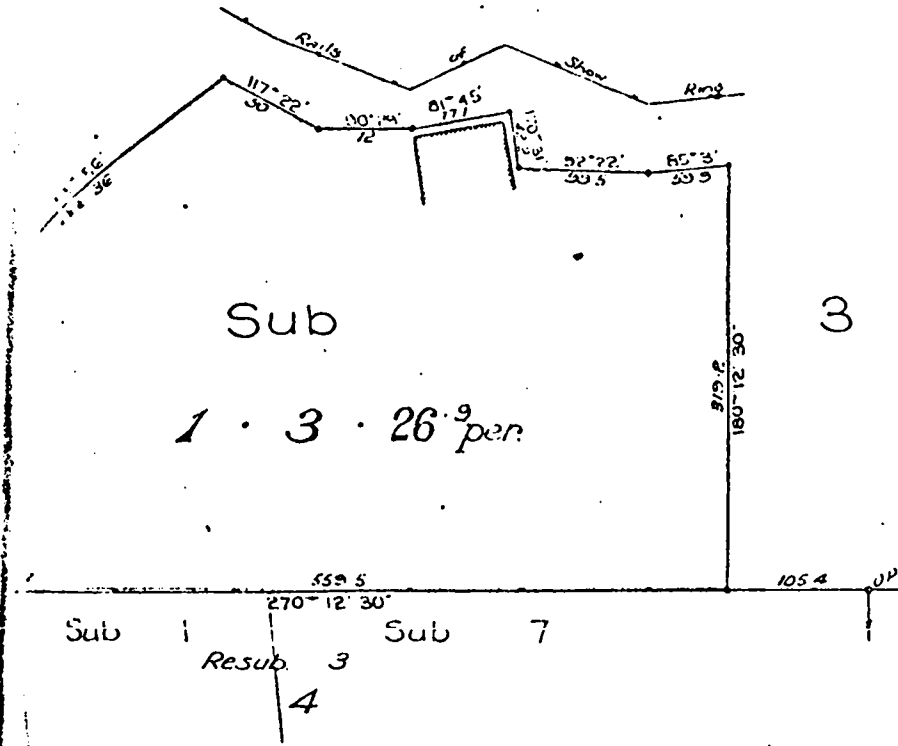
Exhibit No.1
(Pages 78 to 97) Portion
of Lease Brisbane City
Council to Trustees of
Mount Gravatt A H & I
Society
15th March 1850

The Schedule.



GRAVATT SHOW GROUNDS

333



PLAN OF LEASE *BUILT-UP AREA*

in Sub 3 of Por 333
Parish of Bulimba
County of Stanley

SCALE - 1 chain to an Inch

D. Ryland
Auth. Surveyor
26.9.55

(H. Society.

95

The Seal of BRISBANE CITY COUNCIL)
 was hereunto affixed this)
 Fifteenth day of March 1956, by) (Sgd.)
 me JAMES CAMERON SLAUGHTER, I) J. Slaughter
 being the proper officer to affix)
 such seal, in the presence of:) Town Clerk.

D. MacFarlane J.P.

A Justice of the Peace.

10

SIGNED by DAVID LEITH BENCE,) D.L. Bence
 WILLIAM PETTIGREW and ABE HAMID) W. Pettigrew
 HOWSAN in the presence of:) A.H. Howsan

A.G. Roberts J.P.

A Justice of the Peace.

Correct for the purpose of registration

(Signed) G.L. Byth

Solicitor for the Lessor

Simmonds & Simmonds

Solicitors for the Lessees

Exhibits

Exhibit No. 1
(Pages 78 to 97)

Portions of
Lease
Brisbane
City Council
to Mount
Gravatt A.H.
& I. Society

15th March
1956
(continued)

Exhibits

Exhibit No. 1
 (Pages 98 to
 117)
 Portion of
 Lease
 Brisbane
 City Council
 to Trustees
 of Mount
 Gravatt A.H.
 & I. Society
 1st April
 1964
 (continued)

Brisbane, Brisbane aforesaid as Trustees of MT.GRAVATT AGRICULTURAL, HORTICULTURAL AND INDUSTRIAL SOCIETY (hereinafter called "the lessees" which expression shall include their and each of their successors for the time being in the offices of Trustees of Mt. Gravatt Agricultural, Horticultural and Industrial Society and the permitted assigns of such Trustees) TO BE HELD by the lessees as tenants for the period of SEVEN (7) YEARS commencing on the first day of January One thousand nine hundred and sixty-three and extending to and including the thirty-first day of December One thousand nine hundred and sixty-nine at the annual rental of Ten pounds ten shillings (£10.10.0) payable yearly in advance at the office of the Department of Finance of the lessor, City Hall, Brisbane in the said State on the first day of January in each and every year during the said term SUBJECT, in addition to the covenants powers and provisions implied herein by "The Real Property Acts of 1861 and 1877" or such modification or alterations of any of the same as hereinafter appear, to the following covenants, conditions and restrictions:

1. The lessees HEREBY jointly and severally COVENANT with the lessor in manner following that is to say:

- (a) That they will duly and punctually pay the said rental without any formal or other demand and without any deduction whatsoever at the times and in the manner herein mentioned. 30
- (b) That they will duly and punctually pay to the lessor on demand an amount or amounts equivalent to the water rates at the minimum rate from time to time lawfully fixed by the lessor as the Local Authority.
- (c) That they will duly and punctually pay to the lessor on demand, from the date when the demised premises become part of a sewered area, an amount or amounts equivalent to the sewerage rates at the minimum rate from time to time lawfully fixed by the lessor as the Local Authority. 40
- (d) That they will duly and punctually pay to the lessor on demand its accounts for cleansing dues in respect of the demised premises throughout the continuance of the said term.

- (e) That they will duly and punctually pay for all^m gas, electric light and power consumed or used on the demised premises during the said term.
- (f) That they will at all times during the currency of this lease keep and maintain and at the expiration or sooner determination of the said term deliver up to the lessor the demised premises, together with all locks keys and fastenings, in good order repair and condition to the satisfaction of the lessor.
- (g) That they will observe and strictly conform to and cause all the servants, agents, licensees and invitees of the lessees to observe and strictly conform to the covenants agreements conditions and restrictions herein contained.
- (i) That, subject as hereinafter provided, they will not assign, underlet, mortgage, charge or part with the possession of the demised premises or any part thereof or share with a person, body, firm or corporation the occupation thereof without the written consent of the lessor under the hand of the Town Clerk first obtained nor without such consent will they attempt to assign, underlet, mortgage, charge or part with possession or share occupation as aforesaid. This sub-clause is hereby declared to be a condition going to the root of this lease and upon any breach thereof by the lessees in any manner whatsoever this lease shall thereupon determine and become void and of no effect and any purported assignment underletting mortgaging charging or parting with possession or sharing occupation of the whole or any part of the demised premises in any way to any person body firm or corporation shall not operate to pass any estate or interest in respect of the demised premises or any part thereof to that person body firm or corporation.
- (aa) That they will not keep store supply or sell nor permit nor suffer any intoxicating liquor to be kept stored consumed supplied or sold upon the demised premises or any part thereof except in accordance with a current licence or permit issued under "The Liquor Acts, 1912 to 1959" for the period only during which each annual show is conducted by the lessees.

Exhibits

—
Exhibit No. 1
(Pages 98 to 117)

Portion of
Lease
Brisbane
City Council
to Trustees
of Mount
Gravatt A.H.
& I. Society

1st April
1964

(continued)

Exhibits

—
Exhibit No. 1
(Pages 98 to
117)

Portion of
Lease
Brisbane
City Council
to Trustees
of Mount
Gravatt A.H.
& I. Society

1st April
1964
(continued)

- (ab) That they will furnish to the lessor on or before the thirtyfirst day of July in each and every year during the said term an annual financial statement, duly certified to by the Auditor and the Treasurer of the said Society showing full details of the amounts expended by them on the maintenance of, and repairs, alterations and capital improvements to, the demised premises and that they will furnish to the Town Clerk, within the time specified by him such additional details and information concerning each annual financial statement as he shall require. 10
- (ac) That they will use the demised premises for the purpose of conducting thereon annual shows by the said Society and meetings and functions in connection therewith and for the purposes of social functions, sports meetings, girls' marching, and games of cricket, football and tennis and not to use the same for any other purpose whatsoever except with the written permission of the lessor under the hand of the Town Clerk. 20
- (ad) That they will not in any way interfere with the rights of the general public to the lawful user of the demised premises, save and except all buildings other than toilets, as a park and recreation area during such times as the demised premises are not in actual use by the lessees or an approved sub-lessee or by any persons lawfully using the same in accordance with the provisions of this lease. 30
- (af) That they will make the playing grounds forming part of the demised premises available, free of any rental, to State Primary and Secondary Schools for use for the conduct of organised sporting fixtures under the control of a combined Schools Sporting Association on not less than one day in each week or on as many days as the lessor may from time to time determine, subject to the said Association or Associations accepting responsibility for the supervision of the use of the said playing grounds and for the cost of repairing any damage caused to the demised premises during such use. 40
- (ag) That they will, during the first year of the

said term, install on the demised premises a septic system or systems to comply with the requirements of the lessor provided that the amount expended by them on such installation shall be credited to the amount which they are required to expend on capital improvements in compliance with the provisions of sub-clause (ae) of this Clause.

10 (ah) That they will grant a Sub-Lease to the Mt. Gravatt Girls Marching Association and a Sub-Lease to the Mt. Gravatt Youth Recreation Club, each for the period of this lease less one day, of those portions of the demised premises on terms and conditions already agreed to between the said Society and the said Association and the said Society and the said Club respectively at a meeting or meetings on the first day of December 1961, which portions of the demised premises are referred to and terms and conditions are contained in writings signed respectively on behalf of the said Society and the said Association on the ninth and fifth days of December 1961, and the said Society and the said Club on the seventh and fifth days of December 1961 or such other terms and conditions as may be mutually agreed upon and be approved by the lessor.

20

30 (ai) That they will, when the demised premises are not required for the purposes of the annual show of the said Society and when parts of the demised premises are not sub-let as hereinbefore set out, make the demised premises or a part or parts of them available to bodies approved by the lessor and that all applications for the use of the whole or any part of the demised premises, including details of proposed rentals payable and other conditions in respect thereof, together with the recommendation of the lessees thereon shall be submitted by the lessees to the lessor for approval prior to any agreement being reached thereon by the lessees and such bodies; provided however that the lessees shall have the right to enter into casual hirings of the demised premises or any part thereof in accordance with a scale of charges from time to time approved by the lessor.

40

3. The lessor and the lessees hereby mutually

Exhibits

—
Exhibit No. 1
(Pages 98 to 117)
Portion of Lease
Brisbane City Council
to Trustees of Mount Gravatt A.H. & I. Society
1st April 1964
(continued)

Exhibits

covenant and agree with each other as follows:

Exhibit No. 1
(Pages 98 to
117)
Portion of
Lease
Brisbane
City Council
to Trustees
of Mount
Gravatt A.H.
& I. Society
1st April
1964
(continued)

- (a) All buildings, structures, fencing, fixtures, pathways, drains, water pipes, drainage, sewerage and other installations and improvements of any kind erected on or made to the demised premises during the term hereby granted shall, immediately upon such erection or making (and whether such are erected or made by the lessor or by the lessees), become part of the demised premises and be subject to the covenants, conditions and restrictions set forth in this lease and be and remain the sole property of the lessor PROVIDED HOWEVER that the lessor acknowledges that the building or buildings erected by Girl Guides Association on the demised land may be removed by such Association after due notification to the lessor providing always that the land shall be left clean and tidy immediately after such removal. Furthermore in the event of the determination of this lease, the lessor will continue to allow such right of removal to the aforementioned Association for all times. The lessor however retains the right to give notice to the Association to remove the aforesaid building or buildings and in the event of this not having been done within three (3) months the building or buildings will become the property of the lessor. Subject to the approval of the lessor the lessees may levy the Girl Guides Association such rental as may be agreed between the Association and the lessees. 10 20 30
- (b) The lessor will during the said term, at its cost, and expense, insure and keep insured in the name of the lessor against loss or damage by fire or other insurable risk to their full insurable value all buildings, structures and improvements now or at any time hereafter erected or constructed upon the demised premises which shall be capable of being so insured PROVIDED ALWAYS that all moneys received by the lessor under and by virtue of such insurance shall be laid out and expended by the lessor in making good such loss or damage but the lessor shall not be obliged to expend more than the amount received by it in respect of such insurance AND PROVIDED ALSO that in reinstating the demised premises or any part thereof the lessor shall not be bound to conform to any condition 40

structural or otherwise of the premises existing at the time of the said loss or damage.

Exhibits

—
Exhibit No. 1
(Pages 98 to 117)

Portion of
Lease
Brisbane
City Council
to Trustees
of Mount
Gravatt A.H.
& I. Society

1st April
1964
(continued)

- 10 (c) The lessees will erect, at their own cost, a suitable fence (together with necessary gates and other entrances) on each boundary of the demised premises where no such fence exists and the lessor shall not be responsible to erect or repair any fences on the said boundaries nor to join in or contribute to the erection or repair of any fences on the said boundaries. The lessor will, at the request and expense of the lessees, give as owner of the demised premises all necessary notices to fence and notices to repair in accordance with "The Dividing Fences Act of 1953" and any Act amending or in addition to or in substitution therefor. The lessees will punctually comply with all notices to fence and notices to repair under the said Act given by the owners of adjoining lands to the lessor as the owner of the demised premises.

- 20 (f) Notwithstanding anything hereinbefore contained the lessees shall have exclusive possession of the whole of the demised premises for the period only, in each year during the continuance of this lease, commencing 2 weeks prior to the first day of the Annual Show of the said Society and expiring 2 days after the last day of the said Annual Show.

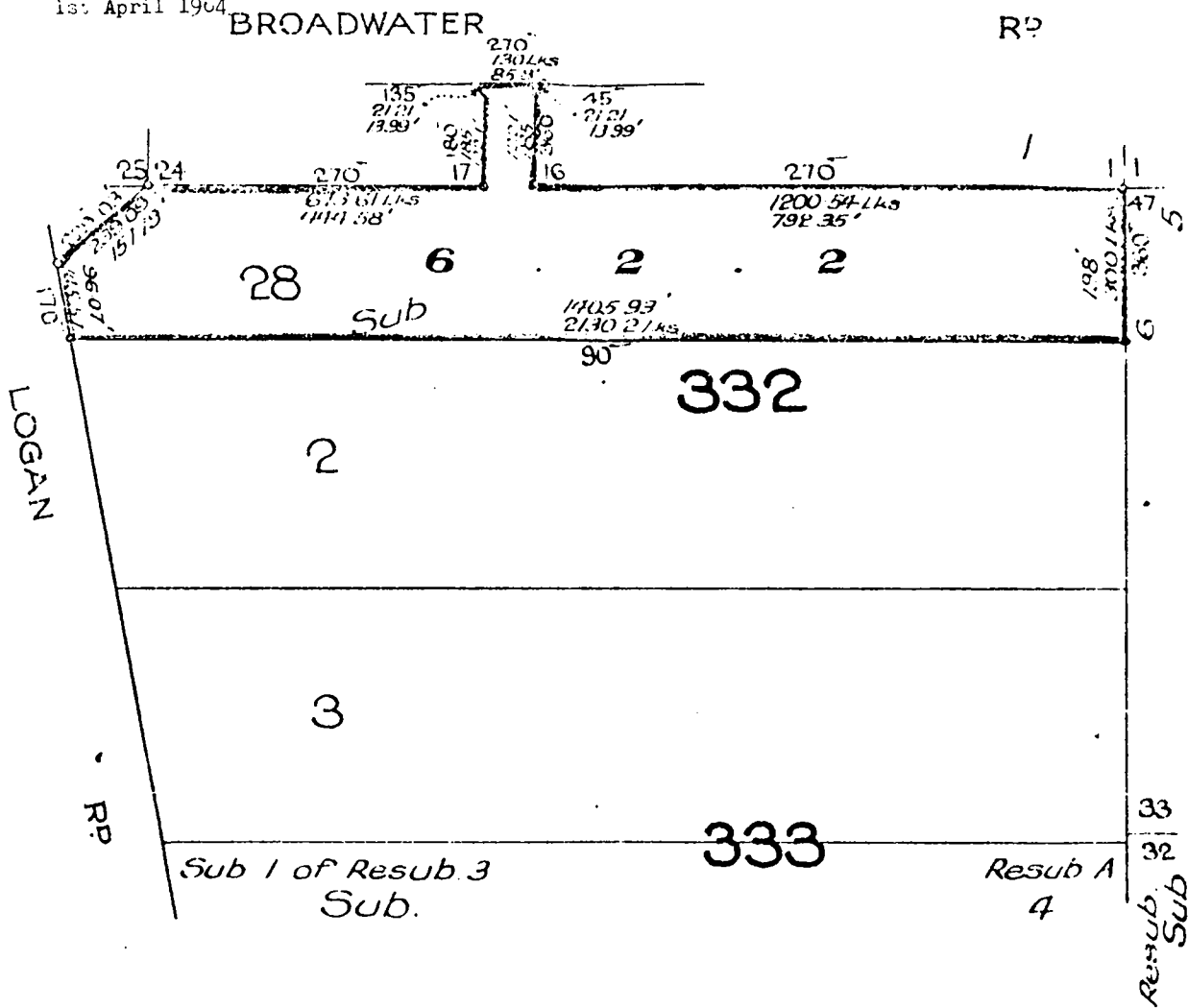
Robert

30 We, William Pettigrew, Abe Hamid Howsan and Guy Ronald Hamlyn-Harris DO HEREBY ACCEPT this lease of the abovedescribed land to be held by us as tenants and subject to the covenants conditions and restrictions above set forth.

DATED this first day of April 1964.

The Schedule Lease before referred to.

Exhibit No. 1
(Pages 98 to 117)
Portion of Lease
Brisbane City
Council to Trustees
of Mount Gravatt
A.H. & I Society
1st April 1964



PLAN OF LEASE
of Part of Resub. 28 of Sub 1
Portion 332
Parish of Bulimba
County of Stanley
Scale: 3 Chs to an Inch



The Seal of BRISBANE CITY COUNCIL }
was hereunto affixed this First }
day of April 1964, by me, Thomas }
Victor McAulay, I being the proper }
officer to affix such Seal, in }
the presence of:

(Signed)
T. V. McAulay
Deputy Town
Clerk

Exhibits
Exhibit No. 1
(Pages 98 to
117)
Portion of
Lease
Brisbane
City Council
to Trustees
of Mount
Gravatt A.H.
& I. Society
1st April
1964
(continued)

Chas. Adrian, J.P.

A Justice of the Peace

10

SIGNED by the said ^{ROBERT} WILLIAM PETTIGREW) W.R. Pettigrew
ABE HAMID HOWSAN and GUY RONALD)
HAMLYN-HARRIS this Sixteenth day of) A.H. Howsan
March, 1964 in the presence of:-) G.R. Hamlyn-
Harris

(Illegible) J.P.

A Justice of the Peace

Correct for the purpose of registration.

(Signed) S. Gatfield

Solicitor for the Lessor

W. R. Pettigrew

A.H. Howsan

G. Hamlyn-Harris

Lessees

20

Exhibits

No. D104731

Memorandum of Encumbrances,
Liens and Interests

Exhibit No. 1
(Pages 98 to
117)

Portion of
Lease
Brisbane
City Council
to Trustees
of Mount
Gravatt A.H.
& I. Society
1st April
1964
(continued)

L E A S E

BRISBANE CITY COUNCIL
Lessor

ROBERT
WILLIAM PETTIGREW, ABE
HAMID HOWSAN and GUY
RONALD HAMLYN-HARRIS
Lessees

Particulars entered in
the Register Book Volumes
2721:902 Folios 243:69
this 1 day of May
1964, at 12.33 p.m.

10

Signed R. M. Millar
Registrar of
Titles
(L.S.)
Queensland.

S. E. Gatfield
Acting City Solicitor,
City Hall,
BRISBANE.

20

Exhibit No. 1 (Pages 118 & 119)

Memorandum by Property and Insurance
Officer to Town Clerk, Brisbane City Council

Exhibits

Exhibit No. 1
(Pages 118 &
119)Memorandum by
Property and
Insurance
Officer to
Town Clerk
Brisbane
City Council2nd January
1970

DEPARTMENT OF FINANCE

176
6 JAN 1970
Central Records

BM:BT R/L G 43981/69

2nd January, 1970

MEMORANDUM:

10

THE TOWN CLERK.re Application for renewal of lease
Mt.Gravatt Showgrounds - Mt.Gravatt
A.H. & I. Society

20

The abovementioned Society has been in occupation of the Mt.Gravatt Showgrounds since 1915, the last lease granted to it being for a period of seven (7) years from 1st January 1963 at a rental of \$21.00 per annum in addition to which the society was responsible for the payment of minimum water and sewerage rates (if applicable) and cleansing dues. The lessee was required to expend a sum of not less than \$600 per annum upon improvements.

The Society has applied for a new lease for a period of twenty (20) years at a rental of \$21.00 per annum on condition that -

30

1. the Society makes improvements to the value of \$600 per annum on a cumulative basis.
2. the Society has the right to sub-let to any person or organisation approved by Council at a rental agreed on between the society and Council.
3. the Society has exclusive possession of the whole Show Grounds and installations thereon for 7 days prior to and 6 days after the Annual Show. One month's notice to be given to sub-tenants if the grounds are required for the April Fair and the October Rodeo and Camp Draft (one day events).

Exhibits

—
Exhibit No. 1
(Pages 118 &
119)

Memorandum by
Property and
Insurance
Officer to
Town Clerk
Brisbane
City Council
2nd January
1970
(continued)

The Society has set out fully its record over the past years and its plans for the future in its application. Very briefly, the Society has \$1,000 in hand and has received offers of assistance from various service clubs. It is proposed to make the following improvements over the term of the lease -

- (a) George Chester Memorial Pavilion at a cost of \$20,000
- (b) Erection of brick base to show hall - \$2000 10
- (c) Painting of all installations.
- (d) Further fencing.
- (e) Lining and re-flooring show hall.
- (f) Extension of seating.

The Society's lease covers an area of 26 acres 3 roods 29 perches of land upon Logan Road in the heart of the fast developing Mt. Gravatt area. The history of the land is as follows -

The Society purchased the original showground of 20 acres 1 rood 27 perches for \$320 in 1915. 20

In 1937 the Society requested Council to take over the land in consideration of the Council -

- (a) setting the land apart permanently for show-ground park and recreation purposes;
- (b) levelling of the show ring;
- (c) granting the Society the exclusive use of the grounds without charge for a period of two weeks in each and every year for the purposes of and in connection with the District Annual Show; 30
- (d) liquidating the present bank overdraft of \$900 on the property.

The Council had no power to take over the property subject to the existing overdraft which was secured by way of a mortgage. However, the Council agreed to the proposal and paid out the \$900 to liquidate the overdraft. It is interesting to note that the Council's minute of 19th October 1937 states that the proposal is a means of acquiring an area of land eminently suitable as a local park and recreation ground at a minimum cost. 40

The additional area of 6 acres 2 roods 2 perches of land included in the lease is part of an area of 6 acres 2 roods 28 perches acquired by Council for addition to the showgrounds at a cost of \$6,800.

Attention is drawn to the report of the Manager, Department of Planning and Building of 12th September 1969 (folio 69) in which he states the "buildings are mostly of poor quality" and the report of the Acting Manager, Department of Parks of 23rd September 1967 (folio 69).

Exhibits

—
Exhibit No. 1
(Pages 118 & 119)

Memorandum by
Property and
Insurance
Officer to
Town Clerk
Brisbane
City Council

2nd January
1970

(continued)

I am in entire agreement with the Acting Manager, Department of Parks and consider this area warrants far better development than that proposed by the applicant Society with its limited funds.

Other local organisations are very interested in parts of the area. A possible site for a swimming pool has also been mentioned.

On the other hand the Show Society has probably done its best over the years, and with the Mt. Gravatt Show a well established function and one of the two small shows held within Brisbane, the Society warrants consideration.

I would therefore recommend that consideration be given to the design of the whole area in such a way as to permit its full use and development by individual lessees, and at the same time providing for the Show Society to have the use of the whole area, excluding any future swimming pool, for 14 days during the month of July each year. The Society to be granted a lease of the area containing the show ring and sufficient area to contain its necessary permanent improvements provided existing or future buildings are brought up to a first class standard and the show ring is made available to other sporting bodies when not in use by the Society.

As such a design will necessarily take some time to prepare it is recommended that the existing lease to the Society be extended until 31st July 1970 upon the existing applicable terms and conditions.

ADMINISTRATION
BOARD

(Signed) B. A. Masterton,
(B. A. Masterton)

PROPERTY & INSURANCE OFFICER.

Admin Board

Exhibits

No. 2

No. 2
Reasons for Judgment of Full Court of Queensland pronounced by Hanger C.J. in Appeals Nos. 1 and 2 of 1972

Reasons for Judgment of Full Court of Queensland pronounced by Hanger C.J. in Appeals Nos. 1 and 2 of 1972

No.13 - Reasons for Judgment of His Honour the Chief Justice in the Full Court of the Supreme Court (with which Mr. Justice Wanstall agreed)
Dated 27 April 1972

27th April 1972

Appeal No. 1 of 1972

BETWEEN:

10

ARTHUR THOMAS SCURR
MT.GRAVATT CENTRAL CHAMBER OF COMMERCE and
ARTHUR THOMAS SCURR for and on behalf of
Mt. Gravatt Central Chamber of Commerce

GARDEN CITY TRADERS ASSOCIATION LIMITED,
ANTONIA CURLEY

- and -

JOHN POWSLAND CONEYBEER

(Appellants)

Appellants

AND:

20

BRISBANE CITY COUNCIL and
MYER SHOPPING CENTRES PROPRIETARY LIMITED

(Respondents)

Respondents

Appeal No. 2 of 1972

BETWEEN:

MYER SHOPPING CENTRES PROPRIETARY LIMITED

(Respondent)

Appellant

AND

30

ARTHUR THOMAS SCURR
MT.GRAVATT CENTRAL CHAMBER OF COMMERCE and
ARTHUR THOMAS SCURR for and on behalf of
Mt.Gravatt Central Chamber of Commerce,

GARDEN CITY TRADERS ASSOCIATION LIMITED,
ANTONIA CURLEY

- and -

JOHN POWSLAND CONEYBEER

(Appellants)

Respondents

JUDGMENT - THE CHIEF JUSTICE

Exhibits

No.2

Reasons for
Judgment of
Full Court
of Queensland
pronounced by
Hanger C.J.
in Appeals
Nos. 1 and 2
of 1972

27th April
1972
(continued)

This is an appeal from the decision of His Honour, Judge Mylne, sitting as the Local Government Court. The relevant facts are sufficiently set out in the judgment under appeal and the grounds of the appeal appear in the reasons of Hoare J. which I have had the opportunity of reading.

10 There is a large number of grounds of appeal but they involve the consideration of a few questions only. The application out of which the questions arose was an application for the consent of the Brisbane City Council to use certain land in a particular zone of the Town Plan for a particular purpose. Consent was required by the joint operation of "The City of Brisbane Town Planning Acts, 1964 to 1967" and "The City of Brisbane Town Plan". The Town Plan divides the City into zones and provides for the purposes for which the land in any zone may be used. In many cases, it provides
20 that land may be used for purposes other than specified purposes, only with the consent of the Council. Repeatedly in the Plan, amongst the purposes for which land in a zone may be used, there is mentioned "shops". The word "shop" is defined in the definition clause of the Plan.

30 By s.22 of the Act, where consent of the Council is sought in a case where its consent is required, the Council, before deciding the application, is required to cause public notice of the application to be given. The applicant in this case applied for consent and indicated that the use to be made of the land was "a shop (Target Discount Shopping Centre)". The Council indicated that it proposed to grant the application and a notice was placed on the land as required by s.22, which stated that application had been made to the Council for its consent to the erection of a building on the land "for the purpose of a shop 'Target Discount Shopping Centre'".

40 The present appellant objected and when his objection was overruled he appealed to the Local Government Court. He failed in that Court and appeals now to this Court.

In the first place, he contends that the advertisement is inadequate having regard to

Exhibits

—
No. 2

Reasons for
Judgment of
Full Court
of Queensland
pronounced by
Hanger C.J.
in Appeals
Nos. 1 and 2
of 1972

27th April
1972
(continued)

statutory requirements. I think that the argument then proceeded, that because of this inadequacy, the Council had no power to proceed further with the application for consent. The prime basis for the allegation of inadequacy was a lack of particularity. S.22(1), in the third paragraph, requires the advertisement to set out particulars of the application. No form of application is anywhere prescribed.

It appears to me that when one keeps in mind that the application is to use land for a particular purpose - the purpose of a shop, the matter of adequacy is clear enough. The applicant is prohibited from using the land for a shop unless the Council consents to this; so the applicant applies for consent to use the land for this purpose. It is with this application that the Council has to deal. Once the Council has given its permission for the land to be used for this purpose, the land may be so used, no matter who becomes the owner of the land; whether what was contemplated by the applicant was a big shop or a little shop, a boot shop or a lolly shop, does not matter. Once it may be used for the purpose of a shop, it may be used for any purpose which comes within the definition of the Plan.

10

20

In my opinion, the advertisement was adequate in its particularity.

The appellants also contended that evidence had been wrongly excluded by Mylne J. which would have shown a shortage of land in the neighbourhood available for open space recreational facilities schools and community purposes. If this evidence was relevant, it must be able to be used by the Court in reaching its decision; I do not see how it can be so used. The question is whether the land is to be allowed to be used for the purpose of a shop. Assume that there is a shortage of land for schools etc.; that this is found as a fact by the Court. What follows? It is no use prohibiting use of the land for a shop if no-one will use the land for a school. It seems to me quite idle to suggest that the Council should refuse to countenance the use of land for a shop on the chance that someone may, at some future date, decide that he would like to acquire the land from the owner - if he could - for the purpose of using it for a school. I think there are probably other

30

40

cogent reasons for rejecting the evidence but as the reason I have mentioned seems unanswerable, I need not go into others.

The land under consideration was owned by the Council, which agreed to sell it to the applicant. The appellant contended that the method by which tenders were invited for the purchase of the land was contrary to law and that all subsequent procedures were void and of no effect.

10 I am unable to see the relevancy of this material. The right of the objector to appeal is given by s.22(3) - to appeal against the proposal of the Council to grant the application. It appears to me the subsection assumes an applica-
 20 tion made under s.22(1) and an objection to the proposal of the Council to grant the application. The Local Government Court is of course a court whose jurisdiction is statutory and limited. The jurisdiction conferred upon it is exclusive to it.
 20 The tenor of the sections which give it juris-
 diction, indicates that they are concerned with matters that relate to town planning; and I see no ground for the suggestion that this Court is entitled to go beyond town planning matters and inquire how any applicant, who has a right to make an application under s.22, comes to acquire the right and whether the right is void or voidable.

30 It was also argued that as the land had been subject to a trust, the Council was in breach of its duty as a trustee in dealing with the land as it had done. This also seems to me remote from the function of the Local Government Court.

Finally, the appellant claimed that there was no jurisdiction to make the order for costs which had been made. S.31 gives the Court power to make such order as it thinks fit as to the costs of any proceedings heard and determined by it.

I am unable to say that the order made was wrong in law.

40 In my opinion, the appeals should be dismissed.

Exhibits

—
 No. 2

Reasons for Judgment of Full Court of Queensland pronounced by Hanger C.J. in Appeals Nos. 1 and 2 of 1972

27th April 1972
 (continued)

Exhibits

Exhibit No. 3

No. 3
Portion of Reasons for Judgment of Full Court of Queensland pronounced by Hoare J. in Appeal Nos. 1 and 2 of 1972
27th April 1972

Portion of Reasons for Judgment of Full Court of Queensland pronounced by Hoare J. in Appeals Nos. 1 and 2 of 1972

No. 14 -Reasons for Judgment of His Honour Mr. Justice Hoare in the Full Court of the Supreme Court (with which Mr. Justice Wanstall agreed).
Dated 27 April 1972.

10

IN THE SUPREME COURT
OF QUEENSLAND

Appeal No. 1 of 1972

BETWEEN:

ARTHUR THOMAS SCURR,
MT.GRAVATT CENTRAL CHAMBER OF COMMERCE and
ARTHUR THOMAS SCURR for and on behalf of
MT.GRAVATT CENTRAL CHAMBER OF COMMERCE
GARDEN CITY TRADERS ASSOCIATION LIMITED,
ANTONIA CURLEY and
JOHN POWSLAND CONEYBEER
(Appellants)
Appellants

20

AND:

BRISBANE CITY COUNCIL and
MYER SHOPPING CENTRES PROPRIETARY LIMITED
(Respondents) Respondents

Appeal No. 2 of 1972

BETWEEN:

MYER SHOPPING CENTRES PROPRIETARY LIMITED
(Respondent) Appellant

AND:

ARTHUR THOMAS SCURR,
MT.GRAVATT CENTRAL CHAMBER OF COMMERCE and
ARTHUR THOMAS SCURR for and on behalf of
MT. GRAVATT CENTRAL CHAMBER OF COMMERCE
GARDEN CITY TRADERS ASSOCIATION LIMITED,
ANTONIA CURLEY and
JOHN POWSLAND CONEYBEER
(Appellants) Respondents

30

JUDGMENT - HOARE J.

Exhibits

No. 3

The grounds of appeal to this Court are as follows:-

Portion of
Reasons for
Judgment of
Full Court
of Queensland
pronounced by
Hoare J. in
Appeal Nos. 1
and 2 of 1972

27th April
1972
(continued)

- (1)
- (2)
- (3)
- (4)
- (5)
- 10 (6)
- (7)
- (8)
- (9)
- (10)

(11) His Honour wrongly excluded evidence sought to be led by the Appellants as to the terms upon which Brisbane City Council acquired the Mount Gravatt Showgrounds. Such evidence was relevant and material, and its exclusion has or may have occasioned a miscarriage of justice. Without limiting the generality of this ground, particulars of such evidence wrongly excluded are as follows:-

- (a) the evidence of the witness Hawes tendered between page 112 line 37 and page 118 line 28 of the transcript of evidence (pp.131-137 of this record);
- (b) the evidence of the witness Bateman tendered at pages 122-123 of the transcript of evidence (pp.142-143 of this Record).

So far as concerns grounds 10 and 11, it may well be that in other appropriate proceedings in this Court, the appellants could establish such defects in the procedures adopted by the Brisbane City Council and a failure to carry out the trusts in relation to the land which would justify the Supreme Court of Queensland interfering. However, these are matters over which the Local Government Court had no jurisdiction whatever and these grounds fail.

Exhibits

Exhibit No. 4

No. 4

Extract from transcript of Proceedings
in Appeals Nos. 1 and 2 of 1972

Extract from
transcript of
Proceedings
in Appeals
Nos. 1 and 2
of 1972

HIS HONOUR: Is that the reason?

MR. GIFFORD: That is the reason.

HIS HONOUR: Right opposite the intersection?

MR. GIFFORD: Yes. We submit that could have very little weight but we do not object to its admissibility. It may be better to let it go in at this stage.

10

HIS HONOUR: I will admit the documents.

MR. DUNN: It says a little bit more than that it is opposite the intersection. It refers to the nature of the road.

HIS HONOUR: This is a decision of Council Registration Board re proposed medical centre and chemist shop, Logan Road, Mt. Gravatt, and application.

Ex.42

(Admitted and marked "Exhibit 42".)

MR. DUNN: This is a topic which will raise objection.

20

BY MR. DUNN: Does the council have documents or papers or minutes or resolutions relating to the acquisition of land from the showground, from the trustees of the Mt. Gravatt Agricultural Horticultural and Industrial Society?-----

MR. KIMMINS: I object. The question is irrelevant. This deals with the whole question of the acquisition of the showground by the Brisbane City Council in 1938, I think it was.

30

MR. DUNN: That is so.

HIS HONOUR: How do you make it relevant, Mr. Dunn?

MR. DUNN: Again, via the three cases I mentioned this morning. This time, however, on the footing that we propose to prove, if not through

the council, through the show society, that the council acquired the land subject to some condition or covenant that it continue to use it for show-ground purposes, and that if we establish the existence of such a term, it is relevant to the question whether it is reasonable on the part of the council now to give permission for it to be used for some other purpose, namely a commercial purpose. In relation to this aspect of the case, the fact that the council proposes to -----

10

HIS HONOUR: Is not this principle covered by the High Court case of the Randwick Racecourse?

MR. DUNN: I am not familiar with it.

HIS HONOUR: Judge Byth dealt with it in the application for a drive-in theatre. It is the judgment of Mr. Justice Windeyer.

MR. DUNN: Were I familiar with it, I could answer you with confidence.

HIS HONOUR: He briefly said if a council resumes land for a particular purpose, the fact it has done so, the land is not impressed with any sort of trust, and it is not prevented from selling it for any other purpose, something to that effect.

20

MR. DUNN: I am not, of course, putting this on the footing of resumption as there was not any resumption. Your Honour has already dealt with this, I think, or did deal with it in an interlocutory way earlier this year. I state the basis of the question - the basis upon which the question is put, mentioning at the same time that another witness will be subject to any ruling Your Honour gives - the secretary of the society for the president. Having stated the basis upon which I asked the question, I ask Your Honour to rule on my learned friend's objection.

30

HIS HONOUR: You say that these documents establish that the council acquired the land in 1938?

MR. DUNN: The question which I asked the witness was whether the council has any documents relating to the acquisition or purchase of the land. The next question, of course, would be a request that they be produced. See, I am doing

40

Exhibits

No. 4

Extract from transcript of Proceedings in Appeals Nos. 1 and 2 of 1972

Exhibits

—
No. 4

Extract from
transcript of
proceedings
in Appeals
Nos. 1 and 2
of 1972
(continued)

it this way because it is the subject of a subpoena and it is an old transaction and certainly it seems fair to ascertain, first, whether the council has any documents at all when it is an old transaction, and it is subpoenaed.

MR. GIFFORD: It might clarify the matter if my learned friend states the reason why he wants the whole material which is, I understand it, an attack on the validity of the sale by the council.

HIS HONOUR: The disposition? 10

MR. GIFFORD: On the basis of some implied trust. If my learned friend states that this is the basis, it clears the air.

MR. DUNN: The basis is that it is not an implied trust. It took the land pursuant to a contract which contained some additional covenant that it would continue to use the land for showground purposes.

HIS HONOUR: And it has acted in breach of this covenant for disposing of the land for another purpose. Have I power to determine that? 20

MR. DUNN: As I say, it is not the show society or the trustees of the show society who are making this complaint. It is us. They can be, if the powers of this court are sufficient to enable the court to say: to give this land-use permission, when there exists a covenant that the land is to be used for some other purpose, is unreasonable on the part of the council. It cannot be advanced in this court on any other basis. 30

HIS HONOUR: Whether it is unreasonable from a planning point of view?

MR. DUNN: Where it is unreasonable.

HIS HONOUR: You are taking it from a trust or a moral point of view.

MR. DUNN: If the land is taken on such a footing, surely from the planning point of view the council must plan on the footing that it will use it in accordance with its contractual obligations. 40

HIS HONOUR: Say it acquired it in 1938 for a sewerage depot and circumstances changed considerably, say, from 1938 to the present time, should I look into the question whether the council has the right to dispose of it other than as a sewerage depot?

10 MR. DUNN: It must depend on the circumstances which surround an application to use it as a sewerage depot and the nature of the application. If it was an out-and-out trust, if you could declare a trust to hold land in perpetuity for a sewerage depot, it could not, with respect, dispose of the trust property - the trustee cannot sell the trust property, at least, perhaps, in such circumstances aided by a direction of the court.

HIS HONOUR: You are saying these documents may show the land is impressed with a trust?

20 MR. DUNN: I am asking, first of all, whether there are such documents, and my learned friend says that that inquiry of itself is irrelevant.

HIS HONOUR: Mr. Kimmins, if the documents show that the council acquired the land as a trustee for any trust, for some purpose, might not that be relevant?

MR. KIMMINS: With respect, no. I refer to the title. We hold a clean title.

HIS HONOUR: But still, trusts are not shown on the title.

30 MR. KIMMINS: If they want to prove it they can go and search the trust.

HIS HONOUR: The trust need not be registered to be an effective trust.

MR. KIMMINS: Is Your Honour reopening the argument which Your Honour has already decided once on discovery?

HIS HONOUR: No. This question was not raised on discovery.

MR. KIMMINS: With respect, it was clearly raised.

40 MR. DUNN: It was.

Exhibits

—
No.4

Extract from transcript of proceedings in Appeals Nos. 1 and 2 of 1972
(continued)

Exhibits

—
No. 4

Extract from
Transcript of
Proceedings
in Appeals
Nos. 1 and 2
of 1972
(continued)

HIS HONOUR: It was raised on discovery, and did I -----

MR. KIMMINS: My recollection of the discovery was, "They wanted to have a scratch around in 1938 because they wanted to come up with something." I still use those words, and whether Your Honour acceded in those terms, Your Honour certainly never ordered discovery.

HIS HONOUR: Have you got a copy of the judgment in Sourris's case? 10

MR. KIMMINS: Yes, Sourris against the Pine Shire. It was a Sourris drive-in at Bell's Pocket Road, I think.

HIS HONOUR: Mr. Dunn was relying on the Randwick Racecourse decision.

MR. KIMMINS: I have concern, and in fact I have given certain advice in relation to it. I am familiar with the decision and with the resumption, and as I understand it, it is unanswerable that, in fact, if a local authority does acquire land, that is the end of it. 20

HIS HONOUR: If it acquires it for a certain purpose there is nothing to prevent it from disposing of it to someone else for another purpose provided - and this is under the Resumption Act - they offer it to the person from whom they acquired it - they offer it first to the person from whom they acquired it.

MR. KIMMINS: My learned friend puts it on a different footing. He does not say it is impressed with any trust. He asks Your Honour to register some moral sort of censure against the council - adopting a paternalistic view of the council's proceedings - and chide it for a breach of undertaking at the outset of it. 30

HIS HONOUR: Is he not rather saying, "Well, he is calling for the document which may show a trust?", and he is relying upon that. If they did not show a trust, of course, they are irrelevant, are they not?

MR. KIMMINS: We argued this in relation to discovery. We have filed our affidavit of discovery. 40

We have not discovered them. They made application for further discovery, putting the arguments up to Your Honour here that are now being adduced.

HIS HONOUR: It was not argued to that extent—I mean I was not referred to this Randwick case.

MR. KIMMINS: With respect, I would have thought no authority was necessary.

HIS HONOUR: The argument was apparently put up in Sourris's case.

10 MR. KIMMINS: It must be right because Sourris got the drive-in permission out there.

HIS HONOUR: The appellant was unsuccessful.

MR. KIMMINS: So far as this argument is concerned, with respect, it was argued before Your Honour and Your Honour did refuse to make an order.

HIS HONOUR: For discovery?

MR. KIMMINS: For discovery on the ground that it was not relevant because if it was relevant Your Honour would have discovered it.

20 MR. DUNN: My recollection is, with respect, that the argument was that we were fishing, and it was on that basis that Your Honour disposed of it, As my learned friend has just said, he put it that we were scratching around to see what we could find.

HIS HONOUR: If it were relevant it should have been discovered. If it related to any matter in issue in the appeal, it should have been discovered if it was an order.

30 MR. DUNN: Of course, Your Honour.

HIS HONOUR: He has not discovered it in his affidavit of documents. What is the position now?

MR. DUNN: We have subpoenaed the documents and I have asked this witness whether the council has any such documents, and my learned friend has objected to that question on the basis that it is irrelevant. I submit that Your Honour has to decide that objection.

Exhibits

—
No. 4

Extract from
Transcript of
Proceedings
in Appeals
Nos. 1 and 2
of 1972
(continued)

Exhibits

—
No. 4

Extract from
Transcript of
Proceedings
in Appeals
Nos. 1 and
2 of 1972
(continued)

HIS HONOUR: I will allow the question so far as it goes.

MR. GIFFORD: Would Your Honour hear me on this?

HIS HONOUR: Yes. I am sorry, I thought you had said your piece.

MR. GIFFORD: Not on this one, I think, but on many others, but not on this one as yet. We would submit that this straight line of approach is not open to my learned friend, Mr. Dunn. In other words, we would submit that any questions with relation to the basis upon which the Brisbane City Council acquired the land in 1938 can have no relevance to the question - the town planning question - as to whether or not a town-planning permit or consent should be granted for the use of this land in 1971. It may be that if my learned friend were able to prove some sort of valid trust and not something falling within, for example, those classes of restraint that the law will not recognise or will not allow -----

10

20

HIS HONOUR: Would you concede that if the documents did disclose some valid trust they would be admissible?

MR. GIFFORD: No. I had not finished my sentence. I was thinking of the rule against perpetuities. For example, ~~ten~~ my learned friend might have a remedy in another jurisdiction, but even then, if and only if he was able to obtain the fiat of the Attorney-General.

30

What my learned friend is seeking to do in this case is to carry the ambit of the case extraordinarily widely so as to convert this court from a statutory body dealing with town-planning questions into a court of equity to determine whether or not there are trusts in existence and whether or not those trusts are valid and enforceable, and presumably, the further discretionary question with which, of course, he would be confronted in the equitable jurisdiction of the Supreme Court, namely, whether in the circumstances the trusts, if any, should be enforced. All those questions he is seeking to bring in to the determination upon what, one might have been pardoned for thinking, was the simple question as to whether

40

or not a town-planning permit should issue, and one can test this by reference to a long line of decisions. It is the old, old story that was tried unsuccessfully in New South Wales and in Victoria, of saying, "Oh well, you need two permits. You need, for example, for putting up a building - you need a town-planning permit a land-use permit, and you also need a building permit under the building control provision" - and so it was tried by people who were seeking to delay buildings. They would say, "Well, you can't come on a town-planning appeal because you have not got your building permit," or, if the appeal were for a building permit, they would say, "You can't come for a building permit because you have not got your town-planning permit," and the Land and Valuation Court of New South Wales, in a series of decisions, has affirmed and reaffirmed the principle that the need for some other permit does not affect the town-planning issue. The mere fact that you have got to get some other approval, for example, or that it may be because of some other law that the building cannot be built, is irrelevant to the town-planning issue, which is whether on town-planning grounds a permit should or should not issue for town-planning purposes, and it has been held - for the moment I cannot recall the names of the cases but I will have them turned up - it has been held in *Ampol v. Warringah Shire Council* in Volume 1 of the *Local Government Courts of Australia* that where you have multiple control the development cannot proceed until all have been complied with. That was a case -----

HIS HONOUR: That principle is fairly clear, is it not?

MR. GIFFORD: That is so.

HIS HONOUR: Here in Queensland you have to get the consent for land use and the consent, say, of the Films Commission.

MR. GIFFORD: Exactly; a very good example, and one cannot hold the whole thing up. It arises also in respect of licensing. Your Honour will recall the case in Townsville. You have a number of stages that might comply from the town-planning point of view and it is then for the licensing authorities to decide which they are going to allow, so that clearly it is implicit in the town-planning

Exhibits

No. 4

Extract from
Transcript of
Proceedings
in Appeals
Nos. 1 and 2
of 1972
(continued)

Exhibits

No. 4

Extract from
Transcript of
Proceedings
in Appeals
Nos. 1 and 2
of 1972
(continued)

powers that one is granting a permit for a use which may not in fact go ahead for other reasons. The mere fact that there is some possibility under other legislation that the particular use could not go ahead cannot be a matter for this court, and cannot invest this court with the equitable jurisdiction of the Supreme Court.

Moreover, if my learned friend were to seek to institute proceedings of this nature in the Supreme Court he would be met immediately with the locus standi issue. His client lacks locus standi and could take these sorts of questions before the Supreme Court in its equitable jurisdiction after, and only after, he obtained the fiat of the Attorney-General. It is a patent attempt to overcome what no doubt is the practical difficulty or perhaps impossibility of obtaining the fiat by trying to dredge them up in this case. 10

HIS HONOUR: Mr. Dunn, do you wish to say anything in reply? 20

MR. DUNN: I do not think so.

HIS HONOUR: Mr. Dunn, you only asked the question, "Have you any documents in the possession relating to this?" I think I would be against you if you asked him to produce the documents. Do you want to persist with that question?

MR. DUNN: Yes.

BY MR. DUNN: Can you answer my question? -- If I searched through the records of the council I would be able to. Without searching through the records of the council I would be unable to ascertain precisely what you are looking for - when in fact I would have to go through the record section to find it. 30

HIS HONOUR: I am allowing you to ask this in case you wish to take the matter further later because obviously if there are no documents in Mr. Hawes's possession relating to this, well, then the question finishes.

BY MR. DUNN: You do not know ----- 40

MR. KIMMINS: There are in fact some documents in existence which relate to the acquisition of the showground by the council.

MR. DUNN: I ask for the production of those documents.

MR. KIMMINS: I object.

MR. GIFFORD: I object.

HIS HONOUR: I uphold the objection.

MR. DUNN: I have no further questions. I have one more.

Exhibits

No. 4

Extract from
Transcript of
Proceedings
in Appeals
Nos. 1 and 2
of 1972
(continued)

10 BY MR. DUNN: Does council have any plans or specifications relating to road works and drainage on or adjacent to the Mt. Gravatt Showground - do you know -----

MR. KIMMINS: There are some in court, Your Honour.

HIS HONOUR: Mr. Haves's answer is "Yes".

MR. KIMMINS: There are no plans for proposed roadways and drainage on or adjacent to Mt. Gravatt Showground.

20 HIS HONOUR: I thought it was - "Has the council any plans relating to roadways and drainage?"

MR. KIMMINS: That is what my learned friend

Exhibits

No. 5

No. 5
Reasons for Judgment of Lucas J. in application by Brisbane City Council to strike out Plaintiff's amended Statement of Claim
9th August 1976

Reasons for Judgment of Lucas J. in application by Brisbane City Council to strike out Plaintiff's amended Statement of Claim

IN THE SUPREME COURT OF QUEENSLAND

No. 63 of 1976

BETWEEN:

HER MAJESTY'S ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND (AT THE RELATION OF ARTHUR THOMAS SCURR AND WILLIAM PERCIVAL BOON)

10

Plaintiff

AND:

BRISBANE CITY COUNCIL

First Defendant

AND:

MYER SHOPPING CENTRES PROPRIETARY LIMITED

Second Defendant

JUDGMENT - LUCAS J.

This application to strike out the plaintiff's amended Statement of Claim is made in litigation which has been long drawn out. It is necessary briefly to relate its history so far as it appears from the material before me. In May and June 1970 the defendant Brisbane City Council ("the Council") called public tenders for the purchase of certain land at Logan Road, Mt.Gravatt. It was the land upon which the Mt. Gravatt show was conducted every year. On 1st September 1970 the Council resolved to sell the land to Myer Shopping Centres Pty. Ltd. ("Myer"). It was a condition of the sale that Myer should obtain site approval for the use of the land for a shopping centre. The relator Scurr appealed to the Local Government Court against the proposal of the Council Registration Board to grant such approval. The Local Government Court dismissed the appeal, and on the day upon which judgment was given, 15th December 1971, the Attorney-General, on the relation of Scurr, commenced an action against the Council designed to enjoin the sale to Myer ("the first action"). Myer was later joined as a defendant in the action by order of the Court. I tried the action and gave

20

30

40

10 judgment dismissing it on 30th November 1972. The issues in the action were whether the sale by the Council to Myer was in excess of the Council's power because the procedure prescribed by the Local Government Act as amended had not been followed, and whether the agreement with Myer had been made by the Council in bad faith, prompted by the Council's desire to prefer Myer to others as the purchaser of the land. The relief claimed in the first action, so far as material, was as against the Council a declaration that in purporting to agree to sell to Myer the Council had acted ultra vires and in bad faith and that the purported sale was void, and an injunction to restrain the sale. No question as to the land being subject to a charitable trust was raised or litigated in the first action.

Exhibits

—
No. 5

Reasons for Judgment of Lucas J. in application by Brisbane City Council to strike out Plaintiff's amended Statement of Claim

9th August 1976

(continued)

20 Meanwhile Scurr had appealed against the decision of the Local Government Court. Eventually, on 24th September 1973, the High Court allowed his appeal on the ground that the public advertisement of Myer's application for site approval had been insufficient. Myer made a fresh application on 23rd October 1974, and Scurr, and the other relator in the action now before me, Boon, appealed again to the Local Government Court. Their appeals were finally dismissed by the Full Court on 2nd March 1976, and on 4th March 1976 the site approval was finally granted.

30 The Writ in the present action was issued on 18th March 1976. It is an action by the Attorney-General on the relation of Scurr and Boon against the Council. Myer was again added as a defendant by order of the Court. An amended Statement of Claim was delivered on 22nd April 1976, and the council's defence was delivered on 11th May 1976. The amended Statement of Claim asserted that the land to which the present action relates (which is the same land as that which was the subject of the first action) was held by the Council on trust
40 "for showground park or recreation purposes or other public charitable trust". The relief claimed was for a declaration to that effect, or alternatively as to the nature of the trust on which the land was held, and an injunction to restrain any sale of it.

The defences set up by the Council were that the land was not held by it subject to any

Exhibits

—
No. 5Reasons for
Judgment of
Lucas J. in
application
by Brisbane
City Council
to strike out
Plaintiff's
amended
Statement
of Claim9th August
1976

(continued)

charitable trust, that the plaintiff was barred by laches and/or acquiescence, and that the plaintiff was estopped from seeking the relief claimed by the judgment in the first action.

The plaintiff simply joined issue on the Council's defence.

The application before me is, as I have said, that the plaintiff's amended Statement of Claim should be struck out as against the Council on the ground that the action is vexatious and oppressive or is an abuse of the procedure of the Court. The application was supported by Myer. The applicants relied upon a principle recently discussed in the Privy Council in an appeal from the Supreme Court of Hong Kong: Yat Tung Co. v. Dao Heng Bank (1975) A.C. 581. That case was concerned with a similar application; the facts were that A, the owner of Blackacre, borrowed money on the security of Blackacre from B, a bank. A defaulted in repayment; B sold Blackacre to C; C borrowed money from B on a mortgage of Blackacre; C defaulted; B sold Blackacre to D. C brought an action against B claiming that the sale to itself had been a sham; it was asserted that C had in fact purchased as trustee for B and that the mortgage was therefore a nullity. B counterclaimed for the loss which it had incurred on the re-sale to D. C's action was dismissed, and judgment was given for B on its counterclaim. C then started a fresh action against B and D; the claim was to set aside the sale from B to D as a collusive sale, entered into by B and D acting in concert to obtain the property at a low price, thus depriving C of its rights as mortgagor. Their Lordships held that the Statement of Claim in the second action should be struck out, since the validity of the sale by B to D could and should have been raised in answer to B's counterclaim in the first action; if it had been right to set aside the sale on the ground raised by C in the second action the counterclaim would of course have fallen to the ground. Their Lordships invoked what they called the "wider sense" of the doctrine of *res judicata*; they said (at p.590):-

"...there is a wider sense in which the doctrine may be appealed to, so that it becomes an abuse of process to raise in subsequent proceedings matters which could and therefore should have been litigated in

10

20

30

40

earlier proceedings. The locus classicus of that aspect of res judicata is the judgment of Wigram V.C. in Henderson v. Henderson (1843) 3 Hare 100, 115, where the judge says:

10 '... where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the court required the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res
20 judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belong to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.'

30 The shutting out of a 'subject of litigation'- a power which no court should exercise but after a scrupulous examination of all the circumstances - is limited to cases where reasonable diligence would have caused a matter to be earlier raised; moreover, although negligence, inadvertence or even accident will not suffice to excuse, nevertheless 'special circumstances' are reserved in case justice should be found to require the non-application of the rule."

40 Counsel for Myer suggested that the question whether the Mt. Gravatt land was subject to a public charitable trust had in fact already been litigated, either in the first action or in the proceedings in the Local Government Court or both. It was certainly not litigated in the first action; the suggestion that it was litigated in the Local Government Court was based upon the report of an appeal to the Full Court against an order in relation to discovery made by the Judge of that Court; Scurr v. Brisbane City Council (1971) 25

Exhibits

No. 5

Reasons for Judgment of Lucas J. in application by Brisbane City Council to strike out Plaintiff's amended Statement of Claim

9th August 1976
(continued)

Exhibits

No. 5

Reasons for
Judgment of
Lucas J. in
application
by Brisbane
City Council
to strike out
Plaintiff's
amended
Statement
of Claim

9th August
1976
(continued)

L.G.R.A. 344. Certainly the appellant, Scurr, had attempted to obtain discovery of documents which might show that the land in the hands of the Council was subject to some trust, but this was refused. A passage in the judgment of Hanger C.J. (at p.348) makes the situation quite clear:-

"On the appeal to the Full Court, the documents on the discovery of which the appellant insisted, resolved themselves into three groups.

10

The first consisted of documents relating to the acquisition of the subject land by the council. The land was acquired by the council in 1938. The appellant seeks discovery of these documents in order to see whether the conditions on which the land was acquired by the council were such that, at least as a matter of conscience, possibly as a matter of a binding trust, the council should not now allow the land to be used for a commercial purpose.

20

The Council has made an affidavit of discovery and prima facie this is to be taken as correct. If the appellant alleges that the affidavit is not complete, he must show this: and, this means, applied to this particular case, that the appellant must show that other documents exist or at least probably exist, which indicate that the council when it acquired the land in 1938 acquired it with some sort of trust which is inconsistent with the current dealing with the land. So far as I can see, the appellant's claim here is based on pure speculation. It seeks to see a document which, he suggests, may contain relevant material, not a document which is relevant. On an application of this kind, I do not think an order for production of this group of documents should be made."

30

The matter then has not in fact been litigated; the question is whether it "could and therefore should have been litigated" in the first action. The Council says that no question of special circumstances, such as were mentioned by Wigram V.C. in Henderson v. Henderson can arise, for if they were present they would have been pleaded by way of reply to the Council's defence based on estoppel by judgment, and the plaintiff merely joined issue.

40

This seems to me to be a somewhat technical way of looking at the matter; pleadings are capable of amendment. In Yat Tung Co. v. Dao Heng Bank the Privy Council suggested that ignorance might constitute a special circumstance, and this is in fact one of the matters which the plaintiff raises in answer to the application in this case; that at the time at which the first action was tried the relator had no knowledge of any trust affecting the land. I have already referred to the refusal by the Council, upheld by the Court, to disclose documents relating to that matter in the proceedings in the Local Government Court. It appears that on discovery in the present action, the Council disclosed a series of such documents for the first time. It seems to me that it is reasonable to conclude that at the time at which the first action was instituted and tried the relator had no sufficient knowledge of the existence of a trust to enable him to raise it as an issue in that action.

Exhibits

No. 5

Reasons for Judgment of Lucas J. in application by Brisbane City Council to strike out Plaintiff's amended Statement of Claim

9th August
1976
(continued)

In any event, however, the two actions seem to me to raise quite different issues. They are of course concerned with the same land, and with the sale of it to Myer. The question in the first action was as to the legality of the sale, and the evidence was directed to the issues which I have mentioned above. In the present action the issue is as to the existence of a trust, and the evidence will be entirely different; cf Brunsdon v. Humphrey (1884) 14 Q.B.D.141 at p.146. This consideration seems relevant enough, but of course Brunsdon v. Humphrey was a case very different from this. It is true that an injunction is sought in both actions, but the principal relief claimed in the second action is a declaration as to whether or not the land is affected by a public charitable trust. The injunction sought in the second action is to "restrain any sale (by the Council) of the said land". It is a different injunction from that which was sought in the first action, which was an injunction to restrain the particular sale to Myer. As I understand it, the Council has already sold or agreed to sell to Myer, but I was informed from the Bar table that Myer was not registered as proprietor of the land, nor of course is it likely to be while the present action remains on foot.

In Greenhalgh v. Mallard (1947) 2 All E.R.255 at p.257 Somervell L.J. said this:

Exhibits

—
No. 5

Reasons for
Judgment of
Lucas J. in
application
by Brisbane
City Council
to strike out
Plaintiff's
amended
Statement
of Claim

9th August
1976
(continued)

"I think that on the authorities to which I will refer it would be accurate to say that res judicata for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject-matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them." 10

The authorities to which his Lordship referred were Green v. Weatherill (1929) 2 Ch.221; Henderson v. Henderson (1843) 3 Hare 114, and Boystead v. Commissioner of Taxation (1926) A.C.370. He distinguished Brunsdon v. Humphrey. The passage was quoted, apparently with approval, in Yat Tung Co. v. Dao Heng Bank. If one is to judge the matter by the test suggested by Somervell L.J., I do not think that the issues or facts in the present action are so clearly part of the subject matter of the first action, or that they so clearly could have been raised in that action, that the conclusion is warranted that the present action constitutes an abuse of the process of the court. Greenhalgh v. Mallard was a clear case; so was Yat Tung Co. v. Dao Heng Bank; so, too, for that matter, was Wright v. Bennett (1948) 1 All E.R.227, which was mentioned in argument. 20

This, I think, is not such a clear case; I do not think that the principle recently discussed by the Privy Council applies to it. If I am wrong in that, I am inclined to think special circumstances exist to take the case out of the operation of the relevant principle, namely, the lack of knowledge of the relator in the first action sufficient to enable him to raise in it the matter of a trust. I do not think that he was bound, assuming that he was entitled to do so, to search the records of the Council in an attempt to discover the existence of a trust even if such a task was physically possible. It is true that no special circumstances were pleaded by way of reply, but that is a technical matter which I regard as being of no importance. 30 40

For the reasons I have given, I decline to strike out the amended Statement of Claim in the second action. I should add two things. First, that for the purpose of this judgment I have not looked at the material which I ordered to be struck

out pursuant to Mr. Fitzgerald's objection on behalf of the Council; that is, paragraphs 2, 3, 4 and 9 on the affidavit of Mr. A.D. Bennett, and the whole of the affidavit of Sir Alan Mansfield.

10 Secondly, Mr. Fitzgerald asked for an adjournment to enable him to put further factual material before me; I refused it. I was not told what the new material was, but the only material which could be relevant, as it would seem to me, would relate to Scurr's knowledge of the existence of a trust. I did not think that I should be called upon, in an interlocutory application, to try a disputed issue of fact which must arise in the action if it remains on foot.

Subject to any further argument on the question of costs, I dismiss the summons; I order that the plaintiff's costs of the summons be plaintiff's costs in the cause.

Exhibit No. 6

20 Notice of Objection, Arthur Thomas Scurr to Brisbane City Council

1128 Cavendish Road,
Mt. Gravatt, 4122.
17th July, 1970.

The Town Clerk,
Brisbane City Council,
City Hall,
BRISBANE. 4000.

30 NOTICE OF OBJECTION UNDER "THE CITY OF
BRISBANE TOWN PLANNING ACTS 1964 TO 1969"

Take notice that Arthur Thomas Scurr, of 1128 Cavendish Road, Mt. Gravatt, 4122, objects to an application made to Brisbane City Council for the consent of Brisbane City Council to erect a building on land commonly known as Mt. Gravatt Showground and situated at Logan Road, Mt. Gravatt, for the purpose of a shop (Target Discount Shopping Centre) as advertised in the Courier-Mail on 7th July 1970.

40 The grounds of objection relied upon are as follows:-

Exhibits

No. 5

Reasons for Judgment of Lucas J. in application by Brisbane City Council to strike out Plaintiff's amended Statement of Claim

9th August
1976
(continued)

No. 6

Notice of Objection
Arthur
Thomas Scurr
to Brisbane
City Council
17th July
1970

Exhibits

—
No. 6

Notice of
Objection
Arthur

Thomas Scurr
to Brisbane
City Council

17th July
1970

(continued)

1. Publicly owned open space suitable for the development of a community centre, large public hall and an open park is short or non-existent in the Mt. Gravatt area.

2. Historically, the land now used as the Mt. Gravatt Showgrounds has been used by the community continuously and by great numbers of people ever since 1918. The Council approval of a change of use or sale of this land would be a betrayal of the Mt. Gravatt community. 10

3. There is no evidence that the Brisbane City Council has correctly applied monies received from developers in the Mt. Gravatt area for park purposes. It appears that the money levied on each subdivided allotment has not been spent within the requisite one mile or within the requisite period. Therefore the general regard of the Brisbane City Council in this matter would make the Showground proposal quite unsupportable.

4. Whilst not objecting to the proposal on the grounds of commercial competition, it is irresponsible from a town planning point of view to allow this proposed shopping centre in the light of - 20

- (a) the proposed "K-Mart" near the corner of Logan Road and Creek Road;
- (b) David Jones Garden City;
- (c) the Civic Fair development in Newnham Road;
- (d) the Big Top drive-in opposite the Mt. Gravatt school;
- (e) the Mt. Gravatt Central shopping complex. 30

5. From a town planning point of view, it is well to remember that the large mountainous mass of the Mt. Gravatt Recreation Reserve and the Toohey Forest Park are not going to produce consumers. Paragraph 4 would be relevant even if this area could carry 360 degrees of population surrounding the proposed site.

6. The Council has never positively and sincerely tried to assist the development of the subject land or its bordering footpaths and approaches. The Council has been a bad landlord, and the admittedly presently sad appearance of the grounds is to some extent the Council's responsibility, and certainly not a reason which the Council can use in support of a sale. 40

7. For some years, many local organisations have been raising money which now runs into some thousands of dollars with the express intention of erecting a multi-purpose hall on this land. I personally, and the staff of the business with which I work, have raised over a thousand dollars for this project.

Exhibits

No. 6

Notice of
Objection
Arthur
Thomas Scurr
to Brisbane
City Council

17th July
1970

(continued)

10

8. It must never be forgotten that the Council bought this land for £450.00 with the intention to preserve for all time this public ownership and use.

9. The proposal as embodied in the application would result in the presently existing series of sports fields being hidden out of sight behind houses fronting the surrounding streets and by the shopping centre on the Logan Road side. This is undesirable. These green areas need to be visible to the passing traffic.

20

10. The Council's motivation in this matter would appear to be the \$510,000.00 left over after the requisitions in the tender were satisfied. This motive is not sufficient to override the damage to the community, both now and in the future, contained in the proposals.

Yours faithfully,

A. T. Scurr

Arthur Thomas Scurr.

Exhibit No. 7

No. 7

Notice of Appeal by Arthur Thomas Scurr
to Local Government Court (No.182 of 1970)

Notice of
Appeal by
Arthur
Thomas Scurr
to Local
Government
Court (No.182
of 1970)

30

NOTICE OF APPEAL

IN THE LOCAL GOVERNMENT COURT
HELD AT BRISBANE

L.G. Appeal No. of 1970

30th
September
1970

BETWEEN:

ARTHUR THOMAS SCURR of 1128
Cavendish Road, Mt. Gravatt,
Brisbane in the State of
Queensland

Appellant

Exhibits

AND:

BRISBANE CITY COUNCIL and MYER
SHOPPING CENTRES PROPRIETARY
LIMITED

Respondents

No. 7

Notice of
Appeal by
Arthur
Thomas Scurr
to Local
Government
Court (No.182
of 1970)
30th September
1970
(continued)

TAKE NOTICE that ARTHUR THOMAS SCURR of 1128 Cavendish Road, Mt. Gravatt, Brisbane in the State of Queensland (hereinafter called "the appellant") hereby appeals to the Local Government Court at its sittings commencing on the twenty-sixth day of October 1970 against the whole of the decision of the Respondent BRISBANE CITY COUNCIL as set out in a letter dated the Second day of September 1970 from the Town Clerk of the Respondent BRISBANE CITY COUNCIL to the Appellant whereby the Respondent Brisbane City Council informed the Appellant that it proposed to grant to the Respondent MYER SHOPPING CENTRES PROPRIETARY LIMITED the necessary consent to erect a building on land situated at Logan Road, Mt. Gravatt, Brisbane aforesaid and described as Proposed Lot 1 of Subdivision 2 and 3 and Resub-division 28 of Subdivision 1 of Portion 332/333, Parish of Bulimba (hereinafter called "the said land") for the purpose of a discount shopping centre AND in lieu thereof seeks the following orders or judgment:-

10

20

Office Copy

District Court
Registry
Brisbane

- (a) that the Respondent BRISBANE CITY COUNCIL do not approve of the said application lodged by or on behalf of the Respondent MYER SHOPPING CENTRES PROPRIETARY LIMITED;
- (b) that the Respondent BRISBANE CITY COUNCIL do uphold the objection lodged by the Appellant in respect of the said application;
- (c) that the Respondents do pay the Appellant's taxed costs of and incidental to this appeal.

30

The grounds of this Appeal and the facts and circumstances relied upon in support thereof are as follows:-

- (i) That the said decision is wrong in and contrary to law.
- (ii) The said decision is unreasonable.
- (iii) Having regard to the Town Plan for the City of Brisbane, relevant ordinances and the circumstances of the case the

40

Respondent BRISBANE CITY COUNCIL should have refused the application made by or on behalf of the Respondent MYER SHOPPING CENTRES PROPRIETARY LIMITED and upheld the objection by the Appellant.

Exhibits

No. 7

Notice of Appeal by Arthur Thomas Scurr to Local Government Court (No.182 of 1970)

30th September 1970

(continued)

- 10 (iv) The Respondent MYER SHOPPING CENTRES PROPRIETARY LIMITED had no sufficient right, title or interest in the said land at any material time.
- 10 (v) Without prejudice to (iv) above if the Respondent MYER SHOPPING CENTRES PROPRIETARY LIMITED is relying for its right title or interest on any rights arising from its tender submitted to the Respondent BRISBANE CITY COUNCIL such rights do not confer any sufficient right title or interest in the said land to support the application.
- 20 (vi) Without prejudice to (iv) above the method by which tenders were invited for the purchase of the said land was contrary to law and all subsequent procedures are void and of no effect.
- (vii) The advertisement published in the Courier Mail on the Seventh day of July 1970 does not properly define the land intended to be used and is otherwise vague and uncertain. The said advertisement does not comply with the requirements of "The City of Brisbane Town Planning Acts 1964-1969".
- 30 Approval of the proposal of the Respondent MYER SHOPPING CENTRES PROPRIETARY LIMITED would be contrary to accepted and well established town planning principles and concept. Existing and planned commercial developments in the area does and will adequately serve and cater for the needs of the community at the present and in the foreseeable future. The proposal would provide for commercial development in excess of the needs of the community and would be prejudicial to the
- 40 existing and planned commercial development in the area. The proposal would be prejudicial to the proper and orderly planning of the area in that there presently exists a regional shopping centre at the corner of Logan Road and Kessels Road, Upper Mt. Gravatt.

Office Copy
District
Court
Registry
Brisbane

Exhibits

No. 7

Notice of
Appeal by
Arthur
Thomas Scurr
to Local
Government
Court (No.182
of 1970)

30th September
1970
(continued)

The proposal would result in the reduction of open space in the Mt. Gravatt area and would deprive the members of the public the use of the said land for community purposes. The proposed use of the said land is contrary to town planning principles in light of existing and proposed commercial development in the area. The proposal would screen the green areas proposed to be developed for sports fields and would be undesirable. The Respondent BRISBANE CITY COUNCIL wrongly considered economic matters when arriving at its decision or alternatively gave too much weight to economic matters.

10

The Appellant incorporates herein and relies upon the matters set out in his Objection dated the seventeenth day of July 1970 which was lodged with the Town Clerk of the Respondent BRISBANE CITY COUNCIL.

DATED this Thirtieth day of September 1970.

Samuel Leonard & Associates
(Signed)

20

Solicitors for the Appellant

TO:
The Respondent,
BRISBANE CITY COUNCIL
City Hall,
BRISBANE.

AND TO:
The Respondent,
MYER SHOPPING CENTRES PROPRIETARY LIMITED
Gympie Road and Hamilton Road,
GEEBUNG.

30

This Notice of Appeal is filed by Messrs. Harding McGregor & Atthow, Solicitors of Commonwealth Bank Building, 89 Adelaide Street, Brisbane, Town Agents for Samuel Leonard & Associates of 1379 Logan Road, Mt. Gravatt, Brisbane, Solicitors for the Appellant, whose address for service is at care of Messrs. Harding, McGregor & Atthow.

It is intended to effect service of this Notice of Appeal on the Respondents BRISBANE CITY COUNCIL and MYER SHOPPING CENTRES PROPRIETARY LIMITED.

40

Exhibit No. 8

Interrogatory No. 2 by Plaintiff and
replies to clauses (d) (e) (f) and (h)
on behalf of Brisbane City Council

Exhibits

No. 8

Interrogatory
No. 2 by
Plaintiff and
replies to
clauses (d)
(e) (f) and
(h) on behalf
of Brisbane
City Council

INTERROGATORY NO. 2

As to the document numbered 45 mentioned in
the first defendant's affidavit of documents sworn
by Andrew Finlay Nisbet McCallum -

- (a) Who was the author of such document?
- 10 (b) Was such document prepared by or on behalf of
the first defendant?
- (c) When was such document prepared?
- (d) Did the Mr. Ludwig therein referred to hold
any position or appointment with the first
defendant in the year 1938?
- (e) If "Yes" to (d), what was such position or
appointment?
- (f) Did the first defendant have the land or any
part of the land described in paragraph 4 of
the amended Statement of Claim valued by a
20 Mr. Ludwig in or about the year 1938?
- (g) If "Yes" to (f), what was the result of that
valuation?
- (h) Did the Mr. Ludwig referred to in the said
document have any qualifications as valuer
(by examination or otherwise) in the year
1938 and if so what was such qualification?

ANSWER TO INTERROGATORY NO. 2(d):

30 In answer to Interrogatory 2(d) I say that the
Mr. Ludwig therein referred to did hold a position
with the First Defendant in the year 1938.

ANSWER TO INTERROGATORY NO. 2(e):

In answer to Interrogatory No. 2(e) I say
that such position was the position of City
Valuer.

Exhibits

ANSWER TO INTERROGATORY NO. 2(f):

No. 8
Interrogatory
No. 2 by
Plaintiff and
replies to
clauses (d)
(e) (f) and
(h) on behalf
of Brisbane
City Council
(continued)

In answer to Interrogatory 2(f) I say that I do not know whether the First Defendant had the land or any part of the land described in paragraph 4 of the Amended Statement of Claim valued by a Mr. Ludwig in or about the year 1938.

ANSWER TO INTERROGATORY NO. 2(h):

In answer to Interrogatory 2(h) I say that the Mr. Ludwig referred to in the said document had or had earlier qualifications as a valuer (by examination or otherwise) in the year 1938 and that such qualification was that he was or had earlier been a Fellow of the Queensland Division of the Commonwealth Institute of Valuers.

10

No. 9

Exhibit No. 9

Portion of
Memorandum,
Brisbane
City Council
Department of
Parks to
Property and
Insurance
Officer
1st May 1970

Portion of Memorandum, Brisbane City Council Department of Parks, to Property and Insurance Officer

DEPARTMENT OF PARKS

MEMORANDUM

20

To: PROPERTY & INSURANCE OFFICER Ref: RJS:CE
From: Manager, Department of Parks 1st May, 1970

Park Development - Mt. Gravatt

Development of the Existing Showground Area as Sportsfield

It is considered that, as there is a great lack of sportsfields in the immediate vicinity of Mt.Gravatt, that the use of this area as a retail area is wrong as it takes this public land away from the people forever. The open green space is also a visually attractive area to the motorist or a visitor to Brisbane and as such has great merit. If retail development is to be allowed on this frontage, it is recommended that any buildings are set back at least sixty feet and the frontage is developed as a garden setting by the developers.

30

R.J. Steward (Sgnd)
(R.J.Steward)

MANAGER,
DEPARTMENT OF PARKS

40

Exhibit No. 10

Interrogatory No. 7 by Plaintiff (in Action 1598 of 1971) and answer on behalf of Brisbane City Council

Interrogatory No. 7

10 At or about the time when Brisbane City Council purchased or acquired the Mt.Gravatt Showgrounds or any part thereof was there any agreement, deed, covenant, trust or document entered into between the Council and any corporation, society or person which restricted the use that might be made of the Mt.Gravatt Showgrounds or any part thereof? If "Yes", identify such agreement, deed, covenant, trust or document.

Answer to Interrogatory No. 7

I refuse to answer the seventh interrogatory on the ground that the matters enquired about therein are not relevant to any matter in issue between the parties.

Exhibits

No.10

Interrogatory No. 7 by Plaintiff (in Action 1598 of 1971) and answer on behalf of Brisbane City Council

20

Exhibit No. 11

Admission by Brisbane City Council

DEFENDANT ADMITS:-

1. The following documents are in a Council file relating to the land.
2. They bear the folio numbers indicated, such folio numbers appearing to have been written many years ago.
3. The documents are, physically, present in the file in the order shown:

30

Number of document (from Ex. 1)	Folio number
14	15
15	16
	17
2 (Schedule of Trusts only)	18 (page 1 is numbered, page 2 not numbered)

No.11

Admission by Brisbane City Council

Undated

Exhibits	Number of document (from Ex. 1)	Folio number	
No.11			
Admission	16	19	
by Brisbane	17	20	
City Council	18	no number	
(continued)		21	
Undated	19	22	
	20	23	
	(Various other documents, in consecutively numbered folios)		10
	21	no number - before No. 30	
	22	30	

No.12

Exhibit No. 12

Transcript of
Evidence of
John Grono
Bateman in
Appeals Nos.
182, 183, 184
185 and 186
to Local
Government
Court

Transcript of Evidence of John Grono
Bateman in Appeals Nos. 182, 183, 184,
185 and 186 to Local Government Court

RECORDING OF EVIDENCE ACT OF 1962IN THE LOCAL GOVERNMENT COURT OF QUEENSLANDBEFORE JUDGE MYLNEBRISBANE, 27 OCTOBER 1971No. 182 of 1970BETWEEN:

ARTHUR THOMAS SCURR

Appellant

- and -

BRISBANE CITY COUNCIL and MYER
SHOPPING CENTRES PROPRIETARY LIMITED

Respondents

BETWEEN:MT.GRAVATT CENTRAL CHAMBER OF COMMERCE
and ARTHUR THOMAS SCURR, for and on
behalf of MT.GRAVATT CENTRAL CHAMBER
OF COMMERCENo. 183 of 1970

Appellants

30

- and -

BRISBANE CITY COUNCIL and MYER SHOPPING
CENTRES PROPRIETARY LIMITED Respondents
No. 184 of 1970

BETWEEN:

GARDEN CITY TRADERS ASSOCIATION LIMITED
Appellant

- and -

10

BRISBANE CITY COUNCIL and MYER SHOPPING
CENTRES PROPRIETARY LIMITED Respondents
No. 185 of 1970

Exhibits

No.12

Transcript of
Evidence of
John Grono
Bateman in
Appeals Nos.
182, 183, 184,
185 and 186
to Local
Government
Court

27th October
1971
(continued)

BETWEEN:

ANTONIA CURLEY Appellant

- and -

BRISBANE CITY COUNCIL and MYER SHOPPING
CENTRES PROPRIETARY LIMITED Respondents
No. 186 of 1970

BETWEEN:

JOHN POWSLAND CONEYBEER Appellant

20

- and -

BRISBANE CITY COUNCIL and MYER SHOPPING
CENTRES PROPRIETARY LIMITED Respondents

DECLARATION VERIFYING TRANSCRIPT OF SHORTHAND NOTES

We, Patricia Jean McCarthy and Elizabeth Keane of Brisbane,

30

being shorthand reporters duly sworn in accordance with the provisions of section 7 of the above Act, do hereby certify that the transcription annexed hereto (being pp.122 and 123 of the proceedings in the above matter) is a faithful transcription of such parts of the shorthand notes as each of us took and constitutes a faithful report thereof.

DATED this 10th day of November 1976

(Signed)

P.J. McCarthy
E. Keane

Exhibits
 ———
 No.12
 Transcript of
 Evidence of
 John Grono
 Bateman in
 Appeals Nos.
 182, 183,184,
 185 and 186
 to Local
 Government
 Court
 27th October
 1971
 (continued)

MR. DUNN: I call Mr. Bateman. This man is the secretary, I understand, of the Agricultural, Horticultural and Industrial Society, and the evidence I will be seeking from him will be in relation to the acquisition by the Council of the showground, on which Your Honour has already ruled.

JOHN GRONO BATEMAN, sworn and examined:

BY MR. DUNN: Is your full name John Bateman?--
 John Grono Bateman.

Would you tell us your address? -- 23 10
 Willclarke Street, Mt. Gravatt.

Would you spell the name of the Street? --
 W -i-l-l-c-l-a-r-k-e.

Do you hold some office with the Mt. Gravatt Agricultural, Horticultural and Industrial Society?
 -- I am the treasurer.

Do you have custody of its records and minutes? -- At the moment, I have custody of its records and minutes. There will be a new secretary - has been appointed and he will be taking over the books later on this week. 20

Do you have the minutes of the society that were kept during the year 1938 -----

MR. GIFFORD: I ask my learned friend how this is put.

MR. DUNN: It is put with a view to first identifying any minute or minutes in relation to the acquisition of the Brisbane City Council of the showground. And secondly, let us suppose we get over hurdle one, secondly, the question must then arise as to whether the minutes are able to be made admissible at all as they may be, perhaps, under section 42(b) of the Evidence Act. 30

HIS HONOUR: What particular part of section 42(b)?

MR. DUNN: At the part of continuous record, and until I see the form of the minutes I do not know whether the other requirements of the section can be satisfied.

HIS HONOUR: They would still have to be relevant.

MR. DUNN: Certainly, it is, in the end, in relation to the proposition that I have already advanced.

HIS HONOUR: You simply asked him has he records of 1938 relating to the acquisition.

MR. DUNN: I asked him first of all if he had 1938 records, yes, and he said "yes". I was going to ask the next question.

10 HIS HONOUR: He said "yes".

WITNESS: Yes, I have.

BY MR. DUNN: Do they include minutes relating to the acquisition of the showground by the Brisbane City Council in that year -----

MR. GIFFORD: I object to any questions relating to that as covered by Your Honour's existing ruling.

HIS HONOUR: I will wait for him to answer either "yes" or "no".

20 WITNESS: Yes.

HIS HONOUR: He said "yes".

WITNESS: They do.

HIS HONOUR: The next question.

BY MR. DUNN: Would you produce the minutes---

MR. GIFFORD: Now, I object.

HIS HONOUR: I allow the objection. Have you any cross-examination, Mr. Gifford?

MR. GIFFORD: Again, I resist the temptation.

Exhibits

No.12

Transcript of
Evidence of
John Grono
Bateman in
Appeals Nos.
182, 183, 184,
185 and 186
to Local
Government
Court

27th October
1971
(continued)

Exhibits

Exhibit No.13

No.13
Portion of
Notice of
Appeal to
High Court of
Australia (No
33 of 1972)
21st June
1972

Portion of Notice of Appeal to High Court
of Australia (No.33 of 1972

IN THE HIGH COURT OF AUSTRALIA
QUEENSLAND REGISTRY

Appeal No.33 of 1972
In the matter of Appeal
No. 1 of 1972 in the
Supreme Court of Queensland

BETWEEN:

10

ARTHUR THOMAS SCURR
MT.GRAVATT CENTRAL CHAMBER OF COMMERCE and
ARTHUR THOMAS SCURR for and on behalf of
Mt.Gravatt Central Chamber of Commerce

GARDEN CITY TRADERS ASSOCIATION LIMITED
ANTONIA CURLEY

- and -

JOHN POWSLAND CONEYBEER
(Appellants) Appellants

AND:

20

BRISBANE CITY COUNCIL and MYER SHOPPING
CENTRES PROPRIETARY LIMITED
(Respondents) Respondents

TAKE NOTICE that, pursuant to leave granted by
the High Court of Australia on the second day of
June, 1972, the Full Court of the High Court of
Australia will be moved by way of appeal at the
next Sittings of the said Court to be held at
Brisbane in the State of Queensland on behalf of
the abovenamed Appellants that the judgment of the
Full Court of the Supreme Court of Queensland
pronounced on the Twenty-seventh day of April, 1972
whereby the Full Court dismissed with costs an appeal
by the Appellants from a decision of the Local
Government Court given on the Seventeenth day of
December 1971, be set aside

AND that in lieu thereof it be ordered that
the said appeal by the Appellants from the decision
of the Local Government Court be allowed with costs,
and that the Respondents be ordered to pay to the
Appellants the costs of the appeal to the Local

Government Court such costs to be ascertained and fixed by the proper costs taxing officer of the Supreme Court at Brisbane according to the scale of costs prescribed by law for the time being in respect of proceedings in the District Court AND FURTHER TAKE NOTICE that the grounds of this appeal are as follows:-

Exhibits

No.13

Portion of
Notice of
Appeal to
High Court of
Australia (No.
33 of 1972)

21st June
1972
(continued)

- 1.
- 2.
- 3.
- 10 4.
- 5.
- 6. The Full Court of the Supreme Court of Queensland was wrong in law in holding that his Honour Judge Mylne correctly excluded evidence sought to be led by the Appellants as to the terms upon which Brisbane City Council acquired the Mt. Gravatt Showground.
- 7.
- 20 8.
- 9.
- 10.
- 11.
- 12.

DATED this twenty-first day of June, 1972.

(Signed) G.D. Macdonald
GRAHAM DONALD MACDONALD
member of the firm of
Kinsey Bennett & Gill,
Solicitors for the Appellant,
Primary Building,
Creek Street,
Brisbane.

30

TO: The Respondent
MYER SHOPPING CENTRES PROPRIETARY LIMITED

AND TO: Its Solicitors,
Messrs. Morris Fletcher & Cross,
T. & G. Building,
Queen & Albert Streets,
40 Brisbane.

AND TO: The Respondent, BRISBANE CITY COUNCIL
AND TO: Its Solicitor,
The City Solicitor,
City Hall, Brisbane.

AND TO: The Registrar of the Supreme Court
of Queensland,
Supreme Court, Brisbane.

Exhibits

No. 14

No.14
 Notice of
 Objection,
 Arthur Thomas
 Scurr and
 Ailsa Dorothy
 Scurr to
 Brisbane
 City Council
 11th November
 1974

Notice of Objection, Arthur Thomas Scurr
 and Ailsa Dorothy Scurr to Brisbane City
 Council

The Town Clerk,
 Brisbane City Council,
 City Hall,
BRISBANE.

13 NOV 1964

Central Records

NOTICE OF OBJECTION UNDER "THE CITY OF
 "BRISBANE TOWN PLANNING ACTS 1964-1973"

Take notice that Arthur Thomas & Ailsa Dorothy Scurr of 1128 Cavendish Road Mt.Gravatt 4122 objects to an application made to Brisbane City Council for the consent of Brisbane City Council to use the land described below, erect a building (and upon its completion to use that building) for the purposes set out below as advertised in the Courier Mail on 24th October 1974:- 10

Piece A being part of Lot 1 on Registered Plan No.140827 in the County of Stanley Parish of Bulimba situated at Logan Road, Mt.Gravatt and commonly known as Mt.Gravatt Showground for the purpose of a shopping centre with on-site parking for 1,037 cars; 20

Piece B being Easement A in Lot 2 on Registered Plan No.140827 in the County of Stanley Parish of Bulimba situated at Broadwater Road, Mt. Gravatt for the purpose of providing vehicular and pedestrian access between Broadwater Road and Piece A;

Piece C being Subdivision 1 of Resubdivision 4 of Subdivision 4 of Portion 333 in the County of Stanley Parish of Bulimba situated at 32 Wishart Road, Mt. Gravatt for the purpose of providing vehicular and pedestrian access between Wishart Road and Piece A. 30

The grounds of objection and the facts and circumstances relied on by the objector are as follows:-

1. Having regard to the shortage of open space in the City of Brisbane and in particular in the Mt. Gravatt area the proposal to develop the subject land for the purposes sought is undesirable. 40

2. Having regard to the Council's policy of requiring developers to make available to the Council areas of land for park purposes in proposed subdivisions the proposal to develop the subject land for the purposes sought is contrary to the said policy and demonstrates an inconsistent approach by the Council to the necessity for obtaining and retaining open space areas within the city and in particular in the Mt.Gravatt area.
- 10 3. The Mt. Gravatt Showground of which the subject land forms a substantial part constitutes a significant proportion of the open space area in Mt.Gravatt and the alienation of that area for the purposes sought would aggravate the existing shortage of open space in the area.
- 20 4. For many years a large number of associations, clubs and other bodies have used Mt.Gravatt Showground or part thereof as their headquarters for various activities. Because of the proposed development all such clubs, associations and bodies were forced to vacate the Mt.Gravatt Showground and re-establish themselves in various locations elsewhere.
- 30 5. The associations, clubs and other bodies above-mentioned enjoy substantial membership and form an integral and important part of community life in the Mt. Gravatt area. The activities of such associations, clubs and other bodies grouped on the one central location would be beneficial to the community.
- 40 6. On the 22nd October 1973 the Mt. Gravatt Community Centre Planning Committee was elected at a public meeting. One of the objectives of the Committee was to ascertain the extent of the desire amongst people in the Mt. Gravatt area and surrounding suburbs for the provision of a community centre. Subsequent to its formation the Committee has undertaken considerable investigations and enquiries and obtained reports from consultants. The reports of the consultants confirmed that there was a shortage of open space in the Mt. Gravatt area.
7. At a public meeting held on the 9th October 1974 at which approximately 370 people were present the meeting resolved with only two dissenting votes:-

Exhibits

No.14

Notice of
Objection,
Arthur Thomas
Scurr and
Ailsa Dorothy
Scurr to
Brisbane
City Council
11th November
1974
(continued)

Exhibits

—
No.14

Notice of
Objection,
Arthur Thomas
Scurr and
Ailsa Dorothy
Scurr to
Brisbane
City Council
11th November
1974
(continued)

"That this meeting of local citizens and organisations affirms the need for a community centre and considers the need proved as outlined tonight; and this meeting further resolves that in its opinion the Mt. Gravatt Showground is the site most suitable for the community centre and hereby expresses its desire that steps be taken to proceed with the implementation of the concept."

The meeting further resolved without any dissenting votes:- 10

"That the Committee appointed on the 22nd October 1973 be re-elected to implement the resolution carried earlier at this meeting and that such Committee shall -

- (1) have power to co-opt but in so doing shall endeavour to keep the Committee as broadly based as possible;
- (2) report back to a further public meeting at such time as it thinks proper but not later than within twelve months of today's date; 20
- (3) take steps to have itself approved as, or cause to be created in this area, an interim committee within the Australian Assistance Plan as a pre-requisite to there being established in this area a regional council within such Plan;
- (4) specifically concern itself in the preparation of or cause to be prepared a draft constitution consistent with the Australian Assistance Plan and report thereon as soon as possible to organisations and citizens in this area." 30

8. The application provides for a commercial development which will be a significant traffic generator. The plan of the proposed development which was incorporated in the public notice indicates that points of access for motor vehicles are proposed off Broadwater Road and Wishart Road. Broadwater Road serves a large residential area and the introduction of large traffic volumes on to Broadwater Road would be undesirable and prejudicial to the quiet residential character of the area in the vicinity thereof. Wishart Road is a quiet 40

residential street which serves a low density residential area comprising mostly single unit residences. The introduction of significant traffic volumes into Wishart Road would be prejudicial to the residential area served by it. The provision of access to the subject site from Wishart Road will result in large volumes of traffic being drawn through other quiet residential streets in the vicinity and would be prejudicial to that residential area. The site plan which was advertised in the public notice indicates access to and from the subject land off Logan Road at a point approximately half way along the Logan Road frontage. Logan Road in the vicinity of the subject site carries large volumes of traffic and the proposal to have traffic leaving the subject site and entering on to Logan Road will create or be likely to create serious traffic problems and disabilities in that such traffic will have to enter the flow of vehicles progressing outbound along Logan Road without any or any adequate method of controlling such traffic movements.

9. In regard to the existing and projected traffic flows along Logan Road in the vicinity of the subject land vehicles entering the site at the proposed point of access off Logan Road could in the absence of any control seriously impede through traffic flow along Logan Road in the outbound direction.

10. The extent of the area to be available for the parking of motor vehicles within the subject land will create a substantial sealed area which would be aesthetically unpleasant.

11. The proposal provides for the parking on site of 1,037 cars. The movement of significant volumes of motor vehicles as is indicated by the extent of on-site parking will create or will be likely to create substantial noise and during hours of darkness car head lights would create a nuisance to residential owners in close proximity to the site.

12. The proposal would be prejudicial to the amenity of the area.

13. Existing and planned commercial development in the area does and would adequately serve and cater for the needs of the area at present and in the future. Existing shopping facilities in the area

Exhibits

—
No.14

Notice of
Objections,
Arthur Thomas
Scurr and
Ailsa Dorothy
Scurr to
Brisbane
City Council
11th November
1974
(continued)

Exhibits

—
No.14

Notice of
Objections,
Arthur Thomas
Scurr and
Ailsa Dorothy
Scurr to
Brisbane
City Council
11th November
1974
(continued)

include the Mt. Gravatt Shopping Centre, the New World Shopping Centre, the Big Top Drive-in Centre in Logan Road, Garden City Shopping Centre at Upper Mt.Gravatt and the shopping facilities which have developed on the perimeter of Garden City, Market Square Shopping Centre at Sunnybank, a drive-in centre in Newnham Road (Civic Fair) and a drive-in centre at Springwood. Planned commercial developments in the area includes a K Mart situated diagonally opposite Market Square at Sunnybank, a shopping complex by Woolworths directly opposite Market Square and a substantial shopping complex to be known as Discount City on the opposite side of Logan Road from Garden City.

10

14. The proposal would provide for commercial development in excess of the needs of the area.

15. On or about the 30th May 1970 Brisbane City Council called tenders for the purchase of part of Mt. Gravatt Showground one of the conditions of which provided inter alia that an amount of \$300,000 be spent on re-establishing the showgrounds in Mt. Gravatt Park. On the 19th June 1970 Myer Shopping Centres Proprietary Limited under and pursuant to the calling of tenders submitted a tender for the sum of \$1,010,000 which tender was purported to be accepted by Brisbane City Council subject to the conditions inter alia that Myer Shopping Centres Proprietary Limited should apply to Brisbane City Council for consent to the proposed use of the land pursuant to the provisions of the Town Plan of the City of Brisbane and the Council's Ordinances and that the contract between the parties should be subject to the abovementioned consent being obtained within a period of six months from the date of the Council's letter communicating its decision or such extended time not exceeding twelve months from the date of such letter as the Council in its absolute discretion shall determine. The Council communicated its purported decision to Myer Shopping Centres Proprietary Limited by letter dated 2nd September 1970. No further tenders have been called for the purchase of the subject land. The Council has no lawful right to extend the time for obtaining such consent beyond the 2nd September 1971.

20

30

40

16. Brisbane City Council acquired Piece A being part of the land then described as "The Mt.Gravatt Showgrounds" by purchase from the Trustees of the

Mt. Gravatt Agricultural Horticultural and Industrial Society. In the circumstances the Council has no power to sell or otherwise dispose of the land or any part thereof so acquired.

17. The use of Mt. Gravatt Park for any purpose other than park purposes is not permitted at law.

10 18. The purported development and use of Mt. Gravatt Park or any part thereof by the Mt. Gravatt Agricultural Horticultural and Industrial Society would be likely to create a traffic hazard on Logan Road and in the residential streets in the vicinity thereof.

19. The purported development and use of Mt. Gravatt Park as abovementioned would be prejudicial to the amenity of the area which area has been recently developed with high class single unit family dwellings.

20 20. The purported development and use of Mt. Gravatt Park would reduce the area of public open space in the Mt. Gravatt area.

30 21. The land described in the advertisement as Piece C is intended to be used for the purpose of providing vehicular and pedestrian access between Wishart Road and Piece A. Piece C is zoned as Residential "A" under the Town Plan for the City of Brisbane. The proposed purpose for which consent is sought is a prohibited use in a Residential "A" zone and consequently the Council has no lawful power whereby it may lawfully grant consent to the use of the land described as Piece C for the purposes sought by the applicant.

22. The action of the Council in purporting to divest itself of publicly owned land in favour of a commercial enterprise is unreasonable and contrary to the public good and interest.

23. The approval of the proposal would be contrary to accepted and well established town planning concepts.

40 24.
25.
26.

Dated this Eleventh day of November 1974.

(Signed) A. T. Scurr

A. D. Scurr

Exhibits

No.14

Notice of
Objections,
Arthur Thomas
Scurr and
Ailsa Dorothy
Scurr to
Brisbane
City Council
11th November
1974
(continued)

Exhibits

No. 15

No.15
 Notice of
 Objection,
 William
 Percival Boon
 to Brisbane
 City Council
 9th November
 1974

Notice of Objection, William Percival
 Boon to Brisbane City Council

The Town Clerk,
 Brisbane City Council,
 City Hall,
BRISBANE.

13 NOV 1974

CENTRAL RECORDS

NOTICE OF OBJECTION UNDER "THE CITY OF
 BRISBANE TOWN PLANNING ACTS 1964-1973"

10

Take notice that William Percival Boon of
 31 Lay St. Mt. Gravatt objects to an application
 made to Brisbane City Council for the consent of
 Brisbane City Council to use the land described
 below, erect a building (and upon its completion to
 use that building) for the purposes set out below
 as advertised in the Courier Mail on 24th October
 1974:-

Piece A being part of Lot one on Registered
 Plan No.140827 in the County of Stanley
 Parish of Bulimba situated at Logan Road,
 Mt.Gravatt and commonly known as Mt.Gravatt
 Showground for the purpose of a shopping
 centre with on-site parking for 1,037 cars.

20

Piece B being Easement A in Lot 2 on
 Registered Plan No.140827 in the County of
 Stanley Parish of Bulimba situated at
 Broadwater Road, Mt.Gravatt for the purpose
 of providing vehicular and pedestrian access
 between Broadwater Road and Piece A;

30

Piece C being Subdivision 1 of Resubdivision 4
 of Subdivision 4 of Portion 333 in the County
 of Stanley Parish of Bulimba situated at
 32 Wishart Road, Mt. Gravatt for the purpose
 of providing vehicular and pedestrian access
 between Wishart Road and Piece A.

The grounds of objection and the facts and
 circumstances relied on by the objector are as
 follows:-

1. Having regard to the shortage of open space in 40

the City of Brisbane and in particular in the Mt. Gravatt area the proposal to develop the subject land for the purposes sought is undesirable.

Exhibits

—
No.15

Notice of
Objection,
William
Percival Boon
to Brisbane
City Council

9th November
1974
(continued)

10 2. Having regard to the Council's policy of requiring developers to make available to the Council areas of land for park purposes in proposed subdivisions the proposal to develop the subject land for the purposes sought is contrary to the said policy and demonstrates an inconsistent approach by the Council to the necessity for obtaining and retaining open space areas within the city and in particular in the Mt. Gravatt area.

3. The Mt. Gravatt Showground of which the subject land forms a substantial part constitutes a significant proportion of the open space area in Mt. Gravatt and the alienation of that area for the purposes sought would aggravate the existing shortage of open space in the area.

20 4. For many years a large number of associations, clubs and other bodies have used Mt. Gravatt Showground or part thereof as their headquarters for various activities. Because of the proposed development all such clubs, associations and bodies were forced to vacate the Mt. Gravatt Showground and re-establish themselves in various locations elsewhere.

30 5. The associations, clubs and other bodies abovementioned enjoy substantial membership and form an integral and important part of community life in the Mt. Gravatt area. The activities of such associations, clubs and other bodies grouped on the one central location would be beneficial to the community.

40 6. On the 22nd October 1973 the Mt. Gravatt Community Centre Planning Committee was elected at a public meeting. One of the objectives of the Committee was to ascertain the extent of the desire amongst people in the Mt. Gravatt area and surrounding suburbs for the provisions of a community centre. Subsequent to its formation the Committee has undertaken considerable investigations and enquiries and obtained reports from consultants. The reports of the consultants confirmed that there was a shortage of open space in the Mt. Gravatt area.

Exhibits

—
No.15

Notice of
Objection,
William
Percival Boon
to Brisbane
City Council
9th November
1974
(continued)

7. At a public meeting held on the 9th October 1974 at which approximately 370 people were present the meeting resolved with only two dissenting votes:-

"That this meeting of local citizens and organisations affirms the need for a community centre and considers the need proved as outlined tonight; and this meeting further resolves that in its opinion the Mt. Gravatt Showground is the site most suitable for the community centre and hereby expresses its desire that steps be taken to proceed with the implementation of the concept."

10

The meeting further resolved without any dissenting votes -

"That the Committee appointed on the 22nd October 1973 be re-elected to implement the resolution carried earlier at this meeting and that such Committee shall -

20

(1) have power to co-opt but in so doing shall endeavour to keep the Committee as broadly based as possible.

(2) report back to a further public meeting at such time as it thinks proper but not later than within twelve months of today's date;

(3) take steps to have itself approved as, or cause to be created in this area, an interim committee within the Australian Assistance Plan as a pre-requisite to there being established in this area a regional council within such Plan;

30

(4) specifically concern itself in the preparation of or cause to be prepared a draft constitution consistent with the Australian Assistance Plan and report thereon as soon as possible to organisations and citizens in this area."

8. The application provides for a commercial development which will be a significant traffic generator. The plan of the proposed development which was incorporated in the public notice

40

indicates that points of access for motor vehicles are proposed off Broadwater Road and Wishart Road, Broadwater Road serves a large residential area and the introduction of large traffic volumes on to Broadwater Road would be undesirable and prejudicial to the quiet residential character of the area in the vicinity thereof. Wishart Road is a quiet residential street which serves a low density residential area comprising mostly single unit residences. The introduction of significant traffic volumes into Wishart Road would be prejudicial to the residential area served by it. The provisions of access to the subject site from Wishart Road will result in large volumes of traffic being drawn through other quiet residential streets in the vicinity and would be prejudicial to that residential area. The site plan which was advertised in the public notice indicates access to and from the subject land off Logan Road at a point approximately half way along the Logan Road frontage. Logan Road in the vicinity of the subject site carries large volumes of traffic and the proposal to have traffic leaving the subject site and entering on to Logan Road will create or be likely to create serious traffic problems and disabilities in that such traffic will have to enter the flow of vehicles progressing outbound along Logan Road without any or any adequate method of controlling such traffic movements.

10

20

30

9. In regard to the existing and projected traffic flows along Logan Road in the vicinity of the subject land vehicles entering the site at the proposed point of access off Logan Road could in the absence of any control seriously impede through traffic flow along Logan Road in the outbound direction.

40

10. The extent of the area to be available for the parking of motor vehicles within the subject land will create a substantial sealed area which would be aesthetically unpleasant.

11. The proposal provides for the parking on site of 1,037 cars. The movement of significant volumes of motor vehicles as is indicated by the extent of on-site parking will create or will be likely to create substantial noise and during hours of darkness car head lights would create a nuisance to residential owners in close proximity to the site.

Exhibits

No.15

Notice of
Objection,
William
Percival Boon
to Brisbane
City Council

9th November
1974

(continued)

Exhibits

—
No.15

Notice of
Objection,
William
Percival Boon
to Brisbane
City Council
9th November
1974
(continued)

12. The proposal would be prejudicial to the amenity of the area.

13. Existing and planned commercial development in the area does and would adequately serve and cater for the needs of the area at present and in the future. Existing shopping facilities in the area include the Mt. Gravatt Shopping Centre, the New World Shopping Centre, the Big Top Drive-in Centre in Logan Road, Garden City Shopping Centre at Upper Mt. Gravatt and the shopping facilities which have developed on the perimeter of Garden City, Market Square Shopping Centre at Sunnybank, a drive-in centre in Newnham Road (Civic Fair) and a drive-in centre at Springwood. Planned commercial development in the area includes a K Mart situated diagonally opposite Market Square at Sunnybank, a shopping complex by Woolworths directly opposite Market Square and a substantial shopping complex to be known as Discount City on the opposite side of Logan Road from Garden City.

10

20

14. The proposal would provide for commercial development in excess of the needs of the area.

15. On or about the 30th May 1970 Brisbane City Council called tenders for the purchase of part of Mt. Gravatt Showground one of the conditions of which provided inter alia that an amount of \$300,000 be spent on re-establishing the showgrounds in Mt. Gravatt Park. On the 19th June 1970 Myer Shopping Centres Proprietary Limited under and pursuant to the calling of tenders submitted a tender for the sum of \$1,010,000 which tender was purported to be accepted by Brisbane City Council subject to the conditions inter alia that Myer Shopping Centres Proprietary Limited should apply to Brisbane City Council for consent to the proposed use of the land pursuant to the provisions of the Town Plan of the City of Brisbane and the Council's Ordinances and that the contract between the parties should be subject to the abovementioned consent being obtained within a period of six months from the date of the Council's letter communicating its decision or such extended time not exceeding twelve months from the date of such letter as the Council in its absolute discretion shall determine. The Council communicated its purported decision to Myer Shopping Centres Proprietary Limited by letter dated 2nd September 1970. No further tenders have been called for the

30

40

purchase of the subject land. The Council has no lawful right to extend the time for obtaining such consent beyond the 2nd September 1971.

Exhibits

—
No.15

Notice of
Objection,
William
Percival Boon
to Brisbane
City Council

9th November
1974

(continued)

10 16. Brisbane City Council acquired Piece A being part of the land then described as "The Mt. Gravatt Showgrounds" by purchase from the Trustees of the Mt. Gravatt Agricultural Horticultural and Industrial Society. In the circumstances the Council has no power to sell or otherwise dispose of the land or any part thereof so acquired.

17. The use of Mt. Gravatt Park for any purpose other than park purposes is not permitted at law.

18. The purported development and use of Mt. Gravatt Park or any part thereof by the Mt. Gravatt Agricultural Horticultural and Industrial Society would be likely to create a traffic hazard on Logan Road and in the residential streets in the vicinity thereof.

20 19. The purported development and use of Mt. Gravatt Park as abovementioned would be prejudicial to the amenity of the area which area has been recently developed with high class single unit family dwellings.

20. The purported development and use of Mt. Gravatt Park would reduce the area of public open space in the Mt. Gravatt area.

30 21. The land described in the advertisement as Piece C is intended to be used for the purpose of providing vehicular and pedestrian access between Wishart Road and Piece A. Piece C is zoned as Residential "A" under the Town Plan for the City of Brisbane. The proposed purpose for which consent is sought is a prohibited use in a Residential "A" zone and consequently the Council has no lawful power whereby it may lawfully grant consent to the use of the land described as Piece C for the purposes sought by the applicant.

40 22. The action of the Council in purporting to divest itself of publicly owned land in favour of a commercial enterprise is unreasonable and contrary to the public good and interest.

23. The approval of the proposal would be contrary

Exhibits

to accepted and well established town planning concepts.

No.15

Notice of Objection, William Percival Boon to Brisbane City Council

24.
25.
26.

9th November 1974 (continued)

Dated this 9th day of November 1974.

(Signed) W. P. Boon

No.16

Exhibit No. 16

Notice of appeal by Arthur Thomas Scurr to Local Government Court (No.11 of 1975)

Notice of Appeal by Arthur Thomas Scurr to Local Government Court (No.11 of 1975)

10

NOTICE OF APPEAL

IN THE LOCAL GOVERNMENT COURT
HELD AT BRISBANE L.G.Appeal No.11 of 1975

10th January 1975

BETWEEN:

ARTHUR THOMAS SCURR

Appellant

AND:

BRISBANE CITY COUNCIL

Respondent

TAKE NOTICE that ARTHUR THOMAS SCURR of 1128 Cavendish Road, Mt. Gravatt, Brisbane in the State of Queensland hereby appeals to the Local Government Court at Brisbane at its sittings commencing on the 3rd day of February 1975 against the whole of the decision of the Respondent Brisbane City Council as set out in a letter dated the seventeenth day of December 1974 from the Town Clerk of the Respondent to the Appellant whereby the Respondent informed the Appellant that it proposed to approve an application made by and on behalf of Myer Shopping Centres Proprietary Limited for consent to use land described in the schedule hereto and to erect a building on the said land situated at Logan, Broadwater and Wishart Roads, Mt. Gravatt, Brisbane aforesaid for the purposes as set out in the schedule hereto AND in lieu thereof seeks the following orders or judgment:-

20

30

(a) that the appeal be allowed;

Office Copy District Court Registry Brisbane

(b) that the objection lodged by the Appellant to the said application be upheld;

(c) that the application by Myer Shopping Centres Proprietary Limited be refused.

The grounds of this appeal and the facts and circumstances relied upon in support thereof are as follows:-

Exhibits

 No.16

Notice of appeal by Arthur Thomas Scurr to Local Government Court (No. 11 of 1975)

10th January 1975
 (continued)

- 10 (i) The said decision is unreasonable.
- (ii) The said decision is wrong in and contrary to law.
- (iii) Having regard to the City of Brisbane Town Planning Act, the Town Plan for the City of Brisbane, relevant ordinances and the circumstances of the case, the Respondent should have refused the application made by or on behalf of Myer Shopping Centres Proprietary Limited.
- 20 (iv) Having regard to the City of Brisbane Town Planning Act, the Town Plan for the City of Brisbane, relevant ordinances and the circumstances of the case, the Respondent should have upheld the objection made by the Appellant to the application made by or on behalf of Myer Shopping Centres Proprietary Limited.

30 Having regard to the shortage of open space in the Mt. Gravatt area the proposal to develop the said land for the purposes sought is undesirable. The proposal to develop the said land for the purposes sought is contrary to the Respondent's practice whereby it requires developers to make areas of land for park purposes. The said land constitutes a significant proportion of the open space area in Mt. Gravatt and its alienation would aggravate the existing shortage of open space in the Mt. Gravatt area. The said land together with other land abutting thereto has for many years been available to a number of associations, clubs and other bodies in the area which such associations, clubs and other bodies, because of the proposed development, were forced to vacate and re-establish themselves in various locations elsewhere. The said

Office Copy
 District
 Court
 Registry
 Brisbane

Exhibits

—
No.16

Notice of
Appeal by
Arthur Thomas
Scurr to
Local Govern-
ment Court
(No. 11 of
1975)

10th January
1975
(continued)

associations, clubs and other bodies formed an integral part of the community life in the Mt. Gravatt area. The said land should be developed for community purposes.

The said application provides for a commercial development which will be a significant traffic generator. The plan of the proposed development indicates that large traffic volumes will be introduced on to the roads in the vicinity of the said land which will be prejudicial to the quiet residential character of the area and will result in significant traffic volumes flowing along quiet suburban streets. The proposal will cause or will be likely to cause traffic difficulties or disabilities on Broadwater Road, Wishart Road and Logan Road. Through traffic along Logan Road could be severely prejudiced by the absence of any form of traffic control in relation to that traffic entering or leaving the said land from the proposed access on Logan Road as indicated on the said plan.

10

20

The extent of the area to be available for the parking of motor vehicles in the said land will create a substantial sealed area which will be aesthetically unpleasant. The proposal provides for parking on site of 1037 cars. The movement of such a volume of motor vehicles will create or be likely to create substantial noise and during hours of darkness car headlights would create a nuisance to residential owners in close proximity of the site. The proposal would be prejudicial to the amenity of the area and contrary to accepted and well established town planning concepts.

30

Office Copy
District
Court
Registry
Brisbane

The existing and planned commercial development in the area does and would adequately serve and cater for the needs of the area at present and in the future. The proposal provides for commercial development in excess of the needs of the area.

The Appellant incorporates herein and relies upon matters set out in his notice of objection which was duly lodged with the Town Clerk of the Respondent.

40

SCHEDULE

Piece A being part of Lot 1 on Registered Town Plan No. 140827 in the County of Stanley Parish of Bulimba City of Brisbane containing 5.085 hectares situated at Logan Road, Mt. Gravatt and

commonly known as Mt. Gravatt Showground for the purpose of a shopping centre with on-site parking for 1037 cars;

Exhibits

No.16

10 Piece B being Easement A in Lot 2 on Registered Plan No. 140827 in the County of Stanley Parish of Bulimba City of Brisbane containing 2179 square metres situated at Broadwater Road, Mt. Gravatt for the purpose of providing vehicular and pedestrian access between Broadwater Road and Piece A;

Notice of Appeal by Arthur Thomas Scurr to Local Government Court (No. 11 of 1975)

Piece C being Subdivision 1 of Resubdivision 4 of Subdivision 4 of Portion 333 on Registered Plan No. 79299 in the County of Stanley Parish of Bulimba City of Brisbane containing 2832.8 square metres situated at 32 Wishart Road, Mt. Gravatt for the purpose of providing vehicular and pedestrian access between Wishart Road and Piece A.

10th January 1975
(continued)

DATED this Tenth day of January 1975.

(Signed)

20

Solicitors for the Appellant.

TO:

The Respondent,
Brisbane City Council,
City Hall,
BRISBANE.

30

This Notice of Appeal is filed by Messrs. Kinsey, Bennett & Gill, Solicitors, Primary Building, Creek Street, Brisbane in the State of Queensland on behalf of the Appellant whose address for service is at the office of his solicitors, Messrs. Kinsey Bennett & Gill, Primary Building, Creek Street, Brisbane aforesaid.

Office
Copy
District
Court
Registry
Brisbane

It is intended to effect service of this Notice of Appeal on the Respondent, Brisbane City Council.

Exhibits

Exhibit No.17

No.17
Notice of
Appeal by
William
Percival Boon
to Local
Government
Court (No. 25
of 1975)

Notice of Appeal by William Percival Boon
to Local Government Court (No.25 of 1975)

NOTICE OF APPEAL

IN THE LOCAL GOVERNMENT COURT
HELD AT BRISBANE L.G.Appeal No. 25 of 1975

BETWEEN:

WILLIAM PERCIVAL BOON Appellant

AND:

BRISBANE CITY COUNCIL Respondent 10

16th January
1975

TAKE NOTICE that WILLIAM PERCIVAL BOON of 31 Lay Street, Mt. Gravatt, Brisbane in the State of Queensland hereby appeals to the Local Government Court at Brisbane at its sittings commencing on the 10th day of March 1975 against the whole of the decision of the Respondent Brisbane City Council as set out in a letter dated the seventeenth day of December 1974 from the Town Clerk of the Respondent whereby the Respondent informed the Appellant that it proposed to approve an application made by and on behalf of Myer Shopping Centres Proprietary Limited for consent to use land described in the Schedule hereto and to erect a building on the said land situated at Logan, Broadwater and Wishart Roads, Mt. Gravatt, Brisbane aforesaid for the purposes as set out in the schedule hereto AND in lieu thereof seeks the following orders or judgment:-

- (a) that the appeal be allowed;
- (b) that the objection lodged by the Appellant to the said application be upheld; 30
- (c) that the application by Myer Shopping Centres Proprietary Limited be refused.

The grounds of this appeal and the facts and circumstances relied upon in support thereof are as follows:-

- (i) The said decision is unreasonable;
- (ii) The said decision is wrong in and contrary to law.

Office Copy
District
Court
Registry
Brisbane

(iii) Having regard to the City of Brisbane Town Planning Act, the Town Plan for the City of Brisbane, relevant ordinances and the circumstances of the case, the Respondent should have refused the application made or on behalf of Myer Shopping Centres Proprietary Limited.

Exhibits

—
No.17

Notice of Appeal by William Percival Boon to Local Government Court (No. 25 of 1975)

16th January 1975
(continued)

10

(iv) Having regard to the City of Brisbane Town Planning Act, the Town Plan for the City of Brisbane, relevant ordinances and the circumstances of the case, the Respondent should have upheld the objection made by or on behalf of Myer Shopping Centres Proprietary Limited.

20

Having regard to the shortage of open space in the Mt. Gravatt area the proposal to develop the said land for the purposes sought is undesirable. The proposal to develop the said land for the purposes sought is contrary to the Respondent's practice whereby it requires developers to make available to the Council in proposed subdivisions, areas of land for park purposes. The said land constitutes a significant proportion of the open space area in Mt. Gravatt and its alienation would aggravate the existing shortage of open space in the Mt. Gravatt area. The said land together with other land abutting thereto has for many years been available to a number of associations, clubs and other bodies in the area which such associations, clubs and other bodies, because of the proposed development, were forced to vacate and re-establish themselves in various locations elsewhere. The said associations, clubs and other bodies formed an integral part of the community life in the Mt. Gravatt area. The said land should be developed for community purposes.

30

Office Copy District Court Registry Brisbane

40

The said application provides for a commercial development which will be a significant traffic generator. The plan of the proposed development indicates that large traffic volumes will be introduced on to the roads in the vicinity of the said land which will be prejudicial to the quiet residential character of the area and will result in significant traffic volumes flowing along quiet suburban streets. The proposal will cause or will be likely to cause traffic difficulties or disabilities on Broadwater Road, Wishart Road and Logan Road. Through traffic along Logan Road could be severely

Exhibits

—
No.17

Notice of
Appeal by
Percival
William Boon
to Local
Government
Court (No. 25
of 1975)

16th January
1975
(continued)

Office Copy
District
Court
Registry
Brisbane

prejudiced by the absence of any form of traffic control in relation to that traffic entering or leaving the said land from the proposed access on Logan Road as indicated on the said plan.

The extent of the area to be available for the parking of motor vehicles in the said land will create a substantial sealed area which will be aesthetically unpleasant. The proposal provides for parking on site of 1037 cars. The movement of such a volume of motor vehicles will create or be likely to create substantial noise and during hours of darkness car headlights would create a nuisance to residential owners in close proximity of the site. The proposal would be prejudicial to the amenity of the area and contrary to acceptable and well established town planning concepts.

10

The existing and planned commercial development in the area does and would adequately serve and cater for the needs of the area at present and in the future. The proposal provides for commercial development in excess of the needs of the area.

20

The Appellant incorporates herein and relies upon matters set out in his notice of objection which was duly lodged with the Town Clerk of the Respondent.

SCHEDULE

Piece A being part of Lot 1 on Registered Plan No. 140827 in the County of Stanley Parish of Bulimba City of Brisbane containing 5.085 hectares situated at Logan Road, Mt. Gravatt and commonly known as Mt. Gravatt Showground for the purpose of a shopping centre with on-site parking for 1037 cars;

30

Piece B being Easement A in Lot 2 on Registered Plan No. 140827 in the County of Stanley Parish of Bulimba City of Brisbane containing 2179 square metres situated at Broadwater Road, Mt. Gravatt for the purpose of providing vehicular and pedestrian access between Broadwater Road and Piece A;

40

Piece C being Subdivision 1 of Resubdivision 4 of Subdivision 4 of Portion 333 on Registered Plan No. 79299 in the County of Stanley Parish of

Bulimba City of Brisbane containing 2832.8 square metres situated at 32 Wishart Road, Mt. Gravatt for the purpose of providing vehicular and pedestrian access between Wishart Road and Piece A.

DATED this sixteenth day of January 1975.

(Signed)

Solicitors for the Appellant.

Exhibits

No.17

Notice of Appeal by Percival William Boon to Local Government Court (No. 25 of 1975)

16th January 1975 (continued)

TO:

10

The Respondent, Brisbane City Council, City Hall, BRISBANE.

This Notice of Appeal is filed by Messrs. Kinsey, Bennett & Gill, Solicitors, Primary Building, Creek Street, Brisbane in the State of Queensland on behalf of the Appellant whose address for service is at the office of his solicitors, Messrs. Kinsey Bennett & Gill, Primary Building, Creek Street, Brisbane aforesaid.

Office Copy District Court Registry Brisbane

20

It is intended to effect service of this Notice of Appeal on the Respondent, Brisbane City Council.

Exhibit No. 18

NNo.18

Portion of Writ, Amended Statement of Claim and Order in action No.1598 of 1971

Portion of Writ, Amended Statement of Claim and Order in action No. 1598 of 1971

IN THE SUPREME COURT) OF QUEENSLAND)

1971

No. 1598

BETWEEN

Let this Writ issue.

Attorney-General's Signature

ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND (at the relation of ARTHUR THOMAS SCURR) Plaintiff

AND

BRISBANE CITY COUNCIL Defendant

ELIZABETH THE SECOND, by the Grace of God Of the United Kingdom, Australia and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith:

Exhibits

No.18

Portion of
Writ, Amended
Statement of
Claim and
Order in
action No.
1598 of 1971
(continued)

To BRISBANE CITY COUNCIL of Adelaide Street Brisbane
in the State of Queensland

Office
Copy

(Seal)
Supreme
Court
Office
Brisbane

We command you that within eight days after
the service of this writ on you, inclusive
of the day of such service, you do cause
an appearance to be entered for you in
Our Supreme Court of Queensland, at
Brisbane, in an action at the suit of
the Attorney-General for the State of
Queensland (at the relation of Arthur
Thomas Scurr) and take notice that in
default of your so doing the plaintiff
may proceed therein, and judgment may be
given in your absence.

10

(Sgd.) Samuel Leonard and
Associates

Solicitors for the Relator

WITNESS - The Honourable Mostyn Hanger

Chief Justice of Queensland, at Brisbane,
the 15th day of December, in the year of
Our Lord One thousand nine hundred and
seventy-one.

For the Registrar,

20

(Signed) N. GREIG

Senior Clerk.

N.B. - This Writ is to be served within twelve
calendar months from the date thereof, or, if
renewed, within twelve calendar months from the
date of the last renewal, including the day of
such date, and not afterwards. Appearance to
this writ may be entered by the defendant either
personally or by solicitor at the Registry of the
Supreme Court at Brisbane.

30

The Plaintiff's claim is for:-

1. Declarations that the Defendant in purporting to agree to sell part of the land described as Subdivisions 2 and 3 of Portions 332 and 333 and Resubdivision 28 of Subdivision 1 of Portion 352 containing an area of approximately 12-3/4 acres and situated at Logan Road, Mt. Gravatt to Myer Shopping Centres Proprietary Limited acted ultra vires and in bad faith, and that its resolution of 1st September 1970 purporting to accept a tender by the said company for the purchase of the said land, and all subsequent proceedings in relation to or arising out of such resolution, are null and of no effect.
2. A declaration that the Defendant, in purporting to extend the period within which the aforesaid company was required by the Defendant to obtain its consent to the use of the aforesaid land for the purposes of a Target Discount Shopping Centre, acted ultra vires and in bad faith, and that its resolution of 31st August 1971 whereby it purported to extend such period is null and of no effect.
3. A declaration that a resolution of the Defendant passed on 16th May 1970 whereby it resolved to call tenders for the sale of the said land was passed in bad faith and is null and of no effect.
4. An injunction restraining the Defendant by itself its servants or agents from selling to Myer Shopping Centres Proprietary Limited or any nominee of that company the aforesaid land, and from acting in implementation of any of the resolutions of the Defendant specified in this indorsement.
5. If and so far as is necessary rectification of the Register Book in the Titles Office.
6. Further or other relief.
7. Costs.

THIS WRIT was issued by **Harding McGregor & Atthow**
 of 71 Adelaide St. Brisbane whose address for service is the same place

agent for **Samuel Leonard & Associates** of 9 Gowrie St. Mt. Gravatt Central solicitor for the plaintiff ~~whose address is~~ said relator who resides at **1128 Covenand St Rd, Mt Gravatt**

No. 1578 of 1971.

IN THE SUPREME COURT
 OF QUEENSLAND

SUPREME COURT
 OF QUEENSLAND
 FILED
 15 DEC 1971
 BRISBANE

Office Copy
 SUPREME COURT
 BRISBANE

ATTORNEY-GENERAL FOR
 THE STATE OF QUEENSLAND
 (at the relation of ARTHUR
 THOMAS SCURR
 -v-
 BRISBANE CITY COUNCIL

Writ of Summons

Samuel Leonard & Associates
 Solicitors for plaintiff
 9 Gowrie Street,
 Mt. Gravatt Central.
 Telephone No. 49-7133

By authority: The Law Book Company Limited

day

19

day of

19

(Signed)

(Address)

Indorsed the

day of

the

This writ was served by me on the defendant at

Exhibits

No.18

Portion of
Writ, Amended
Statement of
Claim and
Order in
action No.
1598 of 1971
(continued)

IN THE SUPREME COURT
OF QUEENSLAND

No.1598 of 1971

BETWEEN:

ATTORNEY-GENERAL FOR THE STATE
OF QUEENSLAND (at the relation of
ARTHUR THOMAS SCURR) Plaintiff

AND:

BRISBANE CITY COUNCIL and MYER
SHOPPING CENTRES PROPRIETARY
LIMITED Defendants 10

AMENDED STATEMENT OF CLAIM

Delivered the 28th day of April, 1972

1. On the fourteenth day of December 1971 the Attorney-General for the State of Queensland gave his fiat herein.
2. Arthur Thomas Scurr resides at 1128 Cavendish Road Mt. Gravatt Brisbane in the State of Queensland.
3. Brisbane City Council (hereinafter called "the first Defendant") is a corporation constituted under "The City of Brisbane Acts 1924 to 1969" and is capable at law of being sued in that name. 20
4. Myer Shopping Centres Proprietary Limited (hereinafter called "the second Defendant") is a company duly incorporated according to law and capable of being sued in that name and having its registered office at Chermside Shopping Centre Gympie Road Chermside Brisbane in the State of Queensland.
5. On the thirtieth day of March 1972 it was ordered on the application of the second Defendant that it be added as a Defendant in the action. 30
6. At all material times the first Defendant was the registered proprietor of land described as Subdivisions 2 and 3 of Portions 332/333 and Re-subdivision 28 of Subdivision 1 of Portion 332 County of Stanley Parish of Bulimba and situated at Logan Road Mt. Gravatt Brisbane aforesaid (hereinafter referred to as "the Mt. Gravatt Showground") which land was used for showground purposes. 40

Office Copy

(Seal)
Supreme
Court Office
Brisbane

7. By resolution dated the Eighteenth day of May 1970 the Establishment and Co-ordination Committee of the first Defendant resolved to sell part of the Mt. Gravatt Showground (hereinafter called "the subject land") which decision was adopted by the first Defendant.

10 8. During the early part of the year 1970 the first Defendant negotiated with, and gave information to the second Defendant with the intent that it should sell and the second Defendant should purchase the subject land to be used by the second Defendant for the purpose of a drive-in shopping centre. On the eighteenth day of May 1970 the first Defendant intended to prefer the second Defendant as a purchaser of the subject land and it has at all times since so intended.

20 9. On the thirtieth day of May 1970 the first Defendant by notice published in the Courier-Mail newspaper invited tenders for the purchase of the subject land containing an area of approximately 12 $\frac{3}{4}$ acres, the relevant part of which notice reads as follows:-

"The land is presently zoned Special Uses (showground) and the successful tenderer will be required to take immediate steps to obtain consent for such use of the land as the Council may approve pursuant to the provisions of the Town Plan of the City of Brisbane and the Council's Ordinances.

30 Tenderers are required,

- 40 (i) To state the total price offered. The Council proposes to allocate from the sum received an amount of \$200,000.00 to be spent on sportsfields development in the balance area of the Mt. Gravatt Showgrounds and on various associated roadworks, and an amount of \$300,000.00 to be spent on re-establishing the showgrounds in Mt. Gravatt Park.
- (ii) To lodge a preliminary deposit of \$5,000.00.
- (iii) To state the intended use of the land.
- (iv) To comply with the Conditions of Tender and Sale."

Exhibits

—
No.18

Portion of
Writ, Amended
Statement of
Claim and
Order in
action No.
1598 of 1971
(continued)

Office Copy

(Seal)
Supreme
Court Office
Brisbane

Exhibits

No.18

Portion of Writ, Amended Statement of Claim and Order in action No. 1598 of 1971 (continued)

10. The first Defendant did not notify its intention to invite tenders for such purchase in any other manner and did not advertise for tenders for purchase of the land in any other newspaper periodical or document.

11. Conditions of tender and sale of the subject land were first available to the public on the afternoon of the third day of June 1970. At the trial of this action the Plaintiff will refer to the said conditions of tender and sale for their full terms true meaning and effect.

10

12. The conditions of tender and sale were vague uncertain and contrary to the Town Plan for the City of Brisbane in the following respects:-

(a) Condition 1 read as follows:-

"1. Tenderers are required to state the total price offered. The Council proposes to allocate from the sum received an amount of \$200,000.00 to be spent on sportsfields development in the balance area of the Mt. Gravatt Showgrounds and on various associated roadworks as listed hereunder and an amount of \$300,000.00 to be spent on re-establishing the showgrounds in Mt.Gravatt Park."

20

(b) Conditions 6 - 8 read as follows:-

"6. The purchaser shall grant to Council, free of cost, an easement for water supply purposes 33 feet wide along the route of the water main constructed in the land or in the event of the water main being relocated within the land along the relocated route of the main.

30

7. The purchaser shall grant to Council, free of cost, an easement for drainage purposes over the actual width of the stormwater drain constructed in the land.

8. All such easements shall be in a form prepared by the City Solicitor and to his requirements and shall be lodged in the Titles Office immediately following the transfer of the land without any intervening dealings."

40

Office Copy

(Seal)
Supreme Court
Office
Brisbane

(c) Condition 12 reads as follows:-

"12. Before commencing the redevelopment of the site the successful tenderer shall allow the Mt. Gravatt Agricultural, Horticultural and Industrial Society to remove such of the existing improvements as shall be approved by the Council."

13. Tenders for the sale of the subject land closed at noon on the nineteenth day of June 1970.

10 14. Within the stipulated time only one tender, namely that of the second Defendant, dated the seventeenth day of June 1970, was lodged with the first Defendant. By the said tender the second Defendant offered to purchase the subject land for \$1,010,000.00.

15. The use proposed by the second Defendant for the subject land was the construction and operation of a Target Discount Shopping Centre with car parking facilities for 1,100 cars.

20 16. It was a term of the said tender by the second Defendant that "the tender is subject to the rezoning of the subject land by Brisbane City Council for the purpose of general retailing or similar." (At the hearing hereof the Plaintiff will refer to the said tender for its full terms true meaning and effect.)

17. To the date hereof no application has been made by the second defendant or the first Defendant for the rezoning of the subject land.

30 18(a) By resolution dated the first day of September 1970 the first Defendant resolved as follows:-

"That approval be given to accept the offer of Myer Shopping Centres Pty. Ltd. dated 19th June, 1970, to purchase the above described land for the sum of \$1,010,000.00 on terms and conditions as outlined in the conditions of tender and sale, and subject to the following additional conditions:-"

40 (b) There followed certain additional conditions, which included the following:-

Exhibits

No.18

Portion of
Writ, Amended
Statement of
Claim and
Order in
action No.
1598 of 1971
(continued)

Office Copy

(Seal)
Supreme
Court Office
Brisbane

Exhibits

No.18

Portion of Writ, Amended Statement of Claim and Order in action No. 1598 of 1971 (continued)

Office copy

(Seal) Supreme Court Office Brisbane

"(a) This offer is subject to the tenderer's applying for consent to the proposed use of the land pursuant to the provisions of the Town Plan of the City of Brisbane and the Council's Ordinances.

(c) Upon acceptance of this offer, the contract between the parties shall be subject to the abovementioned consent being obtained within a period of six(6) months from the date of the Council's letter communicating this decision or such extended time not exceeding twelve (12) months from the date of such letter as the Council in its absolute discretion shall determine. The tenderer shall do, execute and complete all such acts, deeds, documents and things including without limitation prosecution of actions and appeals in the appropriate courts of law as shall be necessary to procure the granting of the said consent within the time specified above."

10

20

(sic)(c) The First Defendant communicated the contents of the said resolution to the second Defendant.

(d) At the trial of this action the Plaintiff will refer to the said resolution for its full terms true meaning and effect.

19. By letter dated the third day of July 1970 the second Defendant wrote to the first Defendant the material part whereof is as follows:-

30

"This letter will serve to confirm our agreement with the general terms for the proposed purchase by tender of the land at Logan Road, Mt. Gravatt presently known as Mt. Gravatt Showgrounds."

20.

21.

22.

23.

24.

40

Exhibits

No.18

Portion of
Writ, Amended
Statement of
Claim and
Order in
action No.
1598 of 1971
(continued)

25.

26.

27.

28.

29.

10 30. The first Defendant acted in excess of power in purporting to accept the tender of the second Defendant hereinbefore referred to, in that it did not, before the purported acceptance, notify its intention to invite tenders for the purchase of the subject land in such manner and to such extent as would ensure that it would receive the greatest number of tenders.

20 31. The first Defendant acted in bad faith in purporting to accept the tender hereinbefore referred to, in that it unreasonably limited the extent of the advertising of its intention to invite tenders, and made the time for making of tenders unreasonably short, with a view to preferring the second Defendant as a purchaser of the subject land.

32. The first Defendant acted in bad faith in passing each of the resolutions hereinbefore referred to, in that it in each case resolved with a view to preferring the second Defendant as a purchaser of the subject land.

30 33. The first Defendant acted in excess of power, having regard to the provisions of Section 19 of "The Local Government Acts 1936-1970" and having regard to the procedure followed when tenders were called, in purporting to extend the time for compliance with condition (c) as alleged by paragraph 28 of this pleading.

AND THE PLAINTIFF CLAIMS -

1. As against the first Defendant -

40 A. Declarations that the first Defendant in purporting to agree to sell the subject land to the second Defendant acted ultra vires and in bad faith, and that its resolution of the first day of September 1970 purporting to accept the tender of the second Defendant

Exhibits

No.18

Portion of
Writ, Amended
Statement of
Claim and
Order in
action NNo.
1598 of 1971
(continued)

and all subsequent proceedings in relation to or arising out of such resolution, are null and of no effect.

B. A declaration that the resolution of the first Defendant of the thirty-first day of August 1971 purporting to extend the period during which the second Defendant was required to obtain the consent of the first Defendant to the proposed use of the subject land for the purposes of a Target Discount Shopping Centre was passed ultra vires and in bad faith, and is null and of no effect. 10

C. An injunction to restrain the first Defendant by itself its servants or agents from selling to the second Defendant or to any nominee of the second Defendant the subject land.

D. An injunction to restrain the first Defendant by itself its servants or agents from implementing or attempting to implement the resolutions of Brisbane City Council dated the eighteenth day of May 1970, the first day of September 1970 and the thirty-first day of August 1971 which are more particularly described in the Statement of Claim. 20

E. Further or other relief.

F. Costs.

2. As against the second Defendant -

A. Such declarations, orders, injunctions and other relief as are necessary to give full relief to the Plaintiff and to conclude all questions arising herein between the parties to this action. 30

B. Costs.

Solicitors for the Relator.

This pleading was settled by Mr. Dunn of Queen's Counsel in consultation with Mr. Row of Counsel.

Office Copy

(Seal)
Supreme
Court Office
Brisbane

NOTICE

The Defendants are required to plead to the within Statement of Claim within twenty-eight days from the time limited for appearance or from the delivery of the Statement of Claim whichever is the later, otherwise the Plaintiff may obtain judgment against them. 40

IN THE SUPREME COURT
OF QUEENSLAND

No. 1598 of 1971

Exhibits

No.18

BETWEEN:

ATTORNEY-GENERAL FOR THE STATE
OF QUEENSLAND (at the relation of
ARTHUR THOMAS SCURR) Plaintiff

Portion of
Writ, Amended
Statement of
Claim and
Order in
action No.
1598 of 1971
(continued)

AND:

BRISBANE CITY COUNCIL and MYER
SHOPPING CENTRES PROPRIETARY
LIMITED Defendants

10

FURTHER AND BETTER PARTICULARS OF AMENDED
STATEMENT OF CLAIM SUPPLIED PURSUANT TO A
REQUEST IN THAT BEHALF BY MYER SHOPPING
CENTRES PROPRIETARY LIMITED

Delivered the Fourth day of July 1972.

Paragraph 6 of Amended Statement of Claim -
particulars of "Showground purposes"

20

(a) the conduct of the Mt. Gravatt Show (which includes the exhibiting of animals; equestrian events; displays of agricultural and horticultural produce; wood chopping; and the provision of facilities for entertainment and amusement), by the Mt. Gravatt Agricultural Horticultural and Industrial Society;

(b) displays of poultry, birds and animals from time to time by divers voluntary associations, the exact names of which are not specifically known to the Plaintiff;

(c) pony club meetings and activities;

30

(d) passive recreation by local people, and active play by children.

The Mt. Gravatt Showground has been used from time to time since in or about the year 1918 for the foregoing purposes on dates which are not precisely known to the Plaintiff.

Office Copy

(Seal)
Supreme
Court Office
Brisbane

Exhibits

No.18

Portion of
Writ, Amended
Statement of
Claim and
Order in
action No.
1598 of 1971
(continued)

IN THE SUPREME COURT
OF QUEENSLAND

No. 1598 of 1971

BETWEEN:

ATTORNEY-GENERAL for the STATE
OF QUEENSLAND (at the relation of
ARTHUR THOMAS SCURR)

Plaintiff

AND

BRISBANE CITY COUNCIL and MYER
SHOPPING CENTRES PROPRIETARY
LIMITED

Defendants 10

BEFORE THE HONOURABLE MR. JUSTICE LUCAS

THE THIRTIETH DAY OF NOVEMBER, 1972

THIS ACTION having been tried before the Honourable Mr. Justice Lucas without a jury on the 6th, 7th, 8th, 9th and 10th days of November, 1972 Mr. Dunn of Queen's Counsel with him Mr. Rowe of Counsel having been heard for the Plaintiff and Mr. Connolly of Queen's Counsel with him Mr. Kimmins of Counsel having been heard for the first Defendant and Mr. Gifford of Queen's Counsel with him Mr. Jackson of Counsel having been heard for the second Defendant.

20

IT IS THIS DAY ADJUDGED pursuant to the order of the said Mr. Justice Lucas that the Plaintiff do recover nothing against the Defendants and that the Defendants recover against the Plaintiff their costs including reserved costs.

Office Copy

(Seal)
Supreme
Court Office
Brisbane

By the Court

(Signed)

DEPUTY REGISTRAR.

30

Exhibit No. 19

Letter, Plaintiff's Solicitors to
Brisbane City Council

KINSEY BENNETT & GILL
Solicitors

127 Creek Street (14th
Floor)
Brisbane, Queensland, 4000

Telegrams: "Bengil",
Brisbane
Telephone: 29 2961

Exhibits

No.19

Letter,
Plaintiff's
Solicitors to
Brisbane
City Council

4th November
1975

10

Our Ref: M/S/C708

4th November, 1975

Your Ref:

Ref.
364/154/SG095 21/AB

The Town Clerk,
Brisbane City Council,
City Hall,
Adelaide Street,
BRISBANE.

5 NOV 1975

20

CENTRAL RECORDS

Dear Sir,

re: Proposed Sale of Mt. Gravatt Showground
by Brisbane City Council to Myer Shopping
Centres Proprietary Limited

We have been consulted by Mr. Arthur Thomas
Scurr, a resident of Mt. Gravatt, a Vice-President
of Mt. Gravatt Agricultural Horticultural and
Industrial Society ("the Society") and the
Secretary of Mt. Gravatt Community Centre Planning
Committee.

30

Our client is the appellant in Appeal No. 11
of 1975 now pending before the Local Government
Court. Documents disclosed in those proceedings
indicate an intention on the part of Brisbane City
Council to sell to Myer Shopping Centres Proprietary
Limited for a consideration of \$1,010,000 the land
now described as Lot 1 on Registered Plan No. 140827
("the site") subject to Myer Shopping Centres
Proprietary Limited first obtaining the consent of
Brisbane City Council to use the site for the
purpose of a shopping centre. The abovementioned
appeal is against the decision of Brisbane City
Council to grant its consent to such an application.

40

Exhibits

—
No.19Letter,
Plaintiff's
Solicitors to
Brisbane
City Council4th November
1975
(continued)

Titles Office records indicate that Brisbane City Council became the registered proprietor of the major part of the site (being part of Sub-divisions 2 and 3 of Portions 332 and 333 and in this letter referred to as "the trust land") by Memorandum of Transfer from W. H. Clarke and R.M. King as Trustees under Nomination of Trustees No. 755102 for a consideration of £475.1.6.

Very recently old records of the Society were made available to our client. Certain entries in these records led to our searching Council minutes and we have now been furnished by your Council with copies of certain correspondence and other documents. The effect of these documents may be summarised in an extract from a letter from your Council to the Secretary of the Society dated 24th August 1938 under cover of which the Town Clerk forwarded a memorandum of transfer and supporting documents for completion. The extract reads as follows:-

10

"The Council undertakes to hold the land for the purposes of a public park recreation reserve or showground or other purposes not inconsistent therewith."

20

Our client has now obtained the opinion of Senior Counsel on various matters relating to the manner in which your Council became the registered proprietor of the site. In answer to an enquiry as to whether or not your Council can be prevented from selling the trust land, Senior Counsel advises:-

30

"I have already expressed the matter as a dilemma. Either the contract is binding, or, if it is not, then the original trust obtains. My view is that the sale to the Council is bad because it was in breach of trust and attempted to set up a perpetuity in breach of the legal rules applicable to perpetuities. The resolution to permit of the sale did not meet the case, and may also be bad for lack of majority of the Society. In any event it was not an out and out genuine sale, and the only effect of the transfer was to put the duties of trustee onto the Council. The land remains saddled with the original trusts."

40

In the circumstances, we are instructed to enquire whether the Council intends to proceed

with the sale of the trust land to Myer Shopping Centres Proprietary Limited if that company should succeed in obtaining the consent of the Council for the use of the site as a drive-in shopping centre. If it is the intention of the Council to so proceed, our client may be forced in the event of Myer Shopping Centres Proprietary Limited obtaining consent as aforesaid to lodge a caveat forbidding any dealings in trust land and to institute proceedings to assert the trusts. Alternatively, our client may elect to allow the sale to proceed and then to assert the trusts against Myer Shopping Centres Proprietary Limited. Notice of the trusts has already been given to that company.

10

Exhibits

No.19

Letter, Plaintiff's Solicitors to Brisbane City Council

4th November 1975

(continued)

Yours truly,

(Signed)KINSEY BENNETT & GILL

Exhibit No. 20

Letter, Solicitor for Brisbane City Council to Plaintiff's Solicitors

20

BRISBANE CITY COUNCIL

Department of City Administration
The City Hall, Brisbane

Queensland

In reply, please quote
420/10/SG095/X24

RNM:DR

Telephone
221-6444 Ext. 165

All correspondence to be addressed to the Town Clerk

When calling or phoning, please ask for Mr. Metcalfe

30

11th November 1975

Messrs. Kinsey Bennett & Gill,
Solicitors,
14th Floor,
127 Creek Street,
BRISBANE, Q., 4000.

Dear Sirs,

re: Brisbane City Council and Myer Shopping Centres Pty. Ltd. ats Scurr and Others - Local Government Court Appeals - Your Ref. M/S/C708

40

No.20

Letter, Solicitor for Brisbane City Council to Plaintiff's Solicitors

11th November 1975

Exhibits

No.20

Letter,
Solicitor for
Brisbane City
Council to
Plaintiff's
Solicitors

11th November
1975
(continued)

Your letter dated 4th November, 1975 and addressed to the Town Clerk has been forwarded to me with instructions to reply thereto.

My instructions are that the Council does intend to proceed with the sale to Myer Shopping Centres Pty. Ltd., subject, of course, to the conditions of the contract.

The question of the Council's power to dispose of the land has already been the subject of a Supreme Court action, viz. The Attorney General at the relation of Scurr v. Brisbane City Council and Myer Shopping Centres Pty. Ltd. Supreme Court action No. 1598 of 1971, which action terminated in favour of my client.

10

You will recall that the question of whether the Council purchased the subject land subject to any trust was mentioned in the Local Government Court in the previous appeals and in the Notice of Appeal by your client to the Full Court and the High Court.

Yours faithfully,

20

(Signed) P. P. O'Brien

(P. P. O'Brien)
CITY SOLICITOR.

No.21

Exhibit No. 21

Answer by
relator,
William
Percival Boon
to Interro-
gatory No. 10
of Brisbane
City Council

Answer by relator, William Percival
Boon to Interrogatory No. 10 of
Brisbane City Council

ANSWER TO INTERROGATORY No. 10 OF THE FIRST
DEFENDANT:

13. In answer to Interrogatory No. 10, I, WILLIAM PERCIVAL BOON, first became aware that the First Defendant had purported to enter into a contract to sell the land described in the amended Statement of Claim to the Second Defendant at a time not long subsequent to the closure date for tenders, of which date I am not able to be more precise.

30

Exhibit No. 22

Answer by relator, Arthur Thomas Scurr
to Interrogatory No. 9 of Brisbane City
Council

ANSWER TO INTERROGATORY No. 9 of the FIRST DEFENDANT:

10 12. In answer to Interrogatory No. 9, I, ARTHUR THOMAS SCURR, first became aware that the First Defendant had purported to enter into a contract to sell the land described in the amended Statement of Claim to the Second Defendant at a time not long subsequent to the closure date for tenders of which date I am not able to be more precise.

Exhibit No. 23

Answer by relators to Interrogatory No. 2
of Brisbane City Council

ANSWER TO INTERROGATORY No. 2 DELIVERED BY FIRST DEFENDANT FOR EXAMINATION OF PLAINTIFF:-

20 5. In answer to Interrogatory No. 2 in respect of THE MOUNT GRAVATT AGRICULTURAL HORTICULTURAL AND INDUSTRIAL SOCIETY other than as recorded in documents discovered we do not know in respect of each of the following dates, that is to say the date of its formation, 11th November 1919, 17th January 1920, 30th January 1920, 19th October 1937, 25th October 1937, 15th December 1937, 4th May 1938, 20th September 1938, and the date of registration of the transfer referred to in paragraph 11 of the amended Statement of Claim:-

- 30 (a) Its objects;
(b) Its powers;
(c) The number of its members;
(d) The arrangement between its members as to -
 (i) The circumstances in which an end might be put to their association and the assets distributed;
 (ii) The distribution of assets in the event of an end being put to their Association;
(e) Whether it had a Constitution and, if so, in what terms;
40 (f) Whether it had rules and, if so, in what terms.

Exhibits

No.22

Answer by
relator,
Arthur Thomas
Scurr to
Interrogatory
No. 9 of
Brisbane
City Council

No.23

Answer by
relators to
Interrogatory
No. 2 of
Brisbane
City Council

IN THE PRIVY COUNCIL

NO. 18 of 1977

O N A P P E A L
FROM THE SUPREME COURT OF QUEENSLAND

B E T W E E N :

BRISBANE CITY COUNCIL and
MYER SHOPPING CENTRES PROPRIETARY
LIMITED

Appellants
(Defendants)

- and -

HER MAJESTY'S ATTORNEY-GENERAL FOR
THE STATE OF QUEENSLAND (AT THE
RELATION OF ARTHUR THOMAS SCURR
and WILLIAM PERCIVAL BOON)

Respondent
(Plaintiff)

RECORD OF PROCEEDINGS

Coward Chance,
Royex House,
Aldermanbury Square,
London EC2V 7LD

Maxwell Batley and Co.,
27 Chancery Lane,
London WC2A 1PA

Solicitors for the Appellants

Solicitors for the Respondent