

Appeal No. 2 of 1978

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

- 1. ROBINSON & COMPANY LIMITED
- 2. ROBINSON & COMPANY (SINGAPORE) PTE. LTD.

Appellants

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- and -

COLLECTOR OF LAND REVENUE,  
SINGAPORE

Respondent

CASE FOR THE RESPONDENT

Collector of Land Revenue, Singapore.

References to Record

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1. This Appeal is brought by leave of the Court of Appeal Singapore granted on the 14th November, 1977 against a decision of that Court (Wee Chong Jin C.J. and Chua and D'Cotta JJ) given on 29th September, 1977 answering 3 questions of law put to the Court by way of Case Stated Under section 30 of the Land Acquisition Act (Chapter 272 of the Revised Edition of the Laws) by the Appeals Board constituted under the provisions of Section 19(1) of the Act for the opinion of the Court of Appeal.

pp111-112  
pp 92-108  
pp 1- 7

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2. The first question was whether there has been in the present case "an acquisition for any purpose specified in sub-section 1 of Section 5 of the Act" of the subject land

p.6  
LL 18-24

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within the period of six months of the land being devastated or affected directly or indirectly by fire.

p.6  
LL 25-42

The second question was if, which is not admitted, the acquisition is held to have taken place within the six months' period contemplated by the Act how is the Board to interpret the requirement that it shall "consider the market value of the land immediately before it was devastated or affected as aforesaid, having due regard to the fact that at the material time the land could not have been conveyed with vacant possession as it was subject to encumbrances, tenancies or occupation by squatters but without taking into account the value of any buildings or structures, permanent or otherwise on the land at the material time" in the context of the facts of the present case.

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p.6  
LL 43-47

The third question was how is the Board to interpret Section 33(1) (d) (before its amendment by the Land Acquisition (Amendment) Act 1973) with particular reference as to whether in determining the amount of compensation the actual loss of earnings of the Second Appellant, Robinson & Company (Singapore) Pte. Ltd. ought to be taken into consideration in the context of the facts of the present case.

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LL 1-6

p97 LL41-47  
pp 98-103  
p104 LL1-11

3. (i) The first question was answered in the affirmative.

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p.104 LL12-46  
p.105  
p.106 LL1-2

(ii) The second question was answered that in the present case the Board (and the Collector) in the context of the facts of the present case, must consider the market value of the subject land immediately before its devastation by fire on the basis that it could not have been conveyed with vacant possession as it was subject to the leases. However, the Court of Appeal went on to consider this question in the event it was wrong to consider a lease as an encumbrance within the meaning of the words of the proviso and determined that the proviso was applicable only if in fact at the material time the land could not have been

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p.106 LL 2-47  
p.107 LL 1-15

conveyed with vacant possession as it was subject to encumbrances, tenancies or occupation by squatters.

(iii) The third question was answered in favour of the Second Appellant

p.107 LL 16-45  
p.108

10 4. In the event the said Court of Appeal remitted the case stated to the Appeals Board with its opinion for the Appeal Board's further consideration and ordered that each party shall pay its own costs.

pp 109-110

5. The Respondent was given leave by the said Court of Appeal on 14th November 1977 to Cross-Appeal against such part of the decision of the said Court of Appeal given on 29th September 1977 as decides that the proviso to Section 33 only applies when the land was actually encumbered, and that the Second Appellant was entitled to claim for loss of earnings.

pp 113-115

20 6. The facts are that-

(i) the subject land was held under leases for 999 years from the 24th April 1826 by The Agent of the Commission for the Administration of the Estates of the Portuguese Missions in China at Singapore (hereinafter called the Portuguese Mission).

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LL 22-26

30 (ii) the subject land together with the building erected thereon known as Raffles Chambers was leased by the Portuguese Mission to the First Appellant by a lease dated the 28th April 1969 for a term of 27 years from the 1st July 1963.

pp 20-27

(iii) the First Appellant by an underlease dated the 4th November 1969 sub-leased the property in question to the Second Appellant for the unexpired residue of the First Appellant's term less 1 day.

pp 28-38

(iv) the freeholder of the subject land is the Government of the Republic of Singapore.

40 (v) the Second Appellant carried on the business of a department store at the building known as Raffles Chambers on the subject land.

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(vi) the land in question was not occupied by squatters.

p 39 LL 9-11 (vii) on the 21st November 1972 the building on the subject land was completely destroyed by fire and the business of the Second Appellant thereon ceased

p 39 LL 12-15 (viii) on the 16th January 1973 the Declaration under Section 5 of the Land Acquisition Act was made.

p 39 LL 16-23  
pp 41-42 (ix) on the 17th January 1973 the Declaration under Section 5 of the Act was published in the Government Gazette. 10

p 39 LL 24-31  
pp 43-44 (x) on the 7th February 1973 the Respondent issued and served the notice under Section 8 of the Act inter alia fixing the Inquiry under Section 10 of the Act for the 7th March 1973 on all parties concerned.

(xi) on the 7th March 1973 the Collector held the Inquiry under Section 10 of the Act.

p 40 LL 12-14 (xii) on the 21st May 1973 the period of six months from the date of the fire, i.e. the total destruction of the building, expired. 20

p 77  
p 78 LL 1-10 (xiii) on the 11th June 1973 the First and Second Appellants submitted their claims in writing to the Respondent.

pp 7-8 (xiv) on the 28th June 1974 the Respondent published his award but failed to make any apportionment pursuant to Section 10(1) of the Act. A corrected award was published on the 16th July 1976. 30

p 40 LL 23-24  
pp 57-58 (xv) on the 5th September 1974 the Respondent took possession of the subject land under Section 16 of the Act.

7. Section 5 of the Land Acquisition Act (Chapter 272) is in the following terms:-

"5 (1) Whenever any particular land is needed:-

(a) for a public purpose;

(b) by any person, corporation or statutory board, for any work or an undertaking which, in the opinion of the Minister, is of public benefit or of public utility or in the public interest; or

10 (c) for any residential, commercial or industrial purpose;

the President may, by notification published in the Gazette, declare the land to be required for the purpose specified in the notification.

(2) Such declaration shall state:-

(a) the town subdivision or mukim in which the land is situated;

20 (b) the lot number of the land, its approximate area and all other particulars necessary for identifying it; and

(c) if a plan has been made of the land, the place and time where and when the plan may be inspected.

30 (3) The declaration shall be conclusive evidence that the land is needed for the purpose specified therein as provided in subsection (1) of this section".

Section 33(1) before the amendment by the Land Acquisition (Amendment) Act 1973 was in the following terms:-

"33 (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Board shall take into consideration the following matters and no others, namely

40 (a) the market value at the date of the publication of the notification under

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subsection (1) of Section 3 of this Act, if the notification is within six months from the date thereof followed by a declaration under Section 5 of this Act in respect of the same land or part thereof, or in other cases the market value at the date of the publication of the declaration made under Section 5 of this Act; 10

(b) any increase in the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put;

(c) the damage, if any, sustained by the person interested at the time of the Collector's taking possession of the land by reason of severing that land from his other land; 20

(d) the damage, if any, sustained by the person interested at the time of the Collector's taking possession of the land by reason of the acquisition injuriously affecting his other property, whether movable or immovable, in any other manner or his actual earnings; and 30

(e) if, in consequence of the acquisition, he is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to the change.

Provided that in the case of an acquisition for any purpose specified in subsection (1) of Section 5 of this Act of any land devastated or affected directly or indirectly by fire, explosion, thunderbolt, 40

10 earthquake, storm, tempest, flood or  
any act of God, or of any land  
immediately adjoining such devastated  
land as is required for any such  
purpose, the Board shall not, in the  
case of any such acquisition within a  
period of six months of the land  
being devastated or affected as  
aforesaid, take into consideration  
the matters set out in paragraphs (a)  
and (e) of this subsection, but shall  
instead consider the market value  
of the land immediately before it was  
devastated or affected as aforesaid  
having due regard to the fact that at  
the material time the land could not  
have been conveyed with vacant  
possession as it was subject to  
encumbrances, tenancies or  
20 occupation by squatters, but without  
taking into account the value of  
any buildings or structures,  
permanent or otherwise, on the land  
at the material time. And provided  
that such acquisition shall not  
affect the rights or liabilities of  
any owner, lessee, tenant or occupier  
of such buildings or structures in  
respect of any contract of insurance  
30 entered into by such owner, lessee,  
tenant or occupier; And provided  
further that the market value of such  
land shall not exceed one-third of  
the value of such land had it been  
vacant land not subject to any such  
encumbrances, tenancies or occupation  
by squatters unless the Minister in  
his discretion, by notification in  
the Gazette, specifies otherwise."

40 8. The principal questions which arise  
in this Appeal are:-

(i) when does an acquisition take  
place for the purpose of the first proviso  
of Section 33(1);

(ii) whether the word "encumbrance"  
in the said proviso includes a lease;

(iii) whether the said proviso  
applies even if the subject land was not in  
fact subject to encumbrances;

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(iv) whether on the facts of the instant Appeal the Second Appellant has in law a claim for loss of actual earnings.

9. The Land Acquisition Act contains the whole code under which compensation for the compulsory acquisition of land is assessed. In such assessment of compensation the Respondent is required to consider the claims for compensation submitted by the persons interested, and to determine, subject to appeal, the amounts properly due. The scheme of the Act is such that that determination by the Respondent has to be made before the land is vested in the State unless the land is urgently needed. Any construction of the provisions of the Act which would not permit the Respondent to know when he determines the compensation, what basis for compensation he had to apply must lead to an absurdity.

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10. It is respectfully submitted that the Court of Appeal was correct when it said

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LL 36-42

"The scheme of the Act shows that there are several essential stages in any acquisition of land under the Act. Thus, when the Legislature used the expression "an acquisition" in the first proviso to Section 33(1), it is reasonable to infer that it was aware of these essential stages."

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LL 31-45

"It is important to observe that at the second stage it is mandatory for the Collector, as soon as possible after the conclusion of the inquiry, to make his award of the compensation he thinks should be allowed for the land. It is important to note, also, that at this stage it is mandatory for the Collector, in determining the amount of the compensation, to take into consideration the matters mentioned in Section 33 of the Act. Insofar as these two important functions are concerned, the Collector is clearly not acting in an administrative, but in a quasi-judicial capacity and must act impartially."

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LL 46-47  
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If the construction Mr. Boydell seeks to place on the words "an acquisition" is correct, the Collector, having completed the inquiry, when he is pondering over the amount of compensation he thinks

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should be allowed in his award, is in a dilemma. At that point in time, he does not know which of the two market values, i.e. market value according to Section 33(i)(a) or market value according to the first proviso, he must take into consideration in arriving at his award for the land. He must decide on one of two alternative courses of action before he can give his award, namely:-

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(1) do nothing and wait until six months after the date of publication of the Section 5(1) notification; or

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(2) ask the appropriate Minister, as a case of urgency, to direct him, under Section 17(1), to take possession of the land, whereupon he can take possession and immediately thereafter give the necessary notice or lodge the necessary instrument of acquisition whereupon the lands vests in the State.

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If the Collector decides on course of action (1), then the first and third provisos do not apply, and he can then decide the amount of compensation on the basis that the market value of the land is at the date of publication of Section 5(1) notification. This course would favour the person or persons entitled to the compensation awarded.

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If the Collector decides on course of action (2), then the first proviso will operate and he can then decide the market value of the land on the basis that the market value is at the date immediately before the land was devastated and proceed to give effect to the rest of the first proviso and to the third proviso. This course would be unfair to the person or

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LL 43-46

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LL 1-26

persons entitled to the compensation awarded, and would favour the acquirer. Whichever course the Collector adopts, he would not be acting impartially and, in our opinion, this situation could not have been intended by the Legislature. In our opinion, the use of the words "in the case of an acquisition", bearing in mind the ordinary meaning of "acquisition" as the "action of" acquiring...", indicate that the Legislature was referring, in the first proviso, in general terms to land which is being acquired and was not referring to land which is being acquired and of which possession has been taken by the Collector, or to land which has vested in the State under Section 18 of the Act.

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In our opinion, on its true construction, the first proviso to Section 33(1) means that where land has been devastated by fire or any act of God, and that land is being acquired for a Section 5(1) purpose within a period of six months after devastation, the Board (and the Collector) in determining the amount of the compensation to be awarded, must not take into consideration the market value of that land at the date of the publication of the Section 5(1) notification, but must instead take into consideration the market value of the land immediately before it was so devastated."

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11. There is nothing in the wording of the Act which compels a different meaning to be given to the first proviso to Section 33(1) from that determined by the Court of Appeal, and applying a contrary meaning to the first proviso would undermine the whole scheme of the Act. The amount of compensation would vary between a case where the land was urgently needed, and a similar case where it was not dependent on factors which had no connection with the market value of the land. It cannot have been the intention of Parliament that the compensation payable for land compulsorily acquired should depend on the decision of Government as to how

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urgent the need for the land was.

12. The subject land was held by the First and Second Appellants under two sub-leases dated 28th April 1969 and 4th November 1969 respectively.

Those Leases were clearly encumbrances within the first proviso to Section 33(1) and it is respectfully submitted that the Court of Appeal was correct in saying "The first thing to observe is that the expression land which "could not have been conveyed with vacant possession" is expressly defined in the first proviso itself as land which "was subject to encumbrances, tenancies or occupation by squatters". In the context of this definition, is land which is subject to a lease, subject to an encumbrance within the meaning of the first proviso? We are of the opinion that it clearly is, and that the word "encumbrances" includes leases. It would, in our opinion, lead to an absurd result if a lease is excluded from the meaning of "encumbrance" in the context of Section 33(1), and the first proviso thereto. Furthermore, in the context of ascertaining the market value of land, it would be patently absurd to consider that land which is subject to a tenancy is land which cannot be conveyed with vacant possession, but, if the same land were subject to a lease, that is land which can be conveyed with vacant possession."

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LL 31-46

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LL 1-6

13. However, it is respectfully submitted that they were wrong in saying "we think Mr. Boydell's contention is correct. In our opinion, it could not have been intended by the Legislature that land compulsorily acquired, which land is not subject to any encumbrance, tenancy or occupation by squatters, should be given a market value on a statutory presumption that it was so subject. If that was the intention of the Legislature, we do not doubt that the language used would have been different. In any event, the words being plainly ambiguous, it would be wrong in accordance with the accepted

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LL 24-47

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canons of construction to give them a meaning which penalises the subject and leads to an irrational result. This would be the case if Mr. Karthigesu's contention is correct.

Let us illustrate. A freehold land (land X) of substantial acreage has a small owner occupied building on it which is devastated by fire and the land is acquired as it is needed for a Section 5 (1) purpose after the fire. If Mr. Karthigesu's contention is correct, then by virtue of the first and third provisos to Section 33(1) in determining the amount of compensation, the market value of land X must be not more than one third of the value of the land as vacant land immediately before the fire. Near to, but not immediately adjoining this land, is another freehold land (land Y) of similar acreage with an identical owner occupied building on it not affected at all by the fire, which is acquired at the same time under the Act, The market value of land Y is its full market value as at the date of publication of the Section 5(1) notification. Such an absurd and irrational result could not have been intended by the Legislature." So to hold gives no meaning to the words "having regard to the fact that at the material time the land could not have been conveyed with vacant possession as it was subject to encumbrances, tenancies or occupation by squatters in the said proviso". Those words add nothing if they merely require regard to be had to the facts as they actually were "at the material time", that is immediately before the land was devastated by fire, as such facts would be a necessary consideration in determining the market value of the land at that time in any event.

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LL 1-15

14. Under Section 33(1)(d) compensation must cover damage (if any) sustained by the person interested at the time of the Respondent taking possession of the land by reason of the acquisition injuriously affecting his actual earnings. At the date of the Respondent's taking possession

10 in this case, the business of the Second Appellant on the land had ceased, and he was in receipt at that time of no actual earnings from that business. The Respondent submits that in those circumstances it cannot be said that the acquisition had damaged the Second Appellant's actual earnings, as his loss was caused by the destruction of the buildings by fire in which the business was previously carried on.

20 15. The words "actual earnings" in Section 33(1) (d) mean, and cover only, earnings actually being received at the relevant time. It might be that where there is damage to actual earnings, the assessment of the amount of damage suffered requires a consideration of the likely level at which those earnings will be maintained in the future, but that is because the entitlement to compensation has been established and only the amount of damage is in dispute.

30 16. A quite different situation arises in this case, and it is entitlement to compensation which is in question. The Second Appellant's position is, so far as material to the point now under consideration, no different in principle from that of any other person who might have wanted to carry on a business in new buildings erected on the land, neither had or would have had any actual earnings from the land at the time of the Respondent's taking of possession. To allow the Second Appellant's claim for loss of actual earnings would establish a right to compensation in respect of speculative earnings and would make meaningless the word "actual" in the phrase "actual earnings".  
40 It is therefore respectfully submitted that the Court of Appeal was wrong in saying "In our opinion the construction sought to be placed on the expression "actual earnings" by the Collector is wrong. In the context of Section 33(1) of the Act, including the provisos thereto,

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LL 13-32

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if loss of future earnings is excluded from being the subject matter of a claim under paragraph (d) of Section 33(1), there could never be a claim because there would never be any actual loss. In our opinion, in every case where a claim is made under paragraph (d) for compensation for loss of earnings, the amount of compensation (if any) is a question of fact for the Collector to determine depending upon the evidence placed before him. Accordingly, in the context of the facts of the present case, the Third Appellant is entitled to have its claim for compensation for loss of actual earnings considered and to payment of the amount of compensation (if any)." 10

17. WHEREFORE THE RESPONDENT SUBMITS that the Opinion of the Court of Appeal in Singapore should be affirmed, and this Appeal dismissed with costs insofar as it relates to the first question and that part of the Opinion as relates to the second question that in the context of the proviso to Section 33(1) of the Singapore Land Acquisition Act the word "encumbrance" includes a lease and that the cross-appeal should be allowed with costs for the following among other 20

R E A S O N S 30

1. BECAUSE the Court of Appeal was right in holding that there has been in the present case an acquisition for the purpose specified in sub-section (1) of Section 5 of the Land Acquisition Act of the subject land within a period of six months of the land being devastated or affected directly or indirectly by fire.
2. BECAUSE the Court of Appeal was right in holding that when the Legislature used the expression "an acquisition" in the first proviso to Section 33(1) of the Act it was reasonable to infer that it was aware of the essential stages in any acquisition of land under the Act and that the Act had to be construed to avoid an absurdity. 40

3. BECAUSE the words "in the case of an acquisition" in the context of the first proviso to Section 33(1) of the Act are satisfied at the moment the owner of the land has lost the right to retain his land.
  
- 10 4. BECAUSE the Court of Appeal was right in holding that when Ordinance 22 of 1961 came into force there was no ambiguity in the expression "in the case of an acquisition for a public purpose of any land devastated by fire .....or any Act of God...." in the first proviso to Section 26(1) of the Land Acquisition Ordinance.
  
- 20 5. BECAUSE the Court of Appeal was right in holding that the limiting words "in the case of any such acquisition within a period of six months" introduced by Section 33(1) and the provisions of the Land Acquisition Act 1966 which repealed and re-enacted Section 26(1) and the provisos of the Land Acquisition Ordinance the clear intention was to free the devastated land from the seemingly harsh effect of the three provisos as originally enacted.
  
- 30 6. BECAUSE the Court of Appeal was right in holding that in the context of the proviso to Section 33(1) of the Act the word "encumbrance" includes a lease.
  
- 40 7. BECAUSE the Court of Appeal was wrong in holding that in considering the market value of the subject land on the basis that the word "encumbrance" does not include a lease the words of the first proviso to Section 33(1) of the Act are plainly ambiguous and that it would be wrong in accordance with the accepted canons of construction to give them a meaning which penalises the subject and leads to an irrational result.

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8. BECAUSE the Court of Appeal was wrong in holding that the actual earnings of the Second Appellant were injuriously affected by the fire within the meaning of Section 33(1) (d) of the Act.
9. BECAUSE the Court of Appeal failed to take account of the fact that what injuriously affected the actual earnings of the Second Appellant was the fire and not the acquisition.
10. BECAUSE the Court of Appeal failed to take account of the fact that at the date of taking possession of the subject land there was no business on the subject land.

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WILLIAM J. GLOVER

M. KARTHIGESU



IN THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL

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O N A P P E A L  
FROM THE COURT OF APPEAL IN SINGAPORE

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B E T W E E N:

1. ROBINSON & COMPANY  
LIMITED
2. ROBINSON & COMPANY  
(SINGAPORE) PTE. LTD.

Appellants

-and-

COLLECTOR OF LAND  
REVENUE, SINGAPORE

Respondent

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CASE FOR THE RESPONDENT

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TURNER PEACOCK,  
1 Raymond Buildings,  
Gray's Inn,  
London, WC1R 5BJ

Respondents Solicitors