

IN THE WARDEN'S COURT
HOLDEN AT SYDNEY
ON 30TH MAY, 1986
BEFORE J.L. McMAHON,
CHIEF MINING WARDEN.

AUSTRALIAN GAS LIGHT COMPANY (APPLICANT)

v.

O'GRADY & OTHERS (RESPONDENTS)

BENCH:

On 27th May, 1986 the Acting Mining Registrar at this Court was approached by The Australian Gas Light Company (A.G.L.), through its secretary, with two applications under Section 144 of the Mining Act. Although the particulars of the sub-sections to Section 144 are not clear on the face of the applications, on yesterday's date I embarked upon argument and hearing of one of them which was for an injunction for a period of one month restraining Philip O'Grady and Judith O'Grady or their agents or servants from hindering, obstructing or preventing access or occupation of property or otherwise interfering therewith or from doing any act whereby the right, title or interest of the applicant in or to the property or any part thereof might be affected. It was said in a supporting affidavit to the application by Mr. Christopher Herbert that the matter was one of extraordinary urgency necessitating the granting of an interim injunction under Section 144(4) of the Mining Act.

It should here be stated that A.G.L. is the holder of Petroleum Exploration Licence No. 260 (wrongly called 255 in some of the documents) and Mr. & Mrs. O'Grady (the O'Gradys) are owners of some land which is covered by that licence. Although subsection 144(4) provides that the application may be granted without the need of the service of a summons or notice upon any respondent, it became apparent that the respondents, Mr. & Mrs. O'Grady had had the matter brought to their attention by virtue of the supply of a copy

of the applications to a solicitor who was acting for them. Mrs. Taylor of that firm made arrangements for Mr. Talbot of Counsel to appear on behalf of the O'Gradys and he attended although in some difficulties from another jurisdiction to argue the matter of my jurisdiction and the need to issue an injunction at all. Mr. Dwyer, instructed by Mrs. Chapman, has appeared for the applicant.

Mr. Talbot's submission as to lack of jurisdiction in this court has been overruled and Mr. Dwyer has called the deponent of one of the affidavits filed, Mr. Christopher Herbert. As indicated in the record, because of certain inadmissible parts of the affidavit by reason of the hearsay rule, only some of Mr. Herbert's affidavit has been admitted into evidence. Mr. Herbert has deposed of a history of the matter. To say the least, the matter has been protracted and one of the reasons for this has been a lengthy hearing before me on the question of assessment of compensation. That question having now been resolved, as has been the questions of costs of the hearing, Mr. Herbert has deposed of the attempts made to permit A.G.L., his fundamental employer, onto the land for the purposes of exercising its right under Petroleum Exploration Licence No. 260. Mr. Herbert deposed of discussions with Mr. O'Grady and in a discussion of 9th May, 1986 Mr. O'Grady had said "I will obstruct entry". Mr. Herbert has deposed that entry cannot be gained to the property of the O'Gradys. No evidence has been forthcoming from Mr. O'Grady who was in Court on 29th May, 1986 to refute these matters.

Apart from objecting to jurisdiction, which objection has been overruled, Mr. Talbot has pointed to the existence of Section 37 to the Petroleum Act which specifies that a licence shall be transferable by the holder and shall descent or devolve as personal property. The implication from his submission

is that Section 37 of the Petroleum Act in effect excludes the subject licence from being classified as "any land the subject of the claim or the authority, or any property" as being the basis upon which an injunction under Section 144 may be granted. I indicated my view in an extempore judgment that Section 37 relates to matters primarily under the Wills, Probate and Administration Act and while on reflection there may also be other aspects of the law which may be affected by Section 37 of the Petroleum Act, in my opinion it has no adverse effect on Section 144 of the Mining Act. The other submission made by Mr. Talbot was that the O'Grady's do not oppose the exercise by A.G.L. of any entry or exercise of any rights under the Petroleum Exploration Licence provided the provisions of the law are complied with and in particular those of the Environmental Planning and Assessment Act. His instructions are that if the O'Grady's were satisfied that the Act was complied with and other conditions of development consent were met, then the entry would be allowed.

Exhibit 1 in the proceedings before me is made up of documents coming from both sides of this matter. There is firstly a photocopy of a letter from the Council of the Municipality of Camden dated 27th May, 1986 which Mr. Dwyer tendered and a copy of a report, pages 4, 5, 9 and 10, much of which refers to the proposed project upon Mr. O'Grady's land of A.G.L. which came from Mr. Talbot. The letter expresses an opinion that the proposed exploration programme is an activity under Part V of the Environmental Planning and Assessment Act and consequently the Minister for Mineral Resources was the responsible authority for issuing any approval. The report is the background to that conclusion and contains some other relevant material. Mr. Talbot has submitted that his client is willing to give access if development consent is forthcoming and proof to that effect is obtained while on the other hand Mr. Dwyer has submitted that as the matter does not come under the authority

of the Camden Municipal Council, but the Minister for Mineral Resources for the purposes of Part V of the Environmental Planning and Assessment Act and that because of the background to the matter, the fact that men and machinery are waiting, and even steel is on site, that the matter is one of such extraordinary urgency that an injunction should be granted under Section 144(4). Mr. Talbot has replied that if an injunction were to be granted (which would be against his submissions) that there should be added to it the words "subject to compliance by the applicant with the provisions of the Environmental Planning and Assessment Act".

As to the matter of extraordinary urgency, one might say on the one hand that as the matter has dragged on for so long that a few more days, weeks or even months might not have any adverse effect upon it. On the other hand the evidence is that the applicant has a programme of sinking three holes for the exploration of gas deposits. This is the second well in that series. A drilling rig is available to move onto the site and if frustration takes place at this time in those plans the drilling rig operators would have to be released from their commitments. This, in turn, would cause problems in finding another drilling rig before the licence expires. However it is apparent that this matter has come to a head only in the last few days, any extraordinary urgency being brought about by the fact the drilling programme is being frustrated by the delays which have occurred and are occurring and will be further interfered with by any other protraction of the litigation. I have given deep consideration to this matter and in the circumstances I am satisfied from the evidence before me that a matter is one of extraordinary urgency coming within Section 144(4).

I turn then to the submissions by Mr. Talbot that it is necessary for the Environmental Planning and Assessment Act to be complied with and in fact development consent to the proposal should be forthcoming before A.G.L. can be allowed onto the property by the O'Gradys. It is obvious that the Council of the Municipality of Camden considers that the Minister for Mineral Resources is the responsible authority under Part V of the Environmental Planning and Assessment Act. It was obviously the Minister for Mineral Resources who caused the grant of the Petroleum Exploration Licence for it was granted by the Crown to A.G.L. The question is should I place a requirement upon a party to comply with Acts of Parliament which clearly they ought to do to ensure legality of their operations. It seems to me that I would be stepping into forbidden waters and I propose simply to look at the situation as it is affected by the Petroleum Act and the Mining Act and to leave any breaches of other laws which the O'Gradys complain have been committed by A.G.L. to be remedied in other jurisdictions.

The shortness of time at my disposal in this matter has prevented a more considered judgment but I am satisfied that the injunction under Section 144(4) should issue and I propose to order it without addition or requirement to comply with the Environmental Planning and Assessment Act. As I have already indicated I am not content to order paragraph 2 of the short minutes of order but an injunction will be issued in accordance with paragraph 1. It follows that Philip O'Grady and Judith O'Grady or their agents or servants are restrained from hindering, obstructing or preventing access or occupation of the property or otherwise interfering therewith or from doing any act whereby the right, title or interest of A.G.L. in or to the property or any part thereof might be affected. I propose to grant the injunction for a period of one month from today unless sooner discharged. The other concurrent proceedings are adjourned to this court on 13th June, 1986

and the matter can be the subject of further hearing on 13th June, 1986, if necessary, including the questions of whether or not the injunction herein should be discharged or a further injunction should be granted.

On the question of costs I propose to direct that the O'Gradys pay to the Registrar of the Court by way of costs of A.G.L. in respect of the proceedings of 29th May, 1986, the sum of \$450 on or before 30th June, 1986.