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THE COMMONWEALTH AND THE POSTMASTER-GENERAL v. THE PROGRESS ADVERTISING AND PRESS AGENCY CO. PROPRIETARY LTD.

Isaacs J.

with the liberty of outside persons to undertake any enterprise that they choose, or of any power of an analogous nature.

I am clearly of opinion that the question should be answered in the negative; and it follows—even if we treat the procedure as right—that the plaintiffs are not entitled to any of the relief claimed.

Question answered in the negative. Judgment for the defendants with costs, the plaintiffs not objecting.

Solicitor, for the plaintiffs, *Charles Powers*, Commonwealth Crown Solicitor.

Solicitors, for the defendants, *Fink, Best & Hall.*

B. L.

[HIGH COURT OF AUSTRALIA.]

GOLDSBROUGH, MORT & CO. LTD. . . APPELLANTS;
DEFENDANTS,

AND

TOLSON . . . . . RESPONDENT.
PLAINTIFF.

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BRISBANE, *Dec.* 2, 3. SYDNEY, *Dec.* 18.

Griffith C.J., O'Connor and Isaacs JJ.

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

Meat and Dairy Produce Encouragement Act 1893 (57 *Vict. No.* 11) (*Qd.*)—*Meat and Dairy Prodnce Encouragement Act* 1895 (59 *Vict. No.* 6) (*Qd.*)—*Certificates for payment of taxes—Conveyance—Chattels and effects.*

The respondent, who was the holder of certain grazing properties, paid taxes under the *Meat and Dairy Produce Encouragement Acts* 1893, 1895, and received certificates therefor. By mortgage deeds he assigned his rights in

these properties to the appellants, "and also all and singular the sheep cattle horses stock *chattels and effects* which are now or may at any time during the continuance of this security be upon or belonging to the said stations." The respondent subsequently conveyed his equity of redemption in the properties to the appellants in identical language.

Held, that the right of the taxpayer under the certificates to a return of the taxes paid by him was a personal right in the nature of a chose in action and did not pass in a conveyance of an equity of redemption under the words "chattels and effects . . . . upon or belonging to the said stations."

Decision of the Supreme Court of Queensland (*Cooper* C.J.) affirmed.

APPEAL from decision of *Cooper* C.J.

The respondent owned several pastoral properties, which he mortgaged to the defendant company in 1891. In 1893 and subsequent years the respondent paid taxes to the Government under the *Meat and Dairy Produce Encouragement Act* 1893 (Queensland) (57 Vict. No. 11) and received certificates under 59 Vict. No. 6, sec. 3, for a total amount of £770 : 7 : 0. On 25th July 1900 the plaintiff conveyed his equity of redemption to the defendant company.

The deed of assignment, after setting out the grazing properties and stock in question, contained *inter alia* the following words:— "And all pre-emptive and other rights incidental or appurtenant thereto together with the dwelling house buildings tanks reservoirs cultivation and other paddocks hurdles huts watch-boxes working bullocks drays wool stores provisions trade-erections farming stock implements furniture chattels and effects and all improvements which are now or during the continuance of this security shall be at or upon or belonging to the said stations or runs or any or either of them and all compensation which during the continuance of this security may be paid or become payable in respect of any such improvements."

In 1902 the defendants, claiming to be holders of the certificates, applied to the Minister for and received a certain sum and still held certificates entitling them to payment of a further sum, making up the full amount claimed. The plaintiff then sued for the amount received by the defendants and the return of the other certificates or damages in lieu thereof.

The action was tried before *Cooper* C.J., who gave judgment

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for the plaintiff. From this judgment the defendant company appealed to the High Court.

Woolcock and *Power*, for the appellants. On 25th July 1900 the plaintiff conveyed and assigned to the appellants all his station property, stock, and all the right, title, and interest in them, and all . . . . his *chattels and effects*, &c. Another deed, dated 25th July 1900, was executed in 1901 similar to that of 1900, but not including the stock or chattels. The second deed was not in substitution of the former, which changed the positions of the parties from those of mortgagor and mortgagee to grantor and grantee. The words "*chattels and effects*" indicated an intention to pass everything on the stations and everything in any way connected with them. As to meaning of goods and chattels, see *Bullock* v. *Dodds* (1); *Kendall* v. *Kendall* (2); *Ex parte Foss*; *In re Baldwin* (3); *Ryall* v. *Rowles* (4); *Howkins* v. *Jackson* (5); *Anderson* v. *Anderson* (6). As to doctrine of *ejusdem generis*, see *Tillmans & Co.* v. *S.S. Knutsford Ltd.* (7). On the facts, by reason of the mortgages, the possession of the certificates, and the assignment itself the defendants are entitled to the money in question. Counsel also referred to *Prosser* v. *Lancashire and Yorkshire Accident Insurance Co.* (8); *Parker* v. *Marchant* (9); *Norton on Deeds* (1906 ed.), p. 29.

Feez K.C. and *Hart*, for the respondent. At the time the mortgage was made neither party had in contemplation the certificates in question, cf. *Lyall* v. *Edwards* (10). The indenture of 25th July was merely a conveyance of the equity of redemption in the mortgaged premises and did not pass an inchoate right to claim moneys which might become payable in the future. The certificates were not intended to be included in the conveyance which was merely a release of what the parties at the time contemplated. A gift of chattels in a house does not pass bonds in a house. [Counsel referred to the following:—*In re*

(1) 2 B. & A., 258.
(2) 4 Russ., 360.
(3) 27 L.J. Bank., 17; 2 DeG. & J., 230.
(4) 1 Ves., 361.
(5) 2 Mac. & G., 372.
(6) (1895) 1 Q.B., 749.
(7) (1908) 2 K.B., 385.
(8) 6 T.L.R., 285.
(9) 1 Y. & C.C.C., 290.
(10) 6 H & N., 337.

Craven; *Crewdson* v. *Craven* (1); *Re Miller*; *Daniel* v. *Daniel* (2); *Brooke* v. *Turner* (3); *Hutchinson* v. *Kay* (4); *In re Perkins*; *Poyser* v. *Beyfus* (5); *Commissioners of Stamps* v. *Hope* (6); *London and South Western Railway Co.* v. *Blackmore* (7).]

Woolcock, in reply.

Cur. adv. vult.

December 18.

GRIFFITH C.J. This was an action brought by the respondent against the appellants to recover a sum of money which was received by the appellants from the Government of Queensland, but which the respondent alleged to be payable to himself.

The *Meat and Dairy Produce Encouragement Act* 1893 (Qd.) imposed a tax upon the owners of cattle and sheep, the product of which was to be placed to the credit of two funds, called the Meat Fund and the Dairy Fund, and was to be applied in making advances for the assistance of the proprietors of works for the manufacture or cold storage of meat and dairy produce. The advances were to be made upon the security of mortgage, and were to be repayable with interest within a prescribed time and upon prescribed conditions. By an amending Act of 1895 (59 Vict. No. 6) it was provided that every person who had paid the tax under the Principal Act should be entitled to receive a certificate stating the amount paid by him (sec. 3), and that the Minister charged with the administration of the Act might out of moneys repaid to him in respect of advances and interest thereon repay to the holder of a certificate the amount thereof or so much as should for the time being be available for the purpose of repayment (sec. 4). It was also provided (sec. 6) that separate certificates should be issued in respect of three Districts into which Queensland was divided for the purposes of the Act, and that receipts previously issued on payment of the tax should be deemed to be certificates issued under the Act.

The respondent, who was a grazier having grazing properties in all three Divisions, paid the tax in the years 1893, 1894, 1895

(1) 24 T.L.R., 750.
(2) 61 L.T., 365.
(3) 7 Sim., 671.
(4) 23 Beav., 413.
(5) (1898) 2 Ch., 182.
(6) (1891) A.C., 476.
(7) L.R. 4 H.L., 610.

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and 1896, and afterwards received certificates for a total amount of £770 7s. In 1902 the appellants, claiming to be holders of the certificates under circumstances hereafter to be mentioned, applied to the Minister for, and received from him, the sum of £660 17s. 8d., and still held possession of certificates entitling the holder to receive a further sum making up the full amount claimed.

The question for determination, therefore, is whether the appellants were the holders of the certificates. The learned Chief Justice thought that they were not, and gave judgment for the plaintiff.

The scheme of the Acts was to raise by a forced contribution from the owners of cattle and sheep a fund to be advanced by way of mortgage for the encouragement of works established for purposes which were for their common benefit, and when the advances were repaid to return the contributions to the real lenders. I have no doubt that the right of the taxpayers to receive this return was a personal right in the nature of a chose in action. There is nothing in the Acts to make the right of reimbursement follow the ownership of the stock in respect of which it was paid, or the locality of the land on which the stock were depastured.

The appellants' claim to be holders of the certificates is founded upon three mortgage deeds, dated respectively 22nd September 1891, 1st February 1896, and 9th August 1899 (which so far as material are in identical terms), and on a conveyance of the equity of redemption dated 25th July 1900.

By the mortgage deeds the plaintiff assigned to the appellants all the grazing properties in question (which were held under lease from the Crown) "And all pre-emptive and other rights incidental or appurtenant thereto together with the dwelling houses buildings tanks reservoirs cultivation and other paddocks hurdles huts watch-boxes working bullocks drays wool stores provisions trade-erections farming stock implements furniture chattels and effects and all improvements which are now or during the continuance of this security shall be at or upon or belonging to the said stations or runs or any or either of them and all compensation which during the continuance of this security may be paid or become payable in respect of any such improvements

And also all and singular the sheep cattle horses stock chattels and effects which are now or may at any time during the continuance of this security be upon or belonging to the said stations or runs together with the whole right of brands or marks wherewith the said sheep cattle and horses are now or may at any time hereafter during the continuance of these presents be marked branded or distinguished And all the estate and interest of him the said mortgagor in the said sheep cattle horses stock effects and premises respectively And also all the estate right title and interest which the said mortgagor his heirs executors administrators or assigns may now have or hereafter acquire in or to any lands of freehold leasehold or other tenure forming part of or used in connection with the said stations."

The conveyance of 25th July 1900, which was made in consideration of a sum of £1125 over and above the mortgage debt, used identical language with the exception of the word "wool" and the words "at or" before "upon," which were omitted. It also contained a release to the mortgagees in the following terms: "And this indenture further witnesseth that in pursuance of an agreement in this behalf and for the consideration aforesaid the said James Tolson doth hereby release the said Company and its assigns from all sums of money accounts actions suits claims and demands of every description up to the date and execution of these presents."

The appellants contend that the choses in action evidenced by the receipts and certificates passed to them under the words "chattels and effects" contained in these deeds. It may be taken that the receipts for the tax when it was paid were sent to the mortgagor at the stations, and that the certificates issued in substitution for them were in the physical possession of the mortgagees or their agents before the deed of 1900.

There is no doubt that the words "chattels and effects" may be used in a sense which will include choses in action—as for instance in a will, if the context so indicates. But it does not follow that they have that meaning if used in a deed, or in every context. At the date of the mortgage of September 1891 this particular kind of chose in action was unknown to the law, and could not therefore have been in the contemplation of the parties,

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but the words may nevertheless have been sufficient to include any new kind of chattels and effects created by law before the execution of the later deeds.

But, having regard to the collocation of words in all these deeds, and to the immediate context, I think that the words "chattels and effects" were used in all of them in the same sense, and that they referred to things in possession and not to things in action. Apart from the words immediately preceding and following them, "paddocks hurdles . . . implements furniture" and "and all improvements," it is to be noted that two kinds of incorporeal property are expressly mentioned, "all compensations which now are or which may hereafter become payable in respect of any such improvements" and "the whole right of brands or marks," &c.

During the argument I suggested that the appellants' claim might possibly be supported by regarding the receipts or certificates as chattels which passed under the mortgages, and that, the right to receive the money in question being evidenced by them, the appellants, being entitled to the possession of the documents of title, had such a lien upon them as to disentitle the respondent to maintain a claim for money which he could not himself have obtained without possession of the documents. But I think that this argument is met by the qualifying words "upon or belonging to the said stations or runs." I do not think that the words "chattels and effects upon or belonging to the said stations or runs" can, having regard to the context already quoted, be construed as including receipts or certificates evidencing the respondent's right to a chose in action which was not in any way appurtenant to the stations or to the stock upon them.

For these reasons I think that the appellants have failed to establish their right to receive the moneys in question.

It was not suggested that the right to these moneys was in the contemplation of either party at the time of the execution of the deed of 25th July 1900, which recited that all matters of account had been settled between the parties. The release by the respondent does not in terms cover his present claim, and even if it could be held to fall within the literal meaning of the words, they

should not be extended to cover a matter to which they were clearly not intended to extend.

I am therefore of opinion that the judgment of the learned Chief Justice was right, and that the appeal must be dismissed.

O'CONNOR J. There can be no doubt that the rights, if they can be so called, conferred by a certificate under the *Meat and Dairy Produce Encouragement Act* 1895 are capable of being assigned. The Act authorizes the Minister to make the repayments to holders of certificates, and the Government have in fact administered it on that footing. The real contest in the case is as to whether the certificates together with the benefits and advantages which went with them were assigned by the respondent to the appellants by his mortgages of 1891, 1896, or 1899, or by the transfer of July 1900, in which he conveyed to them all his equities of redemption and released all his claims. The words of assignment in all these documents are substantially identical. The interpretation of one will apply to all, and I propose to examine only the transfer of July 1900. Upon the appellants who claim under the document rests the onus of establishing that its language, fairly interpreted, covers the certificates. They are not expressly mentioned in the document, nor is there any named division or class named in it under which they could come. The appellants' counsel contend that they are included in the description, which omitting immaterial words is as follows :—" Chattels and effects which are now upon or belonging to the said stations or runs." It was clearly established by evidence that the respondent paid the tax originally as owner of the stock depasturing on the stations, as one of the outgoings necessary for their working, that the receipts and certificates were sent by the Government officials administering the Act to the respondent at the various stations in respect of which the moneys were paid, and were received and kept by the station managers amongst the station books as documents connected with the ordinary business of the several stations. It must also, I think, be taken as against the respondent that the documents were either on the stations or held elsewhere by the appellants together with other station docu-

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ments as the respondent's agents, when they went into possession as mortgagees. From which it follows that the certificates were documents "belonging to the stations" in the sense in which that expression is used in the deed now under consideration. The certificates were not choses in action in the ordinary sense of the word, but they were something more than mere pieces of paper. They represented the respondent's right not perhaps to demand payment, but to be considered by the Government in the distribution of moneys available under the Act of 1905 for repayment to those who had paid the tax under the Act of 1893. The question for determination is whether the words "chattels and effects" as used in the document under consideration, read with their context, should be construed as including the certificates and all the benefits and advantages which they carried with them. Many authorities were cited to show the meaning put upon the expression "chattels and effects" as used in different documents in different contexts and in application to different facts. Those decisions are useful in this case only in so far as they lay down some rule of interpretation or as illustrating the range of meaning of which the expression is capable in certain contexts and in relation to certain facts. In *Anderson* v. *Anderson* (1) the Court of Appeal was called upon to interpret the words "other goods chattels and effects" in a voluntary settlement. Lord *Esher* M.R. endeavours in his judgment to extract a rule of interpretation from the cases, and after quoting from *Church* v. *Mundy* (2) and *Parker* v. *Marchant* (3) says (referring to some observations of Lord Justice *Knight Bruce* in the latter case):—"Nothing can well be plainer than that to show that *primâ facie* general words are to be taken in their larger sense, unless you can find that in the particular case the true construction of the instrument requires you to conclude that they are intended to be used in a sense limited to things *ejusdem generis* with those which have been specifically mentioned before." This is not a case in which what is generally understood as the *ejusdem generis* rule is applicable. A maxim more appropriate to the matter in hand is *noscitur a sociis*, but the rule and the

(1) (1895) 1 Q.B., 749, at p. 753. (2) 15 Ves., 396.
(3) 1 Y. & C.C.C., 290.

maxim rest upon the same principle, which I take to be this—*primâ facie* you must take general words as used in their most extensive meaning, unless you find something in the context in which they stand or in the rest of the deed to indicate that the parties have intended them to have a more restricted meaning. Applying the rule to the present case, I have no doubt that the expression "chattels and effects" is capable of including in its meaning a certificate such as that in question with all the incidental rights, benefits and advantages which it carries, and I was at first disposed to think that in the deed under consideration it should be so interpreted. But after careful consideration of the language of the whole deed and of the context in which the general words stand, I am satisfied that such an interpretation would not carry out the intention of the parties. The deed mentions with much particularity the various objects assigned. In the long string of them there is not one which is not a material object capable of physical acquisition. Nothing incorporeal is dealt with in that part of the deed except the right to compensation for improvements which is expressly mentioned, and which follows immediately after the words which effect an assignment of the improvements themselves. Full effect can be given to the expression "chattels and effects" by construing it as operating on the innumerable things not mentioned in the deed, but of the same substance and tangibility as those mentioned, and which go to make up the working equipment of stations taken over in full working order. To extend the meaning of the expression beyond that would be, in my opinion, to construe it as transferring to the appellants something in the nature of a chose in action, the incorporeal right which possession of a document carries with it; it would be to read into the words used by the parties a meaning which, judging by the context, could not have been present to their minds at the time they used them. In my opinion, therefore, neither by the transfer of July 1900 nor by the mortgages were the certificates in question assigned to the appellants. It follows that the certificates remained the property of the respondent, and the learned Judge in the Court below rightly held the appellants responsible to him for their dealings with them.

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I have said nothing about the assignment contemporary with that of 25th July 1900 dealing with realty only and prepared for the purpose apparently of escaping some of the Queensland stamp duty. It is quite plain that the assignment effected by the main deed of that date which, represents the real transaction between the parties, was not invalidated or altered in its effect by the contemporary deed of limited operation executed for a special purpose. For these reasons I am, therefore, of opinion that the judgment of the Chief Justice of Queensland should be affirmed and the appeal dismissed.

ISAACS J. I am also of opinion that this appeal should be dismissed. The conveyance of 25th July 1900 was the completion of an agreement recited in the document, and when so regarded—that is when read *secundum subjectam materiam*—there can be no doubt as to its meaning. The document traces the mortgage relations of the parties, and then recites the purchase by the appellants from the respondent of "the sheep cattle horses chattels and effects upon the said stations or runs"; recites that all matters of account and reckonings have been settled and adjusted, and that the appellants had agreed to purchase the the respondent's equity of redemption for £1,125, and then "in pursuance of the said agreement" and in consideration of £1,125 the respondent grants, &c., the property mentioned in the deed.

The words relied on to carry the moneys in dispute are "chattels and effects." It is enough to say that read in their collocation, and by the light of the agreement and settlement of accounts recited, these words cannot by any fair method of interpretation be made to include the right to those moneys. It is evident that there is one characteristic common to these words and all the things mentioned in connection with them, viz., their utility as actual instruments for working the stations. Where there is assigned any indirect or consequential advantage, such as *rights*, *privileges* and *advantages*, or *compensation*, they are specifically enumerated, as *e.g.* "rights" on account of leases, "rights" incidental to the leases, "compensation" for improvements, &c., but no mention whatever is made of such a right as is now claimed.

The appellants' contention is that the receipts or certificates were actually treated as being belonging to the "business" of Uanda. But no such expression is found, the words are "upon or belonging to the said stations or runs" and the "chattels and effects" so described are such as form part of the apparatus for carrying on the station. The relation of mortgagee and mortgagor had ended, accounts had been taken, all moneys balanced, a sum of £1,125 fixed, and this left nothing but the working machine and material to be handed over to be used *as from that time*—and not as from an indefinite antecedent period—as the appellants' property.

It was argued for the appellants that "chattels and effects," taken apart from all other expressions, included *primâ facie* the receipts and certificates and the moneys represented by them, and that there was nothing to counteract that primary signification. But if that argument were right, the specific reference to "compensations" and to "the whole right of brands" would have been unnecessary. This is a material consideration. Lord *Herschell's* judgment in *Commissioners of Inland Revenue* v. *Scott*; *In re Bootham Ward Strays, York* (1) is a clear illustration of the force to be given to the fact that narrow specific words follow wider general words which would in themselves be sufficient to cover the words which succeed them; an illustration indeed of the general rule of construction laid down as far back as *Nokes' Case* (2).

The right conferred by the *Meat and Dairy Produce Encouragement Act* 1895 is a statutory right conferred upon every person who had prior to September 1905 paid or should thereafter pay the Meat Export Tax, not to receive money in the first instance, but to receive a certificate of the amount paid by him. Then, the certificate having issued, the Minister was authorized to pay to the holder of the certificate, whoever he might be, the amount thereof (sec. 4), and in addition to that a rateable proportion of any surplus to the credit of the District (sec. 5).

But the primary right was to get a certificate—although by sec. 6, the person entitled might treat his receipt for the tax as a certificate. Now that right is of a nature altogether foreign to

(1) (1892) 2 Q.B., 152, at pp. 164, 165. (2) 4 Rep., 80*b*.

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the property indicated by "chattels and effects" construed as already indicated, and I am therefore of opinion that no right to the receipts or certificates (which were merely indicia of the property represented by them) was transferred to the appellants by the deed of July 1900. The appeal therefore fails.

Appeal dismissed.

Solicitors, for appellants, *J. F. Fitzgerald & Power.*
Solicitors, for respondent, *Flower & Hart.*

H. V. J.

Ovtt
Syme v Commissioner of Taxes (Vic)
(1914) 18 CLR 519

[HIGH COURT OF AUSTRALIA.]

THOMAS PROUT WEBB (COMMISSIONER OF TAXES OF VICTORIA) . . . APPELLANT;

AND

SYME AND OTHERS . . . . . RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

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MELBOURNE, *March*, 14, 15, 16, 17, 18; *June* 18.

Griffith C.J., Barton, O'Connor and Isaacs JJ.

Income tax—Income derived from trust estate—Trade carried on by trustees—Income from personal exertion or income the produce of property—Income Tax Act 1895 (*Vict.*) (*No.* 1374), *secs.* 2, 8, 9, 12—*Income Tax Act* 1896 (*Vict.*) (*No.* 1467), *secs.* 4, 12.

Under the Victorian Income Tax Acts the income tax is an impost laid upon individual persons in respect of annual incomes received by them for their own use and disposition.

Where a business is carried on by trustees under trusts which, although for the benefit of the beneficiaries, do not constitute them the owners of the business, and the beneficiaries are entitled to the income of the trust estate, the beneficiaries and not the trustees are the taxpayers in respect of the incomes of the beneficiaries, and the trustees are not taxpayers at all except