

2. The deduction to prevent double taxation ought to be ascertained in the manner contended for by the appellant.

H. C. OF A.  
1911.

*Questions answered accordingly.*

BAILEY  
v.  
FEDERAL  
COMMISSIONER OF  
LAND TAX.

Solicitors, for the appellant, *Elder & Graham.*

Solicitor, for the respondent, *C. Powers*, Crown Solicitor for the Commonwealth.

B. L.

[HIGH COURT OF AUSTRALIA.]

BENNETT. . . . . APPELLANT.

DEFENDANT,

AND

COLONIAL SUGAR REFINING COMPANY }  
LIMITED . . . . . RESPONDENTS.

COMPLAINANT.

ON APPEAL FROM THE SUPREME COURT OF  
QUEENSLAND.

*Master and servant—Master a joint-stock company—Term of service—Unlawful refusal and neglect to fulfil agreement—Masters and Servants Act 1861 (Qd.)* H. C. OF A.  
(25 Vict. No. 11), secs. 2, 3. 1911.

MELBOURNE,  
Sept. 11.

A joint-stock company may be a “master” within the meaning of sec. 2 of the *Masters and Servants Act* 1891.

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

An agreement by a labourer to serve an employer for a certain number of months with a provision that the employer may discharge the labourer at any time, and without notice, upon paying him the amount due under the agreement, is within sec. 3 of the *Masters and Servants Act* 1861.

Special leave to appeal from the Supreme Court of Queensland : *Colonial Sugar Refining Co. Ltd. v. Bennett*, 1911 St. R. Qd., 191, refused.



H. C. OF A. APPLICATION for special leave to appeal.

1911.

BENNETT  
v.  
COLONIAL  
SUGAR  
REFINING  
CO. LTD.

At the Court of Petty Sessions at Childers in Queensland a complaint was heard on 4th July 1911 whereby the Colonial Sugar Refining Co. Ltd., under sec. 3 of the *Master and Servants Act* 1861, charged that James Bennett, on 27th June 1911, being in the service of the company as a labourer under an agreement in writing to serve the company for the period therein mentioned, did, before the term of the agreement had expired, unlawfully and without reasonable cause, refuse and neglect to fulfil the same.

The agreement in question entered into between the company and Bennett contained the following provisions (*inter alia*):—

“1. This contract is under the *Master and Servants Act* 1861 (25 Vict. No. 11), in the State of Queensland, and all proceedings hereunder shall be used and prosecuted in the Courts of that State only, and this contract may be pleaded in bar to any action, suit, or other proceeding commenced in any other Court.

“2. The labourer shall work at Childers Mill sixty hours weekly by day or by night for a period of seven months from the date of arrival at the mill, unless such period shall be sooner determined by the company under any of the provisions herein-after contained.”

“8. The company may at any time, without notice, discharge the labourer upon paying to him the amount due . . . .”

For the purposes of this report it is not necessary to set out the other facts.

After hearing the evidence the Police Magistrate dismissed the complaint for the following reasons:—(1) The agreement was not under the *Masters and Servants Act* 1861, as the master could determine it at will under clause 8, and therefore the agreement is indefinite as to period; (2) as the defendant could give a week's notice under it, there was in law no agreement; (3) the defendant had a reasonable cause for refusing to fulfil his agreement.

The Police Magistrate having stated a special case under sec. 226 of the *Justices Act* 1886, the Full Court held that the agreement was within the *Masters and Servants Act* 1861 for the period of service was definite and the company was a “master”



within the definition in the Act. They also held that as the magistrate had not determined whether the agreement had been actually broken by Bennett, and, if so, in what respect, he was not in a position to determine whether Bennett had reasonable cause for refusing to fulfil the agreement. The Court therefore by a majority remitted the case to the magistrate with directions to reconsider and determine it according to law: *Colonial Sugar Refining Co. Ltd. v. Bennett* (1).

H. C. OF A.  
1911.  
—  
BENNETT  
v.  
COLONIAL  
SUGAR  
REFINING  
CO. LTD.  
—

Application was now made for special leave to appeal to the High Court from this decision.

*Ryan*, for the appellant.

GRIFFITH C.J. delivered the decision of the Court. We agree with the decision of the Supreme Court so far as regards the validity of the agreement—that the facts that the agreement was made by a joint-stock company and was terminable at the will of the company do not take it out of the provisions of the *Masters and Servants Act 1861*.

The other point sought to be raised, whether the magistrate's finding that the defendant had reasonable cause for refusing to fulfil his agreement should stand, depends upon the particular facts and the history of the proceeding. Without expressing any opinion as to the correctness of the opinions of the Judges of the Supreme Court it is only necessary to say that the question raised is not one of sufficient importance to justify the granting of special leave to appeal.

*Special leave to appeal refused.*

Solicitor, *W. R. Scott* for *N. Foster*, Childers.

B. L.

(1) 1911 St.R. (Qd.), 191.