[HIGH COURT OF AUSTRALIA.]

BURT . . . . . APPELLANT;

AND

THE COMMISSIONER OF TAXATION . RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF WESTERN AUSTRALIA.

H. C. OF A. 1912.

PERTH, *Oct.* 29, 30; *Nov.* 4.

Griffith C.J., Barton and Higgins JJ.

Income tax — Pastoral Tenant from the Crown — Owner — Deductions — Business premises—Improvements—Land and Income Tax Assessment Act 1907 (*W.A.*) (*No.* 15 *of* 1907), *secs.* 2, 29, 30 (1), (7), (9), 31 (8)—*Land Act* 1898 (*W.A.*) (62 *Vict. No.* 37).

Sec. 30 (7) of the *Land and Income Tax Assessment Act* 1907 provides :— "Where any taxpayer occupies and actually uses for the sole purposes of his business any business premises or any portion thereof of which he is the owner, he shall be entitled, in any return of income derived from such business, to claim as an outgoing a sum computed at the rate of four pounds per centum per annum on the actual value of his interest in such business premises or portion thereof."

By sec. 2 the term "Owner" as applied to any estate or interest in land includes "every person . . . entitled to land for any leasehold estate or interest granted under the *Land Act* 1898 . . . with or without the right to acquire the freehold."

By sec. 30 (9) the word "business" is defined as including "any profession, trade, employment, or vocation."

By sec. 31 (8) it is expressly provided that no deduction shall be made in respect of the value of any dwelling-house or domestic premises.

Held, that a pastoral tenant from the Crown in Western Australia is the "owner" of the premises within the meaning of sec. 30 (7), and is entitled to the privileges of an owner.

H. C. OF A. 1912.

BURT v. COMMISSIONER OF TAXATION.

Held, also, that the land of which he is such tenant, being occupied and used solely for pastoral and agricultural purposes, is "business premises" within the meaning of sec. 30 (7), and that he is entitled to the deduction of 4 per cent. on the value of the land and of all improvements erected thereon by him for the purpose of carrying on his business of pastoralist and agriculturalist, but not on the value of buildings used solely as dwelling-houses by himself or his employés.

Judgment of Supreme Court of Western Australia: *Burt* v. *Commissioner of Taxation*, 14 W.A.L.R., 40, varied.

APPEAL, by special leave, from the Supreme Court of Western Australia.

The appellant, Septimus Burt, was during the year 1910 the holder under pastoral lease from the Crown of certain leasehold lands situated in Western Australia. In furnishing his return for income tax he claimed, and was allowed, as a deduction the amount of the rent paid by him to the Crown.

He also claimed that the land, buildings, sheds, windmills, bores, &c., were business premises within the meaning of the Act, and that he was the owner as laid down by the definition in sec. 2, and he sought to obtain the deduction of 4 per cent. on the value of the premises as allowed to owners by sec. 30 (7). The Commissioner refused to allow this deduction, and the matter came on for hearing before a magistrate sitting as a Court of Review under the provisions of the *Land and Income Tax Assessment Act* 1907. The magistrate held that the lands, &c., were not business premises within the meaning of the Act, but that the appellant was the owner. The magistrate stated a case for the opinion of the Full Court, submitting the following questions:—

1. Whether on the facts admitted, the leasehold lands used and occupied by the appellant during 1910 solely for farming and pastoral purposes or any (and what) portion thereof are business premises within the meaning of sec. 30 (7) of the *Land and Income Tax Assessment Act* 1907 ?

2. Whether on the facts admitted, the shearing sheds (with the land occupied thereby) wherein during the year 1910 sheep that had been depastured on the aforesaid leasehold lands were shorn are such business premises as aforesaid ?

3. Whether on the facts admitted, the windmills, bores and

fences (with the land occupied thereby) used by the appellant solely for pastoral and farming purposes and the huts and other buildings used solely as residences for the manager and other employés are business premises within the meaning of sec. 30 (7) of the said Act ?

4. Whether on the facts admitted, the appellant is the "owner" within the meaning of the said sec. 30 (7) of the aforesaid leasehold lands ?

The Full Court answered all the questions in the negative, thus varying the finding of the magistrate: *Burt* v. *Commissioner of Taxation* (1).

This appeal was now brought, by special leave, from the decision of the Full Court.

Draper K.C. and *F. Burt*, for the appellant. The term "owner" is defined in sec. 2. It also occurs in secs. 9, 10, 11, 12, 13 and 15, but these sections only relate to land tax. Sec. 30 is the only section in which it appears which relates to income tax; and the object of this section is the same as that of sec. 28 of the New South Wales Act, which came before this Court in the case of *Adams* v. *Commissioners of Taxation* (2). On the expiration of his lease a pastoral tenant is entitled to the value of his improvements if the Government does not renew: Sec. 146 of *Land Act* 1898 (W.A.) (62 Vict. No. 37) as amended by the Act of 1902 (W.A.) (1 & 2 Edw. VII. No. 20). The definition of "owner" as laid down in sec. 2, should apply unless there is something in the context which shows otherwise. The object of the taxation is this: once having ascertained the class of persons upon whom that taxation is to be imposed, then the Act should be construed so as to impose that taxation upon all persons on whom it is imposed equally.

The meaning of the word "business" is discussed by *Jessel* M.R. in *Smith* v. *Anderson* (3). The Act must apply to every business; a line cannot be drawn between the man carrying on a small garden and the man who owns a larger tract.

This Act is founded on the New South Wales Act, as can be seen by the frequent references in it to that Act. Sec. 28 of the New South Wales Act of 1895 (59 Vict. No. 15), in defining

(1) 14 W.A.L.R., 40. (2) 10 C.L.R., 180. (3) 15 Ch. D., 247, at p. 258.

H. C. OF A. 1912.

BURT v. COMMISSIONER OF TAXATION.

"owner," expressly excludes land-owners, and this part of the definition has been left out of our definition.

When speaking of dwelling-houses, the dwelling-house of the owner alone is meant, and it is not meant to include the buildings for the accommodation of the workmen, as all these buildings are improvements and are necessary for carrying on the business of a pastoralist, and a 4 per cent. deduction should be allowed in respect of them. The decision of the Supreme Court does not impose the tax equally on those liable to pay it, and it should do so: *Coltness Iron Co.* v. *Black* (1). A liberal construction should be given by the Court to an exception in a taxing Act: *Armytage* v. *Wilkinson* (2); *Warrington* v. *Furbor* (3).

Dr. Stow, Crown Solicitor for Western Australia, for the respondent. The definition of "owner" has been put as if the land tax had been paid and this were a compensation, whereas the appellant has been allowed for land tax under sec. 17.

This is an equivalent for rent, and the allowance for rent only extends to rent for such premises as the taxpayer had to occupy to carry on his business, and for such business purpose only. Station property cannot be referred to as business premises.

The definition of "business premises" in our Act does not come from the New South Wales Act, as contended by the appellant, but comes from the New Zealand *Land and Income Tax Act* (95 of 1908), sec. 89: *Commissioner of Taxes* v. *Nightcaps Coal Company* (4). "Domestic premises" points to some structure in which some one lives, and not in the wide sense to land generally: *Metropolitan Water Board* v. *Paine* (5). This case also defines the word "premises," although under a different Act. These words are not used in any technical sense, and I have no technical meaning to displace: *Beacon Life and Fire Assurance Company* v. *Gibb* (6). The word "business premises" is used in the judgment in *Commissioner of Taxes* v. *Kauri Timber Co.* (7), and this case appears to show the meaning in which it is used in this Act.

(1) 6 App. Cas., 315.
(2) 3 App. Cas., 355.
(3) 8 East, 242.
(4) 29 N.Z.L.R., 885.
(5) (1907) 1 K.B., 285.
(6) 1 Moo. P.C. N.S., 73, at p. 97.
(7) 24 N.Z.L.R., 18.

The judgment of the Court below was right, and the claim now made is an attempt to extend this exemption beyond what was intended by the legislature.

Draper K.C. in reply.

Cur. adv. vult.

November 4.

GRIFFITH C.J. This case raises two questions—Whether a pastoral tenant from the Crown in Western Australia, who is, under the *Land and Income Tax Assessment Act* 1907, subject to the liabilities of an "owner" for the purposes of land tax, is entitled to the privileges of an "owner" for the purpose of income tax, and, if so, what is the extent of those privileges? The appellant, according to the facts found, was, during the year in question, the holder under pastoral leases from the Crown of certain land in this State, and during that period used the land solely for pastoral and farming purposes. By sec. 2 of the *Land and Income Tax Assessment Act* 1907 the term "owner," as applied to any estate or interest in land, includes "every person who is, jointly or severally, whether at law or in equity entitled to land for any estate of freehold in possession" and "every person entitled to land for any leasehold estate or interest granted under the *Land Act* 1898 . . . with or without the right to acquire the freehold." In the present case, as I understand, the appellant is not entitled to acquire the freehold. By the same Act land tax is imposed on the unimproved value of land, and by the same sec. 2 the "unimproved value" in respect of land held for a leasehold estate under the *Land Act* 1898 means a sum equal to twenty times the difference between the rent actually paid and what may be called the rack rent at which it might be let to a tenant if that amount has been ascertained; if not, as in the present case, a sum equal to twenty times the amount of the annual rent reserved by the lease. The provisions as to income tax are included in the same Act. Sec. 29 lays down general rules for assessing the taxable amount on which income tax is payable. Sec. 30 provides for certain deductions from that amount; paragraph 1 is: "Losses, outgoings, and expenses actually incurred in Western Australia by the taxpayer in the

H. C. of A. 1912.

BURT v. COMMISSIONER OF TAXATION.

Griffith C.J.

production of his income . . . " Under that rule it is, we are told, accepted in Western Australia that rent paid by the taxpayer in respect of land used by him for the purposes of his business is to be treated as an outgoing, and in the present case the rent payable by the appellant to the Crown has been deducted accordingly. Paragraph 7, on which the difficulty arises, is as follows:—" Where any taxpayer occupies and actually uses for the sole purposes of his business any business premises or any portion thereof of which he is the owner, he shall be entitled, in any return of income derived from such business, to claim as an outgoing a sum computed at the rate of four pounds per centum per annum on the actual value of his interest in such business premises or portion thereof." Now, the appellant, as I have shown, is an owner within the definition of sec. 2 and, *primâ facie*, he comes within the words of the provision I have just read, of which he claims the benefit. The Supreme Court thought that this would, in effect, be allowing him a deduction in respect of rent twice over, and so, at first sight, it would appear. They thought that that could not have been intended, as it would lead to a conclusion inconsistent with the whole scheme of the Act. It does seem strange a man should receive a deduction practically in respect of the same land or the same thing twice over. The object of the provision is pointed out by *McMillan* J. in these words:—" The whole object of the section is to put one who is the owner of business premises in as good a position as one who pays rent for premises which belong to another," with which I respectfully agree. He goes on to say:—" The appellant who is a leaseholder pays rent under his lease to the Crown, and he has been allowed deductions for rent paid. Having received the relief to which he is entitled as a leaseholder, he now claims a further deduction on the ground that he is not a leaseholder, but an owner." The Supreme Court therefore thought that, having regard to the context, the word " owner " could not have been used in this provision in the artificial sense given to it in sec. 2, but must be taken in its natural sense, and that the appellant did not come within the provision. If the consequences which the learned Judges of the Supreme Court thought must follow really followed, I should be disposed to agree with them, but on

further consideration I have come to the conclusion that those consequences do not follow. The deduction allowed—4 per cent. —is not, as seems to have been assumed, and as I myself thought for some time, to be made in respect of the value of the business premises regarded as freehold, but only in respect of the actual value of the taxpayer's interest in those premises. In estimating that value the burden of the rent must be taken into consideration, so that the deduction allowed is only in respect of the value of the land, less that burden, that is, in effect, on the total value, after deducting the notional capitalized value of the rent. In the case of freehold the taxpayer is entitled to a deduction in respect of the whole value, including both unimproved value and the value of the improvements, but in the case of a Crown tenant the deduction is only on the second element of value, so that he gets no deduction in respect of that part of the value which is equal to the capitalized value of the rent, which has been already deducted. On this construction the position of a freeholder and of a pastoral tenant are equalized. I think, therefore, that the supposed inconsistency and absurdity do not arise, and that the word "owner" in this provision of sec. 30 must be construed according to the definition given in sec. 2. It follows that the appellant is the owner within the meaning of the provision, and is entitled to the privileges of an owner.

The next question is whether pastoral lands of this sort—that is, land used solely for pastoral and agricultural purposes—are business premises within the meaning of the provision. The ordinary meaning of the term "business premises" is premises in which business is carried on. It may include land, for instance, in the case of a yard or stable used in connection with a business; and in ordinary use the term is probably confined to premises of that sort. The term "business," however, is defined in the Act and is not limited to businesses as carried on in towns or streets. By sec. 30, paragraph 9, it is to be taken to include any "profession, trade, employment or vocation." I think it is intended to include all money-making enterprises or occupations of any kind. A good definition of "business premises" may be taken from the New Zealand case which has been cited to us, where one learned Judge said it meant land or buildings or land and build-

H. C. OF A. 1912.

BURT v. COMMISSIONER OF TAXATION.

Griffith C.J.

ings used for the actual purposes of a business. There is, therefore, no fixed limit of area to begin with. To give some illustrations: In the case of a laundry, the drying ground is clearly part of the business premises; in the case of a rope walk, which may be of very great length, the whole extent of the land would be clearly business premises; so in the case of fruit growing or fruit drying, as at Mildura. In the case of a wool-scourer, the land on which he has to extend his fleeces is certainly part of the business premises. Again, in the case of a stud farm, I do not see how on a small stud farm there can be any doubt about the whole of the land used for the purpose of breeding the stock being part of the business premises. Then take the case of sheep growing, where the sheep are fed on artificial grasses and where intense culture is practised, and ten sheep, or perhaps more, are carried to the acre, surely that land would be part of the business premises, and, if so, where can we draw the line? Why does not the same principle apply if ten acres are needed for one sheep? I am quite unable to draw any line. The Act does not draw any distinction according to the scale of the business; it may be carried on on a small scale on a small area of land, or on a large scale. For these reasons I have come to the conclusion, not without some doubt, for my opinion fluctuated a good deal during the argument, that the land used by this appellant is "business premises" within the meaning of the Act.

There are two other subsidiary questions: First, whether the shearing sheds on the land are part of the "business premises." It follows from what I have already said, that they are.

The other question is whether the other improvements on the land, windmills, bores, fences, and huts and other buildings used solely as residences for the manager and employés are business premises within the meaning of sec. 30 (7) of the Act. So far as the windmills, bores and fences are concerned, what I have said disposes of the matter. As to the huts and other buildings, the case is governed by an express provision in sec. 31 of the Act, paragraph 8, which provides, among other things, that no deduction shall be allowed in respect of "the . . . value . . . of any dwelling-house or domestic premises, except such part thereof as may be occupied for the said purposes," that

is, for the purposes of the business. It cannot be contended that a dwelling-house, huts and buildings used solely as residences are not occupied for domestic purposes, except such part thereof as may be actually occupied for business purposes; that is to say, if you find a building, part of which is used as a dwelling-house and part of which is used, for instance, as a store, the part used as a store may be treated as used for "business premises," but the part used as a dwelling-house cannot. In the present case the huts and buildings in respect of which the exemption is claimed are used solely as domestic premises, and are therefore not entitled to the exemption.

The result is that the opinion of the Supreme Court must be varied in the manner I have indicated.

BARTON J. read the following judgment:—Sec. 30 of the *Land and Income Tax Assessment Act* 1907 (No. 15 of 1907) prescribes that every taxpayer shall be entitled to certain deductions from the sum on which income tax would otherwise be payable (See, among others, secs. 29 and 19). One of the deductions is expressed by sub-sec. 7 in these terms:—"Where any taxpayer occupies and actually uses for the sole purposes of his business any business premises or any portion thereof of which he is the owner, he shall be entitled, in any return of income derived from such business, to claim as an outgoing a sum computed at the rate of four pounds per centum per annum on the actual value of his interest in such business premises or portion thereof." Sub-sec. 1 allows the deduction of ". . . outgoings . . . actually incurred in Western Australia by the taxpayer in the production of his income . . ." So that a 4 per cent. deduction per annum on the value of his interest in "business premises" is to be allowed the person classed as "owner" just as if it were an "outgoing actually incurred in the production of his income."

There are four questions to be formally answered, all arising in the construction of sec. 30 (7), but they resolve themselves into two. The first is whether on the facts admitted a pastoral lessee is an "owner" within the meaning of that sub-section. If he is not, the appeal fails altogether. The second, which arises only if

H. C. OF A. 1912.

BURT v. COMMISSIONER OF TAXATION.

Barton J.

the appellant is the "owner," is whether on the facts admitted, the leasehold lands, the shearing sheds, the windmills, bores, fencing and huts, &c., mentioned in the case stated, or any portion of them, are "business premises" within the meaning of the sub-section. If we are of opinion that the leasehold lands are such business premises, their accessories, that is to say shearing sheds, windmills, bores and fences, but not the "huts and other buildings" in which employés live, must, I think, be included in the valuation of the owner's interest therein, upon which he may claim 4 per cent. per annum as an outgoing to be deducted. If the lands are not "business premises," the same question arises as to all that is mentioned in questions 2 and 3, except that the "huts and other buildings" included in question 3 are subject to different considerations, and I shall deal with these separately.

First, then, it is contended by the respondent Commissioner that the appellant, who is a lessee from the Crown of lands for pastoral purposes, is not "the owner" meant by sub-sec. 7, but that the words are there used in their ordinary sense. By sec. 2, however, "owner," unless the context otherwise requires, includes, when applied to any estate or interest in land, not only the owner as that term is usually understood, but also the holders of freehold estates less than the fee simple, married women holding separate estates otherwise than through trustees, the makers of settlements and other such instruments not made *bonâ fide*, persons entitled to the receipt of rents and profits, &c., not being entitled to the beneficial legal estate in fee, and together with all these, "every person who is, jointly or severally, whether at law or in equity . . . (*b*) entitled to land for any leasehold estate or interest granted under the *Land Act* 1898, or any amendment thereof, or under any Land Regulations thereby repealed, with or without the right to acquire the freehold." Does the context require that "owner" in sub-sec. 7 should be read not to include such a leaseholder? We were referred to numerous sections of the Act by the appellant to show that the word is, in all the material context, used in the same sense; but counsel for the Commissioner did not point out, nor have I been able to discover in the Act, any place apart from the debatable sub-section in

which the word is used in a sense which is not within the area of the definition. So far, then, as the word "owner" is used elsewhere in the Statute the context does not limit the *primâ facie* extension of the word as used in sub-sec. 7. Certainly it does not "otherwise require." There are other considerations which tend to show that the sub-section intends the privilege for the Crown lessee as much as for the absolute freeholder. One of them is that, if "owner" is to be understood in a sense other than that of sec. 2, the exclusion must extend not merely to the Crown lessee but also to other classes of holders mentioned in the glossary of that section, such as, tenants for life, and many persons who, though not holding the fee, are entitled to the receipt of rents and profits. I can find no warrant in reason, any more than in the context, for the supposition that the legislature intended so to limit the privilege. As my learned brother *Higgins* pointed out during the argument, the ordinary lessee has not to bear the land tax, not being an owner either by force of the definition or apart from it. But the Crown lessee, being expressly included in the definition, has that burden imposed on him. Is it not reasonable then to conclude that the legislature intended him, and not the absolute owner alone, to have the privilege as well as the burden?

It was urged that the appellant is not an owner within sub-sec. 7, because he is entitled to the benefit of sec. 17. The argument did not impress me. Any benefit of sec. 17 only belongs to him in common with any other person who derives profit directly either from the ownership, or the use or cultivation, of any parcel of land whether he be an "owner" as defined or a mere tenant of another person, even at will. The section is merely for the prevention of double taxation of the same subject matter, and it can scarcely be urged that such prevention of that which would be an obvious injustice is a privilege which, if the glossary meaning of "owner" be adopted, will be repeated in favour of the Crown lessee by the terms of sub-sec. 7. If that sub-section doubles the advantage, which I fail to see, the owner, in the ordinary sense of the term, would still be entitled to the boon, and there is no reason why we should conclude that the advantage, even if it were an additional one, is made his

H. C. OF A. 1912.

BURT v. COMMISSIONER OF TAXATION.

Barton J.

privilege to the exclusion of other holders who are within the interpretation.

But it was argued, and the learned Judges of the Supreme Court are of opinion, that the appellant's contention on this point involves an absurd result, because it gives the Crown lessee who has been allowed to deduct his rent as an outgoing under sub-sec. 1, the benefit of a further deduction of the 4 per cent. under sub-sec. 7, which, it is said, is merely designed to put an absolute owner of business premises in as good a position as a person who pays rent to another for his premises. This suggestion assumes that the Crown lessee is entitled to the deduction of his rent as an outgoing under sub-sec. 1. That question is not before us for decision, and I do not think I ought to express an opinion on it until it is specifically raised. But assuming the appellant's right to that deduction, it does not strike me as absurd that he should be entitled also to a deduction under sub-sec. 7. Further, as I think the meaning of the word "owner" as used is clear, whatever difficulties the sub-section may otherwise present, it is not open to me to reject that meaning on the ground of any absurdity in its operation, real or assumed.

With great respect, I think the learned Judges of the Supreme Court have not fully appreciated the force of the concluding words of sub-sec. 7. The deduction in favour of the "owner" is a sum computed at 4 per cent. per annum "on the actual value of his interest in such business premises or portion thereof." The words "his interest" seem to include interests less than the fee, while not excluding the fee. Had it been intended to confine the exception to holders in fee simple, those words would have been wholly unnecessary. It would have been sufficient to say that the deduction must be computed "on the actual value of such business premises or portion thereof." On the other hand, if the word "owner" was used in the sense given it by sec. 2 it was, of course, necessary to show, and the words do show, that the valuation is to be according to the *quantum* of the taxpayer's interest—*e.g.*, in cases within paragraph (*b*) of that section, a "leasehold estate *or interest* granted under the *Land Act*."

I do not think the meaning of the word "owner" is affected by the fact that the Act deals with income tax as well as land

tax, because the interpretations are expressly made applicable to "this Act," that is, the whole Act. It is to be taken, therefore, that the word "owner" is meant to be read in the same sense, whether the section in which it occurs deals with the one tax or the other, that is, unless the context actually requires another sense. It would have been easy enough for the legislature to use some other expression—such, for instance, as "holder in fee simple"—if it wished to avoid the application of sec. 2. If such a desire had existed, to use the term "owner" at all would have been a blunder, and we are to impute care and deliberation to the legislature. We cannot assume a mistake in an Act of Parliament.

It seems tolerably clear that the word must be read in the sense directed by the interpretation section.

The real difficulty is in the second point, and arises from the earlier words, namely, "Where any taxpayer occupies and actually uses for the sole purposes of his business any business premises or any portion thereof." The appellant occupies and actually uses his leasehold lands solely for pastoral and agricultural purposes; that is, he is in respect of those lands a grazier and farmer. Are grazing and farming a business within sub-sec. 7, so that the appellant is occupying and using his lands for the sole purpose of that business? Farming and grazing are, if not a profession or trade, certainly an employment and a vocation, and so they must be taken to be included in the word "business" as used in sec. 30 (9). In the New South Wales Act of 1895, of which the framers of this Statute have largely made use, "business" is, in sec. 28, defined *totidem verbis* with the definition in sec. 30 (9) down to the word "vocation." But the New South Wales Act adds these words: "but shall not include ownership, use, or cultivation of the land." The omission of this exception by the Western Australian Act is significant, because it is clearly deliberate. Its result is to leave the word "business" effective to include occupations for or in which land is owned, used, or cultivated, and the appellant's occupation in respect of this land is, for this further reason, a business.

But that does not suffice. For the appellant to be granted the deduction he claims, lands leased from the Crown must not only

H. C. OF A. 1912.

BURT v. COMMISSIONER OF TAXATION.

Barton J.

be used for the purposes of his "business" of grazier and farmer, and for those purposes only, but they must be "business premises" within the meaning of the sub-section. I find it difficult to decide whether they are or not.

The several deductions allowed by sec. 30 are exceptions to the general rule of taxation prescribed by the Act. Where the construction of such exceptions is seriously in doubt, the interpretation should favour those whose claims are based upon the exceptions. For that position there is the highest authority, if authority be necessary. In *Armytage* v. *Wilkinson* (1), the Judicial Committee express their dissent from the principle that in a taxing Act provisions establishing an exception to the general rule of taxation are to be construed strictly against those who invoke their benefit. They point out that such a principle "is opposed to the rule expressed by Lord *Ellenborough* in *Warrington* v. *Furbor* (2), and followed and confirmed in *Hobson* v. *Neale* (3). Lord *Ellenborough's* words are (4):—'I think that when the subject is to be charged with a duty, the cases in which it is to attach ought to be fairly marked out; and we should give a liberal construction to words of exception, confining the operation of the duty.' It is only, however, in the event of there being a real difficulty in ascertaining the meaning of a particular enactment that the question of strictness or of liberality of construction need arise."

I proceed to apply this rule, bearing in mind the qualification stated, to the construction of these words "business premises," and, when I have explained the difficulty, I shall find that the rule impels me to give the appellant "the benefit of the doubt," as Sir John *Romilly* M.R. put it in *Hobson* v. *Neale* (5).

The word "premises," apart from its use in legal terminology to denote something which has gone before, is no doubt very often applied to buildings. But, whatever may have been the fact half a century ago, it is in these days constantly used to express something more than a mere building—for instance, a place consisting of a building and the land used in conjunction

(1) 3 A.C., 355, at p. 369.
(2) 8 East, 242.
(3) 17 Beav., 178.
(4) 8 East, 242, at p. 245.
(5) 17 Beav., 178, at p. 185.

with it. Whatever land is used in carrying on a business may well be termed business premises, at any rate if it is used with structures appropriate to the conduct of the vocation. Take the case of a laundry, with its drying ground; a dairy farm, with grass land for the milking cows, where the business cannot be carried on altogether in a structure or structures, is it not reasonable to include in the concept of the "business premises" all land necessarily or properly used for its complete exercise? If that is so, dairy farms and wheat farms, as well as factories, become business premises. Then, why not grazing farms with their woolsheds, shearing sheds, windmills and bores for watering the sheep, since without these aids the business of a grazier or sheep farmer cannot be carried on? How is it possible then to exclude the paddocks where the sheep depasture that are to breed, to be shorn, to be sent to market? As the grazier cannot carry on his business without sheep, so neither can he carry it on without a great deal of grass. Without these, his sheds and his artesian bores go for nothing so far as "business" is concerned.

On the other hand, while it is not foreign to common parlance to speak of such places as a laundry or a factory, as the owner's business premises, it certainly seems a stretching of terms so to designate a large farm or a sheep station; not because it is really incorrect to describe them so—for it is not incorrect if they are such in fact,—but because such a description is unusual. But a description is not incorrect because it is unusual. It is so true that business premises are in numberless instances not confined to buildings, though they may seldom if ever be confined to land, that on reflection it is hard to withhold the designation, if claimed, in many cases to which one has not actually heard it applied. For instance, a poultry run would surely be "business premises." But who ever heard one called so?

Here then is a serious difficulty in construing this exception. What is the solution?

With much doubt, I have come to the conclusion that the words "business premises" are used in a sense larger than that of an office or a warehouse, and with the view of including, not only all that is commonly spoken of as business premises, but all that is in reason within the term as a concept; that is, with the view

H. C. OF A. 1912.

BURT v. COMMISSIONER OF TAXATION.

Barton J.

of including land as well as structures, where both are conjointly used in the ordinary conduct of business. An additional reason that I have for coming to this conclusion is that once the term is established as applicable, as I think it is, to some places, such, for instance, as dairy farms, it is impossible as successive gradations or extensions are reached, to draw a line of definition or demarcation which will prevent such a place as a sheep farm from being included. Besides, the class once ascertained, it should not be imputed to the legislature that it withheld equal treatment from one of two specimens of the same class, merely because it operates on a larger scale than the other. It has not shown any such intention, nor has it indicated any point at which it is to begin to take effect. I apply the rule laid down by Lord *Ellenborough*, by giving "a liberal construction to words of exception, confining the operation of the duty," because I find—using the words of the Privy Council quoted above—"a real difficulty in ascertaining the meaning" of this provision.

I think, then, that all the leasehold lands used and occupied by the appellant solely for farming and pastoral purposes, in conjunction with the shearing sheds, windmills, bores and fences on such lands, are "business premises" within the meaning of sec. 30, sub-sec. 7.

It remains to consider the "huts and other buildings used solely as residences for the manager and other employés."

By sec. 31 "no deduction shall . . . be made in respect of . . . (8) the rent or *value* of . . . any dwelling-house or domestic premises, except such part thereof as may be occupied for the said purposes"—*i.e.*, the purposes of the profession, trade, employment or vocation.

This provision forbids the making of any deduction under sec. 30 (7) in respect of the value of the appellant's interest in these huts and other buildings if and so far as they are occupied as dwelling-houses or domestic premises—*i.e.*, as residences. It seems to me not to matter that they are used as the dwellings of employés. It is the nature of the use or occupation, and not the reason of it or the person who occupies, that is the criterion. The Act draws a sharp contrast between business premises and domestic premises, and forbids deduction on account of the latter,

unless some part of them be occupied for the purposes of the business. Where no part of the particular dwelling is so occupied, the whole of it is under the ban of sec. 31 (8), and cannot be made the subject of any deduction.

The huts and other buildings used as residences are therefore not business premises within the meaning of sec. 30 (7)—that is to say, they are not premises on the actual interest of the owner whereof a percentage deduction from the taxable amount may be computed.

I think the order appealed from should be varied, and the questions answered in the sense of the reasons I have given.

HIGGINS J. read the following judgment:—The questions in this case arise as to the deductions to be allowed from the taxable amount of income under the *Land and Income Tax Assessment Act* 1907; and they turn finally on the construction of sec. 30 (7). Under the previous sub-sections, the taxpayer is allowed to deduct (*inter alia*) losses, outgoings and expenses incurred in the production of the income. These words are treated as including any rent paid for premises used for the purpose of producing the income. Then come the words in debate:—"(7) Where any taxpayer occupies and actually uses for the sole purposes of his business any business premises or any portion thereof of which he is the owner, he shall be entitled, in any return of income derived from such business, to claim as an outgoing a sum computed at the rate of four pounds per centum per annum on the actual value of his interest in such business premises or portion thereof." The words are easily applied in the case of a manufacturer who owns his factory; but what do they mean in the case of a pastoralist who carries on his business on a wide area of land? What are to be regarded as his "business premises"? There is certainly no indication in the rest of the Act of any intention to favour the manufacturer as against the pastoralist; all kinds of pursuits of gain are treated as "business"; but what "business premises" has the pastoralist, unless it be the land on which his sheep or cattle range and depasture? It is admitted on all sides that the words are not technical, that they are to be interpreted as language of ordinary speech. Tak-

H. C. OF A. 1912.

BURT v. COMMISSIONER OF TAXATION.

Higgins J.

ing the words by themselves, there would seem to be three conditions to be fulfilled if there is to be a deduction—(1) the premises must be occupied by the taxpayer; (2) they must be actually used for the sole purpose of the business; and (3) they must be "business premises." It is hard to see at first sight how the words "business premises" involve any definite additional condition, if condition (2) be fulfilled—if the premises are actually used for the sole purposes of the business. In my opinion, the key to unlock the meaning of sec. 30 (7) is to be found in the corresponding negative provision of sec. 31 (8), which prescribes that there shall be no deduction made in respect of "the rent or *value* of . . . any premises not occupied for the purposes of the" business, "*or of any dwelling-house or domestic premises except such part thereof as may be occupied for the said purposes.*" "Domestic premises" are in contradistinction to "business premises." Under this section, if the premises are actually occupied for the purposes of the business, the deduction of 4 per cent. on the value is to be allowed even as regards domestic premises, but only in respect of such part as is occupied for the purposes of the business. It is to be observed that the words of exception in sec. 31 (8) are not "*unless* they (the domestic premises) be occupied for the said purposes (of the business)." If such words were used, it might fairly be said that men's huts, &c., though "domestic premises," are to be treated as within the exception. From the point of view of the taxpayer, the huts are occupied for the purposes of the business; the right to reside therein is taken into account in fixing the wages. But the words are "domestic premises except such *part thereof* as may be occupied for the said purposes" (of the business). The result is that the words "business premises" in sec. 30 (7) include premises which are wholly devoted to the business, and such part even of a residence as is devoted to the business; but there is the further condition that they must be actually occupied and used for such purposes. For instance, if a warehouse, or a factory, fall into disuse, it is not the subject of the deduction; and similarly with a block of pastoral land, or a shearing shed. If the pastoralist resides on his station, his residence, with, probably, the residential curtilage, would have to be excluded from the computation of the

outgoing. Sec. 31 (9) also favours the view that the land used by the pastoralist or agriculturist for grazing or crops is to be treated as his business premises. For, surely, in forbidding a deduction for any "improvement of *premises* occupied" for the business, it is intended to forbid a deduction for any improvement of agricultural or pastoral *land*. I see no sufficient reason why the land, which is actually used by the pastoralist for the depasturing of his beasts, and the yards, sheds and other places used for his business—excluding domestic premises of himself or his employés, except so far as they are occupied for purposes of the business—should not be treated as his "business premises." Why should not the land be his "business premises"? Where buildings only are meant, the section uses the word "buildings" (sec. 30, sub-sec. 5); and, if buildings only were to be included under "premises," there would have been no difficulty in using the words "business buildings."

Assuming, however, that the words are equally open to the contrary interpretation, there are certain rules of construction which ought to turn the balance in favour of the interpretation which I have adopted. One is that a liberal construction ought to be given to words of exception confining the operation of the duty (*Armytage* v. *Wilkinson* (1)). Another is that that construction should be avoided which involves injustice—in this case to the pastoralist; and that that construction should be adopted which produces the greatest harmony and the least inconsistency as between the different classes of taxpayers.

The result is that, in my opinion, the owner of pastoral land is entitled to the deduction of 4 per cent. on the value of the land, including the value of shearing sheds, windmills, bores and fences, but not including the "huts and other buildings used solely as residences for the manager and other employés."

The sub-section in question is substantially the same as that in a New Zealand Act (*The Land and Income Assessment Act* 1908); and we have been referred to two taxation cases, one bearing on a previous Act of 1900—*Commissioner of Taxes* v. *Kauri Timber Co.* (2),—and the other bearing on the Act of 1908 —*Commissioner of Taxes* v. *Nightcaps Coal Co.* (3). In the

(1) 3 App. Cas., 355. (2) 24 N.Z.L.R., 18. (3) 29 N.Z.L.R., 885.

H. C. OF A. 1912.

BURT v. COMMISSIONER OF TAXATION.

Higgins J.

former case, it was merely held, by a majority of the Court, that the taxpaying company did not "occupy and actually use for the sole purposes of its business" a whole forest, when it was merely cutting down some timber trees on its fringe. The company did not occupy the forest any more than a grantee of timber rights—one who has a licence to cut timber on Crown lands. The Court was careful to point out (1) that the question did not arise as to land used for agricultural or pastoral purposes, as in this case. In the latter case, the actual decision was merely that the term "business premises" did not include "colliery workings, fixed machinery and plant and buildings of every description"; and the Court declined to attempt any definition of the term.

But the question remains, is the appellant in this case the owner of the land? He is entitled to land for a "leasehold estate granted under the *Land Act* 1898"; and, under the definition of "owner" contained in sec. 2, he is the owner—"unless the context otherwise requires." This definition applies to the whole Act, both to the sections relating to income tax as well as to the sections relating to land tax. By sec. 17, the amount paid for land tax has to be allowed as an abatement from the income tax; and the word "ownership" is applied indifferently to land for the purposes of both taxes. I can find nothing in the context, which necessarily requires another meaning for "owner" in sec. 30 (7). As *McMillan* J. says in his judgment: "The whole object of the section is to put the owner of business premises in as good a position as one who pays rent for premises which belong to another." To the extent of the income from his leasehold, the Crown lessee is liable to income tax; and, if the object of the section is to be attained, he must be allowed to treat as an outgoing a percentage on the value of his leasehold as if it were rent for business premises belonging to another. The only difficulty arises from the fact that the Crown lessee has already been allowed to deduct from his receipts his actual rent paid to the Crown; and it is urged that it would be absurd to allow him to deduct the same rent twice. It is not the same rent; but even if it were, there is no absurdity. If a man were the owner of a fee simple held in socage, and had to pay annually a quit rent,

(1) 24 N.Z.L.R., 18, at p. 34.

the value of his interest would be the value of the full fee simple minus the capitalized burden of the annual payment. The land with the value so ascertained comes under the operation of sec. 30 (7); and, as the land is used as his business premises, he is to get a deduction of 4 per cent. on that value—not of the *land*, but of his "*interest*" in the land (sec. 30, sub-sec. 7). In estimating the value of his interest in the land, allowance has to be made for the fact that the reversion of the lease is in the Crown, and that rent has to be paid to the Crown.

It has been suggested that if the Crown lessee is to get the benefit of the allowance under sec. 30 (7), the actual rent was wrongly deducted. That point is not strictly for us to decide in this case; but, speaking for myself, I do not accept the suggestion. I see no inconsistency or anomaly.

According to my view, the appeal should be allowed, the judgment varied, and the questions answered in favour of the taxpayer as to all but the huts and other buildings used solely as residences for the manager and other employés.

Appeal allowed in part. Judgment appealed from varied by answering all the questions in the affirmative except as to huts and buildings used as residences for the manager and other employés, and as to these in the negative, and by ordering respondent to pay the costs of the appeal to the Full Court.

Respondent to pay costs of this appeal.

Solicitors, for the appellant, *Stone & Burt*, Perth.

Solicitor, for the respondent, *Dr. Stow*, Crown Solicitor for Western Australia.

N. McG.