

[HIGH COURT OF AUSTRALIA.]

KEOGH APPELLANT;

AND

THE DEPUTY FEDERAL COMMISSIONER
OF LAND TAX FOR NEW SOUTH
WALES } RESPONDENT.

H. C. OF A. *Land Tax—Assessment of unimproved value—Pastoral property—Land Tax*
1915. *Assessment Act 1910-1912 (No. 22 of 1910—No. 37 of 1912).*

SYDNEY,

*Feb. 8, 9, 10,
11, 12, 15, 16.
17; April 27;
May 7.*

Rich J.

*Aug. 24;
Sept. 3.*

On an appeal to the High Court from an assessment of the unimproved value of a pastoral property for the purposes of the *Land Tax Assessment Act 1910-1912*, the primary Judge upheld the assessment.

Held, that the primary Judge had acted on a right principle, and that the evidence supported his finding.

Fisher v. Deputy Federal Commissioner of Land Tax (N.S. W.), 20 C.L.R., 242, followed.

Decision of *Rich J.* affirmed.

Isaacs,
Gavan Duffy and
Powers JJ. APPEAL from *Rich J.*

William Monahan Keogh appealed to the High Court from assessments of the unimproved value of a certain pastoral property for the purpose of land tax as of 30th June of the years 1910, 1911, 1912 and 1913. The appeals were heard by *Rich J.*

Campbell K.C. and *Alec Thomson*, for the appellant.

Knox K.C. and *Pike*, for the respondent.

Cur. adv. vult.

RICH J. read the following judgment:—This is an appeal under the Federal *Land Tax Assessment Act 1910-1912* in respect of the assessment of the unimproved value of a station property known as “Warrana,” near Coonamble, New South Wales.

The appellant disputes the assessments for the years 1910-11, 1911-12, 1912-13, 1913-1914, on the ground that they are excessive. By consent the appeals were heard together. The figures for the different years do not call for separate treatment. I propose to deal with the assessment for 1910-11. The other years can be adjusted on the footing of my finding.

In 1910-11 the station had an area of about 87,237 acres, and was used for grazing purposes. It is not suggested that the land is not being put to its most profitable use. The appellant in his return stated the unimproved value for 1910 as £117,900 10s. The Commissioner's amended assessment is £158,212. From these figures the statutory deduction of £5,000 has to be made.

The appellant produced no accounts or station books or other documentary evidence in support of the various items discussed before me. The evidence consisted of the estimates and opinions of the appellant and experts called on both sides. The experts propounded rival theories for arriving at the added value given to the land by the improvements, and at one stage of the proceedings I was asked to state a special case so that the Full Court might define the proper method of ascertaining this value. I declined to do so, as I considered that no question of law emerged for consideration.

In this case, and in *Fisher v. Deputy Federal Commissioner of Land Tax (N.S.W.)* (1), I have taken into account the benefit which arises from improvements—the result of the work of man and the operations of nature—amongst others, ringing, picking up and burning off, and the improvement of the pasturage by grassing and other methods, and the consolidation of the land from the judicious running of stock. Some of these improvements are progressive: as to ringing, for example, none can state the exact period which must elapse before the full benefit of the work will accrue. The period will vary according to the nature of the land and of the timber, the locality of the land, and whether it is capable of being used as wheat or grazing land, and whether the improvement is maintained, *e.g.*, by suckering.

Each case presents different facts, and it is impossible to lay down a rule of universal application. In addition to the actual

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cost of these operations, I have made a large allowance for interest on the amount involved represented both by the land and the cost of the improvements over the period during which I am satisfied they could reasonably be constructed and become effective.

I do not propose to dissect the evidence in dealing with the claim for improvements structural or otherwise, as it will have no bearing on other cases. It will be sufficient, therefore, if I state the conclusion at which I have arrived after weighing the whole of the evidence.

On several questions of fact there has been much difference of opinion. In those cases I have adopted the evidence of the witnesses called for the Commissioner.

The evidence, in my opinion, fully justifies the Commissioner's assessment. I find the unimproved value to be £158,212. Deducting £5,000 from this, tax will be paid on £153,212.

As the taxpayer has failed, he must pay the costs.

From that decision Keogh now appealed to the Full Court.

Campbell K.C. and *Alec Thomson*, for the appellant.

Shand K.C. and *Pike*, for the Commissioner.

Cur. adv. vult.

Sept. 3.

The judgment of the Court was read by

ISAACS J. In this case there was no argument on behalf of the appellant because it was admitted by counsel who appeared for him that, if the decision in *Fisher v. Deputy Federal Commissioner of Land Tax (N.S.W.)* (1) were adverse to the appellant, the present appeal could not be sustained. This appeal will therefore be dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellant, *H. T. Korff*, Coonamble, by *F. R. Cowper*.

Solicitor for the respondent, *Gordon H. Castle*, Crown Solicitor for the Commonwealth.

B. L.