[HIGH COURT OF AUSTRALIA.]

FORSYTH . . . . . APPELLANT;

AND

THE FEDERAL COMMISSIONER OF TAXATION . . . . . RESPONDENT.

H. C. OF A. 1916.

SYDNEY, *Aug.* 21.

Griffith C.J., Barton, Isaacs and Rich JJ.

Income Tax—Assessment—Rate of tax—Income derived from both personal exertion and property—Method of arriving at rates—Income Tax Acts 1915 (*No.* 41 *of* 1915—*No.* 48 *of* 1915), *secs.* 3, 4, *Scheds.* 1, 2.

Where the income of a taxpayer includes income from personal exertion exceeding £7,600 and income from property exceeding £6,500, and income tax thereon is imposed at the rates declared by sec. 4 of the *Income Tax Act* 1915 as amended by the *Income Tax Act* (*No.* 2) 1915, the rate of tax upon his income from personal exertion is in respect of £7,600 the rate per pound found by applying the formula given in the First Schedule to the *Income Tax Act* 1915, and in respect of the surplus beyond £7,600 sixty pence for each pound; and the rate of tax upon his income from property is in respect of £6,500 the rate per pound found in the manner prescribed by the Second Schedule to that Act, and in respect of the surplus beyond £6,500 sixty pence for each pound; and the total amount of income tax payable is the sum of the amounts so ascertained.

CASE STATED.

On an appeal to the Supreme Court of New South Wales by a taxpayer from an assessment of him for federal income tax for the year ending 30th June 1916, *Pring* J. stated a case for the opinion of the High Court. From the case it appeared that the appellant was liable to pay income tax in respect of income which consisted of a sum exceeding £7,600 derived from personal exertion and a sum exceeding £6,500 derived from property, and that the Commissioner of Taxation assessed the total amount of tax payable

in the following way :—In respect of the income derived from personal exertion, applying the formula in the First Schedule to the *Income Tax Act* 1915 he ascertained the amount of tax which would be payable upon £7,600 and added to it a sum representing five shillings in each pound of the excess of the total amount of income from both personal exertion and property, thus arriving at a sum which would represent the total amount of tax payable if the whole income had been derived from personal exertion. That sum he divided by the total amount of income from both personal exertion and property and so arrived at the number of pence in each pound which would have been payable if the whole income had been derived from personal exertion. He then ascertained the amount which would represent that number of pence in each pound of the amount of income actually derived from personal exertion alone, and held that that was the amount of tax payable by the appellant in respect of income from personal exertion. In respect of the income from property, applying the method prescribed by the Second Schedule to the Act he made a similar calculation to that in respect of the income from personal exertion, transposing income from personal exertion and income from property and substituting £6,500 for £7,600. The appellant contended that in respect of income from personal exertion the amount of tax should be arrived at by adding to the amount payable on £7,600 at the rate ascertained by applying the formula in the First Schedule to the Act a sum representing five shillings in each pound of the excess of the income from personal exertion over £7,600, and that in respect of income from property the amount of tax should be arrived at by adding to the amount payable on £6,500 at the rate ascertained in the manner prescribed by the Second Schedule to the Act a sum representing five shillings in each pound of the excess of the income from property over £6,500, and that the two sums so ascertained should be added together. The questions asked were (1) what were the rates of tax chargeable upon the amount of income from personal exertion and the amount of income from property respectively, and (2) what was the amount of income tax payable in respect of the appellant's income.

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Knox K.C. (with him *Harper*), for the appellant.

Garland K.C. and *Flannery*, for the respondent.

GRIFFITH C.J. The point submitted for our determination is extremely simple. It arises on the very plain words of two Income Tax Acts. The Acts make a distinction between income derived from personal exertion and income derived from property, and impose tax at different rates upon them. The words used in sec. 4 of the Act No. 41 of 1915, which originally fixed the rate of tax, were:— "(1) The rate of the income tax in respect of income derived from personal exertion shall be as set out in the First Schedule to this Act. (2) The rate of the income tax in respect of income derived from property shall be as set out in the Second Schedule to this Act." The First Schedule is headed "Rate of Tax upon Income derived from Personal Exertion." It lays down two rules, the first of which begins: "For so much of the taxable income as does not exceed £7,600 the rate of tax per pound sterling shall be" so and so. A formula is given which saves the trouble of making a detailed calculation, and by which you arrive at the total amount of tax upon a given amount of taxable income. The method is to start with threepence and three eight-hundredths of one penny for an income of one pound and to increase the rate uniformly with each increase of one pound of the taxable income by three eight-hundredths of one penny and multiplying the result so obtained by the amount of the taxable income. The Schedule then goes on:—"For every pound sterling of taxable income in excess of £7,600 the rate of tax shall be sixty pence." So that to ascertain the amount of tax upon an income exceeding £7,600 you first multiply the result obtained by the formula by 7,600, and then add one-quarter of the surplus of income over £7,600. That is as plain as possible.

The rule as to income derived from property is that the rate does not vary with every increase of one pound in the amount of income, but rises according to the total value up to £6,500 at rates which are set out in the Second Schedule. For every pound in excess of £6,500 the rate is sixty pence. Under this Act what had to be done in the case of a man who had an

income derived from both personal exertion and property was to make separately the calculation in accordance with the First Schedule in respect of the amount of income derived from personal exertion and that in accordance with the Second Schedule in respect of the amount of income derived from property, and to add together the amounts so ascertained. The sum was the total amount of tax. One result of that method was, as was pointed out by Mr. *Knox*, that a man who had an income of, say £4,000, one half derived from personal exertion and one half from property, would have had to pay a smaller amount of tax than a man who derived the same amount of income wholly from personal exertion, since as to each half of his income the rate of taxation was much less. That result might obviously be considered to be unfair, and the Legislature thought fit to lay down another rule, which they did by Act No. 48 of 1915. It is only necessary to read that rule and apply it in order to answer the present case. It provides that "Where the income of a taxpayer consists of income from personal exertion and income from property the rates" (using the same word as is used in Act No. 41 and in the Schedules to it) "of the income tax shall be: (*a*) In respect of the income from personal exertion—the rate that would have been applicable if the total taxable income of the taxpayer had been derived exclusively from personal exertion; and (*b*) in respect of the income from property—the rate that would have been applicable if the total taxable income of the taxpayer had been derived from property." How are those rules to be applied? First, you assume that the total income is derived exclusively from personal exertion. You then proceed to ascertain the rate of tax that would be payable on that assumption. That is ascertained from the First Schedule to Act No. 41. Having ascertained it, you apply it to the actual amount of income from personal exertion. The same rule applies to the income from property. You then add the two results together and you have the total amount of tax payable. All that is as plain as possible.

The Commissioner, on the other hand, suggests that, for the purpose of ascertaining the rates, instead of taking the words of Act No. 48 as they stand, you are to substitute in each case this formula:—"The sum ascertained by dividing the total amount of

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the tax which would be payable upon application of the rule applicable to income derived exclusively from personal exertion if the whole income were derived from that source." That calculation will, no doubt, give you the ratio of the amount of tax to each pound of total income, but that is not the same thing at all as the process prescribed by the Act. The former might be called the "average rate," and it is so called in the Schedule to Act No. 41, where it is stated in a marginal note that a certain amount of tax for a taxable income of a certain amount is equivalent to a certain "average rate." To suggest that the ratio of the total amount of tax to the total income is what is meant by "the rate that would have been applicable if the total taxable income of the taxpayer had been derived from personal exertion," is contrary to the plain meaning of the words, and involves a *petitio principii.*

It is suggested that in some cases the calculation will produce the same result as before Act No. 48 was passed. Very likely it will, but in a great number of cases it will not. The argument that the new rule will in some cases produce the same result as the old rule is irrelevant. It is always an unsafe guide to the interpretation of any Act, and especially a taxing Act, to speculate *à priori* upon what might have been the intention of the Legislature, or to endeavour to colour the meaning of plain words by a preconception of what that intention might have been. In the present case the Legislature has expressed a very plain intention in very plain words.

The case must therefore be answered in accordance with the appellant's contention.

BARTON J. I agree.

ISAACS J. I also think that the questions should be answered in favour of the taxpayer. The one question to my mind which has to be answered is, what is the rate which would have been applicable to the income from personal exertion if the whole of the income derived from both personal exertion and property had been derived from personal exertion alone? What is the rate that would have been "applicable"? In order to find that rate I turn to the First Schedule to Act No. 41, which is the only place in which it is to be

found. The Schedule informs me that for so much of the taxable income as does not exceed £7,600 there is a certain provision which distributes the charge over every pound of the £7,600 equally. It is so far an average rate. And if the income from personal exertion exceeds £7,600, then for the excess, and the excess only, there is another charge of five shillings in the pound. That whole provision as to income which exceeds £7,600 is the rate that would have been "applicable." That, then, is the rate which the amending Act No. 48 says shall be the rate here. I therefore apply it in the present case, and the answer then is in favour of the taxpayer. Similarly as to the income from property.

RICH J. I agree.

Questions answered in favour of the appellant.

Solicitors for the appellant, *Minter, Simpson & Co.*

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

B. L.