[HIGH COURT OF AUSTRALIA.]

THE BOHEMIANS CLUB . . . . APPELLANT;

AND

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

H. C. OF A. 1918.

MELBOURNE, *March* 15, 21.

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

*Income Tax—Assessment—Income—Club—Subscriptions of members—Income Tax Assessment Act* 1915-1916 (*No.* 34 *of* 1915—*No.* 39 *of* 1916), *secs.* 3, 10.

The annual subscriptions of members of a social club are not taxable income of the club within the meaning of the *Income Tax Assessment Act* 1915-1916, and are not to be taken into account in ascertaining its taxable income.

CASE STATED.

On an appeal by The Bohemians Club from an assessment of the Club by the Federal Commissioner of Taxation for income tax, *Rich* J. stated the following case for the opinion of the Full Court:—

1. "The Bohemians" is a social club in Melbourne.

2. Pursuant to sec. 28 (1) of the *Income Tax Assessment Act* 1915-1916 the said Club by its secretary duly furnished to the Commissioner of Taxation a return for the year ending 31st December 1914, which return was accepted by the Commissioner pursuant to sec. 28 (1) of the Act in lieu of a return for the financial year. Annexed to such return was a copy of the Club's annual statement of receipts and expenditure.

3. The Commissioner assessed the Club for income tax on £96 5s. 6d. as being the taxable income of the Club shown by the said annual

statement. Included in the assessment were the annual subscriptions of members of the Club.

4. The said Club, being dissatisfied with such assessment, duly lodged an objection which was disallowed by the Commissioner.

5. The said Club appealed to the High Court pursuant to the provisions of sec. 37 (4) of the said Act.

6. The said appeal being now before me for hearing, I state this case for the opinion of the High Court upon the following question of law arising in the appeal: (1) Are the annual subscriptions of members of The Bohemians Club mentioned in the said statement of receipts and expenditure income of the Club within the meaning of the said Act?

At the hearing of the case stated the following question was added: (2) Are such subscriptions to be brought into account for the purpose of ascertaining the taxable income of the Club?

*Mitchell* K.C. and *Mann*, for the appellant. Assuming that a social club is within the definition of a "company" in sec. 3 of the *Income Tax Assessment Act* 1915-1916, the annual subscriptions of members are not income of the club (*New York Life Insurance Co.* v. *Styles* (1); *Carlisle and Silloth Golf Club* v. *Smith* (2)). What a body of men contribute out of their own pockets to themselves for purposes of their own is not income at all. If subscriptions should be taken into account in ascertaining the taxable income of the club so also should a call made when it is found that the subscriptions in a particular year had not been sufficient to cover the expenses. The term "income" in regard to companies is used as meaning profits (*Lawless* v. *Sullivan* (3); *Webb* v. *Australian Deposit and Mortgage Bank Ltd.* (4); *Melbourne Trust Ltd.* v. *Commissioner of Taxes* (*Vict.*) (5); *Moffatt* v. *Webb* (6)). The whole case for the Commissioner depends on the fact that a club is taxable as distinct from its members. The only object for making a club a separate entity is to make it possible to serve notices, &c., upon it instead of upon the individual members. The important question

(1) 14 App. Cas., 381.
(2) (1912) 2 K.B., 177, at p. 180; (1913) 3 K.B., 75.
(3) 6 App. Cas., 373.
(4) 11 C.L.R., 223, at p. 227.
(5) 15 C.L.R., 274, at p. 293.
(6) 16 C.L.R., 120, at p. 126.

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is whether the members have a taxable income. They cannot have an income derived from themselves. The expenditure of each is not the income of all.

*Starke*, for the respondent. The subscriptions of members of a club are income because they are paid yearly, and because by the Act a club is made a separate entity from its members. If the Club were a company as ordinarily understood there would be no doubt that annual payments made to it by the members for the purpose of carrying on its functions would be income. There is an essential difference between the *Income Tax Assessment Act* and the English *Income Tax Act* 1842 (5 & 6 Vict. c. 35). The latter Act imposes a tax upon the profits or gains of a trade, and it has been held by the English Courts that a club is not in respect of its members engaged in trade. What is taxed under the former Act is not profits or gains but income. The basis of the taxable income is the gross receipts from which are deducted what the Act allows (sec. 18). All money that is not paid to a club as capital is income, and by capital is meant that which is to be preserved either in money or in kind until the end of the adventure. There is no difference between an ordinary social club and a proprietary club, or between the case of subscriptions to a club and an annual allowance made by a father to his son.

*Cur. adv. vult.*

March 21.

GRIFFITH C.J. read the following judgment:—The appellants are a social club of the usual kind. Their funds are derived in great part from the annual subscriptions of the members, which in the year in question amounted to about £2,200. At the close of the year's operations there remained unexpended a sum of £96, which the Commissioner claims to treat as taxable income, on the ground that the Club, being an unincorporate association, falls within the definition of company and may be a taxpayer (sec. 3); that it is therefore to be regarded as a legal entity entirely distinct from its members, and that, therefore, all moneys received from its members are taxable income. Neither of these conclusions follows from the

premiss. The argument is, indeed, founded upon a complete misconception of the nature of a club, which is a voluntary association of persons who agree to maintain for their common personal benefit, and not for profit, an establishment the expenses of which are to be defrayed by equal contributions of an amount estimated to be sufficient to defray those expenses, and the management of which is entrusted to a committee chosen by themselves. On principle, it is quite immaterial whether the contributors are two or two hundred. If there were two or three only, it would not occur to anyone to say that the two or three are collectively in receipt of income from the individuals. Nor are the committee of the club or the club itself. The contributions are, in substance, advances of capital for a common purpose, which are expected to be exhausted during the year for which they are paid. They are not income of the collective body of members any more than the calls paid by members of a company upon their shares are income of the company. If anything is left unexpended it is not income or profits, but savings, which the members may claim to have returned to them. The notion that such savings are taxable income is quite novel, and quite inadmissible.

The only arguments that have been set up against this view are that under the *Income Tax Assessment Act* all receipts or "incomings" are income, and that the club is a separate entity from its members. As to the latter argument I am of opinion that the interpretation clause has nothing to do with substantive rights. If the members of a club collectively have a taxable income, the club may be treated as a taxpayer, as in the *Carlisle and Silloth Golf Club's Case* (1). And that is all. Whether it has such an income must be ascertained *aliunde*.

As to the first point, the term "income" is not defined in the Act, but sec. 10 speaks of taxable income "derived directly or indirectly . . . from sources within Australia." A man is not the source of his own income, though in another sense his exertions may be so described. A man's income consists of moneys derived from sources outside of himself. Contributions made by a person for expenditure in his business or otherwise for his own benefit cannot

(1) (1913) 3 K.B., 75.

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Griffith C.J.

be regarded as his income, unless the Legislature expressly so declares. This Act does not contain any such declaration either express or implied.

A somewhat similar argument addressed to this Court in the case of *Mooney* v. *Commissioners of Taxation (N.S.W.)* (1) was rejected both by it and by the Judicial Committee (2).

The *Carlisle and Silloth Golf Club's Case* (3) shows that the view above expressed as to the nature of club subscriptions is accepted in the United Kingdom. The case of the *New York Life Insurance Co.* v. *Styles* (4) is, in my opinion, not distinguishable in principle.

I think, therefore, that both questions must be answered in the negative.

BARTON J. I agree.

POWERS J. (read by GRIFFITH C.J.). I concur in the judgment delivered by the learned Chief Justice.

RICH J. read the following judgment:—The question for our determination is whether the subscriptions of the members of the Bohemian Club are taxable income within the meaning of the *Income Tax Assessment Act* 1915-1916. I will assume that this Club is an unincorporated association within sec. 3 of the Act. That, however, leaves the question whether this body has an income which is taxable.

Counsel for the respondent argued that these subscriptions were income derived from personal exertion. Of whom can such exertion be predicated—the Club or its members? The answer is of no importance because "'income from property' . . . means all income . . . not derived from personal exertion," whether it is income from property or not. It is not easy to understand why "income from property" should have this wholly artificial meaning fixed upon it. We are thus brought to the question, what language in the Act imposes a burden on these subscriptions? I can find none. Such

(1) 3 C.L.R., 221.
(2) (1907) A.C., 342, at p. 350; 4 C.L.R., 1439, at p. 1445.
(3) (1913) 3 K.B., 75.
(4) 14 App. Cas., 381.

resources are not income. No doubt, the returns from sales of any commodities are income of the association on the assumption I have made, but it would require an established customary meaning in fiscal provisions to enable the word "income" to be stretched to cover such subscriptions as these. I know of no such extended meaning, and the Act creates none.

I therefore answer the questions submitted in the negative.

*Questions answered in the negative. Costs to be costs of the appeal.*

Solicitors for the appellant, *Blake & Riggall.*

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

B. L.



[HIGH COURT OF AUSTRALIA.]

STAMP . . . . . APPELLANT;
APPLICANT,

AND

W. J. POWELL PROPRIETARY LIMITED RESPONDENTS.
OPPONENTS,

*Patent—Application—Opposition—Want of novelty—Prior publication—Onus of proof—Patents Act* 1903-1909 (*No.* 21 *of* 1903—*No.* 17 *of* 1909), *sec.* 56.



An application for a patent for an "improved mode of and apparatus for drying and deodorizing nightsoil, slaughter-house refuse and other analogous materials" was opposed on the grounds of want of novelty and prior publication, and the Commissioner of Patents upheld the opposition. On appeal to the High Court,