[HIGH COURT OF AUSTRALIA.]

THE OCEAN STEAMSHIP COMPANY LIMITED APPELLANT;

AND

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

ON APPEAL FROM THE SUPREME COURT OF WESTERN AUSTRALIA.

H. C. OF A. 1918.

PERTH, *October* 14.

Barton, Gavan Duffy and Rich JJ.

Income Tax—Assessment—Shipowners—Carriage of goods from Australian port—Freight earned after transhipment outside Australia—Income Tax Assessment Act 1915-1916 (*No.* 34 *of* 1915—*No.* 39 *of* 1916), *sec.* 22.

Sec. 22 of the *Income Tax Assessment Act* 1915-1916 provides (*inter alia*) that any person whose principal place of business is out of Australia and who as owner or charterer of any ship carries goods, &c., shipped in Australia shall by his agent make a return of the full amount payable to him in respect of the carriage of the goods, &c., and that the agent shall be assessed thereon and liable to pay tax on five per cent. of the amount.

A shipping company whose principal place of business was in England carried goods from Fremantle to London, but the ships leaving Australia carried them only to Singapore, where they were transhipped to other ships of the same company for conveyance to London.

Held, that the company was liable to assessment and income tax in respect only to the freight earned by the ships which carried the goods from Australia to Singapore.

Decision of the Supreme Court of Western Australia (*McMillan* C.J.) reversed.

APPEAL from the Supreme Court of Western Australia.

The Ocean Steamship Co. Ltd., whose principal place of business is in England, carried certain cargoes from Fremantle in Western

Australia to London. They were carried from Fremantle to Singapore in the Company's steamers *Charon* and *Gorgon*, and were there transhipped to other steamers of the Company for "on-carriage" to London. A return of the freight payable was made for the purposes of the *Income Tax Assessment Act* 1915-1916 by the local agent of the Company. The assessment thereon included the freight earned over the whole transit from Fremantle to London, and notice of objection to the assessment was given in respect of the sum of £20,158, the proportion of the freight attributable to the carriage from Singapore to London. The objection was disallowed by the Commissioner. An appeal to the Supreme Court of Western Australia under sec. 37 of the Act against this disallowance was dismissed by *McMillan* C.J., and against this decision the Company now appealed to the High Court under sec. 38 (5) of the Act.

Draper K.C. (with him *Boultbee*), for the appellant Company. Sec. 22 only contemplates bottoms which leave Australia. The master, who is liable to assessment and tax (sub-sec. 3), could not be liable in respect of another ship which had not left Australia. [Counsel referred to sec. 10 (1)—"sources within Australia."] The word "payable" in sub-sec. 1 of sec. 22 means the amount which the Australian branch of the Company would derive from the transaction. [He referred to *Commissioners of Taxation* v. *Kirk* (1).] The Act must be construed with regard to its subject matter—that is, as referring to ships which leave Australia, and only as far as they go. The Act contemplates only one ship.

Pilkington K.C. (with him *Thomas*), for the respondent. The Act deals with certain contracts for carriage made in Australia, and the income arising therefrom. Sec. 22 is an arbitrary way of ascertaining such income. The contract is made by a person in his capacity as shipowner for the carriage of goods shipped in Australia. His income is then arrived at by taking five per cent. of the freight payable. The question whether the income is derived from Australian sources is excluded by this provision. What is taxed is the

(1) (1900) A.C., 588, at p. 592.

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amount made out of the contract. The reason the Commissioner claims in respect of the second ship is because it is covered by the contract. The appellant carries in the second ship as owner of the first. The word "ship" may be read as "ship or ships," because the singular includes the plural. The words "owner or charterer" of a ship limit the scope of the section: the object is to exclude persons not of that description, but who have made affreightment contracts.

Draper K.C., in reply. The words "any ship" in sub-sec. 1 of sec. 22 can only mean the ship which leaves Australia. [He referred to *Clifford* v. *Commissioners of Inland Revenue* (1).]

[RICH J. referred to *Duranty* v. *Hart* (2).]

The following judgments were read:—

BARTON J. It must be assumed that the Legislature in framing this section (*Income Tax Assessment Act* 1915-1916, sec. 22) had in mind the ordinary maritime law. See *Duranty* v. *Hart*, where Lord *Kingsdown* (3), for the Judicial Committee, pointed out that, so far from a master being bound to tranship his cargo, "his first duty was to carry his cargo to its destination in the same bottom, unless under the greatest difficulty." And the section in its phraseology seems to keep that principle in view. The appellant Company was carrying as shipowner "goods shipped in Australia," and was under a duty to make a return of the "full amount payable to him . . . in respect of the carriage" of the goods. The passage just quoted follows the ordinary definition of freight, and means the freight payable to the shipowner in or out of Australia on the goods. It was contended that the words "owner of any ship" should be read so that the singular includes the plural. But that construction is not to be adopted if the contrary intention appears (see *Acts Interpretation Act* 1901, sec. 23); and the contrary intention does, I think, appear upon reference to sub-secs. 3, 4 and 5. The words "the ship" there employed clearly refer to the ship mentioned in the first sub-section, that is to say, the particular ship

(1) (1896) 2 Q.B., 187, at p. 192.
(2) 2 Moo. P.C.C. (N.S.), 289.
(3) 2 Moo. P.C.C. (N.S.), at p. 319.

which carries the goods from Australia. When carriage by that ship is over, it seems to me that the section applies no further. If the Legislature intended to include " on-carriage " after transhipment even on a vessel of the same owner, it would probably have said so ; but at least the section cannot be construed as if it had said so. If the first sub-section, taken by itself, led to any ambiguity, which I doubt, no such difficulty appears when the whole section is read together. I think, therefore, that it is only the freight to Singapore in respect of which the assessment can be made.

GAVAN DUFFY J. In my opinion the facts of this case do not bring it within sec. 22, which refers only to freight earned on vessels actually shipping goods in Australia. I agree with the proposed order.

RICH J. I also agree. The section under consideration was not designed to, and does not, in my opinion, cover the case of transhipment. It only contemplates the contract of carriage being performed by the same bottom—the ship which leaves Australia.

Appeal allowed. Judgment appealed from discharged with costs. Appellant's objection upheld, and assessment reduced by five per cent. on £20,158 *accordingly. Respondent to pay costs of appeal.*

Solicitors for the appellant, *Parker & Parker.*

Solicitor for the respondent, *Gordon H. Castle*, Crown Solicitor for the Commonwealth, by *Moss, Dwyer, Unmack & Thomas.*

N. McT.