was frequently brought for different causes of action, and did not seek to drive plaintiffs to a multiplicity of suits. Sec. 6 speaks of "any action in the Supreme Court in respect of any cause or causes of action." The words "the liability the subject of such judgment" mean to confine the consideration of the defendant's conduct to liability which has passed into the judgment, and not to imprison him with reference to a debt under a judgment because of reprehensible conduct in relation to some other liability. When the cause or causes of action have passed into a judgment, then it may be said the debt, now one of record, is indivisible from the date of judgment.

The judgment appealed against should therefore be affirmed, and the appeal dismissed.

Appeal dismissed with costs.

Solicitors for the appellant, *McLaughlin, Eaves & Johnston.*

Solicitors for the respondent, *Rigby & Fielding.*

B. L.

[HIGH COURT OF AUSTRALIA.]

STONE . . . . . APPELLANT;

AND

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

Income Tax—Assessment—Appeal—Burden of proof—Effect of Commissioner's decision—Income Tax Assessment Act 1915-1916 (*No.* 34 *of* 1915—*No.* 39 *of* 1916), *sec.* 32.

On an appeal from an assessment of income made by the Federal Commissioner of Taxation under the *Income Tax Assessment Act* 1915-1916, it is assumed that the Commissioner has made the assessment after careful

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consideration, with experienced aid and with a general, practical and varied knowledge of business, and the effect of sec. 32 is to make his assessment final unless the taxpayer establishes that it is excessive.

APPEAL from the Federal Commissioner of Taxation.

Joseph Ernest Stone made a return of his income for the year ending 30th June 1916 for the purpose of Federal income tax for the year 1916-1917. The return showed for the period a balance of £519 as being income from personal exertion, and upon that sum Stone was assessed. Subsequently the Commissioner investigated Stone's books and accounts, and asked him for a further statement of accounts. Stone then made a fresh return showing a loss of £80 in respect of the business carried on by him in Australia. Thereupon the Commissioner made a further investigation of the accounts, and by an amended assessment assessed Stone's income at £2,124. Stone lodged an objection to that assessment, but the objection was disallowed by the Commissioner.

Stone now appealed to the High Court from the decision of the Commissioner on the grounds substantially that a sum of £974 3s. 3d., alleged by Stone to have been expended in the purchase of goods, was wrongly disallowed by the Commissioner as a charge against Stone's Australian business, and that a number of sums amounting to £906 2s. 10d. should have been allowed as expenses of Stone's Australian business.

Morley, for the appellant.

Eager, for the respondent.

Cur. adv. vult.

Oct. 18.

ISAACS J. read the following judgment :—This is an appeal by Joseph Ernest Stone, under sec. 37 of the *Income Tax Assessment Act* 1915, against an assessment by the Commissioner of certain income of the appellant.

The appellant carries on business in Victoria. His business includes two classes of operations : he imports sponges and chamois articles, and sells them in the Commonwealth ; and he also purchases

in Australia, sometimes at auction and sometimes by private purchase, scrap metals and any other articles which he thinks may be profitably disposed of, and he either sells those goods in the Commonwealth or consigns them to England for sale there. In making his income tax returns he has divided his business into two parts, one relating to goods sold in England, and called his "English business," and the other of all other goods, and called his "Australian business." The Commissioner has treated his "English business" as free from taxation, and this appeal is not concerned with the taxability of that "business," and I have not to consider whether he would or would not be liable in respect of English sales of goods purchased in Australia for the purposes of selling them in England. This appeal relates only to the "Australian business," as it is for convenience called, and what I have to decide is whether, by reason of certain transactions, the assessment of taxable income relating to that business is excessive. The amount assessed on 15th March 1918 as taxable income for that business was £2,124.

The appellant's case, as it ultimately resolved itself, rests on two points: first, he contended that a sum of £974 3s. 3d., which was in his return attributed as an expense connected with the "English business," was wrongly so attributed, should in fact be attributed as an expense of the Australian business, and that it represented moneys expended in purchasing goods sold in that business, or taken into account as stock in hand of that business; next, the appellant contended that a number of items totalling about £900, and disallowed by the Commissioner, should have been allowed as expenses of the Australian business. A third feature should be here mentioned: the Commissioner while disallowing those items, and others, did allow several items claimed subsequently to the return as being the amounts of purchases for the Australian business. These additional items were allowed ultimately by the Commissioner at £133 8s. 8d.; but the Commissioner urges here that as that amount was allowed because the other items were disallowed, and as constituent items of the sum of £133 8s. 8d. originated in the moneys disallowed or some of them, or alternatively in moneys not accounted for, the sum of £133 8s. 8d. should be revised in case the £900 items or any part

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thereof be allowed, otherwise the taxpayer might receive an allowance twice over.

It is important to observe, at the threshold, that the Act places the burden of proof on the taxpayer disputing the accuracy of an assessment. The Commissioner is empowered and directed to assess a taxpayer, and he, it is assumed, does so after careful consideration, and with experienced aid, and with that general, practical and varied knowledge of business and affairs which he must inevitably gain in the course of discharging his duties. For these and other necessary reasons, the Act (sec. 32) says: "If . . . (*b*) the Commissioner is not satisfied with the return made by any person . . . the Commissioner may make an assessment of the amount upon which, in his judgment, income tax ought to be levied, and the person assessed shall be liable to income tax thereon, excepting so far as he establishes on objection that the assessment is excessive.". Many things must be left to "judgment," that is, opinion based on experience or information (sec. 31) as applied to the facts available. Public necessities require that, while affording fair opportunity for correcting provable errors, there shall be some approach to certainty in the Commissioner's assessment. This is attained by sec. 32, which in effect makes the assessment final unless the taxpayer "establishes" that it is excessive.

I have therefore to see whether the taxpayer has "established" excess in either of the respects in which he asserts it.

As to the sum of £974 3s. 3d., the facts are shortly that his vouchers and records show that for the fiscal year in question the sum of £2,302 1s. 4d. was expended in purchases for his English business, certain other amounts for his Australian business, and as to various sums amounting to £974 3s. 3d. it is not indicated by any document or record whether they are properly attributable to the English business or the Australian business. In making his return, upon which initially the assessment is based, he included the £974 3s. 3d. as expenditure for the English business. It is true that his accountant did so because he was not then aware that a sum of £852 was omitted in respect of sales in the Australian business, and has been subsequently included. But the new discovery has

thrown no light whatever on the question of whether the £974 3s. 3d. was in fact expended for one business or the other, assuming them to be separate businesses as the appellant claimed, and still claims, and as they are treated by the Commissioner. The appellant has given evidence, and so has his accountant, and no light whatever has been cast on this question.

In the result, therefore, the position is that the appellant has failed to " establish " the particular excess asserted.

In this particular instance, the fact that the appellant himself in his return asserted the proper attribution of the £974 3s. 3d. to the English business tells against him ; but in law his position would be the same apart from that fact. He fails to establish the alleged inaccuracy in the assessment. And he fails, it may be, because he has neglected so to keep his records and vouchers as to show that what he now asserts is correct. A man is, of course, at liberty to keep his records as he pleases, subject to express statutory provision, as, for instance, in the case of metal dealers, and subject to the requirements of insolvency law in certain cases. But, if he chooses to keep them so as to afford no sufficient internal evidence of the nature of the transactions they record, he must be prepared to take the consequences of his own omission.

[The learned Judge then dealt with the items totalling about £900 already referred to, and allowed certain of them, amounting to £299 12s. 6d. He then continued :—]

It has been very properly agreed that the sum of £133 8s. 8d. should be equally divided, and one half only allowed to stand as a deduction. Therefore £66 19s. 4d. must be taken from the £299 12s. 6d., leaving a net allowance in appellant's favour of £232 13s. 2d. The assessment of £2,124, less the sum of £232 13s. 2d., will stand at £1,891 6s. 10d.

Order accordingly.

Solicitor for the appellant, *V. Wischer.*

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

B. L.