[HIGH COURT OF AUSTRALIA.]

JEFFERY . . . . . APPELLANT;

AND

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

H. C. OF A. 1918.

MELBOURNE, *March* 4.

Rich J.

Income Tax—Assessment—Income—Deduction—Interest paid on borrowed money—Money lent by wife to husband—Income Tax Assessment Act 1915-1916 (*No.* 34 *of* 1915—*No.* 39 *of* 1916), *secs.* 18, 20.

Notwithstanding the provisions in sec. 18 (1) of the *Income Tax Assessment Act* 1915-1916 that in calculating the taxable income of a taxpayer there may be deducted from the total assessable income interest actually incurred in Australia in gaining or producing the assessable income, a taxpayer is not entitled to deduct interest paid by him to his wife on money borrowed by him from her and used by him in his business in the production of his assessable income, the deduction of the payment of such interest being prohibited by sec. 20 (*k*) as being a payment made by a husband to a wife.

APPEAL from the Federal Commissioner of Taxation.

John Simms Jeffery appealed to the High Court from the assessment of him for income tax for the year 1915-1916, the ground of appeal being that he was entitled to deduct from the total assessable income derived from sources in Australia the sum of £263 paid by him to his wife for interest on moneys lent by her to him and used by him in his business and in gaining and producing income.

Mann, for the appellant.

Schutt, for the respondent, was not heard.

RICH J. The facts in this case are short and undisputed. The appellant carries on business as a draper at Richmond, Victoria, and borrowed money from his wife, and in the year 1915-1916 paid her interest thereon to the amount of £263. The appellant claims to deduct this payment, and the question I am asked to determine is whether he is entitled to do so.

The solution of the question depends on the construction to be placed on secs. 18 (1) (*a*) and 20 (*k*) of the *Income Tax Assessment Act* 1915-1916. The first of these sections provides that "in calculating the taxable income of a taxpayer the total assessable income derived by the taxpayer from all sources in Australia shall be taken as a basis, and from it there shall be deducted" (*inter alia*) "interest actually incurred in Australia in gaining or producing the assessable income." There is no suggestion of *mala fides* and the claim is admitted to be genuine, and if there were nothing more in the Act the appellant's contention might be sustained. Sec. 20, however, prescribes that "a deduction shall not, in any case, be made in respect of any of the following matters:— . . . (*k*) Payments made by husband to wife or by wife to husband." The object of this sub-section was to obviate the necessity of investigating fictitious claims which might be difficult or impossible to expose or unravel. It appears to be a reversion to the common law doctrine of the unity of the person of husband and wife, which prevented them from contracting with each other. In my opinion the sub-section overrides the provisions of sec. 18 (1) (*a*) so far as this claim is concerned.

The appeal will be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant, *F. G. Smith & McEacharn.*

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

B. L.