

H. C. OF A. interfering with Germans whom the Allies or the Associated Powers  
1920. choose to incorporate amongst their nationals.

MEYER It appears to me that the motion is without warrant and the  
v. argument without substance. The motion is therefore dismissed  
POYNTON. with costs.  
Starke J.

*Motion dismissed with costs.*

Solicitor for the plaintiff, *W. J. P. Fitzgerald*, Sydney, by *Amess & Clarkson*.

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

B. L.

---

[HIGH COURT OF AUSTRALIA.]

IN RE CARL HEINRICH SCHURR; EX PARTE THE PUBLIC TRUSTEE.

H. C. OF A. *Trading with the Enemy—Enemy subject—Property held by Public Trustee—Pay-*  
1920. *ment thereout of debts—Principal due under mortgage—Form of order—Costs—*  
MEYER *Trading with the Enemy Act 1914-1916 (No. 9 of 1914—No. 20 of 1916), sec.*  
POYNTON. 9D (2).

MELBOURNE,  
June 10, 15.

Starke J.

Where, under sec. 9D (2) of the *Trading with the Enemy Act 1914-1916*, the Public Trustee is authorized to pay out of the property paid to him in respect of an enemy subject a mortgage debt and interest due by him, the order should provide that the mortgagee should execute a proper discharge of the mortgage, and deliver up upon oath to the Public Trustee all titles and other documents relating to the land mortgaged.

The costs of a motion for an order under sec. 9D (2) of the Public Trustee and of the enemy subject were allowed out of the property in the hands of the Public Trustee.

Form of order stated.

MOTION.

This was an application under sec. 9D (2) of the *Trading with the Enemy Act 1914-1916* on behalf of Robert McKeeman Oakley, the Public Trustee, for an order authorizing him to pay out of the



sum of £1,844 11s. 11d. held by him in respect of one Carl Heinrich Schurr, an enemy subject, the sum of £1,400, the amount of principal due and owing by Schurr to one Thomas Elford Edwards under a mortgage dated 30th October 1912 and registered in the Office of Titles, together with any interest due thereunder, and all necessary legal expenses and charges incidental to the discharge of the said mortgage. On 26th September 1919, pursuant to sec. 91 of the Act, the Minister for Trade and Customs by order vested in the Public Trustee certain land, the property of Schurr, an enemy subject, within the meaning of the Act. The value of the land was now £2,000. Interest on the said mortgage was payable quarterly at the rate of five per centum per annum. On 21st April 1920 the mortgagee called in the loan of £1,400, and now required repayment thereof in terms of the mortgage.

By an order of the Solicitor-General of the Commonwealth, in exercise of certain delegated powers under regulations made under the *War Precautions Act* 1914-1916, certain shares held by Schurr in certain companies were transferred to and vested in the Public Trustee pursuant to reg. 9 of the *War Precautions (Enemy Shareholders) Regulations* 1916; and on 17th April 1917 the Solicitor-General directed the sale of the shares, and they were sold on 31st October 1917. The proceeds of such sale were paid to the Public Trustee, and by order dated 16th August 1919 the Acting Solicitor-General declared that these moneys held by the Public Trustee were vested in him under the *Trading with the Enemy Act* 1914-1916. The sum of £1,844 11s. 11d. was held by him, representing the proceeds of such sale and dividends and interest received by him in respect of the shares. No other notices making any claims against Schurr in respect of any other debts owing by him had been served on the Public Trustee. Counsel for Schurr appeared, and intimated to the Court that he did not consent to the application, but considered that such application was in the best interest of Schurr, and asked for payment of his costs out of the moneys held by the Public Trustee.

*J. H. Moore* (Lowe with him), for the Public Trustee.

H. C. OF A.  
1920.

IN RE  
SCHURR;  
EX PARTE  
PUBLIC  
TRUSTEE.



H. C. OF A.  
1920.

*Claude Robertson (Magennis with him), for Schurr.*

*Cur. adv. vult.*

IN RE  
SCHURR ;  
EX PARTE  
PUBLIC  
TRUSTEE.

June 15.

STARKE J. made an order in the following terms :—

*Order that Robert McKeeman Oakley, the Public Trustee appointed pursuant to the Trading with the Enemy Act 1914-1916, be and he is hereby authorized to pay Thomas Elford Edwards out of any property paid to him, the Public Trustee, in respect of Carl Heinrich Schurr, an enemy subject within the meaning of the said Act, the principal moneys and interest due to the said Thomas Elford Edwards under a certain mortgage from the said Carl Heinrich Schurr to the said Thomas Elford Edwards registered in the Office of Titles in the State of Victoria and numbered 312,280 and the proper costs, charges and expenses incurred by the said Thomas Elford Edwards in relation to the said mortgage debt or security, such costs, charges and expenses to be taxed and moderated by the Principal Registrar of this Court, on condition that the said Thomas Elford Edwards do discharge the premises mentioned in the said mortgage from all moneys secured thereunder and do reconvey the said premises to the said Public Trustee free and clear of all encumbrances created by him or any person claiming by, from or under him and do deliver up upon oath to the said Public Trustee all deeds, documents and writings in his custody or power relating to the said premises. Order that the costs of the Public Trustee of this motion (as between solicitor and client) be paid out of any property paid to him in respect of the said*



*Carl Heinrich Schurr, such costs to be taxed by the Principal Registrar of this Court. Order that the costs of the said Carl Heinrich Schurr of this motion be paid by the Public Trustee out of any property paid to him in respect of the said Carl Heinrich Schurr to Messrs. Gair & Brahe, the solicitors of the said Carl Heinrich Schurr, such costs to be taxed by the Principal Registrar of this Court.*

H. C. OF A.  
1920.  
—  
IN RE  
SCHURR;  
EX PARTE  
PUBLIC  
TRUSTEE.  
—

Solicitor for the Public Trustee, *Gordon H. Castle*, Crown Solicitor for the Commonwealth.  
Solicitors for Schurr, *Gair & Brahe*.

B. L.

[HIGH COURT OF AUSTRALIA.]

THORPE . . . . . APPELLANT;  
  
AND  
  
THE FEDERAL COMMISSIONER OF TAXATION . . . . . ) RESPONDENT.

*War-time Profits Tax—Assessment—Profits—Business carried on for part of year—Apportionment of average profits—War-time Profits Tax Assessment Act 1917-1918 (No. 33 of 1917—No. 40 of 1918), secs. 7, 14 (2), 16 (2).*

H. C. OF A.  
1920.  
—  
MELBOURNE,  
March 10.  
—  
Knox C.J.,  
Gavan Duffy  
and Starke JJ.

Sec. 16 (2) of the *War-time Profits Tax Assessment Act 1917-1918* provides that “Where the profits on which the war-time profits tax is to be assessed are for a period less than a year, the amount of the pre-war standard of profits shall be proportionately reduced.”  
  
*Held*, that the word “period” there refers to the “accounting period” mentioned in sec. 7, and the sub-section applies to a case where a business has been carried on by a taxpayer for a portion only of the accounting period and has then been sold to another person.