H. C. OF A. 1920.

KAY v. THE COMMONWEALTH.

Starke J.

class 4. As already indicated, the award characterized the work of telegraphists, grade 3, class 4, as regularly working inter-State lines coupled with the duty of supervising the operating staff. Kay, as already found, did not supervise the operating or any staff before or after the award, and was never entrusted with any such duty. Consequently, in my judgment, the provisions of clause 14 and the schedule do not confer any rights upon him.

The action is dismissed with costs.

Action dismissed with costs.

Solicitor for the plaintiff, *E. A. Smart.*

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

B. L.

[HIGH COURT OF AUSTRALIA.]

GEORGE McROBERT AND ANOTHER . . APPELLANTS; PLAINTIFFS,

AND

WILLIAM McROBERT . . . . . RESPONDENT. DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

H. C. OF A. 1920.

MELBOURNE, *Feb.* 23; *March* 1.

Knox C.J., Isaacs, Gavan Duffy and Rich JJ.

Will—Construction—Reasonable meaning of words.

By his will a testator stated that he wished twenty-five shillings a week to be paid to each of his two sisters "and also" to his brother "if so needed."

Held, that the words "if so needed" did not apply to the payments to the two sisters.

Decision of the Supreme Court of Victoria (*Mann* J.) affirmed.

H. C. OF A. 1920.

McROBERT v. McROBERT.

APPEAL from the Supreme Court of Victoria.

The will, dated 17th June 1905, of George McRobert, who died on 21st June 1905, contained the following provision (*inter alia*): "I wish, twenty-five shillings a week, be paid to each of my two sisters, Jane McRobert and Barbara McRobert of Aberchirder, Scotland and also Peter McRobert Kingower Victoria if so needed." Peter McRobert was a brother of the testator. The three beneficiaries mentioned in that provision survived the testator, each of the two sisters being then over seventy years of age, and the executors of the will, George McRobert and Donald Ross McRobert, paid the sum of twenty-five shillings a week to them until 7th July 1914. The two sisters died in Scotland on 24th April 1917 and 20th April 1917 respectively, and William McRobert, who was the executor of their wills, made a claim on the executors of the testator George McRobert for payment of the arrears of the weekly sums of twenty-five shillings. That claim was resisted on the ground that the executors ceased to make any further payments, believing that the two sisters were not in need of them. The executors accordingly took out an originating summons in the Supreme Court, to which William McRobert was made defendant, asking, among other questions, the question "Do the words 'if so needed' apply to the gift to the sisters Jane and Barbara McRobert?" The summons was heard by *Mann* J., who answered that question in the negative.

From the decision of *Mann* J. the executors of George McRobert appealed to the High Court on the grounds (*inter alia*) that the words "if so needed" upon the face of the will applied to all three legacies, or alternatively that those words were equivocal or ambiguous, and that extrinsic evidence (which should have been admitted) showed that they applied to all three legacies, and that the words enabled the executors to exercise a discretion from time to time, or alternatively imposed a condition upon the gift which was not complied with.

H. Walker and *Owen Dixon*, for the appellants, referred to *Child* v. *Elsworth* (1).

(1) 2 DeG. M. & G., 679.

Weigall K.C. (with him *Stanley Lewis*), for the respondent.

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McROBERT v. McROBERT.

Cur. adv. vult.

March 1.

The judgment of the COURT, which was read by ISAACS J., was as follows :—

The meaning of the third clause of this home-made will is not very clear as to whether the words " if so needed " apply to the sisters of the testator as well as to his brother Peter. It is not legitimate to regard the extrinsic evidence adduced for the purpose of ascertaining the intention of the testator in this respect. The subjects and the objects of his bounty are perfectly well defined, the meaning of every word used is unambiguous, and the only question is what intention has the testator *expressed* by those words with reference to those subjects and objects. To answer that question we have simply to read the third clause—as part of the will as a whole—and give to it the construction that, as a matter of common sense applied to plain English words, we think it fairly bears.

On the whole the conclusion we come to is this :—Down to the word " Scotland," if the clause ended there, no doubt could exist. The two sisters would have a clear unqualified gift. Then, without any punctuation separating what had been already written from what follows, we find the words " and also Peter McRobert Kingower Victoria " and then the words " if so needed." If the word " also " were not there, the clause would show pretty clearly one continuous line of thought ending with the words " if so needed." If the word " and " were not there, it would, on the other hand, be fairly clear that there was a break in the line of thought, and that the reference to Peter was a new branch qualified by the final words. Then can any reason be assigned for the introduction of the word " also " except to indicate a new mental resolution, and, as it appears, of a qualified nature ? It was suggested that as " and " alone was used to conjoin Jane and Barbara, the word " also " might well be considered as a demarcation between sisters and brother. But it is unnecessary for that purpose. The words are " my two sisters," and, further, the Christian names of the beneficiaries would of themselves sufficiently indicate the demarcation

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of personality. That being so, the word "also" seems to have another purpose, and that other purpose appears to us on the whole to be of necessity a break of thought, making the final gift in the clause a gift to Peter alone "if so needed" in addition to the preceding unqualified gift to the sisters.

On these grounds we agree that the order appealed from was right.

Appeal dismissed. Costs of respondent to be paid out of the estate of the testator.

Solicitor for the appellants, *Charles E. Coy.*

Solicitors for the respondent, *Connelly & Crocker*, for *Tatchell, Dunlop, Smalley & Balmer*, Bendigo.

B. L.

Dist *Lion Nathan Brewing Investments Pty Ltd, Re* (1995) 31 ATR 1215

Dist *Lion Nathan Brewing Investments & Comr for ACT Revenue, Re* 39 ALD 759

Foll *Lion Nathan Brewing Investments v C'ner for ACT Revenue* (1996) 133 FLR 4

Dist *Lion Nathan Brewing Inv Pty Ltd v C'ner for ACT Rev* (1997) 79 FCR 177

[HIGH COURT OF AUSTRALIA.]

THE WAR SERVICE HOMES COMMISSIONER

AGAINST

THE COLLECTOR OF IMPOSTS FOR VICTORIA.

ON REMOVAL FROM THE SUPREME COURT OF VICTORIA.

H. C. OF A. 1920.

MELBOURNE, March 4, 5.

Knox C.J., Isaacs, Higgins, Gavan Duffy, Powers, Rich and Starke JJ.

Stamp Duty—Conveyance or transfer on sale of land—Transfer by direction—Intermediate sale—Conveyance giving effect to sale—Transfer to War Service Homes Commissioner—Commonwealth instrumentality—Stamps Act 1915 (*Vict.*) (*No.* 2728), *secs.* 17, 68—*Stamps Act* 1918 (*Vict.*) (*No.* 2982), *sec.* 3—*War Service Homes Act* 1918 (*No.* 43 *of* 1918).

Sub-secs. 3, 5, 6 and 7 of sec. 68 of the *Stamps Act* 1915 (Vict.) (replaced by sec. 3 of the *Stamps Act* 1918 (Vict.)) provide as follows:—"(3) Every sale of real property shall be chargeable with ad valorem duty upon the consideration therefor, and such duty shall be paid on the conveyance" (which term by sec. 62 includes "transfer") "which seeks to give effect whether