[HIGH COURT OF AUSTRALIA.]

SCARFE AND OTHERS . . . . APPELLANTS;

AND

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

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ADELAIDE, *Sept.* 23, 27.

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

Estate Duty—Assessment—Discovery of fresh assets—Amendment of assessment—Time for alteration expired—Estate Duty Assessment Act 1914-1916 (*No.* 22 *of* 1914—*No.* 29 *of* 1916), *secs.* 8, 10, 11, 15, 16, 20, 22, 23, 30—*Acts Interpretation Act* 1901 (*No.* 2 *of* 1901), *sec.* 33 (1).

Sec. 20 (1) of the *Estate Duty Assessment Act* 1914-1916 provides that "The Commissioner may, within one year after the last payment on account of duty on any assessment, make all such alterations in or additions to the assessment as he thinks necessary in order to insure its completeness and accuracy."

Held, that the Commissioner is not entitled, after the expiration of the period mentioned in that section, to alter an assessment so as to include therein property of the testator which the executors have without dishonesty omitted from their statement.

The words "within one year after the last payment on account of duty" mean between the notification of the assessment under sec. 23 and a year after the date of the last payment under sec. 30.

CASE STATED.

On the hearing of an appeal to the Supreme Court of South Australia by Teresa Mary Gertrude Scarfe, Claxon Alexander Frederick George Scarfe and Charles Ernest Moore from an assessment of them as executors and trustees of Thomas Roger Scarfe, deceased, by the Federal Commissioner of Taxation in respect of duty under the *Estate Duty Assessment Act* 1914, *Murray* C.J. stated a case for the High Court which was substantially as follows :—

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1. Thomas Roger Scarfe (hereinafter called " the testator ") late of Adelaide in the State of South Australia, merchant, who died on 19th March 1915, by his last will appointed the appellants executors and trustees thereof.

2. The said executors and trustees are the appellants.

3. The testator at his death was entitled to a certain interest under the will of George Scarfe, who died on 14th April 1903, subject to the life interest therein of Ellen Laura Scarfe, who has died since the death of the testator.

4. On 4th May 1915 the appellants filed a statement for the purposes of the *Succession Duties Act* 1893 (S.A.) with the Registrar of Probates.

5. The appellants furnished to the Federal Commissioner of Taxation for the purposes of the *Estate Duty Act* 1914 a statement purporting to be a full and complete return of all the estate in Australia of the testator.

6. On 24th December 1915 the respondent issued to the appellants a notice of assessment of that date, assessing the net assessable value of the estate at £441,459 and the duty payable at £44,145 18s.

7. On 6th March 1916 the respondent amended the assessment of 24th December 1915, increasing the net assessable value to £441,583 and the duty payable to £45,609, and on the same day gave notice thereof to the appellants.

8. On 31st March 1916 the appellants paid the sum of £45,000 in part payment of the duty levied upon the value of the estate as assessed by the amended assessment.

9. On 3rd May 1916 the appellants paid the balance of duty so levied, namely, £609.

10. On 24th February 1919 the appellants' solicitors wrote to the respondent, enclosing a letter from the appellants to the respondent, to the following effect:—In accordance with the undertaking contained in the estate duty return filed herein, we have to advise you that since the filing of such return the above estate has become entitled to further assets, namely, the sum of £10,849 19s. 7d., being one-sixth of the sum of £107,421 11s. 1d. derived from the estate of George Scarfe, late of Adelaide, merchant, deceased, subject to the life interest therein of Ellen Laura Scarfe, of parts

beyond the seas, spinster (now deceased), who at the date of the death of the above-named Thomas Roger Scarfe was aged 74, the value of the testator's interest at the time of his death being £12,939 12s. 10d., less a deduction of £2,089 13s. 3d. succession duty paid and payable in respect thereof in this State.

11. On 23rd May 1919, the respondent amended the assessment by including the value of such interest, and on the same day gave notice thereof to the appellants.

12. The amount of extra duty payable according to this amended assessment was £1,113 12s.

13. By notice dated 20th June 1919 and given to the respondent the appellants objected against the amended assessment dated 23rd May 1919.

14. By letter dated 20th September 1919 the respondent informed the appellants that their objection was disallowed.

15. On 22nd October 1919 the appellants appealed to the Supreme Court of South Australia against the decision of the respondent.

16. The appeal came on for hearing before me on 22nd December 1919, and I decided to state this case for the opinion of the High Court upon the following question arising in the appeal, which in my opinion is a question of law :

> In the circumstances stated was there any right in the respondent to make any such further amended assessment as was made on 23rd May 1919 ?

Glynn K.C. (with him *Napier*), for the appellants. The last payment on account of duty under the amended assessment of 6th March having been made on 3rd May 1916, sec. 20 (1) of the *Estate Duty Assessment Act* 1914-1916 prevented any alteration of or addition to that assessment after the lapse of one year from 3rd May 1916.

Cleland K.C. (with him *Ward*), for the respondent. Sec. 10 requires an executor to make a full and complete return of the estate of his testator, and it is only where an assessment has been made upon a full and complete return that sec. 20 (1) operates in favour of the executor. If some of the estate has been omitted,

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the return is not full and complete. The Commissioner may in such a case require further returns under sec. 11, and there is no limit upon the time within which he may do that. [Counsel also referred to secs. 8, 15, 16 (*c*), 29, 30, 32.]

Cur. adv. vult.

Sept. 27.

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

This is a case stated by the learned Chief Justice of South Australia for the opinion of this Court, pursuant to sec. 27 (1) of the *Estate Duty Assessment Act* 1914-1916. The material facts are that Thomas Roger Scarfe died on 19th March 1915. On 19th July 1915 his executors, as administrators within the meaning of the Federal Act, furnished to the respondent a return purporting to be a full and complete return of all the testator's estate in Australia. On 24th December 1915 the respondent issued a notice of assessment stating the amount of duty payable at £44,145 18s., and requiring payment on or before 24th January 1916. On 3rd March 1916 an amended assessment was issued increasing the amount of duty to £45,609. On 31st March 1916 the appellants paid £45,000 in part payment of the last-mentioned assessment. On 3rd May 1916 the balance of duty according to the last mentioned assessment, viz., £609, was paid. Stopping there for a moment, it will be observed that " the last payment on account of duty on " the assessment was 3rd May 1916. As a fact, the testator was at the time of his death entitled to a contingent interest under the will of George Scarfe, who died in 1903. This contingent interest was not mentioned in the return made by the appellants, and was unknown to the respondent until after the final payment. The interest was contingent on the death of a sister of the testator, unmarried. That event occurred on some date subsequent to the final payment. Afterwards, on 23rd May 1919, the respondent amended the assessment by including the value of the interest, and gave notice of the details of alterations of the assessment, showing the dutiable balance to be £46,722 12s., that is to say, an increase of £1,113 12s. The appellants objected to this, and appealed.

Upon the appeal, *Murray* C.J. stated the case now under consideration—the question being as follows: "In the circumstances stated was there any right in the respondent to make any such further amended assessment?"

The answer to the question depends on the construction of the *Estate Duty Assessment Act* 1914. Estate duty is imposed at rates declared in the Schedule to the *Estate Duty Act* 1914. The Schedule to that Act provides specified rates according to "the total value of the estate, after deducting all debts." The Assessment Act, which is read with the Tax Act, in sec. 8 provides "(1) Subject to this Act, estate duty shall be levied and paid upon *the value, as assessed under this Act*, of the estates of persons" &c. In sub-sec. 3 it enacts: "For the purposes of this Act the estate of a deceased person comprises"; and then follow the species of property which are comprised. Secs. 10, 11 and 12 refer to the obligation of administrators to furnish returns with descriptions and values of "the items comprising the estate, before deducting any debts or other charges," and also setting out the debts and charges. The Commissioner may require further or other returns "for the full and complete assessment and collection of the duty assessable under this Act," and he may also permit alterations to be made in returns already lodged. Every return must be verified. Secs. 13 to 23 deal with assessments. By secs. 13 and 14 the Commissioner may take advantage of particulars obtained from the State. By sec. 15 the Commissioner "shall cause *an assessment to be made for the purpose of ascertaining the amount upon which duty shall be levied*," and is at liberty to do so from any information he thinks fit. Secs. 44 and 45 confer the most ample powers of inquiry in order to ascertain the full particulars of the estate. By sec. 16 he may make an assessment whether a return is made or not and whether he is or is not satisfied with a return actually made, and the section says "the Commissioner may make an assessment of the amount on which, in his judgment, duty ought to be levied, *and the estate shall be liable to duty thereon, except so far as the amount is, on appeal, shown to be excessive.*" These provisions, we think, are the dominating provisions so far as the present case is concerned, and indicate a "contrary intention" within the meaning of sec. 33 of the *Acts*

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Interpretation Act so as to exclude the application of sub-sec. 1 of that section. The assessment so made is regarded by the Act as definitely settling the taxable value of *the estate*, unless reduced on appeal, subject to any other statutory provision. The terms of secs. 15 and 16 show that the assessment is assumed by the Act to be the assessment of the estate as in fact it is, and not of the estate as it is represented by a possible return to be. That is the answer to the main argument on behalf of the Commissioner, the contention being that where a return was in fact made the assessment made thereon was not binding unless the return was full and complete. Sec. 23 provides that as soon as conveniently may be after an assessment is made the Commissioner is to give notice in writing of " the assessment " to the person liable to pay the duty. Sec. 22 enacts that production of any assessment or of any document under the hand of the Commissioner purporting to be a copy of an assessment shall be, *inter alia*, " conclusive evidence that the amount and all particulars of the assessment are correct," except in appeals. Sec. 32 provides that " the duty assessed under this Act shall be deemed . . . to be a debt due to the King." Sec. 20 (1) provides " that the Commissioner may, within one year after the last payment on account of duty on any assessment, make all such *alterations in or additions to the assessment* as he thinks necessary in order to ensure its completeness and accuracy." The assessment referred to is the assessment mentioned in secs. 15 and 16. The primary meaning of the word " within " in that sub-section would be between the date of payment and a year after, but the context in the rest of the section, and in other sections quoted, leads, we think, to the conclusion that its true interpretation in the present instance is at some period between the notification of the assessment (sec. 23) and a year after the final payment (sec. 30). Sub-sec. 2 of sec. 20 enacts : " Every alteration or addition which has the effect of imposing any fresh liability, or increasing any existing liability, shall be notified to the administrator affected, and unless made with his consent shall be subject to appeal." This sub-section, by requiring notification, not of a new complete assessment but only of the alteration or addition to the existing assessment, indicates that the assessment referred to in secs. 15 and 16 is otherwise to stand. Further, the

provision that in the absence of consent the alteration or addition, not the whole assessment, shall be subject to appeal, indicates the same thing. "The assessment" is appealable under sec. 24 on its own footing; the addition or alteration is also independently appealable in accordance with the conditions prescribed by sec. 24. Sub-sec. 3 and sub-sec. 4 of sec. 20 are applicable to cases where there has been total or (consistently with sec. 34) partial payment of duty. Taken as a whole, sec. 20, on this construction, maintains the general conclusiveness of the assessment as originally made, and, up to one year after the last payment on account of duty, enables errors of any kind whatsoever to be corrected and, if necessary, adjusted, whether they operate in favour of the Crown or the taxpayer. After that time the conclusive effect of the assessment, except so far as altered on appeal, is not to be disturbed. There is obvious reason for this as regards the Crown, because the revenue would otherwise be left uncertain, and therefore the assessment cannot be reduced; and there is almost as much necessity for similar certainty on the part of the taxpayer, and so *e converso* the assessment cannot be increased. It follows from this conclusion that the amended assessment to increase the liability of the administrators in respect of the estate was not authorized by the Act. It is true that an error has occurred by which the estate as a whole has been undervalued; it is also true that the error arose by the omission of the administrators themselves to inform the Commissioner of the interest which has escaped taxation: but it was admitted that the omission was not dishonest, and as an honest mistake it must, as the law now stands, remain uncorrected.

The question must be answered in the negative.

Question answered in the negative. Respondent to pay costs of appeal to High Court. Case remitted to the Supreme Court to do what is right consistently with this order.

Solicitors for the appellants, *Baker, Glynn, Parsons & Co.*

Solicitor for the respondent, *Gordon H. Castle*, Crown Solicitor for the Commonwealth, by *Fisher, Ward, Powers & Jeffries.*

B. L.