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1921.

EDWARDS
v.
MUNICIPAL
TRAMWAYS
TRUST.

May 1920 restored. The plaintiff to have from the defendant her costs before the Supreme Court in Full Court and of the appeal to this Court.

Solicitor for the appellant, *N. J. Hargrave.*
Solicitor for the respondent, *T. S. O'Halloran.*

B. L.

[HIGH COURT OF AUSTRALIA.]

MURRAY

APPELLANT;

AND

THE FEDERAL COMMISSIONER OF
TAXATION

RESPONDENT.

H. C. OF A. *Income Tax—Assessment—Income “derived from sources within Australia”—Dividends—Company—Foreign company—Profits derived from Australia—Shareholder resident outside Australia—Power of Commonwealth Parliament—The Constitution (63 & 64 Vict. c. 12), sec. 51 (II).—Income Tax Assessment Act 1915-1916 (No. 34 of 1915—No. 39 of 1916), secs. 10, 14.*

MELBOURNE,
*Feb. 15 ;
Mar. 2.*

KNOX C.J.,
Higgins,
Gavan Duffy,
Rich and
Starke JJ.

W. M., who was resident and domiciled in England, held shares in certain companies incorporated in England, where the central management and control were. He also held shares in a company incorporated in Queensland, where the management and control were. All these companies carried on business in Australia, and derived their main income from sources in Australia. By reason of the incomes so derived the companies were enabled to declare dividends, and these dividends were payable and paid to W. M. in England.

Held, that the Parliament of the Commonwealth had power to tax the dividends so received, and that the executor of W. M. was liable under the *Income Tax Assessment Act 1915-1916* to income tax in respect of so much of

the whole of each dividend as bore to the whole of each dividend the same proportion that the profits derived by each company from sources in Australia bore to the total profits of each company.

Commissioners of Stamps (Qd.) v. Wienholt, 20 C.L.R., 531, and *Nathan v. Federal Commissioner of Taxation*, 25 C.L.R., 183, followed.

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SPECIAL CASE.

On the hearing of an appeal to the High Court by William Ronald Murray, as executor of William Murray, deceased, from an assessment of him in respect of income tax on income of the deceased for the years 1915-1916 and 1916-1917, *Knox C.J.* stated the following case for the determination of the Full Court :—

1. The appellant, William Ronald Murray, is the executor of William Murray, who died on 6th March 1919.

2. The said William Murray, hereinafter called the taxpayer, was at all times material to this case domiciled and resident in England.

3. The taxpayer by agreements made outside Australia became and was a shareholder in various companies incorporated in England. Each of the companies had its head office and its central management and control in England, and its dividends were, pursuant to its articles of association or other constitution, payable in England. Each of the companies carried on part of its business in one or more of the States of the Commonwealth and was registered as a foreign company pursuant to the statute law of the State or States in which it was carrying on business, and each of the companies derived its main income from sources in Australia.

4. During the financial years 1914-1915 and 1915-1916 each of the companies mentioned in par. 3 hereof paid to the taxpayer in England a dividend in respect of his shares therein.

5. The taxpayer was a shareholder in a company incorporated in Queensland in Australia, having its head office there and deriving its main income from sources there. The taxpayer, by agreement made outside Australia, became the holder of certain shares on the London register of the company; and, pursuant to the articles of association or other constitution of the company, its dividends in respect of the said shares were payable to him in England.

6. During the financial years 1914-1915 and 1915-1916 the company mentioned in par. 5 hereof paid to the taxpayer in England a

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dividend in respect of his said shares on the London register of the company.

7. (a) The taxpayer duly made a return for the financial year 1915-1916, setting forth a statement of the income derived by him from sources in Australia during the financial year 1914-1915; (b) the respondent assessed the taxpayer in respect of the said income, and in the assessment included so much of each of the dividends paid to the taxpayer in 1914-1915 and mentioned in pars. 4 and 6 hereof as bore to the whole dividend the same proportion that the profits derived by the company from sources in Australia bore to the total profits of the company; (c) the taxpayer, being dissatisfied with the said assessment, duly lodged an objection, which was disallowed by the respondent; and (d) the appellant appealed to the High Court pursuant to the provisions of sec. 37 (4) of the *Income Tax Assessment Act* 1915-1918.

8. (a) The taxpayer duly made a return for the year 1916-1917 setting forth a statement of the income derived by him from sources in Australia during the financial year 1915-1916; (b) the respondent assessed the taxpayer in respect of the said income, and in the assessment included so much of each of the dividends paid to the taxpayer in 1915-1916 and mentioned in pars. 4 and 6 hereof as bore to the whole dividend the same proportion that the profits derived by the company from sources in Australia bore to the total profits of the company; (c) the taxpayer, being dissatisfied with the said assessment, duly lodged an objection, which was disallowed by the respondent; and (d) the appellant appealed to the High Court pursuant to the provisions of sec. 37 (4) of the *Income Tax Assessment Act* 1915-1918.

9. The said appeals being now before me for hearing, I state this case for the opinion of the High Court upon the following questions of law arising in the appeal:—

- (1) Was so much of (a) the dividends received by the taxpayer in 1914-1915 and mentioned in par. 4 hereof, (b) the dividend received by the taxpayer in 1914-1915 and mentioned in paragraph 6 hereof, as was included in the assessments income of the taxpayer within the meaning of the *Income Tax Assessment Acts* 1915?

- (2) Was so much of (a) the dividends received by the taxpayer in 1915-1916 and mentioned in par. 4 hereof, and (b) the dividends received by the taxpayer in 1915-1916 and mentioned in par. 6 hereof, as was included in the assessments income of the taxpayer within the meaning of the *Income Tax Assessment Act 1915-1916* ?
- (3) Are the provisions of the *Income Tax Assessment Acts 1915* and the *Income Tax Assessment Act 1915-1916*, in so far as they purport to tax a taxpayer resident outside Australia in respect of income received by him in the circumstances set forth in pars. 3, 4, 5 and 6 hereof, invalid as being not within the competence of the Parliament of the Commonwealth ?
- (4) To what extent, if at all, is any of the said dividends to be brought into account for the purpose of ascertaining the taxable income of the taxpayer ?

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Sir Edward Mitchell K.C. (with him *Pigott*), for the appellant. The case falls within the principle stated in *Commissioners of Stamps (Qd.) v. Wienholt* (1), that a taxing Act of a State or the Commonwealth should not be construed as relating to any person, thing or circumstance not within the territorial jurisdiction. Sec. 14 (b) of the *Income Tax Assessment Act 1915-1916* should therefore be interpreted as not applying to a member of a company who is resident outside Australia.

[RICH J. How is this case, so far as the Queensland company is concerned, distinguishable from *Nathan v. Federal Commissioner of Taxation* (2) ?]

There the shareholder was resident in Australia and could not raise the contention that sec. 14 (b) did not apply to an absentee shareholder. The Commonwealth Parliament has no jurisdiction to impose taxation upon an absentee in respect of dividends upon shares in a company which derives profits from Australia, for the absentee has not, by reason of his being a shareholder in such a company, a proprietary interest in the profits (*Daimler Co. v. Continental Tyre and Rubber Co.* (3)).

(1) 20 C.L.R., 531.

(2) 25 C.L.R., 183.

(3) (1916) 2 A.C., 307.

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[KNOX C.J. We are all of opinion that *Nathan v. Federal Commissioner of Taxation* (1) rightly decided that dividends on shares in a foreign company resulting directly from profits derived in Australia are properly subjects of taxation under the *Income Tax Assessment Act* in the hands of a shareholder.]

The Parliament has specifically dealt in sec. 16 (1A) with shareholders of a company who are absentees, but has made no reference in sec. 14 (b) to absentee shareholders. [Counsel also referred to *Kodak Ltd. v. Clark* (2); *Gramophone and Typewriter Ltd. v. Stanley* (3).]

Owen Dixon, for the respondent. The legislative jurisdiction of the Commonwealth Parliament to tax is dependent only on the source from which the subject of taxation is drawn being physically or practically amenable to the exercise of that power. Where the thing selected for taxation is income earned or derived in Australia it is sufficient if there is income earned or derived in Australia, and it is not necessary to consider any other circumstances. Once given power to impose taxation upon income earned or derived in Australia, the Parliament may create machinery for its collection, including the imposing obligations on agents of persons outside the jurisdiction which are only Australian obligations.

Cur. adv. vult.

Mar. 2.

THE COURT delivered the following written judgment:—

The taxpayer is the executor of William Murray, who was resident and domiciled in England. The testator held shares in companies incorporated in England, where the central management and control abide. He also held shares in a company incorporated in Queensland, where the management and control abide. These companies carry on business in Australia and derive their main income from sources within Australia. By reason of the incomes so derived and incomes from other sources the companies were enabled to declare dividends, and these dividends were payable and paid to the testator

(1) 25 C.L.R., 183.

(2) (1903) 1 K.B., 505.

(3) (1908) 2 K.B., 89.

in England. The dividends, we may take it, were declared by the English companies in England and by the Queensland company in Australia.

The Commissioner of Taxation assessed the taxpayer as executor in respect of so much of the dividend of the respective companies for certain years as bore to the whole dividend the same proportion that the profits derived by the company from sources in Australia bore to the total profits of the company (see *Income Tax Assessment Act* 1915-1916, secs. 14 (b), 10). It was said, first, that such a tax was not within the competence of the Federal Legislature, and, secondly, that persons not resident in Australia were not, on a proper interpretation of the *Income Tax Assessment Act*, within its terms. It is unnecessary for the purpose of this case to discuss the full extent of the Commonwealth power of taxation, but this Court in *Wienholt's Case* (1) recognized that the power subsisted if the subject matter of the tax was within the territory. Here it was said that, though the source of income of the companies was Australian, that of the testator was not, because the dividend was made or was payable in England, and his right originated there and could not be said to be derived directly or indirectly from any source in Australia.

The same argument was used in *Nathan's Case*, but it did not succeed. "When the company," as was said in *Nathan's Case* (2), "has made its profits, though no individual corporator can lay claim to any portion of them, every corporator has an interest in them. He can prevent their diversion to any purpose inconsistent with the bargain he has made, and if the corporation by its proper officers determines to divide them and does divide them, the individual shareholder's rights with respect to them do not then simply originate; they come to fruition in the final act, that has been aimed at from the beginning. The 'dividend' he receives is an aliquot part of the fund divided; the fund itself is the source of the part that he receives, and if on analysis the fund is derived from various sources, some of which are within Australia and some outside Australia, he is, according to the provisions of the Act, liable or not liable to taxation in respect of it accordingly. The Act treats a dividend from profits arising in Australia as also arising in Australia."

(1) 20 C.L.R., 531.

(2) 25 C.L.R., at pp. 197-198.

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The interpretation of the Act is not open to doubt. The tax is to be levied upon incomes derived directly or indirectly from sources within Australia. The taxpayer must then be the person who receives such an income. There is no reason for excepting a non-resident, and we find none in the Act (secs. 14, 10 and 3). Indeed, there are several provisions relating to absentees (see secs. 3, 18 (k), 19, 28).

The questions stated for the opinion of the Court are answered as follows :—(1) (a) Yes ; (1) (b) Yes. (2) (a) Yes ; (2) (b) Yes. (3) No. (4) It is not necessary to answer this question.

The costs of the special case are costs in the appeal.

Questions answered accordingly.

Solicitors for the appellant, *Blake & Riggall*.

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

B. L.