[HIGH COURT OF AUSTRALIA.]

STRICKLAND AND OTHERS . . . APPELLANTS;

AND

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

H. C. OF A. 1921.

MELBOURNE, *Feb.* 23; *March* 2.

Knox C.J., Rich and Starke JJ.

War-time Profits Tax—Assessment—Profits from a business—Partnership—Pre-war standard—"Capital of the business"—Land of partners used by partnership—Value of land—Value of right to use land—War-time Profits Tax Assessment Act 1917 (*No.* 33 *of* 1917), *secs.* 7, 10, 16, 17.

The appellants, who were the owners in severalty in fee simple of three separate parcels of land, carried on the business of graziers in partnership on the land, the partnership having the use of the land free of rent, and the individual owners of the several parcels of land each retaining the fee simple estate in his parcel of land. The profits were divided between the appellants in certain proportions.

Held, that for the purpose of assessing the partnership in respect of the business for war-time profits tax under the *War-time Profits Tax Assessment Act* 1917, the fee simple value of the land should not be treated as part of the "capital of the business" within the meaning of sec. 16 (9) of that Act.

APPEAL from the Federal Commissioner of Taxation.

On the hearing of an appeal to the High Court by Thomas Strickland, Claude Vernon Macarthur and William Stawell from an assessment of them for war-time profits tax, *Starke* J. stated a case, which was substantially as follows, for the opinion of the Full Court of the High Court :—

1. In or about the month of January 1915 the appellants individually purchased certain separate parcels of land in King Island, and entered into the business of graziers in partnership under a

verbal agreement by the terms of which it was agreed that the business should be carried on upon the said land without any rent being payable therefor by the partnership, and that the profits (if any) should be divided between the partners in the proportions of one-half, one-quarter and one-quarter respectively. No balance-sheets or profit and loss accounts of the business were prepared.

2. In pursuance of the requirements of sec. 18 of the *War-time Profits Tax Assessment Act* 1917, the appellants on 25th February 1918 furnished to the Commissioner in the prescribed manner a return on behalf of the partnership.

3. The Commissioner caused an assessment dated 16th April 1918 to be made for the purpose of ascertaining the profits upon which war-time profits tax should be levied. Against such assessment the appellants lodged certain objections. Thereafter the Commissioner sent to the appellants an amended notice of assessment and assessment dated 12th December 1918.

4. The Commissioner considered that the value of the said lands (£50,550) owned individually by the appellants was not capital of the said business, but that only so much thereof as represented the value of the grazing rights brought into the business by each appellant was part of the said capital. The Commissioner valued the said grazing rights at £16,200, which sum was arrived at in the following manner :—The said lands, if let at a rack rent equal to 5 per cent. per annum, would produce an income of £2,527. The said sum of £16,200 represents the present value as at 1st July 1915 of an annuity of £2,527 payable during the joint lives of the three appellants (whose ages were then 50, 51 and 55 years respectively) but ceasing on the death of any one of the said appellants.

5. The appellants lodged an objection in writing dated 17th February 1919 against the said amended notice of assessment.

By letter dated 28th February 1919 the Deputy Federal Commissioner disallowed the said objection, and by letter dated 14th March 1919 the appellants requested the Deputy Federal Commissioner to treat the said objection of 17th February 1919 as an appeal.

6. On the hearing of the appeal before me the following question, which in my opinion is a question of law, has arisen, and at the

H. C. OF A. 1921.

STRICKLAND v. FEDERAL COMMISSIONER OF TAXATION.

request of the parties I state this case for the opinion of the Full Court.

The question for the determination of the Full Court is :—

Whether in determining the capital of the business the lands severally owned by the partners and employed and used in such business should have been taken into account at their capital value as contended by the appellants or at some other sum to be ascertained on some other and what basis.

Weigall K.C. (with him *Lewers*), for the appellants.

Owen Dixon, for the respondent.

[During argument reference was made to *Mant* v. *Deputy Federal Commissioner of Land Tax (Qd.)* (1) ; *Lindley on Partnership*, 8th ed., p. 390 ; *Attorney-General for Victoria* v. *Melbourne Corporation* (2).]

Cur. adv. vult.

March 2.

The COURT delivered the following written judgment :—

The relevant facts in this case are as follows :—The appellants, being owners in severalty in fee simple of three separate parcels of land, agreed to carry on the business of graziers in partnership on that land, the partnership having the use of the land free of rent, and the individual owners of the several parcels of land each retaining the fee simple estate in his parcel of land. The profits of the business were to be divided between the appellants. The fee simple value of the whole of the land so owned by the appellants was £50,550. The question for our decision is whether this sum of £50,550 is to be treated as " capital of the business " within the meaning of sec. 16 (9) of the *War-time Profits Tax Assessment Act* 1917 for the accounting period ending 30th June 1916. That Act provided machinery for levying a tax upon war-time profits of any business to which the Act applied, and in the case of a business which came into existence after the commencement of the War the pre-war standard

(1) 20 C.L.R., 564.

(2) (1907) A.C., 469 ; 5 C.L.R., 257.

of profits was taken to be "an amount equal to the statutory percentage on the capital of the business." In the case of the business carried on by the appellants in partnership, the statutory percentage was ten per centum. The tax was imposed on the amount by which the profits of the business for the year in question exceeded the pre-war standard of profits determined in accordance with sec. 16 (9) of the Act. By sec. 17 (1) of the Act it was provided that the amount of the capital of a business should be taken to be "the amount of its capital paid up by the owner in money or in kind," subject to certain adjustments not material to the point at issue in this case. It is apparent that it is for the appellants to establish that the amount of £50,550 was part of the capital of the business within the meaning of these sections.

It is clear that both the legal and equitable estates in fee simple in the parcels of land in question remained in the individual owners of such land subject only to the right of the partnership to use the land for the purposes of the business, and that the partners as partners, or the partnership consisting of those partners, had no further or other interest in the land than the right to use it for the purposes of the business. It follows that no greater interest in the land than this right to use it could be regarded as an asset of the partnership business, and consequently the fee simple value of the land could not be regarded in any sense as such an asset. It follows also that the fee simple value of the land, as distinct from the value of the right to use it for the purposes of the partnership business, could not be regarded as assets or capital employed or used in the business of the partnership. If the partnership had been dissolved the land would remain as it had always been, the property of the individual owners, and none of the partners could insist on the sale of the land as part of the partnership assets. Under these circumstances we think it is impossible to maintain that the fee simple value of the land formed part of the capital of the partnership paid up by the owner in money or in kind; for none of the appellants has parted with his fee simple estate in the parcel of land belonging to him, and the value of that estate in fee simple remains his individual property subject only to the diminution caused by the right of the partnership to use that land for the purposes of the business so long

H. C. OF A. 1921.

STRICKLAND v. FEDERAL COMMISSIONER OF TAXATION.

as the partnership continues. Having regard to the fact that the fee simple value of the land forms no part of the assets of the partnership, the contention of the appellants involves the proposition that the value of property actually used in a business is to be treated for the purposes of this Act as capital of such business whether such property belongs to the owners of the business or not. We can find nothing in the Act to justify this proposition. The respondent has allowed the sum of £16,200 in respect of the grazing rights in calculating the capital in the business. We express no opinion as to the correctness or otherwise of the method by which the amount was ascertained, and it is unnecessary for us to say more than that there is nothing before us to show that the assessment is excessive.

In our opinion the question submitted in the special case should be answered as follows: "In determining the capital of the business the lands severally owned by the partners and employed and used in such business should not be taken into account at their capital value."

Question answered accordingly.

Solicitors for the appellants, *Malleson, Stewart, Stawell & Nankivell.*

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

B. L.