

Case remitted to Supreme Court to be dealt with as may be considered just. Appellant to pay costs of appeal.

H. C. OF A.
1924.
UNION
THEATRES
LTD.
v.
MARRICK-
VILLE
BUILDINGS
LTD.

Solicitors for the appellant, John Williamson & Sons.
Solicitors for the respondent, W. R. & F. B. Jones.

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[HIGH COURT OF AUSTRALIA.]

THE DE GREY RIVER PASTORAL COM- }
PANY LIMITED } APPELLANT ;

AND

THE DEPUTY FEDERAL COMMISSIONER }
OF TAXATION FOR WESTERN AUS- } RESPONDENT.
TRALIA }

Income Tax — Assessment — Company — Assessable income — Pastoral business —
Reduction of pastoral areas — Effect of Act of Parliament — Sale of cattle —
Profits from sale—Realization of assets—Proceeds of business—Earnings—
Income Tax Assessment Act 1915-1918 (No. 34 of 1915—No. 18 of 1918), secs.
3, 14—Land Act Amendment Act 1917 (W.A.) (7 Geo. V. No. 19), sec. 30 (2). Sept. 19, 21.

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PERTH,
Starke J.

A pastoral company which owned several large stations in Western Australia being compelled by the *Land Act Amendment Act 1917* (W.A.) to reduce the area of its holding, resolved to sell, and did sell, two of its stations and (to other purchasers) the bulk of the cattle upon those two stations.

Held, that the company was assessable to Federal income tax in respect of the profit made on the sale of the cattle as being proceeds of the business carried on by the company and also earnings of the company.

APPEAL from the Federal Commissioner of Taxation.

The De Grey River Pastoral Co. Ltd., having been assessed for Federal income tax for the year 1920-1921 by the Deputy Federal

H. C. OF A. Commissioner of Taxation for Western Australia, appealed to the
 1923. High Court from that assessment, and the appeal came on for hearing
 before *Starke J.*, in whose judgment hereunder the material facts
 are stated.

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 RIVER
 PASTORAL
 CO. LTD.

v.

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 FEDERAL
 COMMIS-
 SIONER
 OF
 TAXATION
 (W.A.).

Jackson, for the appellant.

Dwyer and Thomas, for the respondent.

Cur. adv. vult.

Sept. 21.

STARKE J. delivered the following written judgment :—

The appellant, the De Grey River Pastoral Co. Ltd., was established (*inter alia*) to acquire pastoral properties and to carry on the business of graziers, farmers, and sellers of and dealers in real and personal property, live and dead stock, and produce of the soil of any kind. It possessed several pastoral properties, of large area, in Western Australia, known as De Grey, Mulyie, Warrawagine, and Balfour Downs Stations. The former two adjoined one another, and comprised some 794,500 acres. The latter two also adjoined, but they were some fifty miles distant from the nearest point of the other two stations, and they comprised about 2,440,000 acres. In 1917 a Land Act was passed in Western Australia (7 Geo. V. No. 19), and by sec. 30 (2) it was enacted that the maximum area held by one person in the same Division should be 1,000,000 acres, and that if any leaseholder was beneficially interested in an area exceeding the prescribed maximum, then his leases were liable to forfeiture. Substantially, the Company's leases were in the same Division; and, in view of the Act, it resolved to dispose of its pastoral properties known as Warrawagine and Balfour Downs, and the stock thereon. Warrawagine was sold to one Rubin, Balfour Downs was sold to Dunnet and others, and "the whole of the cattle including bullocks and exclusive of calves under one month old or unfit to travel mustered by the De Grey Co. upon the stations Warrawagine and Balfour Downs prior to 15th March 1921 or any extension thereof, but excluding 500 selected cows and 20 selected bulls," were sold to Copley and others. The price for each and every mob

of cattle—including bullocks and calves—mustered and notified as ready for delivery, or delivered during the currency of the agreement with Copley and others, was the sum of £5 net per head on the stations. Under this agreement, the appellant had received, by 31st December 1920, a large sum of money. The appellant returned its gross income for its balancing period January to December 1920 (substituted in its case for the financial year of the Income Tax Acts), but claimed, in substance, a deduction of all profit arising from the sale of the cattle on Warrawagine and Balfour Downs Stations, in the circumstances hereinbefore mentioned. The Commissioner disallowed this deduction. Allowing for some adjustments, the net amount, for taxation purposes, involved in the deduction claimed is a sum of £8,144.

The appellant claims that this sum represents a realization of its assets, and not the proceeds of any business carried on by it, and that the sum is not otherwise taxable. It relies, in support of this contention, upon *Commissioner of Taxation (W.A.) v. Newman* (1) and *Hickman v. Federal Commissioner of Taxation* (2), decided in this Court. In my opinion the contention is untenable, both in fact and in law.

These moneys are, in point of fact, proceeds of the business carried on by the appellant. The question, as Lord *Buckmaster* said in *O'Kane & Co. v. Commissioners of Inland Revenue* (3), is whether such proceeds arose from a method of realization inconsistent with a continuing concern. Now, in my opinion, the acts of the Company itself afford the Court important evidence for the determination of this question of fact. The appellant Company "may well be held bound by its own actions" (*Commissioner of Taxes v. Melbourne Trust Ltd.* (4)). In its books the Company carried the proceeds of the sale of the cattle to Copley and others to a "Cattle trading account Balfour Downs—Cattle depasturing on Warrawagine pending realization"; it showed a net profit on this account of £9,327, and that profit was carried into the general profit and loss account of the Company for its trading year ending on 31st December 1920. From

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(1) (1921) 29 C.L.R. 484.
(2) (1922) 31 C.L.R. 232.
(3) (1922) 126 L.T. 707.

(4) (1914) A.C. 1001, at p. 1011; 18
C.L.R. 413, at p. 421.

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the profit and loss account this sum was carried to the liabilities side of the balance-sheet of the Company. Similar entries are found in the accounts of the Company for the balancing period ending on 31st December 1921. The total trading profits for the trading year 1921 are stated at £18,584, of which, however, a sum of £7,834 represents profits in respect of the cattle upon Warrawagine and Balfour Downs. The accumulated profits of the Company at the end of 1921 amounted, according to its accounts, to the sum of £65,677, and between 5th October and 8th April 1922 it declared dividends to the extent of £45,078. But in April 1922 the Company purported to apportion these dividends. It was resolved to treat the first dividend as paid out of profits of the year ended 31st December 1918, and the remaining dividends as coming from taxable profits in the hands of the Company derived in the year ended 31st December 1921 and preceding years, in the ordinary sequence. Assuming that the Company could properly make this appropriation, still it treated the accumulated fund of £65,677 in its hands as ordinary trading profits, divisible, if it should so resolve, amongst its shareholders. The sale to Copley and others was not, it may be admitted, an example of ordinary methods of trading on the part of the Company, but it was not for the purpose of ending the Company's trade. The Company still carried on its business on the De Grey and Mulyie Stations, and all that can be said, in my opinion, is that it realized some of its stock in an unusual manner, as a result of the Act passed by the Parliament of Western Australia. "So far as the external world was concerned," the Company was engaged in trading, and its sale of cattle was merely a modification of its usual method, brought about by the passing of the Act. Mr. Dwyer placed some reliance on the fact that some cattle and calves were excepted from the sale to Copley and others, and contended that this fact established the continuance of the Company's business in relation to the Warrawagine and Balfour Downs Stations, and showed, consequently, that the proceeds of the sale were proceeds of the business carried on by the appellant on these stations. It may be so, but I prefer to base my conclusions upon the considerations already set forth.

The proceeds of the sale to Copley and others are, in point of law,

in my opinion, assessable to income tax, whether they are or are not the proceeds of a business carried on by the appellant. There are other sums assessable to income tax as well as the proceeds of a business carried on by the taxpayer, e.g., earnings and income from property. The moneys accruing from this sale were, in my opinion, earnings, even if they were not the proceeds of any business carried on by the taxpayer. These gains and profits were not due to the mere realization of an asset, or to the change of an investment, or to the enhancement of capital. They were the results of a business operation. The transaction was no doubt forced upon the Company by the Act of Parliament, but the gains and profits nevertheless arose from the sale of stock which it had acquired or bred for the purpose of profit-making by sale. The Company made a profit in accordance with its scheme of business, though the method of realizing that profit was to some extent forced upon it by the Act. Profits so made are, in my opinion, income and assessable to tax.

The appeal is dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant, *Parker & Parker*.

Solicitor for the respondent, *Gordon H. Castle*, Crown Solicitor for the Commonwealth, by *Dwyer, Unmack & Thomas*.

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