

[HIGH COURT OF AUSTRALIA.]

THOMSON . . . . . APPELLANT ;

AND

FEDERAL COMMISSIONER OF TAXATION . . . . . RESPONDENT.

*Income Tax—Assessment—Income—Exception—Assignment of lease—Payment therefor—Mining lease—“Prospector”—Satisfaction of Commissioner—Appeal—Income Tax Assessment Act 1915-1921 (No. 34 of 1915—No. 31 of 1921), sec. 14.*

H. C. OF A.  
1923.  
PERTH,  
Sept. 10, 21.  
Starke J.

Sec. 14 of the *Income Tax Assessment Act 1915-1921* provides that “The income of any person shall include . . . (d) . . . the amount of any payment received by a lessee upon the assignment or transfer of a lease to another person . . . . Provided that this paragraph shall not apply to the proceeds of the sale, transfer or assignment of the lease of a mining property (other than coal mining) where the Commissioner is satisfied that the lease has been sold, assigned or transferred (i.) by a bona fide prospector ; ” &c.

*Held*, that where the Commissioner is not so satisfied, his opinion is not subject to review by the High Court.

*Cornell v. Deputy Federal Commissioner of Taxation*, (1920) 29 C.L.R., 39, followed.

A person who procures to be forfeited a mining lease of land well known to contain large deposits of iron ore and himself obtains a mining lease of the land comprised in that lease and of some adjoining land is not, in respect of the lease obtained by him, a “prospector” within the meaning of the section.

APPEAL from the Federal Commissioner of Taxation.

John Thomson was assessed for Federal income tax in respect of the year ending 30th June 1922, and included in the assessment was a certain sum of money received by him upon the assignment or transfer to the Government of Queensland of certain leases for mining purposes. He appealed to the High Court against such assessment, and the appeal was heard by *Starke J.*, in whose judgment hereunder the other material facts are stated.



H. C. OF A.      *Keenan K.C. and Clark, for the appellant.*  
1923.

THOMSON      *Dwyer and Thomas, for the respondent.*  
*v.*

FEDERAL  
COMMISSIONER OF  
TAXATION.

*Cur. adv. vult.*

Sept. 21.

STARKE J. delivered the following written judgment:—The appellant (Thomson) took up certain iron leases on Cockatoo Island in Yampi Sound, which he subsequently sold to the Queensland Government. The Commissioner assessed him to income tax for the financial year 1921-1922, in respect of the amount he received in payment upon the assignment or transfer of the leases to the Queensland Government, pursuant to the provisions of the *Income Tax Assessment Act 1915-1918*, sec. 14 (*d*). But the appellant claims that the provisions of sec. 14 (*d*) do not apply to the moneys received by him in respect of the leases, by reason of an amendment of that section enacted in 1921 (*Income Tax Assessment Act 1921* (No. 31 of 1921), sec. 6 and sec. 12 (2)). The amendment, which applies to assessments for the financial year beginning on 1st July 1921, is as follows:—“Section fourteen of the Principal Act is amended by inserting at the end of paragraph (*d*) thereof the following proviso:—‘Provided that this paragraph shall not apply to the proceeds of the sale, transfer or assignment of the lease of a mining property (other than coal mining) where the Commissioner is satisfied that the lease has been sold, assigned or transferred (i.) by a bona fide prospector; . . .’”

The condition of the exemption is that the Commissioner shall be satisfied that the lease has been transferred by a bona fide prospector: the Court is not, in my opinion, authorized by the Acts to substitute its opinion or satisfaction for that of the Commissioner (*Cornell v. Deputy Federal Commissioner of Taxation* (1)). On this ground alone the appeal must be dismissed. But, as I permitted the appellant to enter upon the merits of the case, I should, I think, state the conclusion which I should reach upon the facts, if the opinion of the Commissioner were subject to review by this Court.

The appellant did not satisfy the Commissioner, and he has not



satisfied me, that he was, within the meaning of the *Income Tax Assessment Act*, a prospector, in relation to the leases assigned to the Queensland Government. A prospector, in the ordinary use of the word, is one who explores a region for minerals and endeavours to establish their existence. All that the appellant in this case did was to take up leases in a region which was well known to contain large deposits of iron ore. Indeed, part of the area which he took up had been under lease to the Australian Iron Mines Ltd. But that company did not work the deposits, and the appellant procured the forfeiture of the leases, and sent a man up to Yampi Sound to peg out all the iron deposits which were valuable. The ground formerly held by the Australian Iron Mines Ltd. was re-pegged, and certain ground adjoining it was taken up in addition. The iron ore deposits in this ground were well known to the appellant and to pearlers and others who had visited the Sound, and they were visible to the eye in large outcrops. The extent of the deposit had not been proved, and was not proved by the appellant or his man when the leases were pegged out on his behalf. Subsequently, the appellant endeavoured to finance the opening up of the leases, and procured the despatch, at his expense, of the State Mining Engineer to Yampi Sound, to report upon the deposits. And he also spent other moneys, with a view to opening up the leases, upon the laying of buoys for the anchorage of ships, &c. But the Commonwealth Government prohibited the export of iron ore, and the whole scheme fell through. The leases were then sold to the Queensland Government.

All this shows that the appellant was a mining speculator in regard to the leases, but it falls far short, in my opinion, of establishing his claim to be a prospector.

The appeal is dismissed with costs.

*Appeal dismissed with costs.*

Solicitors for the appellant, *F. J. Clark*.

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

B. L.

H. C. OF A.  
1923.

THOMSON  
v.  
FEDERAL  
COMMISSIONER OF  
TAXATION.

Starke J.