

[HIGH COURT OF AUSTRALIA.]

THE INCORPORATED COUNCIL OF LAW
REPORTING FOR THE STATE OF } APPELLANT;
QUEENSLAND

AND

THE FEDERAL COMMISSIONER OF TAXATION RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF
QUEENSLAND.

H. C. OF A. *Income Tax — Assessment — Exemption — Public authority — Public educational*
1924. *institution—Company—Association not for profit—Objects of company—*
Publication of law reports—Assistance to Supreme Court libraries—Income Tax
BRISBANE, *Assessment Act 1915-1918 (No. 34 of 1915—No. 18 of 1918), secs. 3, 10, 11,*
June 23. *14, 16—Companies Act Amendment Act 1889 (Q.) (53 Vict. No. 18), sec. 26.*

Isaacs A.C.J.,
Rich and
Starke JJ.

The Incorporated Council of Law Reporting for the State of Queensland, registered as an association not for profit under sec. 26 of the *Companies Act Amendment Act 1889 (Q.)*, for the purpose of publishing law reports, is not a “public authority” or a “public educational institution” within the meaning of sec. 11, (1) (a), (d), of the *Income Tax Assessment Act 1915-1918*, and is not exempt from income tax.

CASE STATED.

On the hearing of an appeal to the Supreme Court of Queensland by the Incorporated Council of Law Reporting for the State of Queensland from an assessment of Federal income tax, *Lukin J.* stated a case, which was substantially as follows, for the opinion of the Full Court of the High Court :—

1. The appellant, the Incorporated Council of Law Reporting for the State of Queensland is an association duly registered and incorporated under sec. 26 of the *Companies Act Amendment Act of 1889 (Q.)*.

2. The articles of association provide (*inter alia*) :—

“(5) On and after 31st December 1908 the Incorporated Council shall consist of members to be appointed as follows : Three members of the Bar of Queensland practising in the City of Brisbane and three solicitors of the Supreme Court of Queensland practising in the City of Brisbane to be appointed by three of the Justices of the Supreme Court and such members shall retire at the end of every year but shall be eligible for reappointment. The Incorporated Council shall also include the Attorney-General and the Solicitor-General and the Registrar of the Supreme Court at Brisbane for the time being as *ex-officio* members during the time they respectively hold their offices (if respectively willing to be and act as such members).”

“(10) The constitution of the Incorporated Council may be varied from time to time by resolution of the Incorporated Council with the consent in writing of three of the Justices of the Supreme Court of Queensland.”

“(18) The Incorporated Council are empowered to hire or take on lease any lands or tenements for the purposes of the Incorporated Council upon such terms as they shall think fit and to let or surrender any such premises from time to time, also to institute conduct defend compromise or refer to arbitration or abandon any legal or other proceedings which shall be brought or taken against the Incorporated Council or any of their officers printers or publishers or which shall otherwise relate to their property or affairs ; also to invest in their names or in the names of two or more trustees to be named by them for that purpose any moneys or funds of the Incorporated Council not required for their immediate purpose in stocks or funds of the Government of the State of Queensland or in the Savings Bank of the State of Queensland and also to place any moneys on deposit at interest with any joint stock banking company carrying on business in Queensland and from time to time realize or vary their investments or securities as they shall think fit.

“(19) The proceeds of the sale of reports and other profits of the Incorporated Council shall be applied as follows :—(1) In paying the current expenses costs charges and other disbursements of the Incorporated Council in the conduct and management of the

H. C. OF A.
1924.

INCORPORATED
COUNCIL
OF LAW
REPORTING
FOR THE
STATE OF
QUEENSLAND
v.
FEDERAL
COMMISSIONER OF
TAXATION.

H. C. OF A.
1924.

INCORPORATED
COUNCIL
OF LAW
REPORTING
FOR THE
STATE OF
QUEENSLAND
v.

FEDERAL
COMMISSIONER OF
TAXATION.

affairs of the association or relating thereto including all liabilities of the existing Council of Law Reporting. (2) In paying the salaries of the editors and reporters secretary and other officers in such manner as shall from time to time be arranged or agreed upon with them. (3) In defraying the other expenses of the publication sale and distribution of the *Queensland Law Reporter* and of the Reports and other publications. (4) In paying the rent of any lands or tenements hired or taken on lease as aforesaid or any repairs alterations and other outgoings in respect of such premises. (5) In supplementing the funds of the committees of the libraries of the Supreme Court of Queensland or in forming a reserve fund to meet future contingencies or in reducing the cost of any of the publications of the Incorporated Council to subscribers or others in such other way as the Incorporated Council in their discretion shall from time to time consider best calculated to improve the libraries of the Supreme Courts of the State of Queensland or the present system of law reporting or otherwise to provide for the purposes expressed in the memorandum of association.

“(20) The application of the proceeds of the sale of reports and other profits of the Incorporated Council may without prejudice to existing engagements be varied as the Incorporated Council shall from time to time determine or as the course of their operations shall from time to time require or render expedient but so as always strictly to adhere to the rule prescribed by the memorandum of association that the income and property of the association whencesoever derived shall be applied solely towards the promotion of the objects of the association as set forth in the memorandum of association.”

3. The memorandum of association provides as follows:—

“(3) The objects for which the association is established are (*inter alia*):—(a) The preparation and publication in a convenient form at a moderate price and under gratuitous professional superintendence and control of reports of judicial decisions of the Supreme Court in the State of Queensland. (d) To supplement or assist any of the libraries of the Supreme Court of the State of Queensland by gifts of any of the publications of the association or publications received by it or of such profits of the association as the Council shall from time to time determine to donate.

“(4) The income and property of the association whencesoever derived shall be applied solely towards the promotion of the objects of the association as set forth in this memorandum of association and no portion thereof shall be paid or transferred directly or indirectly by way of dividend bonus or otherwise howsoever by way of profit to the persons who at any time are or have been members of the association or to any of them or to any person claiming through them: Provided that nothing herein shall prevent the payment in good faith of remuneration to any editors reporters secretaries officers or servants of the association or to any members of the association or other person in return for any services actually rendered to the association.

“(8) If after the dissolution of the association there remains after the satisfaction of all its debts and liabilities any property whatever the same shall not be paid to or distributed among the members of the association but shall be given or transferred to the committee of the library of the Supreme Court of the State of Queensland at Brisbane to be distributed amongst the committees of the libraries of the Supreme Court of the said State in such proportions as the committee of the said first-mentioned library shall determine or if at any time such last-mentioned committee shall not be in existence to such public legal library or libraries in the State of Queensland and in such proportions as a Justice of the Supreme Court of the said State having jurisdiction in the matter may determine for the purpose of purchasing legal or other works for the said library or libraries.”

4. [A copy of the memorandum and articles of association was annexed to the special case.]

5. Pursuant to the said memorandum and articles of association between 1st February 1919 and 31st December 1919 an aggregate sum of £350 was paid to the respective committees of the Supreme Court libraries at Brisbane, Townsville and Rockhampton, but such sum was not allowed as a deduction in calculating the taxable income of the appellant.

6. The said libraries are open for the use, free of any charge, to the Justices of the Supreme Court, barristers and solicitors, conveyancers, students-at-law, articled clerks and solicitors' clerks

H. C. OF A.
1924.

—

INCORPORATED
COUNCIL
OF LAW
REPORTING
FOR THE
STATE OF
QUEENSLAND

v.

FEDERAL
COMMISSIONER OF
TAXATION.

—

H. C. OF A.
1924
—
INCORPORATED
COUNCIL
OF LAW
REPORTING
FOR THE
STATE OF
QUEENSLAND
v.
FEDERAL
COMMISSIONER OF
TAXATION.
—

in the respective towns in which the libraries are situated, and they respectively make use of the books in the said libraries very extensively, both for reference purposes and for citations in Court, and the said libraries are practically indispensable for the due conduct of the Supreme Court. As a fact the said libraries are also used free of any charge by Crown Law officers, Court officials, including the Registrars, Police Magistrates, Clerks of Petty Sessions, and by actual litigants not having legal advisers. Students-at-law and articled clerks also make general use of the books in the said libraries for the purpose of preparing themselves to qualify as barristers or solicitors, and any members of the public who desire to use the same may upon obtaining permission do so.

7. The gross income of the appellant for the year ending on 31st December 1919 was £1,361, from which sum the appellant was allowed deductions amounting to £802.

8. The respondent assessed the appellant for the payment of income tax based upon income derived during the year 1919 on the sum of £559 as income of a company not distributed.

9. The appellant duly gave notice of objection on the grounds :
(i.) That the Council is not liable to pay income tax, being exempt under sec. 11 (1) (d) of the *Income Tax Assessment Act* 1915-1918 ;
(ii.) that the Council is not liable to pay income tax, as the Council is not carried on for profit or gain to the individual members thereof ;
(iii.) that if the Council is liable the rate at which it is assessed is excessive, and the Council contends that it is not liable to be assessed under any section or schedule applicable to companies ; (iv.) the assessment is contrary to law.

10. The appellant duly required the notice of objection to be treated as a notice of appeal to the Supreme Court of Queensland.

The opinion of the High Court was asked on the following questions :—

- (1) Is the appellant liable to assessment to income tax as to any and what amount (a) as a company on the income which was not distributed ; or (b) as a person ?
- (2) Is the appellant exempt from assessment to income tax ?
- (3) By whom should the costs of this special case be paid ?

Stumm K.C. (with him *Douglas*), for the appellant. The appellant company is not a company assessable to income tax under the *Income Tax Assessment Act* 1915-1918: it was formed for certain useful objects to the promotion of which its profits are solely applicable; it has no power to pay any dividend to members; and it was registered under the *Companies Act Amendment Act* of 1889 (Q.) (53 Vict. No. 18), sec. 26, as an association not for profit. In strictness it has and can have no profit and itself is in receipt of no taxable income as a company. Further, the company is exempt as a "public authority" (sec. 11 (1) (a)) and as a "public educational institution" (sec. 11 (1) (d)).

H. C. OF A.
1924.

INCORPORATED
COUNCIL
OF LAW
REPORTING
FOR THE
STATE OF
QUEENSLAND
v.
FEDERAL
COMMISSIONER OF
TAXATION.

[ISAACS A.C.J. I do not know how this body of persons are able to constitute themselves a public authority. I can only understand their constitution as a public authority by the exercise of some statutory power authorizing them to act on behalf of the public or of the State.]

Primarily the Act indicates no intention to impose taxation on the income of a company in which the company can take no benefit and in which no one can take benefit except by the exercise of the company's power to make a gift to a particular class of donees.

Hart, for the respondent, was not called on.

THE COURT delivered the following judgment:—

This case may be dealt with very shortly. The appellant is an association incorporated and registered under the *Companies Act Amendment Act* of 1889 (Q.). The *Income Tax Assessment Act* 1915-1918 contains provisions for assessment of income tax on the taxable income of companies. A company includes all bodies or associations corporate or unincorporate, but does not include partnerships (sec. 3). By sec. 10 of that Act income tax is, subject to the provisions of the Act, payable upon the taxable income derived by every taxpayer, that is, "any person chargeable with income tax" (sec. 3), and "person" includes a company (sec. 3). There is no doubt that this association is a taxpayer within sec. 10 of the Act. In sec. 11 (1) the Legislature has directed its attention to a determination of what incomes should be exempt from income tax, and has declared that the revenue of a public authority (sub-sec. (a)) and the income

H. C. OF A.
1924.

INCORPORATED
COUNCIL
OF LAW
REPORTING
FOR THE
STATE OF
QUEENS-
LAND
v.
FEDERAL
COMMISSIONER OF
TAXATION.

of a public educational institution (sub-sec. (d)) are amongst those which are to be exempt. Sec. 14 contains a list of dividends, interest, profits, and receipts, &c., which are statutorily defined as income of any person. The income of this company is income within that definition. Sec. 16 enables certain deductions to be made for the purpose of ascertaining the taxable income of a company from the total assessable income of a company in addition to any other deduction allowed by the Act, under the circumstances stated in that section. Those circumstances, however, do not, and, perhaps, cannot, exist with respect to the appellant company, and that is the only reason for not applying the section. These considerations, in our opinion, indicate that, unless this company falls within any of the exemptions specified in sec. 11, it cannot be exempt as a company at all. The only two provisions of that section upon which counsel place reliance are sub-secs. (a) and (d), to which I have referred. But this company clearly is not a public body and, in our opinion, it is not a public educational institution.

The answers to the question must be, first, that the company is liable to assessment to income tax as a company on the income which was not distributed; and to the second question, the company is not exempt from assessment to income tax.

The third question is "By whom should the costs of this special case be paid?" We have given our answers to the substantial questions submitted to us; and we remit the case to the Supreme Court to be determined in accordance with the judgment, with the opinion that the costs of this special case be costs in the appeal.

Question 1 answered: Appellant is liable to assessment to income tax as a company on the income which was not distributed.
Question 2 answered in the negative. Question 3: Costs of special case to be costs in the appeal. Special case remitted to Lukin J.

Solicitors for the appellant, *Tully & Wilson*.

Solicitors for the respondent, *Chambers, McNab & McNab*, for *Gordon H. Castle*, Crown Solicitor for the Commonwealth.

J. L. W.