

[HIGH COURT OF AUSTRALIA.]

LEGH AND ANOTHER . . . . . APPELLANTS ;

AND

THE FEDERAL COMMISSIONER OF }  
TAXATION . . . . . } RESPONDENT.H. C. OF A.  
1926.BRISBANE,  
June 25, 26.Knox C.J.,  
Higgins and  
Gavan Duffy JJ.*Income Tax—Assessment—Assessable income—Land held on lease from Crown under Land Acts 1910-1925 (Q.) (1 Geo. V. No. 15—16 Geo. V. No. 27)—Sale and transfer by lessee—"Tangible assets"—Income Tax Assessment Act 1922-1923 (No. 37 of 1922—No. 27 of 1923), sec. 16 (d) (i.).*

Sec. 16, sub-sec. (d) (i.), of the *Income Tax Assessment Act 1922-1923* provides that "the assessable income of any person shall include . . . the amount of any payment received by a lessee upon the assignment or transfer of a lease to another person after deducting therefrom . . . the part (if any) which, in the opinion of the Commissioner, is properly attributable to the transfer of any tangible assets belonging to the lessee."

*Held*, that grazing selections held on lease from the Crown under the *Land Acts 1910 to 1925 (Q.)* are "tangible assets" within the meaning of the sub-section.

## CASE STATED.

On the hearing of an appeal by Alma Sybil Legh and the Union Trustee Co. of Australia Ltd., the trustees of the estate of Edmund Dawson Legh deceased, against an assessment of income tax for the year 1922-1923 by the Deputy Federal Commissioner of Taxation at Brisbane to the High Court of Australia, *Knox C.J.* stated a case, which was substantially as follows, for the opinion of the Full Court :—

1. Edmund Dawson Legh, who died on 2nd June 1919, carried on



for many years before and at the date of his death the business of a pastoralist at Paradise Downs Station in Queensland. The said station comprised certain grazing farms and a grazing homestead, all held on lease from the Government of the State of Queensland under the provisions of Part IV. of the *Land Acts* 1910 to 1925, and at the time of the sale and transfer hereinafter mentioned some portion of the term of each of the said leases remained unexpired.

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2. By his will, dated 30th November 1917, the said Edmund Dawson Legh appointed his wife, the appellant Alma Sybil Legh, and his brother William Montagu Legh, to be his executors and trustees. William Montagu Legh renounced probate, but Alma Sybil Legh duly proved the will and accepted the trusts thereof and became lessee of the grazing farms and grazing homestead and continued to carry on the said business.

3. Alma Sybil Legh continued, until the time of the sale and transfer hereinafter mentioned, to carry on the business as sole executrix and trustee of the will and as sole lessee of the grazing farms and homestead. On 27th February 1925 the appellant the Union Trustee Company of Australia Ltd. was duly appointed a trustee of the will in the place of William Montagu Legh.

4. At no time did Edmund Dawson Legh nor did Alma Sybil Legh, his executrix and trustee, traffic in land or interests in land or carry on the buying and selling of such property as part of his or her business.

5. Pursuant to an agreement in writing dated 6th February 1923 Alma Sybil Legh, as such executrix and trustee as aforesaid, sold and transferred the leases comprising the station together with all fixtures and improvements thereon and certain plant, furniture and live-stock, on a walk-in-walk-out basis, to John Yamala Shannon and Mabel Pierce Shannon for the total price of £36,311 10s.

6. The purchasers duly took delivery and possession of the property so sold, and duly paid to Alma Sybil Legh, as such executrix and trustee, in the financial year ended 30th June 1923 the said sum of £36,311 10s., and the leases were duly transferred to them.

7. The price of £36,311 10s. was apportioned between the vendor and the purchasers as follows :—Part I.—Payment received for the



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leases of Paradise Downs £14,820 5s. Part II.—Payment received for improvements £8,797, plant £972, furniture £211, sheep £11,165 5s., cattle £106, and horses £240—£21,491 5s. :—Total £36,311 10s.

8. By a notice of assessment dated 8th April 1925 the appellants were assessed to income tax by the respondent, in respect of the period commencing on 1st July 1922 and ending on 30th June 1923, on the sum of £14,048 as being the balance of the payment received by the appellant Alma Sybil Legh upon the assignment or transfer of the said leases after deducting from such payment the amounts in the next succeeding paragraph set out.

9. The sum of £14,048 was arrived at by the respondent as follows : by deducting from the total sum of £36,311 10s., firstly, the sum of £21,491 5s., as representing the part of the total sum which, in his opinion, was properly attributable to the transfer of the tangible assets particularized in Part II. of par. 7 hereof ; secondly, the sum of £549, as representing so much of the amounts paid by the testator for the assignment or transfer of the leases (or some of them) as was properly attributable to the period of the leases (or some of them) unexpired at the time of the said sale ; and thirdly, the sum of £223, being the amount of the commission paid by the appellants on the said sale, and by omitting the odd 5s.

10. The respondent accepted the sum of £14,820 5s. mentioned in Part I. of par. 7 hereof, as being the part of the total purchase-money properly attributable to the transfer of the said leases, but did not deduct the said sum of £14,820 5s. from the total sum of £36,311 10s., being of opinion that the leases were not tangible assets within the meaning of sec. 16 (d) (i.) of the *Income Tax Assessment Act* 1922-1923.

11. The appellants, being dissatisfied with the said assessment, duly lodged an objection in writing thereto, stating as the grounds of such objection that the assessment as issued was excessive and that the amounts received on the sale of the leases were not assessable as income under sec. 16 (d) of the said Act. The said objection was disallowed by the respondent, and the appellants thereupon appealed to the High Court pursuant to the provisions of sec. 50 (4) of the said Act.



12. During the hearing before me the appellants desired to contend that if on its true construction the said sec. 16 (*d*) makes assessable as income the said sum of £14,820 5s., the said section is invalid as being obnoxious to the provisions of sec. 55 of the Constitution. The respondent objected that this contention was not open to the appellants, having regard to the notice of objection lodged by them as set out in par. 11 hereof.

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13. On the hearing of the appeal the following questions arose, which in my opinion are questions of law, and I state this case for the opinion of the High Court thereon:—

- (1) Did the said sum of £14,048 form part of the assessable income of the taxpayer derived during the period of twelve months ended on 30th June 1923 ?
- (2) Was the taxpayer entitled to have the said sum of £14,048 deducted from the said sum of £36,311 10s. in determining the amount of her taxable income ?
- (3) Whether under the objection lodged by the appellants set out in par. 11 hereof it is open to them to contend that sec. 16 (*d*) is invalid as being obnoxious to the provisions of sec. 55 of the Constitution.
- (4) If the answer to question 3 is "Yes," is the said sec. 16 (*d*) invalid for the said reason ?

*Herchman* (*Stumm* K.C. with him), for the appellants.

*Real*, for the respondent.

KNOX C.J. The only question in the case is whether certain grazing selections which were held on lease from the Government of Queensland and which were the subject of the sale by the taxpayer were "tangible assets" within the meaning of sec. 16 (*d*) (i.) of the *Income Tax Assessment Act* 1922-1923. In my opinion they clearly are tangible assets. There is no doubt that the leases are tangible in the sense that they had the real and substantial value of property which could be dealt with, just as any other chattel, such as the sheep and implements on the selections leased to the taxpayer.

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Question 1 will be answered in the negative and question 2 in the affirmative. It is not necessary to answer questions 3 and 4.

HIGGINS and GAVAN DUFFY JJ. concurred.

*Questions answered accordingly.*

Solicitors for the appellants, *Cannan & Peterson.*

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

J. L. W.

[HIGH COURT OF AUSTRALIA.]

WILLIAMS, KENT & CO. . . . . APPELLANTS ;

AND

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TAXATION . . . . . RESPONDENT.

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June 27, 28.

*War-time Profits Tax—Assessment—Objection—Reasons for objection— Further reason not taken within statutory period—Part payment of tax—Subsequent alteration in assessment—Taxpayer's right to object—Estoppel—War-time Profits Tax Assessment Act 1917-1918 (No. 33 of 1917—No. 40 of 1918), secs. 23, 28.*

Knox C.J.,  
Gavan Duffy  
and Starke JJ.

The taxpayers, within the time prescribed for lodging objections, objected to assessments under the *War-time Profits Assessment Act 1917*. After that time had expired they raised a further ground of objection, upon which the Deputy Commissioner at first decided in their favour; and the taxpayers paid tax (in part) accordingly. The assessments were subsequently amended by the Deputy Commissioner.

*Held*, that the taxpayers had no right to object to the amended assessments as they were not subject to objection under sec. 23 of the Act, because they