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1926.
LEGH
v.
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COMMIS-
SIONER OF
TAXATION.

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

THE FEDERAL COMMISSIONER OF }
TAXATION RESPONDENT.

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BRISBANE,
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

did not impose any fresh liability or increase any existing liability; and that the taxpayers were not entitled to rely on the further ground of objection above referred to, as it was not lodged within the time prescribed for lodging objections to the original assessments.

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CASE STATED.

On the hearing of an appeal by Williams, Kent & Co. against an assessment of that firm by the Deputy Federal Commissioner of Taxation at Brisbane for war-time profits tax, *Knox* C.J. stated, for the opinion of the Full Court, a case in which the substantial question raised was whether there had been a change of ownership of the business carried on by the firm on 15th November 1913. A preliminary objection was also raised by the respondent that the appellants had no right to litigate that question as no objection on that ground had been made within the statutory time for lodging objections.

On this question the facts stated by the special case were substantially as follows:—On 5th February 1918 the appellants, who were a firm of graziers carrying on business in Queensland in partnership, made a return for the purposes of the *War-time Profits Tax Assessment Act* 1917. The Deputy Commissioner of Taxation assessed the appellants and on 13th December 1922 served notices of assessment for the years 1915-1916, 1916-1917, 1917-1918 and 1918-1919. On 3rd January 1923 the appellants lodged an objection to the assessment, giving certain reasons, which did not include the reason that there had been a change of ownership of the business. On 17th January 1923 the appellants, after an interview with the Deputy Commissioner, claimed, by letter, that under sec. 16 (13) a new business had commenced. On 9th February 1924 the Deputy Commissioner sent a letter to the appellants referring to the original assessment, stating that it had been decided to admit the change of partnership as from the death of William Charles Williams in November 1913, and indicating that that decision would cancel the tax for the years ending June 1916 and June 1919, and cause a reduction for the years ending June 1917 and June 1918. The letter also stated that the Deputy Commissioner was not in a position to finalize the assessments owing to the indefinite position in respect of live-stock, but that the tax was not likely

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to be reduced under £1,300, and asking for payment of £900. On 15th February 1924 the sum of £900 was paid to the Deputy Commissioner. On 15th January 1925 the Deputy Commissioner wrote a letter to the appellants, stating that sec. 16 (13) had no application to the case and that the assessments as issued were correct. The appellants in reply submitted that the letter of 9th February 1924 was an assessment, and requested adherence to the assessments. To this the Commissioner on 20th February 1925 answered that the letter was not an assessment, that the Deputy Commissioner was wrong in admitting a change of ownership, and that the original assessments of December 1922 must stand. On further consideration of the appellants' objection of 3rd January 1923, the Deputy Commissioner made certain allowances, and on 3rd April 1925 sent four notices of amended assessments for the four years 1915 to 1919. These amended assessments assessed the appellants to an amount slightly less than the original assessments and, as in the case of those assessments, were made on the basis that there had been no change of ownership of the business. The appellants thereupon gave a notice of objection dated 27th April 1925 stating, amongst other reasons, that there had been a change of ownership, that an assessment had already been made by the Deputy Commissioner on 9th February 1924 and the tax so assessed had been paid, and that the Commissioner was precluded and estopped from altering the assessment. The Commissioner refused to recognize this notice as valid, for the reason that it was not made within time (secs. 23, 28).

Fahey (*Stumm* K.C. with him), for the appellants. The appellants are entitled, by their notice of objection of 3rd January 1923, to contend that the business changed ownership. If not, the Commissioner after the receipt of the notice of objection of 17th January 1923 accepted it and acted upon it, and waived and excused the failure to lodge the objection within the time required by the Act; and consequently he was thereafter precluded and estopped from asserting that such objection was not lodged in due time. The Commissioner made reassessments of the appellants to war-time profits tax or altered his original assessments as particularized in

the letter of 9th February 1924, and, on payment of the sum of £900 pursuant thereto, he was thereafter precluded and estopped from asserting that there was not a change of ownership, and from making any reassessment or alteration of or addition to his assessment made by that letter except as stated therein. There was a binding contract to settle on that basis—a compromise which precluded any reassessment inconsistent with that basis. [Counsel referred to the following cases : *Cox v. Deputy Federal Commissioner of Land Tax (Tas.)* (1), *Callisher v. Bischoffsheim* (2), *Jayawickreme v. Amarasuriya* (3) and *Holsworthy Urban Council v. Holsworthy Rural Council* (4).]

Henchman, for the respondent. The appellants are not entitled to contend, as a reason for objection to the original assessments of 13th December 1922 or to the amended assessments of 1925, that there was a change of ownership of the business on 15th November 1913, because they are limited to the reasons set out in their objections of 3rd January 1923, which do not include that reason ; that reason was first put forward after the expiration of the statutory period of thirty days within which an objection may be lodged (*War-time Profits Tax Assessment Act* 1917-1918, secs. 23, 28) ; the Commissioner is not bound, and the Court has no jurisdiction, to entertain any ground of objection first raised after the expiration of that period ; the appellants were not entitled to put in any objection to the amended assessments of 1925, for they did not impose any fresh liability or increase any existing liability (sec. 23) but, in fact, each decreased the then existing liability of the appellants ; the letter of 9th February 1924 was not an assessment or a notice of assessment. The respondent was not precluded from making the amended assessments of 1925, and is not estopped from contending that they were validly made ; they were a valid exercise of the respondent's power of amendment, and, having been in fact made, are valid, because the Act throws upon the Commissioner the duty of assessing the tax imposed, and gives him the power of making such alterations from time to time

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(1) (1914) 17 C.L.R. 450.

(2) (1870) L.R. 5 Q.B. 449, at p. 451.

(3) (1918) A.C. 869.

(4) (1907) 2 Ch. 62.

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as he thinks necessary to secure completeness and accuracy—nothing that he can say or do can prevent the exercise of this power in the public interest, and the Court cannot interfere with the exercise of such power; the Act lays down imperative rules for the ascertainment of the pre-war standard, and the Commissioner cannot, by act or conduct, bind himself not to adopt that standard; the mere production of the notices of amended assessments of 1925 is conclusive evidence of the due making of them. [Counsel referred to *Trustees, Executors and Agency Co. v. Commissioner of Land Tax* (1) and *The King v. Deputy Federal Commissioner of Taxation* (S.A.); *Ex parte Hooper* (2).]

KNOX C.J. The preliminary objection is fatal to the case of the appellants. The document of 9th February 1924 was not an assessment, and did not destroy the assessment which had already been made. That in effect decides the first point against the appellants. The new assessments issued in 1925 made a reduction in the amount of the tax to which the appellants were originally assessed; and no right of objection was given to the appellants by reason of that altered assessment. The appellants therefore have now no right to raise the question whether or not a change of ownership of the business occurred on the death of Mr. Williams on 15th November 1913.

The appeal will be dismissed, but in the circumstances no order will be made as to costs.

GAVAN DUFFY and STARKE JJ. agreed.

Appeal dismissed.

Solicitors for the appellants, *McNab & Dowling*.

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

J.L.W.

(1) (1915) 20 C.L.R. 21.

(2) (1926) 37 C.L.R. 368.