[HIGH COURT OF AUSTRALIA.]

THE FEDERAL COMMISSIONER OF TAXATION . . . . . Respondent, } Appellant;

AND

RYAN . . . . . Appellant, Respondent.

H. C. OF A. 1926.

BRISBANE, *June* 29; *July* 1.

Knox C.J.

MELBOURNE, *Oct.* 12.

Isaacs, Higgins, Gavan Duffy, Rich and Starke JJ.

Income Tax—Assessment—Proceeds from sale of whole of trading stock of any "business"—More than one business carried on by one person—Grazier—Income Tax Assessment Act 1922-1924 (*No.* 37 *of* 1922—*No.* 51 *of* 1924), *secs.* 4, 17.

The respondent on several stations carried on the business of wool-growing but not that of sheep-breeding. He purchased another station, which he used for wool-growing and sheep-breeding and which was managed and treated by him as a separate concern in no way connected with his other stations. Having sold that other station and the live-stock and plant thereon on a walk-in-walk-out basis,

Held, that the sale of that other station was a sale of a business either as a going concern or for the purpose of discontinuing that business, within the meaning of sec. 17 of the *Income Tax Assessment Act* 1922-1924; and therefore that, under sub-sec. 4 of that section, in assessing the proceeds of the sale attributable to the trading stock of that business, the trading stock should not include live-stock which in the opinion of the Commissioner were ordinarily used for breeding purposes.

Decision of *Knox* C.J. affirmed.

APPEAL from *Knox* C.J.

An appeal by Michael Ryan from his assessment for Federal income tax for the year ending 30th June 1924 was heard by *Knox* C.J., in whose judgment hereunder the material facts are stated.

Macrossan and *O'Connor*, for the appellant.

Real, for the respondent.

Cur. adv. vult.

KNOX C.J. delivered the following written judgment :—

The question at issue between the parties in this appeal is whether the provisions of sec. 17 of the *Income Tax Assessment Act* 1922-1924 are applicable in assessing to income tax the proceeds derived by the appellant from the sale of the live-stock depasturing on Vindex Station. The undisputed facts are as follows :—On and before 3rd April 1914 the appellant was carrying on the business of a grazier on two stations known as Arcturus Downs and Comet Downs, situate in the Springsure district of Queensland. These stations adjoin one another, and were worked in conjunction. On 3rd April 1914 the appellant purchased a station known as Vindex with the stock thereon on a walk-in-walk-out basis. Vindex is situate in the Winton district, and is distant about 400 miles from Arcturus Downs and Comet Downs. The purchase-money was financed by means of a security over Vindex alone. On taking over Vindex the appellant retained in his service the manager, bookkeeper, overseer and other employees who had theretofore been employed on the station, and the station was carried on as if there had been no change of ownership. The class of business carried on on Vindex was that of sheep-breeding and wool-growing, about half the total number of sheep depasturing on the station being breeding ewes. The ewes were culled and classed every year and rams were purchased from time to time for use on the station. A separate station working account was kept with a bank at Winton. From the time when the appellant purchased Vindex until he sold it, it was managed and treated by the appellant as a separate concern in no way connected with his other stations, neither of which was used for the purpose of sheep-breeding. On 13th July 1923 the appellant agreed to sell Vindex with the live-stock and plant thereon on a walk-in-walk-out basis for the sum of £150,000. Included in this sale were 75,910 sheep, including a large number of breeding ewes, and about 690 rams. In the agreement for sale the rams were taken to be of the

H. C. OF A. 1926.

FEDERAL COMMISSIONER OF TAXATION v. RYAN.

KNOX C.J.

value of £6 6s. per head and the rest of the flock was valued at 16s. per head. The proceeds of this sale were dealt with in the appellant's books relating to Vindex Station by opening a realization account in which the purchaser was debited and the realization account credited with the items of purchase-money provided for by the contract, showing a profit on realization account of £32,303 3s. 10d. This amount was then debited to realization account and credited to capital account, no portion of the proceeds being taken into the profit and loss account.

In these circumstances the appellant asserts and the Commissioner denies that the provisions of sec. 17 of the Act should be applied in determining how much of the purchase-money attributable to the live-stock comprised in the sale is assessable income of the appellant. The question in dispute really turns on whether the operations carried on by the appellant on Vindex Station constituted a business. The Commissioner contends that such operations were merely part of the grazing business carried on by the appellant on that and other stations. The appellant insists that the business carried on in connection with Vindex Station was in fact a separate business, and was always treated as such, and that the sale in question was the sale of a business either as a going concern or for the purpose of discontinuing the business. The question is one of fact, and in my opinion the facts proved establish that the appellant's contention is correct.

Counsel for the Commissioner relied on the decision of my brother *Starke* in the case of *De Grey River Pastoral Co.* v. *Deputy Federal Commissioner of Taxation* (1) as an authority in his favour. That decision, however, turned entirely on the peculiar facts of that case, which differed widely from the facts proved here, and is therefore not in point. In the view which I take of the facts proved in this case, the profit made by the appellant on the sale of Vindex would not be assessable to income tax under sec. 16 of the Act as profits derived from a business, having regard to the decisions in *Commissioner of Taxation (W.A.)* v. *Newman* (2) and *Hickman* v. *Federal Commissioner of Taxation* (3), but the proceeds derived from the sale of the

(1) (1923) 35 C.L.R. 181.
(2) (1921) 29 C.L.R. 484.
(3) (1922) 31 C.L.R. 232.

"trading stock" of the business carried on in connection with Vindex Station are made assessable income by sec. 17 of the Act. It follows that the proceeds derived from the sale of the trading stock of the business carried on by the appellant on Vindex Station must be treated as assessable income subject to the qualification introduced by sub-sec. 4 of that section, namely, that "trading stock" is not to include live-stock which in the opinion of the Commissioner were ordinarily used by the appellant for breeding purposes. I therefore order that the appeal be allowed, and declare that in assessing the appellant to income tax in respect of the proceeds derived from the sale of trading stock comprised in the agreement for sale of Vindex Station, the trading stock is not to include any live-stock which in the opinion of the Commissioner were ordinarily used by the appellant for breeding purposes. Liberty to apply.

The Commissioner is to pay the costs of this appeal.

From that decision the Federal Commissioner of Taxation now appealed to the Full Court.

Sir Edward Mitchell K.C. (with him *Keating*), for the appellant. The transaction of the sale by the present respondent of Vindex Station does not come within sec. 17 (1) of the *Income Tax Assessment Act* 1922-1924. It is not a sale of "a business" as a going concern or for the purpose of discontinuing the business, and therefore the respondent is not entitled to the benefit of sec. 17 (4). The "business" of the respondent for the purposes of sec. 17 (1) was his whole business as a grazier (see the definition of "business" in sec. 4). He describes his occupation as that of a "grazier" in his return. It has never been held by this Court that the sale of one of several stations belonging to a grazier or pastoralist was a sale within sec. 17. Upon the evidence Vindex Station was bought by the respondent and resold as part of a profit-making scheme. The fact that separate books of account were kept for Vindex Station could not be evidence for the respondent. The evidence shows that there were transfers of sheep between Vindex and the other stations of the respondent, and that his general banking account was used to finance all his stations.

H. C. OF A. 1926.

FEDERAL COMMISSIONER OF TAXATION v. RYAN.

Ham, for the respondent. In sec. 17 "business" means an enterprise. The facts that Vindex Station was acquired by the respondent as a complete entity, that it was operated separately, that it was eventually sold by him as a complete entity, and that the proceeds of the sale were credited by him to a separate capital account, show conclusively that the carrying on of the station was a "business" within the meaning of sec. 17. [Counsel also referred to *Beaver* v. *Master in Equity of Victoria* (1) ; *Wakefield Rural District Council* v. *Hall* (2).]

Oct. 12.

PER CURIAM. The learned Chief Justice held that Vindex Station with the operations carried on upon it by the respondent could, consistently with the law, be regarded as a distinct business. It was upon an examination of the law and the facts that he so held. We think that his Honor was right both in regard to the law and in regard to the facts. The appeal will be dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellant, *Gordon H. Castle*, Crown Solicitor for the Commonwealth.

Solicitors for the respondent, *McCullough & Robertson*, Brisbane, by *Blake & Riggall.*

B.L.

(1) (1895) A.C. 251, at p. 256.

(2) (1912) 3 K.B. 328.