[HIGH COURT OF AUSTRALIA.]

O'SHEA . . . . . APPELLANT;

AND

THE COMMISSIONER OF TAXES FOR VICTORIA . . . . . } RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

Income Tax—Assessment—Income—Deductions—Part of taxpayer's dwelling-house used in taxpayer's business—Income Tax Act 1915 (*Vict.*) (*No.* 2668), *secs.* 11, 19*—*Income Tax Acts Amendment Act* 1923 (*Vict.*) (*No.* 3319), *sec.* 8.*

On a case stated by the Commissioner of Taxes for Victoria for the opinion of the Supreme Court, that Court was asked, with respect to premises used by a taxpayer partly as a dwelling-house and partly for the purpose of her business as a hotel-keeper, the questions (1) whether in the assessment of the taxpayer's income a deduction should be allowed of the rental value of the part of the premises used for the purpose of the taxpayer's business, and (2), if so, whether the sum so deducted was assessable to tax as income the produce of property.

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MELBOURNE, *Mar.* 11.

SYDNEY, *April* 20.

Knox C.J., Isaacs, Higgins, Gavan Duffy and Powers JJ.

Held, by *Isaacs, Higgins, Gavan Duffy* and *Powers* JJ. (*Knox* C.J. dissenting) that the first question should be answered in the affirmative and the second, in the negative.

Decision of the Supreme Court of Victoria (Full Court): *O'Shea* v. *Commissioner of Taxes*, (1926) V.L.R. 434; 48 A.L.T. 84, reversed.

* Sec. 19 of the *Income Tax Act* 1915 (Vict) (as amended by sec. 8 of the *Income Tax Acts Amendment Act* 1923 (Vict.)) provides that "(1) In calculating the taxable income of a taxpayer the total assessable income earned in or derived from Victoria by the taxpayer shall be taken as a basis, and from it there shall be deducted—(*a*) all losses and outgoings (not being in the nature of losses and outgoings of capital) including . . . expenses actually incurred in gaining or producing the assessable income. . . . (2) In estimating the balance of the income liable to tax no sum shall be deducted therefrom for . . . (*h*) the rent or annual value of any dwelling-house . . . or any part of such dwelling-house . . . except such part thereof as may be used for the purposes of such trade not exceeding such proportion of the said rent or annual value as is allowed by the Commissioner;" &c.

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APPEAL from the Supreme Court of Victoria.

On the hearing by a County Court Judge of an objection by Sarah Jane O'Shea to an assessment of her for income tax for the year ending 30th June 1924 by the Commissioner of Taxes for Victoria, the County Court Judge at the request of the parties stated a case, which was as follows, for the opinion of the Supreme Court :—

1. The taxpayer, Sarah Jane O'Shea of No. 4 Ballarat Street, Footscray, in the State of Victoria, is and at all times material to this case has been a hotel-keeper residing and carrying on business at the Pioneer Hotel, No. 4 Ballarat Street, Footscray, aforesaid, and she is the registered proprietor under the *Transfer of Land Act* 1915 of the land on which the said hotel is situated, and at all times material to the case she has resided in the said State.

2. The taxpayer duly furnished to the Commissioner of Taxes a return of her income of the year ended 30th June 1924, in which she set out her income of the said year both from personal exertion and property and claimed (*inter alia*) as a deduction from her income the rental value of the part of the licensed premises used by her in her business of hotel-keeper, namely, £364. No rental was in fact paid or payable by the taxpayer in respect of the said premises.

3. The Commissioner of Taxes made an assessment of the taxpayer's income for the said year and therein disallowed the whole of the said deduction of £364.

4. The taxpayer gave to the Commissioner of Taxes notice in writing of objection to the said assessment on the ground "that the rental value of the part of the premises used for the purposes of the taxpayer's business, namely, £364, under sec. 19 (*h*) of the Act, should be allowed as a deduction," and she required that the said assessment should be altered accordingly.

5. The Commissioner of Taxes disallowed the said objection of the taxpayer and transmitted it to be heard and determined by a Judge of County Courts.

6. The said objection came on for hearing before me at the County Court at Melbourne on 30th March 1926, when counsel representing the parties applied that a special case be stated; and

pursuant to the said application I state this case for the opinion of the Supreme Court.

The questions for the opinion of the Court were as follows :—

(1) In the assessment of the income of the taxpayer for the year in question should the said deduction of the rental value of the part of the taxpayer's premises used for the purpose of the taxpayer's business, namely, £364, claimed by the taxpayer be allowed ?

(2) If so, should not the said sum of £364 be assessable to tax as income the produce of property ?

The special case was heard by the Full Court, which answered the first question in the negative and found it unnecessary to answer the second question: *O'Shea* v. *Commissioner of Taxes* (1).

From that decision Mrs. O'Shea now, by special leave, appealed to the High Court.

Sir Edward Mitchell K.C. (with him *Coppel*), for the appellant. The exception in sec. 19 (2) (*h*) of the *Income Tax Act* 1915 (Vict.) shows plainly that the appellant is entitled to a deduction in respect of the annual value of the part of the dwelling-house used in her business. She may do so just as a taxpayer might deduct the rent paid for premises in which he carries on business (*Moffatt* v. *Webb* (2)). It is not necessary to show that this deduction is a loss or outgoing within the meaning of sub-sec. 1 (*a*). The reasoning in the English cases dealing with the *Income Tax Act* 1842 (5 & 6 Vict. c. 35) support this view (*Russell* v. *Town and County Bank* (3) ; *Stevens* v. *E. Boustead & Co.* (4) ; *Usher's Wiltshire Brewery Ltd.* v. *Bruce* (5)).

Robert Menzies, for the respondent. Sec. 19 starts on the basis of gross income, and provides affirmatively and exhaustively for the deductions which are to be made from that gross income. Sec. 19 (2) is no more than a limitation upon the scope of the deductions allowed by sec. 19 (1), and consequently none of the provisions of sec. 19 (2) should be treated as providing affirmatively for making

(1) (1926) V.L.R. 434 ; 48 A.L.T. 84.
(2) (1913) 16 C.L.R. 120, at pp. 127, 136.
(3) (1888) 13 App. Cas. 418.
(4) (1918) 1 K.B. 382.
(5) (1915) A.C. 433, at p. 457.

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any deduction, unless it would fall within the words of sec. 19 (1). Rent or annual value is, therefore, to be deducted only if it falls within losses or outgoings in sec. 19 (1). The English system is different: the *Income Tax Act* 1842 imposes a tax on the annual value of property and also on profits or gains. In those circumstances it is reasonable that a taxpayer should be allowed to deduct from his profits or gains an amount corresponding to the annual value of the property upon which he has to pay tax. [Counsel referred to *Commissioners of Taxation* v. *Antill* (1); *Commissioner of Taxes* v. *Duthie & Co.* (2).]

Sir Edward Mitchell K.C., in reply.

Cur. adv. vult.

April 20.

The following written judgments were delivered :—

KNOX C.J. The appellant was assessed to income tax under the *Income Tax Act* 1915 (Vict.) in respect of the profits of the business of a hotel-keeper carried on by her. The hotel in which the business was carried on stands on land of which the appellant was the owner, and she claimed to be entitled to deduct from the profits of the business the sum of £364 as the annual value of the part of the premises used by her in her business. The Commissioner having disallowed her claim to this deduction, a special case was stated for the opinion of the Supreme Court of Victoria on the question whether the deduction claimed should be allowed. The Supreme Court, by majority (*Mann* and *McArthur* JJ., *Irvine* C.J. dissenting), answered the question in the negative and the taxpayer now appeals from that decision.

The learned Judges who constituted the majority in the Supreme Court thought that the substantial differences in plan between the Victorian statute and the Imperial Act 5 & 6 Vict. c. 35, which was under consideration in *Russell* v. *Town and County Bank* (3), and the admission made in that case, rendered the decision of the House of Lords inapplicable in the present case. On the construction

(1) (1902) A.C. 422, at p. 427.
(2) (1898) 17 N.Z.L.R. 139.
(3) (1888) 13 App. Cas. 418.

of sec. 19 of the Victorian Act they were of opinion that the expression "losses and outgoings" construed according to the natural meaning of the words could not include the annual value of premises belonging to the taxpayer and used by him in his business, and that there was nothing in the Act to indicate that these words were used in any other than their natural and ordinary meaning.

I agree with them in these conclusions and in the reasons which they gave in support of them. The amendment made by the Act No. 3319 in sec. 19 seems to me to show clearly that Parliament intended by sub-sec. 1 to state exhaustively the deductions which may be made from the gross income in ascertaining the taxable income and by sub-sec. 2 to exclude from the operation of sub-sec. 1 deductions which might otherwise have been thought to be within it. In other words, I think sub-sec. 2 is to be construed as a provision limiting, not extending, the operation of sub-sec. 1.

In my opinion the appeal should be dismissed.

ISAACS J. The question for determination is whether, under sec. 19 of the Victorian *Income Tax Act* 1915 as that section has been amended, a taxpayer carrying on business on his own land is entitled to a deduction in respect of the "annual value" of the property, the amount of the deduction being within the discretion of the Commissioner. By a majority, the Supreme Court decided that question in the negative, *Irvine* C.J. dissenting. I am of opinion that the dissent of the learned Chief Justice was justified and I am substantially in accord with his reasons.

Though in many respects the Victorian Act and the English Act are quite different in structure, there are points of contact where business understanding or natural justice, not overcome by statutory provision, has to be considered and applied. This is just one of those cases where that happens. Lord *Herschell's* judgment, read with the express terms of the Victorian Act, leaves no reasonable doubt on the matter. Consequently, I prefer not to regard the taxpayer's contention as based on two distinct grounds, namely, (1) the words of the Act and (2) *Russell's Case* (1). It is one contention only, based on the words of the Act, interpreted, however, in accordance

(1) (1888) 13 App. Cas. 418.

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with some universal principles enunciated in *Russell's Case* (1), and which, not being negatived, ought to be recognized. I therefore consider the words of the Act to begin with, because they and they alone, as they stand, without diminution and without addition, but properly interpreted, must govern the matter.

The Act in Part III. (secs. 7-16) deals with the "nature of the taxation." By sec. 11 it is enacted that "whenever land with improvements thereon is used for the purpose of residence or enjoyment and not for the purpose of profit or gain by the owner or any person who would be liable to pay tax in respect of the income thereof if the same produced an income, such land shall be deemed to return to such person an income of four pounds per centum per annum on the actual capital value thereof and such income shall be subject to be taxed accordingly." That is an express statement that annual value in such case is substantially income. The same principle appears in sec. 12, where residence, &c., is part of remuneration.

Part IV. of the Act is headed "Exemptions and Deductions." Secs. 17 and 18 are the exemptions. Sec. 19 sets out the deductions. As amended by Act No. 3319, sub-sec. 1 consists of four paragraphs stating affirmatively what deductions are allowable. Par. (*a*) refers to "losses and outgoings," and it is said that by no reasonable construction can annual value come within those words. But par. (*a*) itself says that the expression "losses and outgoings" includes "expenses actually incurred in gaining or producing the assessable income." And one question is how far in that connection the word "expenses" would be understood to cover the annual value of property owned by the taxpayer and used in producing the taxable income. Then, quite independently of the right affirmatively given by sub-sec. 1 and as standing, if necessary, on its own basis, we find par. (*h*) of sub-sec. 2. That paragraph, read with the governing words, says: "In estimating the balance of the income liable to tax no sum shall be deducted therefrom for . . . the rent or annual value of any dwelling-house or domestic offices or any part of such dwelling-house or domestic offices *except* such part thereof as may be used for the purposes of such trade not exceeding such

(1) (1888) 13 App. Cas. 418.

proportion of the said rent or annual value as is allowed by the Commissioner." I cannot for a moment entertain the notion that the words " annual value " have crept in by mistake. They have a distinct meaning, and are necessary for various reasons. To begin with, since by secs. 11 and 12 " annual value " has been treated as actual income, it might well be that in some cases it might be treated as actual outgoing. Par. (*h*) first secured that rent should not be deducted in respect of houses not used for trading purposes, and correlatively said the same where the owners occupied them, by forbidding any possibility of deduction of the annual value—which could have been received if let—as against the annual value taxed under sec. 11. But however that may be, the paragraph went on to state the exception. So stated, I am prepared to hold, quite independently of " losses and outgoings," that the " exception " is in effect a statutory provision for deduction. Otherwise it has no meaning or effect, except to deceive the taxpayer where he occupies his own house. It treats the occupier of his own house on the same footing as the occupier of another man's house. For the purpose in hand, A rents the house of another, and pays £100 a year rent. He may deduct in the case mentioned such part as the Commissioner thinks fairly represents the value of the portion occupied for business. B uses his own land for similar purposes, and by not letting it, loses the same amount per annum. The paragraph treats him as equally entitled to deduct the amount he is out of pocket—by not receiving the value—as if he were not entitled to receive any, and paid out the corresponding amount. Inherently fair, and perfectly understandable on its own basis, we have also the judgment of Lord *Herschell* on the point. In the first place, on a precisely similar phrasing, Lord *Herschell* in *Russell's Case* (1) says :—" The provisions of the Act do not expressly allow any deductions. What they do is to prohibit certain deductions with certain exceptions, and therefore it may perhaps, in a sense, be said that having prohibited certain deductions with certain exceptions, the excepted things are allowed." Guarded as is that language, there can be no doubt what Lord *Herschell* really thought about such a form of tax legislation. But the learned Lord went further. Dealing with the matter on its

(1) (1888) 13 App. Cas., at p. 425.

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essential business basis, he regarded annual value as a necessary deduction in order to arrive at profits, and said: "It is to be deducted either by taking it as an element before arriving at the balance of profits and gains, or as included in a very broad construction of the provision relating to disbursements and expenses." Making due allowance for the fact that the Victorian Act taxes "income" and not "profits," the latter part of the learned Lord's statement is strictly in point in relation to the word "expenses" in the paragraph relating to "losses and outgoings." The Victorian Act no doubt had to some extent in view the observations of Lord *Herschell* on the fundamental principles of justice in relation to this matter, and I do not find any such incongruity between the two sets of provisions on this point as to make those observations inapplicable.

In my opinion, therefore, the appeal should be allowed, and the taxpayer declared entitled to such part of the annual value as the Commissioner allows as right and proper in the circumstances.

HIGGINS J. I am of opinion that question 1 of the special case should be answered in the affirmative and that this appeal should be allowed.

It appears to me that the key of the problem as to the effect of sec. 19 (2) (*h*) is to be found in sec. 11. Under sec. 11, land of the taxpayer, used for residence only, comes into the calculation of the gross income, whereas land used by him for the purpose of profit or gain does not. The land used for residence is to be deemed to return him an income of 4 per cent per annum on the capital value; but not land used for profit or gain. This line of demarcation, between land used for residence and land used for profit or gain, is carried on by sec. 19 (2) (*h*), which, in forbidding the deduction of the rent or annual value of any dwelling-house, *excepts that portion of the house* which is used for trade.

The question, therefore, is not as to a right to deduct from gross income under sec. 19, but as to the right of the Commissioner to treat the annual value of premises used for trade as entering into the gross income at all.

The words of sec. 11 are: "Whenever land with improvements thereon is used for the purpose of *residence* or enjoyment and *not for the purpose of profit or gain by the owner* or any person who would be liable to pay tax in respect of the income thereof if the same produced an income, such land shall be deemed to return to such person an income of four pounds per centum per annum on the actual capital value thereof and such income shall be subject to be taxed accordingly."

Thus sec. 11 clearly excludes from taxation land used for the purpose of profit or gain by the owner; but then arose the problem, what is to be done with land which is used partly for residence and partly for profit or gain. The answer to the problem is found in sec. 19 (2) (*h*): "(2) In estimating the balance of income liable to tax no sum shall be deducted therefrom for . . . (*h*) the rent or annual value of any dwelling-house or domestic offices . . . *except* such part thereof as may be used for the purposes of such trade not exceeding such proportion of the said rent or annual value as is allowed by the Commissioner." So the land *so far as* it is used for mere residence is to be taxed; but so far as it is used for profit or gain is not to be taxed.

In short, sec. 19 (2) (*h*) is a mere corollary to sec. 11. This would be manifest, probably, if the original arrangement of sections in the original Act of 1895 had been reserved; for in that Act the words of the present sec. 19 (2) (*h*) appeared in the same section (sec. 9) as the words of the present sec. 11. The Legislature, having provided that residence land is to be treated as yielding an income and trade land not, provided also that where a specific piece of land is used for both residence and trade such proportion only of the rent or annual value as is attributable to the residence part is to be treated as income taxable. The trade proportion of the annual value has, therefore, to be deducted from the total annual value of the particular land before computing the gross income. This is the view taken, as I understand it, of the sections by the Full Court of Victoria in *In re Income Tax Acts* (1).

The same scheme is carried out in sec. 12. For instance, a post-master entitled to quarters as part of his remuneration must bring

(1) (1903) 29 V.L.R. 298, at p. 305; 25 A.L.T. 110, at pp. 111, 112—per *Holroyd* J.

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this privilege into his return, although the advantage is not given to him in money ; but as he does not carry on any trade *for himself*, there is no deduction under sec. 19 (2) (*h*).

Under this view of the Act, one is no longer puzzled to understand why the annual value of machinery and plant used for the purpose of profit or gain is not excepted from sec. 19 (2) (*h*), as well as the annual value of the part of a dwelling so used. Machinery and plant are altogether for trade purposes, not for residence. This view applies also to the other puzzle—why pastoral or agricultural land is not excepted in sec. 19 (2) (*h*). The reason is obvious—that such land *is* used for the purpose of profit or gain even if it is also used for residence or enjoyment (sec. 11). Yet it appears from the judgment of *Mann* J. in the Supreme Court that counsel for the taxpayer *admitted* that he could see no rational ground for a distinction between buildings and machinery or other necessary means of carrying on business.

It may be pointed out, also, that by sec. 18 income from grazing or farming land is specially exempted if the unimproved value of the land is not more than £5,000.

I rather think that such confusion as has arisen is due to the reliance on cases decided in England under a very different Act—the Act 5 & 6 Vict. c. 35. I agree with *Mann* J. that that Act is fundamentally different from the Victorian Act in scheme, and that we should " approach the decision of this question by first examining the Victorian *Income Tax Act* under which it arises to see whether an answer suggests itself upon a careful examination of that Act, and then to inquire whether the interpretation arrived at is inconsistent with any binding judicial decisions " (1). Yet it seems that the argument below for the taxpayer was founded mainly upon the binding authority of *Russell* v. *Town and County Bank* (2), a decision under the English Act. It is not a binding authority as to the Victorian Act. It is true that the decision was treated by this Full Court as a great assistance in the decision of *Moffatt* v. *Webb* (3), where it was held that land tax paid to the Commonwealth was a legitimate deduction (under sec. 19) from the gross income of the

(1) (1926) V.L.R., at p. 444; 48 A.L.T., at p. 87.

(2) (1888) 13 App. Cas. 418.

(3) (1913) 16 C.L.R., at p. 125.

taxpayer. I am, of course, bound by that decision; but I am at liberty to say that I am not satisfied as to the reasoning based on *Russell's Case* (1). Under the English Act, before applying the express provision for deductions, one had to find "the balance of the *profits or gains*," and the annual value of the business premises had to be taken into account before you could find that balance; whereas under the Victorian Act one has not to find the profits or gains, but to find "*the gross amount of the taxpayer's income*" (sec. 19), and make any of the express deductions from that gross amount. Therefore, it by no means follows that under the Victorian Act any deductions from gross income could be made before you applied the express deductions. It was on this very point, that you must make deductions of expenditure before you can ascertain profits, that the Law Lords based their decision in *Russell's Case* (see, in particular, Lord *Herschell's* speech (2)).

There is no need, according to my view, to treat the loss of the possible rent as a "loss or outgoing" under sec. 19 (1). The words of sec. 19 (2) (*h*) merely show that in taxing the owner on the privilege of residence the taxation is confined to such part of the land as is used for residence. Parliament says, in effect, that in forbidding a deduction for the rent or annual value of a dwelling-house or any part of it the intention is not to treat such part of a dwelling-house as may be used for purpose of trade as being used for residence.

My answer to question 1 would be Yes; to question 2 would be No.

In my opinion, the appeal should be allowed.

My brother *Gavan Duffy* desires me to say that he agrees with me that the appeal should be allowed.

POWERS J. This is an appeal from a majority judgment of the Full Court of the Supreme Court of Victoria.

The taxpayer, Sarah Jane O'Shea, is a hotel-keeper carrying on business at Footscray, Victoria, and she is the owner of the land on which the hotel is erected. The taxpayer in the return furnished to the Commissioner of Taxes claimed as a deduction from her income the rental value of the part of the licensed premises used by her in

(1) (1888) 13 App. Cas. 418. (2) (1888) 13 App. Cas., at pp. 424-425.

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her business of hotel-keeper, namely, £364. It was admitted that no rental was in fact paid or payable by the taxpayer in respect of the said premises. The deduction claimed was disallowed by the Commissioner. The taxpayer gave notice in writing of objection to the Commissioner's assessment, on the ground "that the rental value of the part of the premises used for the purposes of the taxpayer's business, namely, £364, under sec. 19 (2) (*h*) of the Act" (*Income Tax Act* 1915) "should be allowed as a deduction."

The appeal from the Commissioner's assessment came before a County Court Judge, and he submitted to the Full Court for its opinion the following question: "In the assessment of the income of the taxpayer for the year ended 30th June 1924 should the said deduction of annual value of the taxpayer's premises used for the purpose of the taxpayer's business, namely, £364, claimed by the taxpayer be allowed?" The Full Court of Victoria (*Irvine* C.J. dissenting) decided that the disallowance of the deduction was right.

The only question to be decided by this Court is whether the taxpayer is entitled to the deduction claimed under sec. 19 (*h*) of the *Income Tax Act* 1915. Sec. 19 is headed "Deductions." The section commences: "(1) All losses and outgoings." Then follow what expenses may be included as such—taxes, interest on moneys borrowed, calls (paid) in mining companies, &c. Sub-sec. 2 starts: "In estimating the balance of the income liable to tax no sum shall be deducted therefrom for"—then follow pars. (*a*) to (*g*) and (*h*). Par. (*h*) of sub-sec. 2 of sec. 19 is the paragraph to be considered in this case. Sec. 19 (2) (*h*) declares: "The rent or annual value of any dwelling-house or domestic offices or any part of such dwelling-house or domestic offices except such part thereof as may be used for the purposes of such trade not exceeding such proportion of the said rent or annual value as is allowed by the Commissioner."

Mann J. in his judgment, in which *McArthur* J. concurred, held that the deduction of the "annual value" claimed should not be allowed, notwithstanding the words used in sub-sec. 2 (*h*). The learned Judge could not understand how the "annual value" of the premises could possibly be allowed as an "outgoing" or "loss" under the Victorian Act, and held that Parliament never intended to use the words "annual value" in their ordinary meaning

in the sub-section in question. He held that the words "rent" or "annual value" in the sub-section must be interpreted to mean *rent or so much thereof as is equal to the "annual value."* Further, he expressed the view that in his opinion the words "or annual value" had crept into the sub-section by inadvertence. I cannot concur in such a finding.

The sub-section in question was inserted in the Victorian Act some years after the sub-section in the English Act had been interpreted in *Russell's Case* (1). If unexpected results follow from the Court's interpretation of the sub-section, it is for Parliament, not the Court, to add to or omit words from the Act. I hold the words "annual value" were used in their ordinary sense in the sub-section in question. The sub-section is not inconsistent with sec. 11. Sec. 11 declares that where land with improvements thereon is used for the purpose of residence or enjoyment and not for profit or gain by the owner such land shall be deemed to return to such person an income of 4 per centum per annum on the actual capital value thereof, and such income shall be taxed accordingly. In the latter case no income is actually received by the taxpayer and yet the annual value is deemed by the Act to be income received by him. In the case in question, sub-sec. 2 (*h*) of sec. 19, no money is actually expended, but the annual value is treated in the special circumstances as an "outgoing" or loss by sec. 19, possibly because the premises are necessarily used for the purpose of securing the income.

I agree with the judgment of the learned Chief Justice of the Supreme Court in his dissenting judgment, and for the reasons given by him. In that judgment he holds that "the Legislature has expressed its intention to allow the deduction in the case of a dwelling-house, and that the words 'losses and outgoings' are not, in their application to income derived from a business or trade, taken by itself, incapable of a meaning which will give effect to that intention" (2). This conclusion is, in my opinion, supported by (1) the deduction in question being referred to in a section of the Victorian *Income Tax Act* dealing only with "losses and outgoings"

(1) (1888) 13 App. Cas. 418.
(2) (1926) V.L.R., at p. 444; 48 A.L.T., at p. 87.

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and deductions therefrom; (2) the reasons given in the judgments in several cases, particularly in *Russell's Case* (1), when dealing with a similar clause in the English *Income Tax Act*, and later on in *Usher's Case* (2). The cases mentioned have been fully referred to in other judgments, and, therefore, I do not think it necessary to quote the reasons given in those cases.

I hold that the sum of £364 in question was properly deductible and that the appeal should be allowed.

Appeal allowed. Order appealed from discharged. Questions answered: (1) *Yes*; (2) *No. Respondent to pay costs in Supreme Court and of this appeal.*

Solicitors for the appellant, *Snowball & Kaufmann.*

Solicitor for the respondent, *F. G. Menzies*, Crown Solicitor for Victoria.

B. L.

(1) (1888) 13 App. Cas. 418.

(2) (1915) A.C. 433.