

[HIGH COURT OF AUSTRALIA.]

ROBINSON APPELLANT;

AND

THE FEDERAL COMMISSIONER OF }
TAXATION } RESPONDENT.

Income Tax (Federal)—Assessment—Income—Sale of trading stock—Sheep station—Ewes used for breeding and wool only—Whether trading stock—“Breeding stock”—Ewes not yet joined to rams—Deduction of working expenses of station—Deductions “on account of” live-stock—Income Tax Assessment Act 1922-1925 (No. 37 of 1922—No. 28 of 1925), secs. 4, 16, 17, 23.

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The owner of a sheep station in carrying on his business never sold or exchanged any ewes or ewe weaners off the station, but they were bred and held exclusively for breeding purposes and for their wool. The owner sold the station on a walk-in-walk-out basis. Included in the sale were a number of ewe weaners.

Held, that the ewe weaners were not “trading stock” within the definition of that term in sec. 4 of the *Income Tax Assessment Act 1922-1925*, and therefore that the proceeds of the sale of such ewe weaners were not assessable income of the owner under sec. 17 (1) of that Act.

Semble, that the mere fact that at the time of the sale of the trading stock of a sheep station ewes have not yet been joined with rams does not negative the fact that they are stock which were ordinarily used for breeding purposes.

Held, also, that the proviso to sec. 17 (4) of the *Income Tax Assessment Act 1922-1925* that, where the proceeds of sale of live-stock are excluded from assessable income, then notwithstanding anything in secs. 16 or 23 no deduction shall be allowed “on account of” that live-stock, does not prevent the deduction of any part of the working expenses of the station, for the deduction of those expenses is not allowed “on account of” that stock but as part of the outgoings actually incurred in the conduct of the business.

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Matthew John McWilliam Robinson, having been assessed for Federal income tax for the year 1924-1925, appealed to the High Court from his assessment. The appeal was heard by *Rich J.*, in whose judgment hereunder the material facts and the grounds of the appeal are sufficiently stated.

E. M. Mitchell K.C. and *Bowie Wilson*, for the appellant.

Alroy Cohen, for the respondent.

Cur. adv. vult.

April 5.

RICH J. delivered the following written judgment:—This is an appeal from the disallowance by the Commissioner of two items in the appellant's return for the financial year 1924-1925. The first item is in respect of the proceeds of the sale of 3,000 ewe weaners which the Commissioner has included in the appellant's assessable income, and the second item relates to the disallowance of a sum of £6,511, proportion of the working expenses of a station known as Bonus Downs, near Mitchell in the State of Queensland. During the greater part of the period of twelve months ending on 30th June preceding the financial year for which the tax was payable the appellant with his partners was carrying on at Bonus Downs a wool-growing business. The sheep there were bred for breeding and wool and not for trading. No ewes had ever been sold on the station. On 10th June 1924 the partnership sold the station on a walk-in-walk-out basis, delivery being given and taken on 30th June 1924. At the date of this sale there were on the station 3,000 ewe weaners which had not been joined with rams. In the ordinary course they would have been so joined in the November following the sale and used for breeding and wool until they died. The appellant claimed that the 3,000 ewe weaners in question should be excluded from his assessable income, alleging that they were not trading stock. The Commissioner disallowed this claim on the ground that these ewe weaners were not ordinarily used by the vendors of the station for breeding purposes, his contention being that stock which could

or might be used for breeding purposes does not bring them within the category of "breeding stock." It is, therefore, necessary to consider, with the aid of the definition section, sec. 4, the material part of sec. 17 of the *Income Tax Assessment Act* 1922-1925. By sec. 4 unless the contrary intention appears " 'trading stock' means anything produced, manufactured, acquired or purchased for purposes of manufacture, sale or exchange." The relevant parts of sec. 17 are as follows :—“(1) The proceeds derived from the sale of the whole or part of the trading stock of any business after the thirtieth day of June one thousand nine hundred and twenty-one (whether on the sale of a business as a going concern or in any other manner for the purpose of discontinuing the business) shall be assessable income. . . . (4) In this section—(a) The expression 'trading stock' does not include live-stock which in the opinion of the Commissioner, Assistant Commissioner or Deputy Commissioner were ordinarily used by the vendor as beasts of burden or as working beasts or for breeding purposes.”

Assuming the ewe weaners to fall within sub-sec. 1 of sec. 17, this sub-section does not allow me to substitute my opinion for that of the Commissioner, Assistant Commissioner or Deputy Commissioner, although I cannot refrain from observing that I think that the Commissioner's interpretation of sub-sec. 4 is too narrow. It is well known that in periods of drought breeding ewes are not always joined with rams. The effect of the Commissioner's contention to which I have already referred would be to bring such animals within sub-sec. 1 because at the relevant date they were not being used for breeding purposes. However this may be, the Commissioner's opinion is, as I have said, to prevail, assuming that the animals are "trading stock." But the undisputed evidence in this case is that none of the ewes on this property were used for trading purposes. No ewes or ewe weaners were ever sold or exchanged off Bonus Downs. They were bred and held exclusively for breeding purposes and for wool. It cannot, therefore, be predicated of the ewe weaners that they were "acquired for purposes of manufacture, sale or exchange" (sec. 4). In my opinion, these ewe weaners were not swept into the taxing net for the purposes of assessable income under the provisions of sec. 17 (1). In construing

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taxing Acts a well-known rule prevails that for the purpose of inclusion within the taxing area the words of the statute in question must be clear and unambiguous. A striking illustration of the application of this rule is to be found in *Greenwood v. F. L. Smidth & Co.* (1). In the case before me the section under consideration is at the best not plainly worded.

Rich J.

The remaining question in this appeal is concerned with the disallowance of the proportion of the working expenses of the station to which I have referred. The solution of this question depends upon the construction of the proviso to sec. 17, which is in these terms: "Provided that, where by virtue of paragraph (a) of this sub-section, the proceeds of the sale or assumed realization of any live-stock are excluded from assessable income, then, notwithstanding anything contained in section sixteen or section twenty-three of this Act, no deduction shall be allowed on account of that live-stock." Speaking generally, in ascertaining the method of calculating profits made by a sheep station in the ordinary course of business the first step would be to compare the stock on hand at the beginning of the given accounting period and the purchases made during that period, on the one hand, with the stock on hand at the end of such accounting period and the sales effected during the same period, on the other hand. In the case of "live-stock" which in the opinion of the Commissioner were ordinarily used for breeding purposes, sec. 17 operates to exclude their value from the sheep on hand at the beginning of the accounting period or the purchases during that period. If the section stopped here, it might well be said that sec. 16 (a) still operated to require the inclusion of the breeding stock in the stock on hand at the beginning of the accounting period and sec. 23 (1) (a) to require their inclusion in the purchases during the accounting period. Accordingly the proviso of sec. 17 enacts that in cases in which the proceeds of sale of breeding stock are excluded from assessable income then, "notwithstanding anything contained in section sixteen or section twenty-three of this Act, no deduction shall be allowed on account of that live-stock." This prevents the deduction of the standard or other value of the breeding stock on hand at the beginning of the accounting period and the

(1) (1922) 1 A.C. 417, at p. 423.

price of breeding stock purchased during the accounting period from the selling price of stock sold in the period and the standard or other value of breeding stock on hand at the end of the period when there have been excluded therefrom the proceeds of sale of breeding stock. It was urged that the proviso had a further operation to exclude some part of the working expenses of the station incurred from the commencement of the accounting period up to the date of sale. Such a construction would bring about a curious result. If during the given accounting period no sale of the station took place, the whole of the working expenses would be deducted, whereas a sale carried out at any time during the accounting period would have the effect of preventing such a deduction being made. But, in my opinion, the scheme of the Act is that, when these expenses are allowed as a deduction under sec. 23, they are not allowed "on account of" the live-stock, but as a part of the out-goings and expenses actually incurred in the conduct of a business which was being continued as a profit-earning machine up to the date of the sale of the business as a going concern or otherwise.

For these reasons I think that the appellant's objections should be allowed and the assessment varied accordingly.

The respondent must pay the costs of this appeal.

Appeal allowed and assessment varied accordingly.

Respondent to pay costs of appeal.

Solicitors for the appellant, *Biddulph & Salenger*.

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

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