

[HIGH COURT OF AUSTRALIA.]

THE MELBOURNE TRUST LIMITED . . . APPELLANT ;

AND

THE FEDERAL COMMISSIONER OF }
TAXATION } RESPONDENT.

Practice—High Court—Case stated—Inferences of fact—Whether Full Court will determine—Remission of case for determination of questions of fact—War-time profits tax—Realization company—Basis of taxation—War-time Profits Tax Assessment Act 1917-1918 (No. 33 of 1917—No. 40 of 1918), sec. 29 (3).

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A case was stated for the opinion of the Full Court under the provisions of sec. 29 (3) of the *War-time Profits Tax Assessment Act 1917-1918* as involving the determination of questions of law.

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

Held, by Knox C.J., Isaacs, Gavan Duffy and Starke JJ. (Rich J. dissenting), that the case depended upon ultimate inferences of fact and not on questions of law, and therefore the case should not be heard by the Full Court but should be remitted to the trial Judge for the purpose of having such inferences of fact determined.

CASE STATED.

This was a case stated by Rich J., under the provisions of sec. 29 (3) of the *War-time Profits Tax Assessment Act 1917-1918*, for the opinion of the High Court.

The questions raised related to the war-time profits tax payable by the Melbourne Trust Ltd. for the year ending 30th June 1918. The Melbourne Trust Ltd. was incorporated in 1903 for the purpose of taking over and realizing the unrealized assets of three assets companies, which had been formed for the purpose of realizing the assets of three banking companies which had been unable to pay their debts, and had been ordered to be wound up prior to 1897. Included in the assets taken over by the Melbourne Trust Ltd.

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were two pastoral properties—one, called “Coan Downs,” in the Western District of New South Wales, and another, called “Strathdarr,” in the Central District of Queensland. Coan Downs was sold in 1912 and Strathdarr in 1925. In August 1921 the Queensland Government charged additional rent for Strathdarr in respect of each of the years 1914-1921, and this was paid in 1921.

By notice dated 29th April 1921 the Commissioner of Taxation gave notice to the Melbourne Trust Ltd. that he had assessed it for war-time profits tax for the year ending 30th June 1918 in the sum of £5,702 15s. This assessment was varied from time to time, and on 27th August 1927 the Commissioner again amended the assessment and assessed the Trust Company at £4,200, such notice being marked J. In arriving at the sum of £4,200 as the tax payable by the Trust Company the Commissioner treated the operations carried on at Strathdarr as a business separate from the other activities of the Trust Company, and in fixing the pre-war standard of profits for the purpose of assessing the Trust Company he excluded all the profits derived by it in the relevant pre-war trade years, other than those arising from the grazing and other operations carried on at Strathdarr. He did not allow the additional rent paid for Strathdarr as a deduction from the profits made from Strathdarr in the financial year ending 30th June 1918, and in arriving at the pre-war standard of profits did not allow the net surplus of £18,695 2s. received on the sale of Coan Downs. The Trust Company lodged an objection to this amended assessment. The Commissioner disallowed the objection, and the Company requested the Commissioner to treat such objection as an appeal and to forward it to the High Court for hearing.

The appeal came on for hearing before *Rich J.*, who stated a case for the opinion of the Full Court.

The special case set out (*inter alia*) the facts above stated, and continued :—The appeal coming on for hearing before me for hearing I at the request of counsel for both parties state this case for the opinion of the High Court on the following questions which, in my opinion, are questions of law :—

- (1) Was it competent to the respondent to issue the said document marked J ?

- (2) Is the issue of the said document marked J a valid exercise of the powers of the respondent to make all such alterations in or additions to any assessment as he thinks necessary in order to ensure its completeness and accuracy ?
- (3) For the purpose of fixing the pre-war standard of profits should the respondent have taken into account (a) the profits arising from the whole of the activities of the appellant for the relevant pre-war trade years, or (b) the profits arising from the carrying on of grazing and other operations at both Strathdarr and Coan Downs during the said pre-war trade years, or (c) the profits referred to in clause (b) of this question plus the sum of £18,695 2s. above mentioned ?
- (4) In determining the profits arising in the financial year ending on 30th June 1918 should the additional rent paid for Strathdarr as above mentioned be taken into account ?

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Ham K.C. and *Martin*, for the appellant.

Cohen K.C. and *Tait*, for the respondent.

Ham K.C. The whole purpose of the Trust Company's existence was to liquidate the assets taken over from three banks, and it should have been assessed as carrying on one business and not three businesses. This is supported by *Commissioner of Taxes v. Melbourne Trust Ltd.* (1). Alternatively, if it was competent to the Commissioner to treat the Trust Company as carrying on three businesses, the pastoral properties that it was nursing should have been treated as one business and not as separate businesses. It should not have been separately assessed in respect of Strathdarr. In any event it should not have been assessed as carrying on an ordinary pastoral business but as carrying on such business solely for the purpose of realization.

[STARKE J. Does this matter not depend upon inferences from fact and not upon conclusions of law ?

[KNOX C.J. If questions 3 (a) and (b) are answered, will that not determine the whole matter ?]

(1) (1914) A.C. 1001 ; 18 C.L.R. 413.

H. C. OF A. Probably it would do so.
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KNOX C.J. The answers to those questions depend on inferences to be drawn from facts and do not involve questions of law. In these circumstances we think that we ought not to answer the questions asked, but we think that the case should be sent back to the trial Judge for the purpose of having those facts decided.

ISAACS, GAVAN DUFFY AND STARKE JJ. concurred.

RICH J. I dissent. Questions 1 and 2 are obviously questions of law. Question 3 amounts to this: Whether, within the meaning of the Act, the business of the Company in all its branches is one. The ultimate facts having been agreed upon, that, in my opinion, is a question of law.

In *Hoddinott v. Newton, Chambers & Co.* (1) Lord Macnaghten considered that the question whether a temporary staging is a scaffolding within the meaning of the *Workmen's Compensation Act* 1897 is not a mere question of fact:—"It is a mixed question of fact and law. When the facts are ascertained it is a question of law on which the Court of Appeal is entitled, and I think bound, to express an opinion." And this Court entertained a somewhat similar question under the *War-time Profits Tax Assessment Act* 1917-1918 in *Hickman v. Federal Commissioner of Taxation* (2).

Case remitted.

Solicitors for the appellant, *Blake & Riggall*.

Solicitor for the respondent, *W. H. Sharwood*, Commonwealth Crown Solicitor.

H. D. W.

(1) (1901) A.C. 49, at p. 56.

(2) (1922) 31 C.L.R. 232.