[HIGH COURT OF AUSTRALIA.]

THE FEDERAL COMMISSIONER OF TAXATION . . . . . APPELLANT

AND

GORDON . . . . . RESPONDENT.

ON APPEAL FROM THE HIGH COURT (DIXON J.).

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SYDNEY, *Nov.* 20, 22, 1929.

Dixon J.

March 26, *April* 15, 1930.

Isaacs C.J., Rich and Starke JJ.

Income Tax (Cth.)—Assessment—Assessable income—Deduction—Subscription paid as member of association of employers having mutual interests—Expenditure wholly and exclusively for production of assessable income—Income Tax Assessment Act 1922-1928 (*No.* 37 *of* 1922—*No.* 46 *of* 1928), *secs.* 23 (1) (*a*), 25 (*e*).

The respondent, a grazier, was a member of an association which was an association of persons and companies engaged or interested in pastoral pursuits in Australia with a "sphere of operation" restricted to New South Wales. The objects of the association were to prevent strikes, to maintain freedom of contract, to effect amicable settlement of disputes between members and their employees, to secure to members all the advantages of unity of action to protect them in all matters affecting their interests, to undertake the engagement of labour required by members, to act in conjunction with other unions or associations of a similar nature in any part of Australia, to enable the association to amalgamate or affiliate with and to appoint representatives to any employers' union or association in Australia, to enter into any agreement with the employees of the association which may seem to be for the mutual benefit of both the association and such employees.

Held, that the annual subscription paid by the respondent to the association was a loss or outgoing actually incurred in gaining or producing assessable income within the meaning of sec. 23 (1) (*a*) of the *Income Tax Assessment Act* 1922-1928, and its deduction therefrom was not prohibited by sec. 25 (*e*) of the Act, because it was money wholly and exclusively laid out in the production of such assessable income.

Decision of *Dixon* J. affirmed.

APPEAL from the High Court (*Dixon* J.).

William Deuchar Gordon, a grazier, objected to the inclusion, in his assessable income for the year ending 30th June 1928, of the sum of £15, being part of the sum of £15 17s. 8d. paid by him during the year ending 30th June 1927 to the Graziers' Association of New South Wales as his annual subscription thereto. The Federal Commissioner of Taxation disallowed the objection, and at the request of the taxpayer treated the objection as a notice of appeal to the High Court. For the purposes of the appeal the taxpayer, as appellant, and the Federal Commissioner of Taxation, as respondent, admitted the following facts (*inter alia*) :—

(1) William Deuchar Gordon herein called the appellant is a grazier carrying on his business as such at Manar Station near Tarago in the State of New South Wales, and not elsewhere.

(2) The appellant objects to the assessment for income tax for the financial year ending 30th June 1928 (based upon income derived during the year ending 30th June 1927), made by the Deputy Commissioner of Taxation and notified to the appellant by notice of assessment dated 13th April 1928, and claims that the assessable income should be reduced in order to arrive at his taxable income by the sum of £15, part of the sum of £15 17s. 8d. paid by him during the year ending 30th June 1927 to the Graziers' Association of New South Wales (which said sum of £15 was claimed by him in his return as a deduction) on the ground that the said sum of £15 is deductible from his assessable income as being (a) a loss not being in the nature of a loss or outgoing of capital, (b) an outgoing not being in the nature of a loss or outgoing of capital, (c) an expense actually incurred by him in gaining the assessable income, (d) an expense actually incurred by him in producing the assessable income. The said amount of £15 is that part of the sum of £15 17s. 8d. mentioned in par. 7 hereof which is arrived at by ignoring the fraction of a pound.

(3) The Graziers' Association of New South Wales is registered in the State of New South Wales as a trade union under the *Trade Union Act* 1881 and as an industrial union of employers under the New South Wales *Industrial Arbitration Acts* 1912-1922 and as an industrial organization under the *Commonwealth Conciliation and*

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Arbitration Act 1904-1927 and conducts its operations in the Commonwealth of Australia only.

(4) The objects of the said Association as set forth in its rules are (a) to prevent strikes, (b) to maintain freedom of contract, (c) to effect the amicable settlement of disputes between members and their employees, (d) to secure to the members all the advantages of unity of action to protect them in all matters affecting their interests, (e) to undertake the engagement of labour required by members, (f) to act in conjunction with other unions or associations of a similar nature in any part of Australia, (g) to enable the association to amalgamate or affiliate with and to appoint representatives to any employers' union or association in Australia, (h) to enter into any agreement with the employees of the Association which may seem to be for the mutual benefit of both the Association and such employees.

(5) In order to remain a member of the said Association each member owning sheep on properties owned or occupied by him pays to the said Association an annual subscription or contribution to its funds calculated on the following scale (the latest stock return under the *Pastures Protection Act* 1912 (N.S.W.) being the basis of such payment): Owners of 1,000 sheep or under, 10s.; owners of any number over 1,000 sheep, 10s. for the first 1,000 sheep and at the rate of 20s. per 1,000 sheep thereafter.

(6) The general council of the said Association has power to make calls upon its members in accordance with the number of sheep owned by them, provided such calls in any one year shall not exceed £1 per 1,000 sheep or part of 1,000 (lambs included).

(7) Under the foregoing scale of fees the appellant on 10th September 1926 paid to the Graziers' Association of New South Wales the sum of £15 17s. 8d. as his annual contribution for the year ending 31st December 1926.

(8) The said Association also has a political fund called its "Special Purposes Fund," which is kept separate and distinct from the ordinary funds of the said Association and payments and contributions to which are purely voluntary and not compulsory. The appellant contributed a like amount to the political fund for the financial year ending 31st December 1926.

(11) The appellant, being dissatisfied with the said assessment, duly lodged with the respondent an objection with respect to the disallowance of the said sum of £15 as a deduction. The respondent disallowed the said objection, and the appellant thereupon duly requested the respondent to treat the said objection as a notice of appeal and to forward it to this Honourable Court, which the respondent in due course did.

On the hearing of the appeal before *Dixon* J. evidence was given by the secretary of the Graziers' Association of New South Wales.

Other material facts appear in the judgments hereunder.

Mason, for the appellant.

E. F. McDonald, for the respondent.

Cur. adv. vult.

Nov. 22.

DIXON J. delivered the following written judgment:—The question raised for decision in this case is whether a member's ordinary subscription to the Graziers' Association of New South Wales is an allowable deduction in ascertaining his taxable income from personal exertion in the occupation of a grazier. The body is an association of persons and companies engaged or interested in pastoral pursuits in Australia, with a "sphere of operation" restricted to territory which lies within New South Wales. [His Honor then stated the objects of the Association as set out in par. 4 of the above admissions of fact, and continued:—] The Association is managed by an elective general council which admits to membership. The council may appoint from among its own members an executive committee for purposes of administration. Members are bound in employing labour not to do so otherwise than upon terms and conditions approved by the general council and to observe its regulations and orders, and in case of a difficulty or dispute arising between the member and his employees, which they are unable to settle, to report it to the general secretary and to the council or executive, who may investigate it and deal with it as they think best. The general council is given a full power to determine the basis and

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conditions upon which the Association shall undertake the engagement of labour required by members. The executive committee is the committee of management for the purpose of industrial arbitration legislation. It may make industrial agreements on behalf of the Association and its members; bring industrial disputes and matters before the Courts; formulate or authorize claims, defences and proceedings; and nominate or elect delegates or representatives under the Acts. A member who owns sheep, cattle or horses must pay an annual subscription calculated at £1 a thousand sheep (cattle and horses being reckoned upon an equivalence of two sheep to the beast), unless he owns not more than one thousand, in which case he pays 10s. Upon disposing of his pastoral interests he may remain a member for three years at a subscription of £1. Persons who own pastoral properties are admitted to membership "in respect of" the property. Those who do not, but are "interested in the pastoral industry," must apply "in a form prescribed in that behalf," and, if admitted, pay an annual subscription of three guineas. The ordinary funds of the Association must be applied only in promoting its objects, but the Association may provide for the application of money to the furtherance of political objects. Payments must, however, be made out of a special fund to which members are not compelled to contribute. The council may appoint a special purposes committee to deal with political questions and matters. In fact, these powers have been exercised and a special purposes committee has been formed, of which the appellant happens to be a member. It controls a separate fund, to which the appellant also happens to have contributed. The Association is represented in the "Country Party." Its political activities are, however, kept distinct and separate from its ordinary functions. In practice the Association has been much concerned with industrial matters. It had taken part in the proceedings which in 1907, 1911, 1917, 1922 and 1926 resulted in awards of the Commonwealth Court of Conciliation and Arbitration relating to the pastoral industry, and it circulated copies of these awards among its members. It similarly dealt with State proceedings and awards. It has also provided legal aid in cases which appeared to affect its members industrially, fiscally or otherwise.

The appellant has been a member since 1911, and his subscription, based upon stock, has always exceeded £15. His assessable income from personal exertion liable to income tax for the financial year commencing 1st July 1927 consisted wholly of receipts from his pastoral business in New South Wales. The Commissioner's assessment for that financial year is expressed to be based upon his income earned during the twelve months immediately preceding, but it seems not unlikely that it was actually based on income earned in the calendar year 1926. On 10th September 1926 the appellant paid to the Association £15 17s. 8d., his annual subscription for this calendar year; and in his return he claimed to deduct £15 on this account. The Commissioner disallowed the deduction. Hence this appeal.

During the twelve months ending 30th June 1927 and during the calendar year 1926 the Association engaged in its usual activities. It was much occupied from the beginning of 1927 in industrial disputes heard before the Commonwealth Court of Conciliation and Arbitration, to which the appellant was a party. In 1926 it supplied the appellant with agreement forms for his labour, and also tally-books. An annual conference was held in April 1926, at which a large number of matters affecting the business of graziers was dealt with, including the marketing of wool.

The decision of the question whether the appellant's subscription should be deducted in ascertaining his taxable income depends upon sec. 23 (1) (*a*) and sec. 25 (*e*) of the *Income Tax Assessment Act* 1922-1927-1928. It is now established that these provisions apply in ascertaining the net "proceeds of any business carried on by the taxpayer" (see sec. 4, definition of "Income from personal exertion"): *Webster* v. *Deputy Federal Commissioner of Taxation* (1). Accordingly it is not permissible to determine the profits or gains of the business upon commercial principles subject to any special provisions of the Act, and then take these profits or gains into the assessable income; proceeding upon the analogy of the English cases of which the leading authority is *Usher's Wiltshire Brewery Ltd.* v. *Bruce* (2).

(1) (1926) 39 C.L.R. 130.

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

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Sec. 25 provides that a deduction shall not in any case be made in respect of any of the following matters: "(*e*) money not wholly and exclusively laid out or expended for the production of assessable income." This provision is based upon what is now rule 3 of cases I. and II. of Schedule D of the British *Income Tax Act* 1918; but, in applying the cases decided upon that enactment, care must be exercised because in the Commonwealth provision the words "assessable income" have been substituted for the words "the purposes of the trade, profession, employment, or vocation." At the same time, they do make it clear that the question propounded by the provision must be decided as a matter of fact in each case. (See the authorities cited by *Rich* J. in *Maryborough Newspaper Co.* v. *Federal Commissioner of Taxation* (1).) They also make it clear that money expended not of necessity but voluntarily, and to secure an expedient aid to the business operations which produce the assessable income, may yet be expended wholly and exclusively for the production of assessable income (see *British Insulated and Helsby Cables Ltd.* v. *Atherton* (2), *Morley* v. *Lawford & Co.* (3) and cases there cited; and cf. *Bourne & Hollingsworth Ltd.* v. *Ogden* (4)).

The Graziers' Association of New South Wales performs for the appellant important work which arises in the conduct of his business, and affords him assistance in carrying it on. It also attempts to promote and protect the general interests of the business of grazier and pastoralist industrially, commercially, and financially. In doing so it extends its activity or its influence into politics, but without confusing or impairing the performance of its main functions, namely, the service of its members in their occupation where combination is effective, and the promotion of their business advantage. I think the subscription was paid to secure these advantages to the business by which assessable income was earned, and for no other purpose or reason, and that it was money wholly and exclusively expended for the production of assessable income. The deduction of the amount is, therefore, not prohibited.

The next question is whether it is authorized. This depends upon sec. 23 (1) (*a*), which is now cast in a form which makes applicable

(1) *Ante*, p. 450.
(2) (1926) A.C. 205, particularly at p. 212.
(3) (1928) 140 L.T. 125.
(4) (1929) 45 T.L.R. 222.

Alliance Assurance Co. v. *Federal Commissioner of Taxation* (1). The material words of the provision are "in calculating the taxable income of a taxpayer the total assessable income derived by the taxpayer from all sources in Australia shall be taken as a basis, and from it there shall be deducted . . . all losses and outgoings . . . actually incurred in gaining or producing the assessable income." It is to be noticed that the loss or outgoing must be incurred in gaining or producing the assessable income, which naturally means the gross income derived during the accounting period not exempt from taxation. Some observations in *Ward & Co.* v. *Commissioner of Taxes* (2) may perhaps be relied upon to diminish the force or the effect of the word "the" in the phrase "in producing the assessable income"; but for the purpose of my decision I find it unnecessary to deal with this question. In point of fact, I consider that the subscription, the outgoing, was incurred in producing the gross income from personal exertion derived during the calendar year 1926, and during the financial year ended 30th June 1927.

It was suggested on behalf of the Crown that an investigation should be made to ascertain how much of the subscription had been applied in the hands of the Association to purposes conducive to the production of the appellant's assessable income, and *Lochgelly Iron and Coal Co.* v. *Crawford* (3) and *Grahamstown Iron Co.* v. *Crawford* (4) were cited. These cases appear to be considered authority for the position that upon a claim to deduct a subscription to a trade society so much, and so much only, is allowable as is proportionate to the expenditure which the society has actually made towards increasing the taxpayer's profits. (See *Konstam* on the *Law of Income Tax*, 4th ed., p. 146.) Probably the course which the first of these cases took was due entirely to the footing upon which it was conducted by counsel. The second, in the result, decides no more than that, before the deduction is allowed, the subjects upon which the society expends its funds should be known. Some of the observations made by Lord *Strathclyde* and Lord *Johnston* do suggest that they considered a dissection of the societies'

(1) (1921) 29 C.L.R. 424.
(2) (1923) A.C. 145, at p. 148.
(3) (1913) S.C. 810; 50 Sc.L.R. 597; 6 Tax Cas. 267.
(4) (1915) S.C. 536; 52 Sc.L.R. 385; 7 Tax Cas. 25.

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expenditure might be proper in order to determine what portion of the subscription was allowable. I should have thought that the subscription was an entire sum which either was or was not wholly and exclusively laid out and expended by the taxpayer for the purpose of his trade or for the production of income, and that why the manner in which the society expended its funds was relevant to this question was because it showed or tended to show the purposes for which the taxpayer laid out his money in paying the subscription. However this may be, it is enough in this case for me to say that, in my opinion, the expenditure by the taxpayer was altogether made in gaining or producing his assessable income and for the production of his assessable income, and that the objects to which the society confined the expenditure of its general funds, to which the subscription went, do not extend beyond purposes calculated to aid the taxpayer in the production of income.

The appeal will be allowed with costs, and the assessed taxable income from personal exertion will be reduced by £15.

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

E. F. McDonald (with him *Gain*), for the appellant. In determining the question at issue there are three tests, namely, (1) whether the subscription is allowable as a deduction under sec. 23 (1) (*a*) of the *Income Tax Assessment Act* as being a loss or outgoing actually incurred in gaining or producing the assessable income ; (2) whether its deduction is prohibited by sec. 25 (*e*) of the Act because it is money not wholly and exclusively laid out or expended for the production of assessable income, and (3) whether it is not allowable as a deduction because of its being in the nature of a loss or outgoing of capital. The matter does not come under sec. 23 (1) (*a*) at all. Under that section it is not sufficient for the taxpayer to show that the amount is a loss or outgoing actually incurred in gaining or producing taxable income : it must have been incurred in gaining or producing assessable income. The evidence does not show that the Graziers' Association did any work for the respondent as an individual or for the benefit of his individual business except the sending to him of certain forms and pamphlets. The activities of

the Association were designed to reduce or keep down the working expenses of graziers generally and to promote the interests of the industry generally. The keeping down or reduction of expenses, although it may increase the taxable income, cannot affect the amount of the assessable income. No part of the subscription "gained" or "produced" any part of the assessable income or "made" any income (*Federal Commissioner of Taxation* v. *Munro*; *British Imperial Oil Co.* v. *Federal Commissioner of Taxation* (1)). Owing to the difference between the words in the Commonwealth Act and the words in the English Income Tax Act, decisions under the latter Act have no real bearing on the points involved here (*Ward & Co.* v. *Commissioner of Taxes* (2)). If some of the activities of the Association are merely for the purpose of keeping down expenses, then the money was not wholly laid out or expended for the production of assessable income. The Court should not stop at the actual payment to the Association but should inquire into the objects to which the money is applied by the Association (*Lochgelly Iron and Coal Co.* v. *Crawford* (3); *Grahamstown Iron Co.* v. *Crawford* (4)). In view of the fact that the funds of the Association were expended for purposes other than for the direct benefit of individual members the subscription cannot be said to be an entire sum (*Adam Steamship Co.* v. *Matheson* (5)). The onus is on the taxpayer to show what sums were paid towards purposes for which he can properly claim exemption. The amount of the subscription is not deductible at all unless it is wholly and exclusively laid out in the production of income. If any part was applied to purposes other than the production of income, then either the whole subscription or such part is excluded from exemption. As to the words "not being in the nature of losses and outgoings of capital" in sec. 23 (1) (*a*) of the Act, the test is as suggested by Lord *Dunedin* in *Vallambrosa Rubber Co.* v. *Farmer* (6)). The subscription should be regarded as a capital expenditure because it was laid out for the industry generally and not for one year merely (*British Insulated*

(1) (1926) 38 C.L.R. 153, at pp. 197, 218.
(2) (1923) A.C. 145.
(3) (1913) 50 Sc.L.R. 597; 6 Tax Cas. 267.
(4) (1915) 52 Sc.L.R. 385; 7 Tax Cas. 25.
(5) (1921) 58 Sc.L.R. 168.
(6) (1910) 5 Tax Cas. 529, at p. 536.

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and Helsby Cables Ltd. v. *Atherton* (1); *Granite Supply Association Ltd.* v. *Kitton* (2)). The payment was made, not for benefit at a particular time, but for a lengthy period, probably many years. One of the objects of the Association was to obtain legislation favourable to the Association. As the benefits flowing from such legislation would be permanent the subscription to the Association must be regarded as capital expenditure (*Commissioners of Inland Revenue* v. *Adam* (3)).

Weston, for the respondent. The subscription cannot be regarded as a loss or outgoing in the nature of capital [He was stopped on this point.] In considering whether or not the amount was properly deducted the Court will have regard to all the facts, that is to say, the nature of the work performed by the Association, the fifteen years' membership of the taxpayer, &c. The intention of the taxpayer in paying the subscription must be considered: did he pay the money with a view to improving his business as a grazier? The general fund and the political fund of the Association are quite separate and distinct. Ordinary subscriptions to the Association, including the one now under review, are paid into the former, whilst the latter is composed of voluntary subscriptions only. The tests to be applied are (1) what is the actual result of the expenditure of the money by the Association, (2) what was the object of the taxpayer at the time he paid the subscription and (3) what was done with the subscription during the relevant year. What happens to the subscription after it is paid by the member does not concern the member because it ceases to be his money on payment by him into the general fund. The question must be looked at as a practical commercial matter and not from a legal aspect. The taxpayer joined, and remained a member of, the Association in order to derive benefits which would accrue to him in his occupation as a grazier.

E. F. McDonald, in reply. There is no evidence before the Court to indicate the intention of the taxpayer when he paid the subscription.

Cur. adv. vult.

(1) (1926) A.C., at p. 213. (2) (1905) 5 Tax Cas. 168, at p. 171.
(3) (1928) 14 Tax Cas. 34.

The following written judgments were delivered :—

ISAACS C.J. This is an appeal to this Court in its appellate jurisdiction, under sub-sec. 10 of sec. 51A of the *Income Tax Assessment Act* 1922-1928, from the decision of my brother *Dixon*, who held that the sum of £15 17s. 8d. paid by the respondent to the Graziers' Association of New South Wales for the year ending 31st December 1926 was an allowable deduction from the respondent's assessable income for the relevant year. Apart from the prohibitory words in sec. 25 (*e*), no doubt could exist that it is a proper deduction. By that paragraph, with the introductory words of the section, it is provided :—" A deduction shall not, in any case, be made in respect of any of the following matters : . . . (*e*) money not wholly . . . laid out or expended for the production of assessable income." In my opinion the only purpose or intention legally imputable to the respondent in connection with outlay or expenditure of the sum mentioned is to pay it to the Association for utilization in accordance with its professed objects. Once paid to the Association it merges in its funds and ceases to be traceable or separate from the like subscription of other members.

The only test of whether it comes within the description contained in sec. 25 (*e*) is that of the Association's objects. Those objects are set out in clause 4 in these terms : The objects of the Association are (a) to prevent strikes, (b) to maintain freedom of contract, (c) to effect the amicable settlement of disputes between members and their employees, (d) to secure to the members all the advantages of unity of action to protect them in all matters affecting their interests, (e) to undertake the engagement of labour required by members, (f) to act in conjunction with other unions or associations of a similar nature in any part of Australia, (g) to enable the Association to amalgamate or affiliate with and to appoint representatives to any employers' union or association in Australia, (h) to enter into any agreement with the employees of the Association which may seem to be for the mutual benefit of both the Association and such employees.

Apart from object (d), there could hardly arise any question that the Association was for the purpose of arranging and securing for its members' benefit the continued and uninterrupted progress of

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industrial relations on the most advantageous terms. That is conspicuously for the purpose of producing assessable income, for strikes and lock-outs stop everything. But (d) raises some difficulty. Its terms literally read are wide. They do not go beyond trade operations, but the question here is: Do they go beyond that class of trade operations which are confined to the "production of assessable income"? With some hesitation I have arrived at the conclusion that they do not. I think on the whole, that, on reading clause 4 in a business light, par. (d) is directed to unity of action with respect to all matters affecting members' interests in relation to their employees. The position of the paragraph aids that construction. It is true that clause 57 provides for the furtherance of political objects, but only by means of a "separate fund," and the "political object" provision, as I read and interpret it, is a separable adjunct to the ordinary objects of the Association, and, as its funds are to be additional and separate and as contribution to that fund is not a condition of membership of the Association, I disregard it. But within the "political objects" department can be placed at least many of the subjects dealt with at the conference of April 1926, and for the rest I do not think they should affect the strict legal effect of clause 4 as I have interpreted it. Broadly speaking certainly, and strictly speaking also, as I think, on the whole the subscription escapes the prohibition in sec. 25 (*e*), and, as it undoubtedly falls within sec. 23 (1) (*a*) and is indivisible, the respondent is entitled to the deduction and the judgment should be affirmed.

RICH J. I think the judgment of my brother *Dixon* is correct. The attack made on it appears to me to depend substantially upon the view that the objects of the Association enable it to perform functions and expend money for purposes which, while advancing the appellant's business interests, are not confined strictly to the increase of assessable or gross income. The judgment under appeal lays emphasis on the fact that it is the disbursement by the taxpayer which has to be considered, and not that of the Association, although the manner in which the Association expended its funds is relevant because it showed or tended to show the purposes for which the taxpayer laid out his money in paying his subscription. The

judgment further points out the necessity of exercising care in applying the English decisions, because the words "assessable income" in the Australian legislation take the place of the words "the purposes of the trade, profession, employment, or vocation" (8 & 9 Geo. V. c. 40, rule 3 to Cases I. and II. of Sched. D), and the learned Judge expressly holds that the outgoing was "incurred in producing the gross income from personal exertion derived during the calendar year 1926, and during the financial year ended 30th June 1927." The question is one of fact in each case (*Maryborough Newspaper Co.* v. *Federal Commissioner of Taxation* (1).)

It is obvious from the activities of the Association, as well as its rules, that membership, if not necessitated, is rendered highly expedient in order that the pastoralist may be represented in his relations with the labour by which his sheep are cared for and shorn. The main purposes which the Association fulfils on behalf of its members are intimately bound up with the production of their gross incomes, and it is difficult to say that anything which the Association did during the year of income did not tend either directly or indirectly to aid in the production of the assessable income. It may be true that some things it did may have tended also to diminish losses or outgoings. As a matter of speculation it may be also true that the Association might expend its money and efforts in some activity which tended to diminish its members' expenditure rather than to increase their revenue, but it is a very narrow and unworkable view of sec. 25 (*e*) of the *Income Tax Assessment Act* 1922-1927-1928, which disqualifies an expenditure which produces or aids in the production of assessable income, i.e., revenue, because incidentally and accidentally it may aid in the curtailment of expenditure. But, as the primary Judge pointed out, the question is upon what the taxpayer expended his money and not how the Association disbursed its revenue, and I have no doubt the learned Judge was right in holding that the taxpayer did so to obtain the solid practical advantages which the Association gave him in earning his revenue and not the speculative and unreal and doubtful benefits by which his disbursements might be lessened.

The appeal should be dismissed with costs.

(1) *Ante*, 450.

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STARKE J. The *Income Tax Assessment Act* 1922-1927 allows a deduction of "all losses and outgoings (including commission, discount, travelling expenses, interest and expenses, and not being in the nature of losses and outgoings of capital) actually incurred in gaining or producing the assessable income" (sec. 23 (1) (*a*)). Sec. 25 (*e*) provides that a deduction shall not be made in respect of any "money not wholly and exclusively laid out or expended for the production of assessable income."

The taxpayer is a member of the Graziers' Association of New South Wales, and pays a yearly contribution to the funds of that Association on a scale prescribed by its rules. His contribution in the financial year 1926-1927 amounted to £15, and he claimed this sum as a deduction from his assessable income for the financial year 1927-1928. The Commissioner disallowed the claim, but my brother *Dixon*, on appeal, allowed it, and from his decision this appeal has been brought.

The objects of the Graziers' Association are set forth in its rules, and, substantially, they are the protection of its members and the advancement of their interests. It should be stated that the Association has a political fund, which is kept separate and apart from its other funds, and to which members are under no obligation to contribute. So far as the matter is one of law, money expended, not of necessity but voluntarily, and on the grounds of commercial expediency, and in order to protect or facilitate the carrying on of a business may be incurred in gaining or producing the income arising from that business (see *British Insulated and Helsby Cables Ltd.* v. *Atherton* (1); *Usher's Wiltshire Brewery Ltd.* v. *Bruce* (2)). And my brother *Dixon* has found that the contribution in question in this appeal was in fact incurred in gaining or producing the assessable income of the taxpayer. I see no reason for disturbing that conclusion of fact, and concur in it.

But then it is argued that the contribution was not "wholly and exclusively laid out or expended for the production of assessable income," as the Association has such wide powers that the contributions of members might lawfully be applied to very different purposes than those the taxpayer had in view. The question is really one

(1) (1926) A.C., at pp. 211-212.

(2) (1915) A.C., at pp. 469-470.

of fact. The money was paid to secure to the taxpayer's business the benefits which flowed from membership of the Association. It was from his business that his assessable income was derived, and the contribution was made to protect his interest in and his income from this business, and for no other purpose. My brother *Dixon* concluded that money so expended was wholly and exclusively laid out or expended for the production of the taxpayer's assessable income. Again, I see no reason for disturbing his finding, and concur in it.

The appeal should be dismissed.

Appeal dismissed with costs.

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

Solicitors for the respondent, *McLachlan, Westgarth & Co.*

J. B.