[HIGH COURT OF AUSTRALIA.]

COGLAN . . . . . APPELLANT;

AND

THE FEDERAL COMMISSIONER OF TAXATION . . . . . RESPONDENT.

H. C. OF A. 1932.

MELBOURNE, *June* 5; *July* 7.

Starke J.

War-time Profits Tax—Assessment—Purchases of wheat scrip—Numerous transactions—Profit earned—"Business"—Transactions amounting to carrying on business—Deduction for interest in calculating profits earned—War-time Profits Tax Assessment Act 1917-1918 (*No.* 33 *of* 1917—*No.* 40 *of* 1918), *sec.* 4.

In 1917 the appellant, a farmer and grazier, commenced purchasing in the market wheat scrip or certificates entitling him to various payments in respect of wheat pooled by the owners under various Wheat Harvesting Acts. The appellant commenced purchasing wheat scrip as an investment to meet a mortgage obligation of £13,000 falling due in 1919, but his purchases extended over many years, and the appellant purchased in all some £95,000 worth of scrip and realized a profit of some £20,000. Substantially, he sold no scrip but financed his operations out of dividends which he received on scrip purchased, the profits he made as a farmer and grazier, and loans from his relatives and from bankers and financial institutions. The Commissioner assessed the appellant to war-time profits tax for the financial year 1917-1918 in respect of the profits he realized for that year on his purchases of wheat scrip or certificates.

Held, that the appellant's transactions in wheat scrip constituted the carrying on of a business within the meaning of the *War-time Profits Tax Assessment Act* 1917-1918, and that he was liable to assessment to war-time profits tax but that an allowance should be made for interest on moneys borrowed to purchase the scrip or certificates and for the amount of interest his own money if otherwise invested would have earned.

APPEAL from the Federal Commissioner of Taxation.

This was an appeal by Michael John Coglan from the assessment by the Commissioner of Taxation of the appellant to war-time profits tax for the financial year 1917-1918 in respect of the profits realized by him in that year on his purchases of wheat scrip or certificates.

H. C. OF A. 1932. COGLAN v. FEDERAL COMMISSIONER OF TAXATION.

The appellant's objections to the assessment were as follows:— "(1) The assessment is contrary to law; (2) the profits included in the assessment are not from a business within the meaning of the Act; (3) alternatively, the assessment is excessive; (4) proper allowances and/or deductions have not been made and/or allowed; (5) if the profits in question are from a business they are exempt under sec. 15 (16) of the Act."

Further facts and the arguments of counsel are stated in the judgment hereunder.

Wilbur Ham K.C. and *Byrne*, for the appellant.

Arthur Dean, for the respondent.

Cur. adv. vult.

July 7.

STARKE J. delivered the following written judgment:—

The appellant is a farmer and grazier, and for many years he occupied himself very successfully in those pursuits. In April of 1917, however, he began purchasing in the market wheat scrip or certificates entitling him to various payments in respect of wheat pooled by the owners under pooling agreements or marketed under schemes provided for by Wheat Harvesting Acts. The wheat in respect of which these various certificates had been issued had all been sold at the time the appellant purchased the scrip or certificates. The appellant had a mortgage obligation of £13,000 falling due towards the end of 1919, and he knew, he said, no sounder investment, nor anything in which his money would be more readily available, than the purchase of wheat scrip or certificates. But though the purchases began in this way, they extended over many years, and the appellant purchased in all some £95,000 worth of scrip and realized a profit of some £20,000. Substantially, he sold no scrip but financed his operations out of dividends which he received on scrip purchased, the profits he made as a farmer and grazier, and loans from his relatives and from bankers and financial institutions. The Commissioner assessed the appellant to war-time profits tax for the financial year 1917-1918 in respect of the profits he realized for that year on his purchases of wheat scrip or certificates.

The method by which the Commissioner ascertained the war-time profits and the pre-war standard of profits were not challenged before me. But it was contended that the appellant's transactions in wheat certificates were investments of his funds, and not the carrying on of any trade or business within the meaning of the *War-time Profits Tax Assessment Act* 1917-1918. Under that Act, a tax is levied on all war-time profits from any business to which the Act applies, and "business" includes any profession or trade. The Act applies to trades or businesses commenced after the beginning of the War (*Cape Brandy Syndicate* v. *Inland Revenue Commissioners* (1)). The word "business"—or "trade"—is, as has been said, an elastic word, capable of wide extension; but the cases suggest that the term implies or connotes a series or a repetition of acts in carrying on or carrying out a scheme for profit-making (*Ducker and Inland Revenue Commissioners* v. *Rees Roturbo Development Syndicate* (2); *Martin* v. *Lowry* (3); *Blockey* v. *Federal Commissioner of Taxation* (4); *Commissioners of Inland Revenue* v. *Marine Steam Turbine Co.* (5); *Inland Revenue Commissioners* v. *Korean Syndicate Ltd.* (6)). So far as the present case is concerned, I have no doubt, and I find, that the appellant's purchase of wheat scrip or certificates were operations for profit-making, and resulted in a profit; the scheme even in its inception had profit-making in view; the appellant, in putting aside moneys to meet his mortgage obligation, always had in view a profit from the dividends he would receive on the scrip or certificates or a rise in the market values of the scrip or certificates. And the continuation of his speculation in a series of transactions totalling £95,000 and resulting ultimately in a profit of some £20,000, only confirms the conclusion that he originally entered upon the purchases of scrip, not for the permanent investment of his money, but for the profits he might derive from the dividends he would receive from the scrip or certificates or the rise in market values.

But I should notice an argument made for the appellant. It was claimed that the transactions resembled discount or redemption transactions. The appellant purchased choses in action, and the difference between the price he gave for them and the amount

(1) (1921) 2 K.B. 403.
(2) (1928) A.C. 132.
(3) (1927) A.C. 312.
(4) (1923) 31 C.L.R. 503.
(5) (1920) 1 K.B. 193, at p. 203.
(6) (1921) 3 K.B. 258, at pp. 276-277.

H. C. OF A. 1932.

COGLAN v. FEDERAL COMMISSIONER OF TAXATION.

Starke J.

ultimately received on account of them represented the so-called discount. A discount is the deduction or drawback made upon a prompt or advanced payment; but I cannot think that the appellant's transactions bear any resemblance to such transactions, and still less do they bear any resemblance to transactions by way of redemption. And if they do, they are none the less operations of business for the purpose of profit-making. It cannot be suggested —or, at all events, found—that the price is simply a calculation of the present value of the amounts due (uncertain in amount and in time of payment) under the wheat scrip or certificates. It depended upon the market rate, and all the uncertain elements that affect such a rate. But the Commissioner has not made any allowance for interest on moneys borrowed to purchase the scrip or certificates, or on the appellant's own moneys used for the purchase of scrip and certificates. On the borrowed moneys, the appellant actually paid interest, whilst on his own moneys he, of course, stood out of interest. The Commissioner does not now dispute that some such allowance ought to be made, and that the fourth objection covers the matter, but he relies upon sec. 25 (1) (*b*) of the Act. That provision does not, however, compel the Court to confirm an assessment which is admittedly wrong, though the precise amount cannot accurately be calculated on the materials before it. In all the circumstances, I shall remit the assessment to the Commissioner to make all such alterations as he thinks necessary to ensure its completeness and accuracy—especially as regards charges for interest—and adjourn this appeal and give liberty to either party to apply. Substantially the Commissioner has succeeded on the appeal, but I reserve the costs until I know how the assessment is affected by the interest charges.

Assessment remitted to Commissioner of Taxation to make necessary alterations. Appeal adjourned. Liberty to either party to apply. Question of costs reserved.

Solicitors for the appellant, *Whiting & Byrne.*

Solicitor for the Commissioner of Taxation, *W. H. Sharwood,* Crown Solicitor for the Commonwealth.

H. D. W.