[HIGH COURT OF AUSTRALIA.]

SMITH . . . . . APPELLANT,

AND

THE FEDERAL COMMISSIONER OF TAXATION RESPONDENT.

H. C. OF A. 1932.

SYDNEY, *Aug.* 9, 10, 18.

Gavan Duffy C.J., Rich, Starke, Dixon, Evatt and McTiernan JJ.

Income Tax (Cth.)—Assessable income—Resumption of land owned by company—"Sale of assets"—Compulsory sale—Land "not acquired for . . . resale at a profit"—Profit arising from resumption distributed as dividend—Dividend not "assessable income"—Subsequent amending legislation—Income Tax Assessment Act 1922-1927 (*No.* 37 *of* 1922—*No.* 32 *of* 1927), *sec.* 16 (*b*) (i.)—*Income Tax Assessment Act* 1930 (*No.* 50 *of* 1930), *sec.* 6 (*b*)—*City of Brisbane Improvement Act* 1916 (*Q.*) (7 *Geo. V. No.* 24), *secs.* 3, 7, 8, 17.*

The third proviso to sec. 16 (*b*) (i.) of the *Income Tax Assessment Act* 1922-1927 enacted that in the case of a dividend paid "wholly and exclusively out of the profits arising from the sale of assets which were not acquired for the purpose of resale at a profit a . . . shareholder shall not be liable to tax on that dividend." A new proviso was substituted by the *Income Tax Assessment Act* 1930 exempting from tax dividends paid from "profits arising from the sale, or compulsory resumption for public purposes of assets" of the nature previously described.

* The *City of Brisbane Improvement Act* 1916 (Q.) provides, so far as is material, as follows:—"3. The Council may from time to time, with the approval of the Governor in Council, in pursuance of the provisions hereinafter contained and without further or other authority than this Act, take any lands within . . . the City which the Council, by resolution, declares to be required by the Council . . . 7. The Council shall from time to time, with the approval of the Governor in Council, by notice of resumption published in the *Gazette* . . . declare that any land required for the purposes of this Act has been taken by the Council . . . (8) Upon the publication of such notice of resumption—(*a*) The land therein described shall by force of this Act . . . become absolutely vested in the Council for an estate in fee simple in possession freed and discharged from all trusts, obligations, mortgages . . . estates, interests . . . and easements of what kind soever; and (*b*) The estate, right, and interest of every person entitled to the whole or any part of the land so taken . . . shall be deemed to have been converted into a claim for compensation under this Act . . . (17) The time limited for making a claim for compensation under this Act shall be three years from the date of notice of resumption taking the land. If no claim for compensation is made within such period, the right to compensation shall be absolutely barred."

In pursuance of its statutory powers the Brisbane City Council resumed, in 1926, by a notice of resumption published in the *Government Gazette*, land owned, and occupied for the purpose of its business, by a company of which the taxpayer was a shareholder, the amount to be paid by the Council to the company as a result of such resumption being subsequently agreed upon by the parties. The Commissioner of Taxation contended that the resumption was not a "sale" within the meaning of the third proviso to sec. 16 (*b*) (i.) of the *Income Tax Assessment Act* 1922-1927, and he included in the taxpayer's assessable income for the financial year ended 30th June 1927 the dividend received by the latter out of the profits arising from the transaction.

Held, by *Rich*, *Starke*, *Dixon* and *McTiernan* JJ. (*Gavan Duffy* C.J. and *Evatt* J. dissenting), that, notwithstanding the alteration in the proviso afterwards made by the *Income Tax Assessment Act* 1930, the compulsory acquisition of the property by the Council was a "sale" within the meaning of the third proviso to sec. 16 (*b*) (i.) of the *Income Tax Assessment Act* 1922-1927, and, therefore, the dividend received by the taxpayer did not form part of his assessable income.

APPEAL from the Board of Review.

The taxpayer, William Ritchie Smith, objected to the inclusion in his assessable income for the year ending 30th June 1927, as shown in a notice of amended assessment issued on 4th December 1930, of the sum of £5,275 18s. 5d., being a dividend received by him as shareholder from W. R. Smith & Paterson Ltd. The objection, which was on the ground that "the . . . dividend from W. R. Smith & Paterson Ltd. was paid out of profit arising from the resumption by the City Council of the Company's property in Adelaide Street, Brisbane, and, therefore, under sec. 16 (*b*) (i.) of the *Income Tax Assessment Act* 1922-1927, such dividend is not liable to tax in the hands of the recipient," was disallowed by the Commissioner, and at the request of the taxpayer the matter was referred to the Board of Review. Evidence given before the Board showed that the property in question was acquired in 1919 at a cost of £12,180 by W. R. Smith & Paterson Ltd., for the purpose of its business, that of printers and wholesale stationers, and not for the purpose of resale at a profit. By a letter, dated 22nd October 1926, received from the Brisbane City Council, the attention of the Company was directed to a notice of resumption, which appeared in the Queensland *Government Gazette* of 16th October 1926, giving notice, pursuant to the provisions of the *City of Brisbane Improvement Act* 1916 (Q.), that "the lands," including, *inter alia*, the

H. C. OF A. 1932.

SMITH v. FEDERAL COMMISSIONER OF TAXATION.

property of the Company "are taken by the Council as from the date of publication hereof, such lands being required for the purposes of the said Act," and the Company was informed that from the date of publication of the notice "the land" became vested in the Council freed from all encumbrances, leases, tenancies, &c., whatsoever." A claim for compensation was made by the Company on 12th January 1927, and, after negotiations between the Company and the Council, the former accepted, on 16th May 1927, an offer by the latter to pay the sum of £24,000 in full settlement of the Company's claim. Of this amount the Company credited the sum of £11,026 18s. 4d. to its "freehold property account," being the purchase price less depreciation; the sum of £1,173 10s. 4d. to the relevant account for alterations and additions made to the property by the Company; created a reserve of £1,500 for removal expenses and loss of business; and carried the balance of £10,551 16s. 10d. to the "profit and loss appropriation account," which balance was, on 30th June 1927, distributed to the shareholders of the Company as a dividend in pursuance of a resolution made by the directors of the Company on 28th June 1927. The "removal expenses account" opened by the Company in connection with the consequent transfer, between June and September 1928, of its business to other premises, showed various items entered therein totalling £1,603 0s. 8d., the amount in excess of the reserve of £1,500 being carried to the "profit and loss" account.

The Commissioner contended that in the circumstances the dividend received by the taxpayer was not paid out of profits arising from the "sale" of an asset within the meaning of the third proviso to sec. 16 (*b*) (i.) of the *Income Tax Assessment Act* 1922-1927, and also that the dividend paid by the Company exceeded the actual profits arising from the transaction to the extent of the sum of £103 0s. 8d. under-estimated for removal expenses, so that such dividend was not "paid wholly and exclusively out of" such "profits" as required by the proviso. By the proviso a shareholder was made not liable to tax in respect of dividends paid to him "wholly and exclusively out of the profits arising from the sale of assets which were not acquired" by the Company "for the purpose of resale at a profit"; but a new proviso was substituted by sec. 6 (*b*) of the

Income Tax Assessment Act 1930 to the effect that the "profits arising from the sale, or compulsory resumption for public purposes, of assets which were not acquired" by the company "for the purpose of resale at a profit" shall not be assessable income to the shareholders to whom they were distributed.

The Board of Review confirmed the amended assessment, and the taxpayer appealed to the High Court.

The appeal came on for hearing before *Rich* J., and his Honor, after further evidence—directed towards showing that certain items, aggregating £277 11s. 9d., appearing in the "removal expenses account" were not properly chargeable to that account—had been tendered, referred the matter to the Full Court.

Grove, for the appellant. The dividend was "paid wholly and exclusively out of the profits arising from the sale" of the land in question within the meaning of the third proviso to sec. 16 (*b*) (i.) of the *Income Tax Assessment Act* 1922-1927. Although shown in the relevant account as being £1,603, the expenses properly attributable to the removal were actually much less than the estimated amount of £1,500. The account was so kept for convenience of bookkeeping, but the fact of being entered in such account does not conclude the real nature of the items involved (*Foster Brewing Co.* v. *Federal Commissioner of Taxation* (1)). As the estimate of £1,500 was not exceeded, there was a profit sufficient to meet the amount paid as a dividend by the Company. Even though the land was acquired by the Council under its compulsory powers, the transaction between it and the Company was a "sale" of land. The notice of the "taking" by the Council, and the subsequent fixing, after negotiations, of the purchase price, together constitute a contract of sale and purchase, and establish the relation of vendor and purchaser (*Adams* v. *London and Blackwall Railway Co.* (2); *Regent's Canal Co.* v. *Ware* (3); *Mason* v. *Stokes Bay Pier and Railway Co.* (4); *In re Pigott and Great Western Railway Co.* (5); *In re Cary-Elwes' Contract* (6); *Federal Wharf Co.* v. *Deputy Federal Commissioner of Taxation* (7)).

(1) (1916) 22 C.L.R. 288.
(2) (1850) 2 Mac. & G. 118; 42 E.R. 46.
(3) (1857) 23 Beav. 575; 53 E.R. 226.
(4) (1863) 32 L.J. Ch. 110.
(5) (1881) 18 Ch. D. 146.
(6) (1906) 2 Ch. 143.
(7) (1930) 44 C.L.R. 24.

H. C. OF A. 1932.

SMITH v. FEDERAL COMMISSIONER OF TAXATION.

[STARKE J. referred to *Harding* v. *Metropolitan Railway Co.* (1).]

The fact that the proviso was later amended by the insertion of the words " or compulsory resumption for public purposes " cannot be taken as an indication by the Legislature that prior to such amendment the word " sale " did not include such a transaction (*Attorney-General* v. *Clarkson* (2); *Beal's Cardinal Rules of Legal Interpretation*, 3rd ed. (1924), p. 420). The Commissioner wrongly interprets the proviso as if it reads " where the whole dividend is exclusively paid out " &c.

Hooton, for the respondent. There was no " sale of assets " within the meaning of the proviso; this view is strongly supported by the fact that by a subsequent amending Act the words " or compulsory resumption for public purposes " were inserted in the proviso (*Hurlbatt* v. *Barnett & Co.* (3)). The natural plain meaning of the word " sale " does not include a compulsory acquisition by force of Act of Parliament as here. The cases of *Adams* v. *London and Blackwall Railway Co.* (4), *Regent's Canal Co.* v. *Ware* (5), *Mason* v. *Stokes Bay Pier and Railway Co.* (6), *Harding* v. *Metropolitan Railway Co.* (1), *In re Pigott and Great Western Railway Co.* (7) and *In re Cary-Elwes' Contract* (8) are distinguishable because under the relevant Act, the *Lands Clauses Consolidation Act* 1845 (Eng.), a " notice to treat " had been given while under the relevant Act here in question, that is, the *City of Brisbane Improvement Act*, by virtue of the publication of a notice of resumption the land and all the interests therein are divested from the owners and the whole title passes to the resuming authority. An examination of the procedure laid down by the *City of Brisbane Improvement Act* shows that the course adopted is very different from that followed in the case of an ordinary sale. The rights of parties are limited to those found within the relevant statutes, and ordinary rules and consequences do not apply or follow; e.g., there is no lien for unpaid purchase-money (*Davies* v. *Littlejohn* (9)).

(1) (1872) L.R. 7 Ch. 154.
(2) (1900) 1 Q.B. 156.
(3) (1893) 1 Q.B. 77, at p. 79.
(4) (1850) 2 Mac. & G. 118; 42 E.R. 46.
(5) (1857) 23 Beav. 575; 53 E.R. 226.
(6) (1863) 32 L.J. Ch. 110.
(7) (1881) 18 Ch. D. 146.
(8) (1906) 2 Ch. 143.
(9) (1923) 34 C.L.R. 174.

The decision in *Federal Wharf Co.* v. *Deputy Federal Commissioner of Taxation* (1) is not applicable, the only question for consideration there being whether interest on compensation money was income within the meaning of the *Income Tax Assessment Act*. In default of express statutory provision, there is no right to interest. In *In re Pigott and Great Western Railway Co.* (2) it was put as flowing from the ordinary equitable rights as applied to the case of vendor and purchaser. As there was no " sale " of an asset within the meaning of the proviso, the appellant was not entitled to be exempt from tax on the dividend in question. The onus is upon the appellant to establish that he is within the exemption.

[STARKE J. referred to *John Foster & Sons Ltd.* v. *Inland Revenue Commissioners* (3).]

Here there is no conveyance by the owner to the " taking " authority: the owner has no free power of disposition. The " profits " were not correctly ascertained by the Company.

[DIXON J. referred to *Commissioners of Inland Revenue* v. *Glasgow and South-Western Railway Co.* (4).]

The amount of £103 0s. 8d., by which the estimate of £1,500 for removal expenses was exceeded, should be deducted from the amount of £10,551 16s. 10d. carried to the profit and loss account in order to ascertain the actual profit arising from the transaction. The profit so ascertained was £10,448 16s. 2d., and, as the full amount of £10,551 16s. 10d. was distributed as a dividend, it cannot be said that such dividend was paid " wholly and exclusively out of the profits " as required by the terms of the proviso. The finding of the Board of Review as to the total amount of removal expenses should not be disturbed: it is in accordance with actual expenditure as shown in the Company's books, and each item is properly chargeable as a removal expense. The appellant fails because the language of the proviso, at the relevant time, did not unambiguously include the exemption sought by him (*Universal Film Manufacturing Co. (Australasia)* v. *New South Wales* (5) and *Brunton* v. *Commissioner of Stamp Duties* (6)).

(1) (1930) 44 C.L.R. 24.
(2) (1881) 18 Ch. D. 146.
(3) (1894) 1 Q.B. 516.
(4) (1887) 12 App. Cas. 315.
(5) (1927) 40 C.L.R. 333, at pp. 345, 346, per *Isaacs* A.C.J.
(6) (1913) A.C. 747, at p. 760.

H. C. OF A. 1932.

SMITH v. FEDERAL COMMISSIONER OF TAXATION.

Grove, in reply. Compulsory resumption of land accompanied by an agreement as to price amounts to a sale of the land (*Walker* v. *Ware, Hadham, and Buntingford Railway Co.* (1)); and see *Williams* on *Vendor and Purchaser*, 3rd ed. (1923), vol. II., p. 992.

Cur. adv. vult.

Aug. 18.

The following written judgments were delivered :—

GAVAN DUFFY C.J. AND EVATT J. Certain lands of the taxpayer became the property of the City of Brisbane under and by virtue of the *City of Brisbane Improvement Act* of 1916. By sec. 13 the Council was empowered " without complying with the Act," to " enter into an agreement to take " any land required. But action was not taken under sec. 13, and the course adopted was to " take " the land under sec. 3 by " notice of resumption " published in the *Gazette*.

The question which now arises is whether the transaction mentioned was a " sale of assets " within the meaning of the third proviso to sec. 16 (*b*) (i.) of the *Income Tax Assessment Act* 1922-1927. That proviso enacts that when a company dividend or bonus is paid " wholly and exclusively out of the profits arising from the sale of assets which were not acquired for the purpose of resale at a profit a member or shareholder shall not be liable to tax on that dividend or bonus."

The general scheme of the proviso is not in doubt. The assets of a company are divided into assets acquired " for the purpose of resale " and those not so acquired, that is, " fixed " assets. Profit may arise from the sale by the company of assets belonging to the second class, and, if profit does arise, it is not taxable as dividend in the hands of the shareholder.

We do not think that the expression " sale " in the proviso is sufficiently elastic to include the compulsory taking of the appellant's land by the Council. There was no agreement between the parties prior to the taking. The property became vested in the Council by force of the publication of the notice, not by force of any conveyance or transfer. After *Gazette* notification, the appellant retained no

(1) (1865) L.R. 1 Eq. 195.

interest whatever in the land, and his sole right was to have compensation paid to him. The subsequent arrangement between the parties as to the amount of that compensation was directed solely to avert the litigation which otherwise would have taken place. For a "sale," there must be a seller or vendor, a purchaser or a buyer, and a transfer of the thing sold—for a price. These predominant features are absent from the transaction here, where there was never a vendor, never a purchaser, and never a price. We are not impressed by the consideration that the resumption of lands under some State laws the true intent of which is to compel a person to sell land for a price, may be within the proviso. That is not the case here.

When, in August 1930, the Legislature amended the *Income Tax Assessment Act*, it altered the proviso under consideration and used the disjunctive phrase "profits arising from the sale, or compulsory resumption for public purposes, of assets"; but made the alteration applicable only to assessments in respect of financial years, commencing with the financial year 1930-1931. This amendment can, we think, be looked at, and it shows conclusively the Legislature thought that a very clear distinction existed between a sale and a compulsory resumption of land, and that the original proviso did not apply to compulsory resumptions. The form of the amending legislation is inexplicable on any other hypothesis.

For these reasons the appeal should be dismissed.

RICH J. This is a taxpayer's appeal under sec. 51 (6) of the *Income Tax Assessment Act* 1922-1930 from a decision of the Board of Review. The proceedings came before me pursuant to Rule 13 of Order LIA. and at the request of both parties I referred the matter to be argued before the Full Court. The question before the Board arose under the third and last proviso of sec. 16 (*b*) (i.) of the *Income Tax Assessment Act* 1922-1927, which makes a general exception to the rule that the assessable income of any person shall include in the case of a member of a company profits credited, paid or distributed by the company. The proviso is as follows: "Provided also that where a dividend or bonus is paid wholly and exclusively out of the profits arising from the sale of assets which

H. C. OF A. 1932.

SMITH v. FEDERAL COMMISSIONER OF TAXATION.

Rich J.

were not acquired for the purpose of resale at a profit a member or shareholder shall not be liable to tax on that dividend or bonus." The taxpayer as a shareholder participated in a distribution by a company of profits said to arise from the compulsory sale of assets which were not acquired by the Company for the purpose of resale at a profit. The question arose under this provision before the amendment effected by sec. 6 (*b*) of No. 50 of 1930. The Board considered the question whether the expression " arising from the sale of assets " covered the involuntary realization of property as a result of compulsory acquisition, but decided against the taxpayer upon the ground that the dividend had not been paid by the Company wholly and exclusively out of the profits from the realization. This decision proceeded upon the view that certain expenses incurred by the Company in order to establish itself in new premises in lieu of those taken compulsorily ought to be thrown against the purchase-money or compensation received. The character of these expenses was imperfectly explained by the evidence before the Board. But, if we were confined to the materials before it, I should have great doubt as to the propriety of the allocation of the disbursements. But upon the further evidence given before me it is quite plain that the profits relied upon by the Company cannot be reduced by attributing the expenses in question to capital account. The case is thus restricted to the question whether the word " sale " in the proviso as it stood before the amendment of 1930 includes compulsory sale. I must confess that if it had not been for the subsequent amendment I should not have hesitated in giving an affirmative answer. Sale is not a word of precise technical import. In many contexts the essential idea it conveys is an agreement to transfer property for a valuable consideration. Often the valuable consideration intended is restricted to money. In other contexts agreement is not of the essence of the conception but the conversion of property into money or its realization is the notion sought to be expressed. Ever since the *Lands Clauses Consolidation Act* 1845 the alienation of property accomplished under its provisions has been regarded as an instance of sale. The very title under which the subject is discussed in legal compilations is compulsory purchase.

Stamp duty is levied upon the assurance of property as a conveyance or transfer on sale (*Commissioners of Inland Revenue* v. *Glasgow and South-Western Railway Co.* (1)), where it was not even argued that the conveyance did not answer this description. In *Mason* v. *Stokes Bay Pier and Railway Co.* (2) *Wood* V.C. (as he then was) said: "In this case the amount to be paid had been settled by the award, and a parliamentary contract had been made which could be enforced in this Court at the instance of either vendor or purchaser . . . after notice given and the price fixed, the relation of the parties, as vendor and purchaser, was as fully constituted as in the case of a formal and regular agreement." And *Swinfen Eady* J. (as he then was), in *In re Cary-Elwes' Contract* (3), said: "It is well settled that in cases of compulsory purchase, after notice to treat and ascertainment of the price, a contract is established, enforceable in a Court of Equity, and with regard to which both vendor and purchaser can enforce specific performance (*Adams* v. *London and Blackwall Railway Co.* (4) ; *Regent's Canal Co.* v. *Ware* (5)). Following these decisions, it was held by *Jessel* M.R. in *In re Pigott and Great Western Railway Co.* (6) that as specific performance of the contract, as a contract of purchase and sale, or sale and purchase, may be enforced, all the ordinary rules apply, unless you find some statutory enactment in the way." Many references will be found to the relationship established by notice to treat and ascertainment of the purchase-money in which it is called a quasi-contract, e.g., per Lord *Watson* in *Tiverton and North Devon Railway Co.* v. *Loosemore* (7), and as a purchase, e.g., by Lord *Bramwell* (8). It is true that the Queensland statute under which the land was taken from the Company does not proceed by notice to treat but by a *Gazette* notice of acquisition. Perhaps in England the procedure by notice to treat produced a greater similarity in conveyancing practice to the completion of a voluntary sale, but the difference is not material in considering whether agreement is an essential element in the connotation of the word "sale," or whether it is capable of including

(1) (1887) 12 App. Cas. 315.
(2) (1863) 32 L.J. Ch., at p. 111.
(3) (1906) 2 Ch., at p. 148.
(4) (1850) 2 Mac. & G. 118 ; 42 E.R. 46.
(5) (1857) 23 Beav. 575 ; 53 E.R. 226.
(6) (1881) 18 Ch. D., at p. 150.
(7) (1884) 9 App. Cas. 480, at p. 501.
(8) (1884) 9 App. Cas., at p. 511.

H. C. OF A. 1932.

SMITH v. FEDERAL COMMISSIONER OF TAXATION.

Rich J.

alienation of property for a money sum, when the alienee alone possesses freedom of action; see per Lord *Macnaghten* in *Williams* v. *Permanent Trustee Co. of New South Wales* (1), where he says: "It is a compulsory purchase just as much in the one case as in the other." The common speech of lawyers in Courts of Equity justifies the assertion that the word is capable of the more extensive meaning, and the only question remaining is whether in this statute it should receive the more restricted construction. The subject with which the statute is dealing points unmistakably in the direction of the more extended meaning. It is directed to the discrimination between income profits and capital profits, but the object is to leave dividends derived from income or trading profits arising from the disposal of stock-in-trade and the like subject to tax and to exclude from taxation dividends derived from money into which property has been converted although not acquired for the purpose of resale. Broadly the distinction is between the recovery of fixed capital and circulating capital, and the detachment therefrom of the surplus over expenditure. The fact that the fixed capital is recovered by a compulsory conversion as distinguished by a voluntary conversion of the asset into money is quite irrelevant to the purpose of the Legislature. When trading stock was requisitioned in war time no one considered that the trader should exclude the proceeds paid to him by the Government from his profit and loss account; and I have no doubt that the ordinary accountant would put the sums down amongst the trader's "sales." Further, it is probable that the Commissioner would consider the transaction as a resale within the meaning of the present proviso. But the difficulty remains that the Legislature has, after the date of the transaction now in question, made an amendment of the proviso by, amongst other things, introducing the words "or compulsory resumption for public purposes." Further, the provision making the amendment is, by sec. 26 (5) of No. 50 of 1930, to apply to assessments of the financial year beginning on 1st July 1930 and subsequent years. From this it is argued that an alteration in the law has been made to take effect prospectively, thus amounting to a legislative acknowledgement that "sale" did not cover compulsory sale. Argument

(1) (1906) A.C. 249, at p. 252.

from subsequent legislative exposition of prior statutes is always hazardous. In this case the amendment at least shows clearly that the wider interpretation of the word " sale " gave effect to the policy of the enactment. All that can be logically inferred from the amendment is that the Legislature supposed that by its previous choice of expressions it had failed in its attempt to give effect to that policy. But no judicial decision existed to inspire that belief, which must have arisen either from apprehension or from a course of administrative practice. It is for the Courts to ascertain the meaning expressed in the enactments of Parliament, and, though no doubt the enactments of a subsequent Parliament may be a source of enlightenment, they can only control their actual meaning by declaratory provision. The Act of 1930 is far from being declaratory. It justifies no more than an inference that the Legislature regarded its previous statement of its intentions as open to so much doubt that a restatement was necessary.

For these reasons I am of opinion that compulsory acquisition is included in the word " sale " in the proviso to sec. 16 (*b*) (i.).

The appeal should be allowed with costs.

STARKE, DIXON AND MCTIERNAN JJ. The *Income Tax Assessment Act* 1922-1927, sec. 16 (*b*), provided that where a dividend or bonus is paid wholly or exclusively out of the profits arising from the sale of assets which were not acquired for the purpose of resale at a profit, a member or shareholder shall not be liable to tax on that dividend or bonus.

It appears that certain land had been resumed under the *City of Brisbane Improvement Act* of 1916, and the question arises whether that resumption is a sale of assets within the meaning of the *Income Tax Assessment Act* already mentioned. A sale technically imports the conveyance or transfer of property or an agreement or other obligation to convey or transfer property for a price in money. The compulsory acquisition of lands under such Acts as the *Lands Clauses Consolidation Act* 1845 (Eng.) and the *Lands Compensation Act* 1928 of Victoria is well enough described as a sale and purchase once the price is ascertained. As Lord *Hatherley* L.C. said in *Harding*

H. C. OF A. 1932.

SMITH v. FEDERAL COMMISSIONER OF TAXATION.

Starke J. Dixon J McTiernan J.

v. *Metropolitan Railway Co* (1): "When the price is ascertained . . . you have then all the elements of a complete agreement, and, in truth, it becomes a bargain made under legislative enactment between the railway company and those over whom they were authorized to exercise their power." Under the *City of Brisbane Improvement Act*, however, the Council is authorized to declare that any land required for the purposes of the Act has been taken by the Council, and, upon publication of a notice of resumption, the land becomes vested in the Council and the right of the person from whom the land is taken is converted into a claim for compensation under the Act. It is an exchange of land, made under legislative enactment, for money. Substantially the Act has provided the price at which the land is to be taken or resumed (*Davies* v. *Collector of Imposts* (2); *Commissioners of Inland Revenue* v. *Glasgow and South-Western Railway Co.* (3)). Does the expression "sale of assets" require a definite contract of purchase and sale, or does it mean a parting with assets in the same manner as upon a contract of purchase or sale? The latter view, in our opinion, is the right one (*Great Western Railway Co.* v. *Commissioners of Inland Revenue* (4)). The Act looks to the substance of the matter, and is not concerning itself with technical definitions of the word sale. It would be strange indeed if the *Income Tax Assessment Act* 1922-1927, sec. 16 (*b*), applied to compulsory acquisitions of lands by means of a notice to treat under such Acts as the *Land Compensation Act* of Victoria and not to compulsory acquisitions by means of a notice of resumption under such Acts as the *City of Brisbane Improvement Act*. The alteration in the provisions of the *Income Tax Assessment Act* 1922-1927 by the Act 1930, No. 50, sec. 6 (*b*), does not affect this case, but it has been used in argument as an aid to construction of the words in the original Act. It is not, we think, a legitimate deduction, and in any case the implication that the Legislature was not expanding the meaning of the expression "sale of assets" is just as sound as that it was. Despite some argument to the contrary, the evidence now before us, which was not before the Board of Review, makes it clear in the present case that the dividends, the

(1) (1872) L.R. 7 Ch., at p. 158.
(2) (1908) V.L.R. 272; 29 A.L.T. 233.
(3) (1887) 12 App. Cas. 315.
(4) (1864) 1 Q.B. 507.

subject of this appeal, were wholly and exclusively paid out of the profits arising from the land resumed by the City of Brisbane Council, and it was not in contest that the land was not acquired for the purpose of resale.

The appeal should be allowed.

Appeal allowed. Declare that the amount of £5,275 18s. 5d. received by the appellant by way of dividend from W. R. Smith & Paterson Ltd. is not part of the appellant's assessable income. Assessment discharged and remitted to the Commissioner for re-assessment consistently with this declaration. Commissioner to pay the costs of this appeal.

Solicitors for the appellant, *Morris, Fletcher & Cross*, Brisbane, by *Campbell, Campbell & Campbell.*

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

J. B.