

[HIGH COURT OF AUSTRALIA.]

ELDER'S TRUSTEE AND EXECUTOR }
COMPANY LIMITED } APPELLANT ;

AND

THE DEPUTY FEDERAL COMMISSIONER OF }
TAXATION } RESPONDENT.

H. C. OF A. *Estate Duty (Cth.)—Assessment—Value of estate—Shares and government bonds—
1934. Brokerage—Estate Duty Assessment Act 1914-1928 (No. 22 of 1914—No. 47 of
1928), secs. 10 (2), 15, 17.*

ADELAIDE,
Sept. 21 ;
Oct. 1.
Starke J.

In ascertaining the value of shares in companies and government bonds for the purpose of the *Estate Duty Assessment Act 1914-1928* it is not permissible to deduct from the market value of the shares and bonds brokerage that would have been payable by the seller had the shares and bonds been sold on the Stock Exchange.

Commissioner of Stamp Duties (Q.) v. Lansdowne, (1927) 40 C.L.R. 115, distinguished.

APPEAL from decision of the Deputy Federal Commissioner of Taxation.

Albert Edward Jolly died testate on 11th August 1933 leaving a large estate which included government bonds and shares in various companies. The testator by his will appointed the present appellant, Elder's Trustee and Executor Company Limited, executor and trustee thereof. The appellant proved the will and filed the return required by sec. 10 of the *Estate Duty Assessment Act 1914-1928*. In addition to other assets the return disclosed the following personal property :—

Schedule No. 1 Bonds	..	£16,892	18	0	Less Brokerage	£81	1	0	=	£16,811	17	0
Schedule No. 2 Bank Shares		14,923	12	0	Less Brokerage	147	6	0	=	14,776	6	0
Other Shares (S.A.)	..	70,923	15	4	Less Brokerage	1,051	7	11	=	69,872	7	5
Other Shares (Vic.)	..	64,985	10	0	Less Brokerage	991	4	4	=	63,995	5	8
Other Shares (N.S.W.)		6,443	14	0	Less Brokerage	101	18	2	=	6,341	15	10

The shares and bonds were subject to a trust for realization (with power to postpone) contained in the will. The Deputy Federal Commissioner of Taxation, the present respondent, refused to allow the deduction of brokerage claimed in the return. The appellant, being dissatisfied with this decision of the Deputy Commissioner, appealed to the High Court. On the hearing of the appeal evidence was given by a sharebroker and member of the Adelaide Stock Exchange confirming the value placed on the shares in the return. The witness stated that the figures represented the maximum amounts for which in his opinion each parcel could be sold. He also stated that to receive this maximum market price it would be necessary to employ a broker and pay brokerage. He verified the correctness of the amounts of brokerage set out in the return.

H. C. OF A.
1934.

ELDER'S
TRUSTEE AND
EXECUTOR
CO. LTD.
v.
DEPUTY
FEDERAL
COMMISSIONER OF
TAXATION.

Ligertwood K.C. (with him *Ross*), for the appellant. The value of the property in the hands of the testator, if arrived at by reference to market price, is the same as the value to the beneficiaries. The question is concluded by *Commissioner of Stamp Duties (Q.) v. Lansdowne* (1).

Mayo K.C. (with him *Brebner*), for the respondent. Subject to specified deductions, the gross value of the estate is the value on which duty is assessed. Secs. 8, 10, and 17 of the *Estate Duty Assessment Act* 1914-1928 make it clear that the duty is on the estate as in the hands of the testator. The estate is to be treated as intact as at the date of death. The testator had shares in hand and the benefit of what they returned to him. He held the value of the shares as represented by the net price receivable from a buyer and by brokerage also. *Commissioner of Stamp Duties (Q.) v. Lansdowne* (1) is a decision on succession duty which differs fundamentally from estate duty (*Succession and Probate Duties Act* 1892-1920 (Q.), sec. 12). Sec. 17 of the *Estate Duty Assessment Act* shows the only permissible deductions from the gross value. [Counsel also referred to *Archibald v. Commissioner of Stamps* (2); *National*

(1) (1927) 40 C.L.R. 115.

(2) (1909) 8 C.L.R. 739, at p. 757.

H. C. OF A. *Trustees Executors and Agency Co. of Australasia Ltd. v. Federal*
 1934. *Commissioner of Taxation* (1); *Jackson v. Federal Commissioner of*
 { *Taxation* (2); *Perpetual Trustee Co. Ltd. v. Federal Commissioner*
 ELDER'S *of Taxation* (3); *Hanson on Death Duties*, (7th ed.) (1925), pp. 132,
 TRUSTEE AND *of Taxation* (3); *Hanson on Death Duties*, (7th ed.) (1925), pp. 132,
 EXECUTOR 133 and 137; *Thompson on Death Duties*, 2nd ed. (1931), p. 208;
 CO. LTD. *Dymond on Death Duties*, (3rd ed.), pp. 87, 161 and 163; *Norman's*
v. *Digest of Death Duties*, (3rd ed.), p. 408; *Spencer v. The Common-*
 DEPUTY *wealth* (4); *W.A. Trustee Executor and Agency Company Ltd. v.*
 FEDERAL *Deputy Federal Commissioner of Taxation* (5).]
 COMMIS-
 SIONER OF
 TAXATION.

Ligertwood K.C., in reply. Under sec. 17 the gross value has nothing to do with market value, but is the gross value before deduction of debts and other charges. The value on the Stock Exchange is not the value to the seller. That is the *ratio decidendi* of *Lansdowne's Case* (6). The value to the beneficiary must be the value to the testator.

Cur. adv. vult.

Oct. 1, The following written judgment was delivered:—

STARKE J. Estate duty is imposed upon the value, as assessed under the *Estate Duty Acts*, of the estates of persons dying after the commencement of the Acts. It is imposed upon the total or gross value of the estate, after deducting all debts (*Estate Duty Act* 1914; *Estate Duty Assessment Act* 1914-1928, secs. 10 (2), 15, 17). Alfred Edward Jolly died on 11th August 1933, leaving a large estate, including government bonds and shares in various companies. The appellant, his administrator, made a return of his estate, as required by the *Estate Duty Acts*. It stated the value at which the bonds and shares were quoted, and could be sold, on the Stock Exchange, on the 11th August 1933: in other words, the amount that a purchaser on the exchange would have given for the bonds and shares. It also stated the brokerage that would have been payable by the seller if the shares had been sold on the exchange on that date; and they

(1) (1916) 22 C.L.R. 367, at pp. 372, 377, 379, 380.

(2) (1920) 27 C.L.R. 503, at p. 508.

(3) (1932) 47 C.L.R. 402, at p. 410.

(4) (1907) 5 C.L.R. 418.

(5) (1931) 33 W.A.L.R. 83.

(6) (1927) 40 C.L.R. 115.

could not, for practical purposes, be realized except through brokers on the exchange. The amount of the brokerage would have been £2,373. The appellant claimed to deduct this brokerage from the market value of the bonds and shares, for the purpose of ascertaining the value of the estate of the deceased under the Acts already mentioned, but the Commissioner refused to allow the deduction.

In my opinion the Commissioner was right. It is the value of the property that must be assessed. The price that it will fetch if sold in the open market is one test of value—the price that a purchaser will give for it. Brokerage would normally be reflected in this price in the case of bonds and shares sold on a Stock Exchange, though I am informed that the buyer and seller both pay brokerage in the case of the sale of shares on the Stock Exchange in Adelaide. But the amount that is produced to the seller, or that comes home to the seller, after deducting the costs of realization, is not the value of the property, but the result to him of its sale (Cf. *Leycester v. Logan* (1)).

The case of *Commissioner of Stamp Duties (Q.) v. Lansdowne* (2) is relied upon by the appellant. It is a decision of this Court, and binds me. It was decided under the *Succession and Probate Duties Acts* 1892-1920 of Queensland. The 12th section of those Acts provided that “there shall be levied and paid to His Majesty in respect of every . . . succession . . . according to the value thereof at the time when the succession takes effect the following duties . . .” The estate of the testator included certain shares which were valued at the market quotation for those shares on the date of the testator’s death, less brokerage, which would be payable on the realization of the shares. The headnote states that it was held that for the purpose of ascertaining the value of the shares brokerage should be deducted from the market value of the shares. *Isaacs* and *Higgins JJ.* insist that it is the net value of the succession to the successor that is to be taxed, and the net value of the succession is what remains after deducting any necessary and proper expenses. “The value to the successor,” said *Higgins J.*, “is expressed by the money which he would receive if it were sold” (3).

H. C. OF A.
1934.
ELDER’S
TRUSTEE AND
EXECUTOR
CO. LTD.
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DEPUTY
FEDERAL
COMMISS
SIONER OF
TAXATION.
Starke J.

(1) (1858) 4 K. & J. 725 ; 70 E.R. 301. (2) (1927) 40 C.L.R. 115.
(3) (1927) 40 C.L.R., at p. 125.

H. C. OF A.
1934.
ELDER'S
TRUSTEE AND
EXECUTOR
CO. LTD.
v.
DEPUTY
FEDERAL
COMMISSIONER OF
TAXATION.

But in the present case, it is not the value of a succession that is being ascertained, but the value of the estate or property of a deceased person. It is true that, as Mr. *Ligertwood* said, the subject of valuation was represented in each case by shares in companies. But the value of a succession to shares in a company is not necessarily, according to the learned Judges in *Lansdowne's Case* (1), the same thing as the value of the shares.

The appeal is dismissed.

Appeal dismissed with costs.

Solicitors for the appellant, *Thomson, Buttrose, Ross & Lewis*.

Solicitors for the respondent, *Fisher, Powers, Jeffries & Brebner*,
agents for *W. H. Sharwood*, Commonwealth Crown Solicitor.

C. C. B.

(1) (1927) 40 C.L.R. 115.