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It is unnecessary in this view to decide whether the transfer was invalidated by the addition of the notification of the mortgage or to discuss the issues of incapacity or undue influence.

I should add that I see no reason for disturbing the order of *Nicholas* J. as to costs.

Appeal dismissed with costs. Cross appeal dismissed with costs. Costs to be set off.

Solicitors for the appellant, *William Patterson & Co.*

Solicitors for the respondent, *Iceton, Faithfull & Baldock.*

J. B.

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[HIGH COURT OF AUSTRALIA.]

THE DEPUTY FEDERAL COMMISSIONER OF TAXES (SOUTH AUSTRALIA). APPELLANT;
RESPONDENT,

AND

ELDER'S TRUSTEE AND EXECUTOR COMPANY LIMITED RESPONDENT.
APPELLANT,

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ON APPEAL FROM THE SUPREME COURT OF SOUTH AUSTRALIA.

Land Tax (Cth.)—Assessment—Validity—Pastoral leases of Crown lands—Notice of objection—Appeal—Grounds available—Amendment—Land Tax Assessment Act 1910-1912 (*No.* 22 *of* 1910—*No.* 37 *of* 1912), *secs.* 29, 44, 74—*Land Tax Assessment Act* 1914 (*No.* 29 *of* 1914)—*Land Tax Assessment Act* 1930 (*No.* 1 *of* 1930).

Statute—Construction—Erroneous assumption by Parliament as to effect of statute.

The *Land Tax Assessment Act* 1910-1912 provided that land tax should be charged on land as owned at noon on the thirtieth day of June immediately

preceding the financial year for which the tax was levied. The Act exempted from tax leases of certain Crown lands, including lands leased for pastoral purposes. The *Land Tax Assessment Act* 1914, which came into operation on 21st December 1914, amended the 1910-1912 Act so that pastoral leases were excluded from the exemption, but it did not specify the financial year as from which the exclusion took effect. Amendments made by the *Land Tax Assessment Act* 1930 showed that Parliament assumed that pastoral leases were taxable in respect of the financial year beginning on 1st July 1914.

Held that, on the proper construction of the 1914 Act, the amendments made by it did not apply to the financial year 1914-1915, and the construction of that Act was not affected by the assumption of the legislature in the 1930 Act; accordingly, a lessee who owned pastoral leases on 30th June 1914 was not subject to tax in respect of the leases for the year 1914-1915.

A taxpayer who owned pastoral leases of Crown lands on 30th June 1914 objected to his assessment to Federal land tax in respect of the leases for the financial year 1914-1915. The notice of objection was in the following terms: —"The departmental valuations of pastoral leases are excessive. I claim that the assessment should be made on a taxable balance of £ ". His objection having been disallowed, he appealed against the assessment and contended that the pastoral leases were exempt from tax.

Held, by *Starke*, *Dixon*, *Evatt* and *McTiernan* JJ. (*Latham* C.J. doubting), that, the notice of objection having been given before the operation of sec. 44M of the *Land Tax Assessment Act* 1910-1927, the taxpayer was not restricted in his appeal to the grounds stated in the notice, and that, in any event, any defect in a notice given at that time could be cured by amendment.

Decision of the Supreme Court of South Australia (*Angas Parsons* A.C.J.): *Elder's Trustee and Executor Co. Ltd.* v. *Deputy Federal Commissioner of Taxes for the State of South Australia*, (1935) S.A.S.R. 408, affirmed.

APPEAL from the Supreme Court of South Australia.

On an appeal by Elder's Trustee and Executor Co. Ltd. to the Supreme Court of South Australia against an assessment to Federal land tax for the financial year 1914-1915 the following facts were agreed between the parties :—

1. The appellant is the sole surviving trustee of the estate of William Tennant Mortlock, late of "Martindale," Mintaro, in the State of South Australia, pastoralist, deceased.

2. On 30th June 1914 the appellant, as such trustee, owned the following Crown leases (pastoral) in South Australia, of which the appellant was the registered proprietor :—

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				Title Book	Title Folio
Pastoral Lease No.		1021	Issued under Act 770 of 1901	503	55
,,	,,	1022	do.	503	56
,,	,,	1025	do.	503	58
,,	,,	100	Issued under Part VIII. of Crown Lands Consolidated Act 1886 ..	67	38
,,	,,	1015	Issued under Act 770 of 1901	487	120
,,	,,	1023	do.	503	57
,,	,,	1024	do.	503	59
,,	,,	1094	do.	503	64
,,	,,	1026	do.	503	60
,,	,,	1074	do.	503	61
,,	,,	1075	do.	503	62
,,	,,	1076	do.	503	63

3. On 29th May 1915 the appellant furnished to the respondent a taxation return under the *Land Tax Assessment Acts* in respect of the Crown leases owned by the appellant as aforesaid on 30th June 1914. On 20th March 1916 the appellant furnished to the respondent an amended return in respect of the Crown leases owned by the appellant as aforesaid on 30th June 1914.

4. On 23rd May 1917 the respondent by an amended assessment assessed the appellant for land tax on land held by the appellant on 30th June 1914 on the basis that the appellant was liable to assessment for land tax in respect of the Crown leases, and that the fee simple unimproved value of the leases on 30th June 1914 was £50,554.

5. On 19th June 1917 the appellant gave notice to the respondent that it objected to the amended assessment. The notice of objection was in the following form :—" I hereby give you notice that I object to the assessment of land tax under the above registered number, and contained in the notice of assessment issued by you under date 23rd May, 1917, for the following reasons :—The departmental valuations of pastoral leases are excessive. I claim that the assessments should be made on a taxable balance of £ ".

6. On 2nd February 1918 the respondent gave notice to the appellant disallowing the objection.

7. On 27th February 1918 the appellant required the respondent to treat the objection as an appeal and to transmit the same to the Supreme Court of South Australia.

8. It has been agreed between the parties that on 30th June 1914 the fee simple unimproved value of the lands comprised in the Crown leases numbered 1021, 1022, 1025, 100, 1015, 1023, 1024 and 1094 was £27,963, and that on 30th June 1914 the fee simple unimproved value of the lands comprised in the Crown leases numbered 1026, 1074, 1075 and 1076 was £1,516.

9. On 31st August 1934 the respondent by a further amended assessment assessed the appellant for land tax on the basis of the values referred to in the preceding paragraph hereof.

10. On 19th June 1935 the respondent transmitted the appellant's objection to the Supreme Court of South Australia as a formal appeal.

11. The appellant contends that under the provisions of the *Land Tax Assessment Acts* the appellant is not liable to be assessed for land tax in respect of his ownership of the Crown leases on 30th June 1914 because as on that date the leases were not subject to land tax under the Acts.

12. The respondent contends :—(*a*) That the appellant is liable to be so assessed. (*b*) That the appellant is not entitled to make the contention referred to in par. 11 hereof, because he did not state it as a reason for objection in his notice of objection of 19th June 1917.

Each of the leases in question was a lease from the Crown for pastoral purposes and was subject to a liability to resumption by the Crown during the term of the lease.

Other material facts appear in the judgments hereunder.

In the Supreme Court of South Australia *Angas Parsons* A.C.J. held that the point which the then appellant desired to take was open to him, and that, in any event, any defect in the notice of objection could be cured by amendment, and his Honor allowed an amendment of the notice. It was also held that the appellant was not liable to land tax for the financial year 1914-1915 in respect

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of the Crown leaseholds: *Elder's Trustee and Executor Co. Ltd.* v. *Deputy Federal Commissioner of Taxes for the State of South Australia* (1).

From this decision the Deputy Commissioner appealed to the High Court.

Ligertwood K.C. (with him *Brebner*), for the appellant. By reason of the decision in *Clark Tait & Co.* v. *Federal Commissioner of Land Tax* (2) tax was not payable in respect of these leases. The *Land Tax Assessment Act* 1930 was passed to overcome the effect of this decision, and the effect of secs. 3 and 4 of that Act is directly to impose the tax and to do so for the financial year beginning on 1st July 1914. The earlier legislation shows that the 1914 Act was intended to apply for the 1914-1915 financial year. As to construing the legislation as a whole, see *Nathan* v. *Federal Commissioner of Taxation* (3). As to the sufficiency of the notice, sec. 44 of the *Land Tax Assessment Act* 1910 gives the right of appeal on two alternative grounds, and the appellant must state on which ground he relies. In the case of an appeal against the assessment, reg. 38 of the *Land Tax Regulations* 1912 provides that the appellant shall be restricted on the hearing of the appeal to the grounds stated in the notice of appeal. In the case of an objection in lieu of an appeal, reg. 40 (as amended by the regulations of 1913 and 1914) applies, and, when the taxpayer requires the objection to be treated as an appeal, the objection becomes the notice of appeal and is covered by reg. 38. The regulations were properly made under sec. 74 of the Act (*Federal Commissioner of Land Tax* v. *Jowett* (4)).

Mayo K.C. (with him *Norman*), for the respondent. Although the incidence of tax may be altered during a financial year, it will not be effective until the next financial year. The tax is not during a period but as on a date (*Federal Commissioner of Land Tax* v. *Duncan* (5)). Sec. 12 of the *Land Tax Assessment Act* 1910 shows that the liability is fixed as on the 30th June. Although the 1910 Act must be taken to be retrospective, it does not follow that subsequent amendments are retrospective, and, when retrospectivity is

(1) (1935) S.A.S.R. 408.
(2) (1929) 43 C.L.R. 1.
(3) (1918) 25 C.L.R. 183, at p. 188.
(4) (1930) 45 C.L.R. 115, at pp. 117, 120.
(5) (1915) 19 C.L.R. 551, at p. 553.

intended, the Act expressly says so (sec. 13 of the Assessment Act of 1911; sec. 12 of the Assessment Act of 1912; sec. 3 of the Assessment Act of 1923). Sec. 4 (2) of the 1930 Assessment Act comprehends no more than an amendment of sec. 28 of the principal Act. Only that amendment is to apply for the financial year 1914-1915. Apart from the 1930 Act, the taxpayer was exempt until 24th December 1914, and there is nothing in the 1930 Act to remove that exemption. As to the objection to the appeal, the taxpayer was entitled to apply to amend, and the amendment was duly allowed. The power of amendment has never been taken away from the court.

Ligertwood K.C., in reply. Sec. 4 (2) of the 1930 Act should be read into the principal Act as on 21st December 1914, and the Act must be read as a whole (*Nathan* v. *Federal Commissioner of Taxation* (1)).

Cur. adv. vult.

Dec. 10.

The following written judgments were delivered:—

LATHAM C.J. The question which arises upon this appeal from the Supreme Court of South Australia is whether the interests of the respondent in certain lands held by lease from the Crown, used for pastoral purposes, and subject to a liability to resumption by the Crown during the term of the lease, are taxable under the *Land Tax Assessment Act* 1914. Sec. 27 provided for the taxation of leases of land leased after the commencement of the Act. Sec. 28 provided for the taxation of leases of land which had been leased before the commencement of the Act. Sec. 29 was in the following terms:—

"Notwithstanding anything in the last two preceding sections, the owner of a leasehold estate under the laws of a State relating to the alienation or occupation of Crown lands or relating to mining (not being a perpetual lease without revaluation or a lease with a right of purchase) shall not be liable to assessment or taxation in respect of the estate."

(1) (1918) 25 C.L.R. 183.

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The tax was levied upon the unimproved value of all lands within the Commonwealth owned by taxpayers and not exempt from taxation (sec. 10). Land tax was charged on land as owned at noon on the thirtieth day of June immediately preceding the financial year for which the tax was levied. The question which arises relates to taxation for the financial year 1914-1915. In the case of that year, the tax was charged on land as owned at noon on the thirtieth day of June 1914.

The taxpayer owned the leasehold estates in question on 30th June 1914, but, by reason of sec. 29, he was not liable to assessment or taxation in respect of them. The question is whether certain subsequent amendments of the law have made him so liable.

The first amendment to be considered is to be found in the *Land Tax Assessment Act* 1914. This Act, by sec. 3, amended sec. 29 by removing certain Crown leases, including leases of land to be used for pastoral purposes, from the exemption contained in sec. 29 as it originally appeared in the 1910 Act. They therefore became taxable. This Act came into operation on 21st December 1914. There was no provision in the Act which specified the assessments to which the amendment in question was applicable.

On the same day, 21st December 1914, the *Land Tax Act* 1914 came into operation. This Act repealed the first and second schedules to the *Land Tax Act* 1910 and substituted other schedules declaring rates of tax. In this Act sec. 4 provided that "the amendments of the principal Act made by this Act shall apply to land tax levied in and for the financial year beginning on the first day of July, One thousand nine hundred and fourteen and all subsequent years."

Subsequent legislation in the *Land Tax Assessment Act* 1923 repealed the amendment made in sec. 29 by the *Land Tax Assessment Act* 1914 to which I have referred, and reinstated sec. 29 in its original form, so that the respondent's leasehold interests in the lands in question again became non-taxable. The alteration made in the law in 1923 did not, however, extinguish the respondent's liability (if any) to taxation for the year 1914-1915, because sec. 3 of the Act provided that the Act should be deemed to have commenced on the first day of July one thousand nine hundred and

twenty-three, and that it should apply to assessments for the financial year commencing on that date and all subsequent years. Here again is a definite provision clearly specifying the assessments to which the amended Act is to apply. In other amending Land Tax Assessment Acts, namely, No. 12 of 1911, sec. 13, and No. 37 of 1912, sec. 12 (2) (as well as in No. 29 of 1923 already mentioned), it was provided that the amendments of the principal Act made by the Acts in question should apply to assessments for a specified financial year beginning on the 1st July immediately prior to the coming into operation of the Act.

The *Land Tax Assessment Act* 1930 was passed after the decision of this court in *Clark Tait & Co.* v. *Federal Commissioner of Land Tax* (1), in which it was held that, although Crown leases of land used for pastoral purposes were taxable antecedently to 1923, the method provided in the *Land Tax Assessment Act* 1910-1927 for valuing leasehold interests was such as to be inapplicable where (as in this case) leased land was subject to liability to resumption. Sec. 3 of the Act of 1930 provided a new method for valuing such leasehold interests. Sec. 4 of the same Act provided that the amendment made by sec. 3 should be deemed to have commenced on the date of the commencement of the *Land Tax Assessment Act* 1914, i.e., 21st December 1914—the first date upon which it was provided that pastoral leases held from the Crown should be subject to land tax. It was further provided in the same section that the amendment made by sec. 3 " shall apply to all assessments for the financial year beginning on the first day of July one thousand nine hundred and fourteen, and all subsequent years."

The last-mentioned provision shows that Parliament, in enacting the Act of 1930, proceeded upon the assumption that pastoral leases were taxable in respect of the financial year beginning on 1st July 1914—i.e., that persons who were lessees under such leases on 30th June 1914 were liable to tax. Such an assumption, however, cannot make law, unless there are affirmative provisions positively bringing the subject matter in question into the taxing area. It is unnecessary for me to refer to the many cases which establish that the intention to impose a charge upon the subject

(1) (1929) 43 C.L.R. 1.

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must be shown by clear and unambiguous language. It is therefore necessary to go back to the *Land Tax Assessment Act* 1914 in order to see whether it imposes a charge in respect of the pastoral leases in question.

It is clear that the amendment made by that Act applies so as to bring into tax Crown pastoral leases held on 30th June 1915 and subsequent years up to 30th June 1922. The question is whether the Act also applies in the case of such leases as held on 30th June 1914.

It has not been contended for the commissioner that the amendment made by the 1914 Act should be construed as applying to all assessments of land tax which happen to be made after the 21st December 1914, whether for the year 1914-1915 or for other years, but not to assessments made before that date. Such a construction of the Act would be so unjust as between individuals and so irrational in principle that it should not be adopted unless no other construction is open upon a fair reading of the words.

The contention submitted to the court for the commissioner is that the amendment applies to all assessments for the financial year 1914-1915 and that, therefore, Crown leases of land used for pastoral purposes held by a person on 30th June 1914 are taxable.

The argument rests upon the contention that every amendment of the *Land Tax Assessment Act* must prima facie be held to relate to all assessments for the then current year, as well as to subsequent assessments.

The 1914 Act came into operation on 21st December 1914. It was not in operation on 20th December 1914 or on any antecedent date. It was in operation on and after 21st December 1914 until the further amendment was made in 1923. It contains the amendment which brings into the taxing area land which would be otherwise untaxed. No tax is chargeable as against any person in respect of any land unless that land was owned by that person on 30th June in a relevant year, and unless its unimproved value with or without other land owned by the same person exceeded £5,000. Further, the rate of tax depends upon the value of all the taxable land owned by the taxpayer. Thus the state of ownership of land upon 30th June is an element which must necessarily

be considered in determining both liability to tax and amount of tax. On 30th June 1914 the leases in question were not liable to assessment or tax. There is no provision which in clear and definite terms provides that they shall be so liable. It may have been intended to make them liable, but the legislature has not introduced into the *Land Tax Assessment Act* 1914 the provision, which, in several other Acts to which reference has been made, applied amendments made after 30th June immediately preceding a financial year to all assessments in respect of that financial year. The practice of the legislature, as shown by the examples quoted, is contrary to the contention that, without express words, amendments of the Act apply to all assessments for the current year.

Further, the general principle, to which I have already referred, that a tax must be shown to be expressly imposed in accordance with a literal construction of a taxing Act, is also contrary to the contention. On 30th June 1914 any person who owned pastoral leases of the description mentioned was free from land tax in respect of them. He was entitled to make his arrangements upon that basis, unless the legislature by quite clear words stated that tax was imposed in respect of them. I am unable to find such clear words and, therefore, in my opinion, these leases are not assessable to taxation for the financial year beginning on 1st July 1914.

Upon the hearing of the appeal before the Supreme Court of South Australia a preliminary objection was taken on behalf of the commissioner and that objection has been repeated in this court. The objection is that the taxpayer is not entitled to contend that he is not liable to taxation in respect of the leasehold interests included in the assessment.

The original objection was lodged on 19th June 1917. It was in the following terms :—

"The departmental valuations of pastoral leases are excessive. I claim that the assessment should be made on a taxable balance of £ ".

It may be observed that the taxpayer had made a return including the pastoral leases in which he valued them at about £5,000. There is nothing in the objection to show that the taxpayer contended that no assessment whatever should be made in respect of the

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pastoral leases. The objection was that the valuations were excessive and that the value should be reduced, apparently to nothing.

On 2nd February 1918 the objection was disallowed and on 27th February 1918 the taxpayer required the commissioner to treat the objection as an appeal and to transmit it to the Supreme Court of South Australia. Negotiations with respect to the value of the leases ensued, and ultimately, in August 1934, an agreement on values was reached. The taxpayer then for the first time raised a contention in the following terms :—

" The taxpayer contends that the taxation of pastoral leaseholds was not made retrospective so as to enable any assessment to be made for such land held on 30th June 1914. Our client will obtain legal advice as to the liability for tax on land held at 30th June 1914 and we will communicate further with you regarding such last-mentioned assessment."

This is the first indication of any such contention, and it will be observed that at this time (seventeen years after the objection was made) the taxpayer was only proposing to obtain legal advice on this aspect of the matter. I cannot see that the commissioner acted wrongly in any respect in forwarding to the Supreme Court the only objection which had been made within the prescribed time. Nor is the commissioner guilty of any impropriety in submitting for the decision of the court the question whether the taxpayer was entitled to rely upon a ground of objection which he raised for the first time seventeen years after he had requested that his objection be treated as an appeal.

I have had much doubt as to whether this preliminary objection should not be held to be effectual. The other members of the court, however, are of opinion that it should not prevail, and I am not prepared to dissent from this opinion. The matter is now covered by statute (*Land Tax Assessment Act* 1910-1934, sec. 44M (3)).

The judgment of the Supreme Court should be affirmed.

STARKE J. The legislation affecting this case is confused and confusing. I have reached the same conclusion as the Chief Justice, and concur in his opinion. But I desire to add some observations upon the argument for the commissioner that the ground taken by

the respondent on this appeal—that it was not liable for the tax—was not open to it because not stated in the notice of objection, and that it should be confined to an objection that the departmental valuations were excessive. Under the *Land Tax Assessment Act* 1910-1916, a taxpayer might, within the prescribed time, appeal to the High Court, or other tribunal, against any assessment by the commissioner with respect to his land on the ground that he was not liable for the tax or any part thereof or that the assessment was excessive (sec. 44). The Governor-General in Council was authorized to make regulations not inconsistent with the Act prescribing all matters which by the Act were required or permitted to be prescribed, or were necessary or convenient to be prescribed for giving effect to it (sec. 74). Under this authority, the Governor-General purported to make regulations dealing with, *inter alia*, appeals against land tax. They are contained in Part IV. of Statutory Rules 1912 No. 141, as amended, and deal with "Appeals against Land Tax" (clauses 32-39), and "Objection in lieu of Appeal" (clause 40). Appeals against land tax under sec. 44 were required by these regulations to be made to the court within thirty days from the service of the notice of assessment, and the appellant, by clause 38, was restricted on the hearing of any appeal to the grounds stated in the notice of appeal. Under clause 40 ("Objection in lieu of Appeal"), it was provided that where a taxpayer was dissatisfied with his assessment, but did not desire to appeal to the court, then he might within thirty days from the date of service of the notice of assessment state his objections in writing to the commissioner, who might allow them wholly or in part. The commissioner was required to give notice of his decision upon the objections to the taxpayer, who might, within a prescribed period, ask that his objections be treated as an appeal, and "all objections which may be treated as appeals shall be transmitted to the court of appeal selected by the taxpayer as formal appeals." But it is not expressly provided that, on an appeal by means of this procedure, the appellant is restricted to the grounds stated in his objection. Nor is the implication of such a provision necessary, for all that is transmitted to the court of appeal is the objection of the taxpayer upon which the commissioner has made a decision. In the present case, the

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taxpayer pursued the procedure provided in clause 40 of the regulations and objected to an assessment on the ground that the departmental valuations were excessive, but in February 1918 the commissioner disallowed the objection, and the taxpayer, being dissatisfied with the decision of the commissioner, required him in due time to transmit the objection to the Supreme Court of South Australia, which he did in 1935, "as an appeal from the said assessment as lastly amended on 31st August 1934." In 1918, however, the justices of the High Court, pursuant to sec. 47 of the *Land Tax Assessment Act* 1910-1916, made rules of court regulating the practice and procedure in relation to appeals against land tax assessments; it is Statutory Rule 1918 No. 52, and now stands as Order LI.A of the rules of this court. Some doubt existed whether Part IV. of the regulations made by the Governor-General were valid, in view of the express power given in sec. 47 to the justices of the High Court to regulate the practice and procedure in relation to appeals against land tax assessments, and those doubts, I believe, led to the rules of court in 1918. A special power was given to the court in relation to the matter, and, when exercised, established the practice and procedure of the court to which its rules applied. The general power given to the Governor-General was necessarily superseded, if it existed, and also any regulations made by him. Irregular in form as the appeal is in the present case, yet it should be regarded as an appeal brought under sec. 44 of the *Land Tax Assessment Act* 1910-1916, as regulated by the rules of court made in 1918, and not by the regulations made by the Governor-General. The grounds of appeal under sec. 44, as already set forth, are that the taxpayer is not liable for the tax or any part of it, or that the assessment is excessive. The rules of court require that the appellant shall, in his notice of appeal, specify his grounds of appeal; and in the ordinary course of procedure he would be confined to those grounds, but an appeal court has still in reserve the power to allow such amendments as are just. The objection taken by the Deputy Commissioner thus becomes a matter of form, and was curable by amendment in the Supreme Court of South Australia and should now be treated as so cured. But this opinion may mislead unless I add

a reference to the Act 1927 No. 30 (*Land Tax Assessment Act* 1910-1927), sec. 44M (3): "A taxpayer shall be limited, on the hearing of the appeal, to the grounds stated in his objection." That provision has no application to the present case, which began by a notice of objection in June 1917 before the Act was passed and before the procedure under it was established.

The appeal should be dismissed.

DIXON, EVATT AND MCTIERNAN JJ. The taxpayer, who is the respondent to the appeal, complains of the inclusion in its assessment for land tax for the financial year beginning 1st July 1914 of a number of pastoral leases held from the Crown in South Australia.

The *Land Tax Assessment Act* 1910-1912 provided that land tax should be levied and paid upon the unimproved value of all lands within the Commonwealth owned by taxpayers and not exempt from taxation under the Act; that it should be payable by the owner of land upon the taxable value of all land owned by him and not so exempt; and that it should be charged on land as owned at noon on the thirtieth day of June immediately preceding the financial year in and for which the tax is levied (secs. 10 (1), 11 (1) and 12).

On 30th June 1914 the taxpayer held the pastoral leases in question, but at that date they were excluded from liability to land tax by sec. 29, which provided that the owner of a leasehold estate under the laws of a State relating to the alienation or occupation of Crown lands (not being a perpetual lease without revaluation, or a lease with a right of purchase) should not be liable to assessment or taxation in respect of the estate. This provision was, however, amended by the *Land Tax Assessment Act* 1914, which was assented to on 21st December 1914. Sec. 3 of that Act provided that sec. 29 of the *Land Tax Assessment Act* 1910-1912 should be amended by the omission of the words following the reference to a perpetual lease and by the insertion in their stead of other words the effect of which was to exclude from the exemption given by sec. 29 most kinds of Crown lease and in particular pastoral leases. This exclusion from the exemption remained in operation until the financial year beginning 1st July 1923, when it was ended by the *Land Tax Assessment Act* 1923. But the financial year as from which the exclusion

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took effect was not specified by the *Land Tax Assessment Act* 1914, and in this appeal we are called upon to decide the question whether the exclusion operated for the financial year beginning on 1st July 1914, so that the taxpayer would be liable for that financial year in respect of the pastoral leases which it held on 30th June 1914.

In 1929 a decision was given by this court to the effect that Crown leases for terms of uncertain duration reserving rents of indeterminate amounts could not be taxed during the period when the exemption had been excluded, because the method prescribed by sec. 28 of the Assessment Act for computing the value could not be applied (*Clark Tait & Co.* v. *Federal Commissioner of Land Tax* (1)). In the following year, by the *Land Tax Assessment Act* 1930, sec. 28 was amended so as to supply a method of calculating the value of such leases and thus remove the objection upon which the decision was founded. The matter is relevant to the present question only because the amending Act of 1930 contains a provision showing that the legislature understood that the exclusion made by the Act of 1914 from the exemption of Crown leases operated in respect of the financial year beginning 1st July 1914. Sub-sec. 2 of sec. 4 of the Act of 1930 provides that the amendment made in sec. 28 shall be deemed to have commenced on the date of the commencement of the *Land Tax Assessment Act* 1914, and shall apply to all assessments for the financial year beginning on the first day of July 1914 and all subsequent years.

Except for the evidence of legislative intention supplied by this provision, we should have felt little doubt that the exclusion effected by the Act of 1914 from the exemption conferred on Crown leases by sec. 29 did not operate in respect of the financial year beginning 1st July 1914.

The conditions of liability to land tax for that financial year were fixed as on 30th June 1914. Returns by taxpayers for the purpose of the assessment and levy of land tax for that year were due on 31st August 1914. The financial year was half way through when the amending Act was passed. It had been, as it still is, the general practice in amending taxation assessment Acts to specify the first financial year to which the amendments shall apply, particularly in

(1) (1929) 43 C.L.R. 1.

the case of past or current financial years. Such a provision was conspicuously absent from the *Land Tax Assessment Act* 1914. In these circumstances, it appears to us that if the question now before us had come up for decision before the passing of the Act of 1930, or if it were now considered independently of that Act, there would be no foundation for an interpretation of the Act of 1914 which would produce a new liability for the financial year beginning 1st July 1914 in respect of Crown leases held as at 30th June 1914. Both presumption and reason would be against it. But sub-sec. 2 of sec. 4 of the Act of 1930 seems to be framed on the contrary view. It appears to assume that Crown leases falling within the decision in *Clark Tait & Co.'s Case* (1) would have been taxable for the financial year beginning 1st July 1914 but for the considerations leading to that decision. It may be true that leases might conceivably exist which, while affected by those considerations, were never within the exemption given by sec. 29, leases with a right of purchase but granted with a term of uncertain duration, or at rents to be fixed from time to time. This possibility, one may be sure, is not the true explanation of the adoption by sec. 4 (2) of the Act of 1930 of the financial year beginning 1st July 1914 as the commencing point of the amendment, although, having regard to sec. 26 of the *Land Tax Assessment Act* 1910-1912 and to the condition of sec. 27 (3) before it was amended by sec. 2 of the Act of 1914, that may be the first financial year in which sec. 28 could apply to a Crown lease not covered by the exemption given by sec. 29 of the *Land Tax Assessment Act* 1910-1912. Doubtless the true explanation is that, in drafting the Act of 1930, it was supposed that the exclusion by the Act of 1914 of Crown leases from the exemption took effect for the financial year beginning 1st July 1914. But, in our opinion, the supposition ought not to lead us to give that effect to the Act of 1914. "An Act of Parliament does not alter the law by merely betraying an erroneous opinion of it" (*Maxwell, Interpretation of Statutes*, 6th ed. (1920), p. 544, and, per Lord *Atkinson*, *Ormond Investment Co.* v. *Betts* (2)). " Where the interpretation of a statute is obscure or ambiguous, or readily capable of more than one interpretation, light may be thrown on the true view to be taken of it by the aim

(1) (1929) 43 C.L.R. 1.

(2) (1928) A.C. 143, at p. 164.

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and provisions of a subsequent statute" (per Lord *Atkinson* (1)). In *Cape Brandy Syndicate* v. *Inland Revenue Commissioners* (2), Lord *Sterndale* said: "I quite agree that subsequent legislation, if it proceed upon an erroneous construction of previous legislation, cannot alter that previous legislation; but if there be any ambiguity in the earlier legislation, then the subsequent legislation may fix the proper interpretation which is to be put upon the earlier." In reference to this statement, Lord *Buckmaster* said in *Ormond Investment Co.* v. *Betts* (3): "That is, in my opinion, an accurate expression of the law, if by 'any ambiguity' is meant a phrase fairly and equally open to divers meanings." But it is not permissible to construe an unambiguous phrase in an earlier Act by an erroneous assumption of its effect contained in a later Act which did not purport to alter or amend the earlier Act (per *Lawrence* L.J., *Port of London Authority* v. *Canvey Island Commissioners* (4)).

In the present case the Act of 1930 did not intend to amend the Act of 1914. It was not concerned with it and was dealing with a matter unconnected with the question for what financial year the amendments made by the Act of 1914 first took effect. On that question it did no more than proceed upon an assumption. It was a question depending, not on an ambiguous word or phrase, but on the absence from the Act of 1914 of any express statement of the financial year first to be affected. The ordinary rules of interpretation supplied the deficiency and, in our opinion, made it clear that the amendments first applied, not to the financial year then current, for which the land tax liabilities had accrued nearly six months before, but to the then next ensuing financial year.

In our opinion the taxpayer is not liable to assessment for land tax for the financial year beginning 1st July 1914 in respect of pastoral leases from the Crown which it held on 30th June 1914.

Angas Parsons A.C.J., who heard the taxpayer's appeal to the Supreme Court of South Australia, adopted the same view as we have expressed, and gave effect to it by the order from which the Deputy Commissioner of Taxes now appeals.

It is contended that it was not open to the learned judge to do so, because the ground relied upon was not taken by the taxpayer

(1) (1928) A.C. at p. 164.
(2) (1921) 2 K.B. 403, at p. 414.
(3) (1928) A.C., at p. 156.
(4) (1932) 1 Ch. 446, at p. 493.

in his notice of objection to the amended assessment by which the pastoral leases were brought under tax for the financial year beginning 1st July 1914. It appears that the taxpayer's assessment for that financial year was made on 14th July 1915, but did not include the pastoral leases. These were included by an amendment of which the taxpayer was notified on 23rd May 1917. Within thirty days the taxpayer objected " to the assessment of land tax . . . contained in the notice of assessment " of that date, and gave as the reason that the departmental valuations of the pastoral leases were excessive and claimed that the assessment should be on a taxable balance of £ — (*sic*). The objection was disallowed by notice dated 2nd February 1918, and the taxpayer within thirty days requested that the objection should be treated as an appeal and transmitted to the Supreme Court of South Australia. The transmission was withheld pending, no doubt, the solution of the many difficulties attending the taxation of Crown leaseholds. At length, on 19th June 1935, the transmission was made. The procedure followed clause 40 of the *Land Tax Regulations* 1912-1914 (S.R. 1912 No. 141, as amended by S.R. 1913 No. 335 and S.R. 1914 No. 5). That clause was expressed to give to a taxpayer who, although dissatisfied with a land tax assessment, did not desire to appeal to the court, a right to lodge objections to it with the commissioner and then, if he was dissatisfied with the commissioner's decision upon his objection, to require that the objections be treated as an appeal and transmitted to the court. Clauses 32 to 39 of the same regulations provided the procedure for a direct appeal against an assessment by a form of notice stating reasons. The procedure for land tax appeals is now regulated by secs. 44 to 44M of the *Land Tax Assessment Act* 1910-1934, provisions which were introduced by Act No. 30 of 1927 and superseded the regulations. The regulations are recognized by sec. 29 of that Act, which seems to imply that they shall not operate in relation to fresh appeals rather than to " repeal " them or to repeal *pro tanto* the power under which they were made. It may be that sec. 11 of the *Acts Interpretation Act* 1904-1932 or sec. 8 of the *Acts Interpretation Act* 1901-1932 preserves rights under regulations abrogated by statute, but this is not clear. We assume, however, that, in relation to pending matters, the

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regulations lost none of the force they possessed. What force they did possess was a problem that remained unsolved when they were superseded. Sec. 47 of the *Land Tax Assessment Act* 1910-1916 conferred upon the justices of the High Court a power to make rules of court for regulating the practice and procedure in relation to appeals against assessments. It would appear at first sight that the existence of this power must exclude the application to the same matter of the general power conferred upon the Executive by sec. 74 to make regulations not inconsistent with the Act, prescribing all matters which by the Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for giving effect to the Act. But sec. 44, which gives to the taxpayer the right of appeal, imposes the condition that he shall appeal "within the prescribed time." Sec. 9 of the *Acts Interpretation Act* 1904-1932 provides that in any Act, unless the contrary intention appears, "prescribed" means prescribed by the Act or by the regulations under the Act. Perhaps rules of court may satisfy the description "regulations" in this definition. But we think that the better view is that sec. 44 and sec. 74 combined to empower the Executive to fix by regulations the time within which the appeal might be brought. Rules of court were not made, it seems, until 1918, when Statutory Rule No. 52 of 1918 introduced Order LI.A, sec. I. of which applied, we think, to land tax appeals in all courts. It may be that, in default of rules of court, it was "convenient" within the meaning of sec. 74 to prescribe the full procedure on appeal, but it is difficult to suppose that two authorities were meant to possess and exercise concurrently two independent powers of equal strength to regulate the same matter. The power of regulating appeals generally under sec. 74 could be at best *ad interim* pending the making of rules of court. If clauses 33 to 39 ever were valid, we think they ceased to operate when Statutory Rule No. 52 of 1918 was made. The contention that the taxpayer could not rely upon the freedom of the pastoral leases from liability to land tax for the financial year beginning 1st July 1914 was based upon clause 38. This clause provided that the appellant should be restricted on the hearing of any appeal to the grounds stated in the notice of appeal. The clause does not in terms apply to proceedings under clause 40. In those

proceedings there is no notice of appeal. It is only by making an implication in clause 40 that clause 38 can be incorporated. There is, in our opinion, no warrant for making such an implication. Clause 40 itself was probably valid because it does not interfere with the procedure after the institution of an appeal. The power of the Executive to make regulations would extend to giving a right to carry in objections to the assessment and to providing that a taxpayer who does so shall have thirty days after the decision to appeal. The rules of court appear to fix the same time. Rule 1 speaks of the "decision of the commissioner." Perhaps, in strictness, the taxpayer should have given notice of motion as well as requiring the commissioner to treat the objection as an appeal. That point was not taken and, if it had been, it could have been cured under the non-compliance provisions of the rules of court. But, in our opinion, clause 38 had no force, at any rate after Statutory Rule No. 52 of 1918, and never did apply to proceedings under clause 40 of the regulations.

The objection in fact taken was to the assessment and there was nothing except the discretion of the court before which it came as an appeal to restrict the appellant to the "reason" given in support of the objection. We do not see how the fact that in sec. 44 of the *Land Tax Assessment Act* 1910-1916, which continues to apply to this case as a result of sec. 8 of the *Acts Interpretation Act* 1901-1932, two grounds of appeal are expressly mentioned operates to restrict the power of the court to allow the appellant to rely on one of them, although, in giving the notice of appeal, he mentioned the other of them only.

In our opinion it was open to *Angas Parsons* A.C.J. to entertain the ground of appeal upon which the taxpayer succeeded, and his Honour's order was rightly made.

We think that the appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellant, *W. H. Sharwood*, Crown Solicitor for the Commonwealth, by *Fisher, Powers, Jeffries & Brebner.*

Solicitors for the respondent, *Norman, Waterhouse, Chapman & Johnston.*

C. C. B.