[HIGH COURT OF AUSTRALIA.]

MOORE AND ANOTHER . . . . PLAINTIFFS;

AND

THE COMMONWEALTH AND ANOTHER . DEFENDANTS.

H. C. OF A. 1951.

MELBOURNE, *Feb.* 13, 16; *March* 22.

Latham C.J., Dixon, McTiernan, Webb, Fullagar and Kitto JJ.

Constitutional Law (Cth.)—Powers of Parliament—Taxation—"Laws imposing taxation"—"Shall deal with one subject of taxation only"—The Constitution (63 & 64 *Vict. c.* 12), *ss.* 51 (*ii.*), (*xxxix.*), 55—*Wool Sales Deduction (Administration) Act* 1950 (*No.* 29 *of* 1950)—*Wool Sales Deduction Act* (*No.* 1) 1950 (*No.* 30 *of* 1950)—*Wool Sales Deduction Act* (*No.* 2) 1950 (*No.* 31 *of* 1950).

The *Wool Sales Deduction Act* (*No.* 1) 1950, the *Wool Sales Deduction Act* (*No.* 2) 1950 and the *Wool Sales Deduction* (*Administration*) *Act* 1950 require a producer of wool to pay to the Commonwealth a prescribed proportion of the sale value of the wool (if he sells it in Australia) or of the appraised value (if he exports it). The amount is to be paid to the Federal Commissioner of Taxation and a certificate of the amount paid issued to the producer. The producer is to send all such certificates to the commissioner with his income-tax return for the year of income in which the wool is sold or exported; the commissioner is to credit the amounts they show against the producer's liability for income tax and provisional tax for that year, provisional tax for the next financial year and any income tax already due and unpaid. If there is any unapplied residue of the amounts of the certificates, it is to be repaid to the producer.

Held, by the whole Court, that the Acts were within the power of the Commonwealth Parliament. They were laws with respect to taxation within the meaning of s. 51 (ii.), and were not invalidated by s. 55, of the Constitution. Within the meaning of s. 55 (by *Dixon, Webb, Fullagar* and *Kitto* JJ.) they were not laws imposing taxation; (by *Latham* C.J. and *McTiernan* J.) the *Wool Sales Deduction Act* (*No.* 1) and the *Wool Sales Deduction Act* (*No.* 2) were laws imposing taxation, but neither of them dealt with any subject other than taxation or with more than one subject of taxation, and the *Wool Sales Deduction* (*Administration*) *Act* was not a law imposing taxation.

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DEMURRER.

Desmond Carty Moore and Thomas Anthony Darcy brought an action in the High Court against the Commonwealth and Patrick Silvesta McGovern (the Federal Commissioner of Taxation), claiming declarations that the *Wool Sales Deduction Act* (*No.* 1) 1950, the *Wool Sales Deduction Act* (*No.* 2) 1950 and the *Wool Sales Deduction* (*Administration*) *Act* 1950 (which are hereinafter referred to respectively as the No. 1 Act, the No. 2 Act and the Administration Act), and, alternatively, certain provisions thereof, were unconstitutional and void. The plaintiffs alleged in their statement of claim that they were producers of wool within the meaning of the Acts and were owners of wool in respect of which they were liable under the Acts to make certain payments to the Commonwealth.

The defendants demurred to the statement of claim.

The plaintiffs had purported, in the first place, to sue on behalf of themselves and all other persons producers of wool within the meaning of the Acts; but, on the demurrer coming on for hearing, the question of their right to sue in a representative capacity was raised, and they consented to the amendment of the title to the writ and of the statement of claim by the striking out of the words by which they were expressed to be so suing.

At the instance of the Court the plaintiffs began.

R. M. Eggleston K.C. (with him *R. L. Gilbert*), for the plaintiffs. As between the two Deduction Acts it is convenient to refer first to the No. 1 Act, as the validity of each of those Acts depends on substantially the same considerations. It is submitted, first, that the Act is not ascribable to any head of Commonwealth legislative power unless it is taxation and that it is not legislation with respect to taxation; alternatively, if it is within the taxing power (Constitution, s. 51 (ii.)), it fails either wholly or as to material provisions by reason of s. 55 of the Constitution. It is necessary to read the No. 1 Act with the Administration Act. Although the former Act does not say in so many words that the latter shall be taken to be incorporated in it, it is evident from the subject matter (see particularly No. 1 Act, ss. 3 (2), 4 (4), 6) that the two Acts must be read as one. At all events, the provisions of the Administration Act relating to refunds are necessarily incorporated in the No. 1 Act by s. 4 (4) thereof, and they introduce the subject of income tax. Thus, if the No. 1 Act is to be regarded as imposing a tax, it, in conjunction with the Administration Act, comes into conflict with s. 55 of the Constitution as dealing with more than one subject of taxation. It was perhaps on this account that the

draftsman has been at pains (it would seem) to avoid the use of the word "tax" or any other words calculated to suggest that the exaction provided for by the No. 1 Act was a tax—that the Act was intended as an exercise of the powers conferred by s. 51 (ii.) of the Constitution. It is significant in this regard that the draftsman has adopted—or, rather, adapted—in these Acts many expressions which are commonly used in taxing Acts, but has eliminated from those expressions any such word as "tax" or "taxpayer". This is particularly manifest in s. 23 of the Administration Act. It is not suggested that a taxing Act must contain any particular form of words; in particular, it is not suggested that it must use the word "tax". It is true, moreover, that the draftsman (apparently with an eye to the words of s. 55 of the Constitution relating to customs and excise—in case the Acts might be thought to be taxing Acts) has adopted a form of legislation which is similar to the familiar form of Acts relating, in particular, to income tax; but it is clear that the Acts are not Acts imposing income tax (in the accustomed sense), whatever else they may be. If the No. 1 Act is capable of being regarded as a taxing Act, it would seem rather to be an excise Act; but it lacks the characteristic of a taxing Act—whether in relation to excise or otherwise—in that in some cases as to part and in others as to the whole of the amount exacted the exaction is temporary. It may seem curious that the plaintiffs should attack the Acts on a ground which involves the idea that they will or may ultimately be refunded part of the amount exacted; but the submission is that Parliament evidently did not think it advisable to impose an out-and-out tax but endeavoured to achieve whatever purpose it had in mind by a means not within constitutional power. The purpose, it is suggested, is to "freeze" some part of the woolgrowers' money in order to guard against inflation. It is not contended that such a purpose or "motive" would affect the validity of the Act if its content could be ascribed to any legislative power of the Commonwealth; but it is relevant to the question whether the Act is a taxing Act.

[DIXON J. referred to *United States* v. *Sanchez* (1).]

The point is that legislation which takes a person's money from him temporarily is not legislation with respect to taxation. It is rather a kind of compulsory borrowing; in any event, it is an acquisition of property, and it will be submitted that in either view it is not within any constitutional power. The legislation now in question has a closer resemblance to an Act like the *Banking Act*

(1) (1950) 95 Law. Ed. 47 [340 U.S. 42].

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1945 than to a taxing Act. That Act requires trading banks to deposit surplus funds with the Commonwealth Bank, which retains them until it consents to their repayment. That Act may be within the power to legislate with respect to banking; but it is not to be supposed that anyone would suggest that the provision requiring the deposit of the funds was a form of taxation. If it was, all the other provisions of the *Banking Act* would be invalid. Section 25 of the Administration Act, in making an appropriation for refunds, is important in the plaintiffs' view for several reasons. At the moment it is sufficient to say that s. 55 of the Constitution does not permit an appropriation in an Act imposing or dealing with taxation, and under s. 55—not because it says so in so many words, but because the ordinary principles of severability apply—the taxing provisions could not stand because they could not be severed from the appropriation for purposes of refund. [He referred to *Resch* v. *Federal Commissioner of Taxation* (1); *R.* v. *Barger* (2); *Osborne* v. *The Commonwealth* (3); *Buchanan* v. *The Commonwealth* (4); *Waterhouse* v. *Deputy Commissioner of Land Tax (S.A.)* (5); *Harding* v. *Federal Commissioner of Taxation* (6); *Federal Commissioner of Taxation* v. *Munro* (7); *Cadbury-Fry-Pascall Pty. Ltd.* v. *Federal Commissioner of Taxation* (8).] A further objection under s. 55 of the Constitution is that, if the No. 1 Act is a taxing Act, it is one imposing an excise, and, when it is read—as, it is submitted, it must be—with the Administration Act, another tax is dealt with—income tax. The effect of s. 55 would be to destroy the whole scheme of the legislation. The whole scheme must be looked at for the purposes of s. 55: cf. *W. R. Moran Pty. Ltd.* v. *Commissioner of Taxation* (9). Whether the Administration Act can be left to stand alone on the statute book is a matter with which the plaintiffs are not concerned; it will have no effect if the Deduction Acts go. It has been suggested that the No. 1 Act, if it is a taxing Act, is an excise Act. As to what constitutes an excise, see *Commonwealth and Commonwealth Oil Refineries Ltd.* v. *South Australia* (10); *Attorney-General (N.S.W.)* v. *Homebush Flour Mills Ltd.* (11); *Hopper* v. *Egg and Egg Pulp*

(1) (1942) 66 C.L.R. 198, at pp. 212, 222, 224.
(2) (1908) 6 C.L.R. 41, at p. 77.
(3) (1911) 12 C.L.R. 321, at pp. 335, 336, 349-355, 357, 362, 364, 372.
(4) (1913) 16 C.L.R. 315, at pp. 329, 332.
(5) (1914) 17 C.L.R. 665, at pp. 669-671, 676, 678, 679.
(6) (1917) 23 C.L.R. 119, at pp. 133, 134.
(7) (1926) 38 C.L.R. 153, at pp. 186, 208, 209, 215.
(8) (1944) 70 C.L.R. 362.
(9) (1940) A.C. 838, at p. 849; 63 C.L.R. 338.
(10) (1926) 38 C.L.R. 408, at pp. 419, 424-426, 435, 437-439.
(11) (1937) 56 C.L.R. 390, at p. 400.

Marketing Board (Vict.) (1); *Matthews* v. *Chicory Marketing Board (Vict.)* (2); *Parton* v. *Milk Board (Vict.)* (3). However, the plaintiffs do not have to establish that the exaction is an excise. It may be said as a matter of words that the No. 1 Act is an income-tax Act inasmuch as it taxes gross income from wool and there is nothing to prevent the Commonwealth Parliament taxing gross incomes. Even so, the subject matter would be a different one from the existing system of taxation of net incomes under the Income Tax and Assessment Acts; so that the result would be the same under s. 55. The legislation cannot be supported as being incidental to the collection of income tax. If anything is needed to show that that is not its object or nature, reference may be made, first, to s. 12 of the Administration Act, under which, even though it is demonstrated that there will be no income tax payable by the woolgrower in the relevant year, he still has to wait some time for his refund unless the case is one of " hardship ". Moreover, it is evident that no real attempt has been made to relate the wool legislation to the payment of income tax. The tax—if it is a tax—on wool is imposed at a flat rate, whereas income tax is imposed at differential rates. It necessarily follows that wool-growers in the higher income group will pay far too little and those in the lower income group far too much. It is, perhaps, unnecessary to say that these matters are not put by way of criticism of the *policy* of the legislation now challenged in that it may work an injustice; they are put to show that there is not the necessary relation—from the viewpoint of validity—between the legislation and the legislative power. What Parliament has done (see No. 1 Act, s. 4 (2)-(4); Administration Act, s. 10) is, as to the first year, to make a deduction of one-fifth and to hold it until the assessment to income tax is made. In the second year the deduction is made and held until the end of the financial year. The result is to provide definitely for a deduction in two years and its application to income tax, if any, at some distant period, after the end of the first year and no application to income tax at all in the second year. Unless some further legislation is passed, the result may be merely a process of deduction and refunds without any relation to income tax at all. The validity of the existing legislation cannot be left to depend on the passing of a future Act to relate the deduction to income tax. The next point is that the deduction is to be retained until provisional tax (within the *Income Tax Assessment Act* 1936-1949, Part VI., Div. 3) in a future year is

(1) (1939) 61 C.L.R. 665, at p. 671.
(2) (1938) 60 C.L.R. 263.
(3) (1950) 80 C.L.R. 229.

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ascertained: See Administration Act, ss. 4, 10, 11. Provisional tax being an annual charge and being provided for by Parliament in the year of income, these are really provisions requiring the retention of money in part to meet charges not yet imposed, but which may be imposed under some future Act. This cannot be incidental to income tax. The provisional-tax legislation, if it is to be within power, can be justified only on the basis that it is incidental to the taxing power; and a stage must be reached—it has been, it is submitted, in the legislation now challenged—at which further "incidentals" added to what is itself merely incidental become too remote from the main power to be supported by it. In s. 51 (iv.) of the Constitution, "borrowing money on the public credit of the Commonwealth" means borrowing on the promise of the Commonwealth to repay—an expression which has no significance where the Commonwealth attempts to levy an enforced loan. Accordingly, s. 51 (iv.) has no application here.

A. D. G. Adam K.C. (with him *G. H. Lush*), for the defendants. It is submitted that the three Acts in question, whether taken separately or together as embodying one scheme, are within the power conferred by s. 51 (ii.) of the Constitution to legislate with respect to taxation. On the authorities as they now stand, it is trite to say that, if an Act is in its terms within power, it is immaterial that the motive of Parliament, if such can be ascertained, is to achieve some end which is not within power. Indeed the plaintiffs did not seek to controvert this proposition—so far, at any rate, as rendering lip-service to it was concerned—but they sought to escape from it in some way which they did not make clear, mainly—it would seem—by reference to *R.* v. *Barger* (1). Whether the decision of the majority in that case (in which there was a sharp division of opinion) would now be supported is a matter of doubt. *United States* v. *Sanchez* (2), referred to by *Dixon* J., seems opposed to it. The amplitude of the taxation power has so often been stressed that it is not desired to labour it. It is thought sufficient on this point to refer to *South Australia* v. *The Commonwealth* (3); *Attorney-General (N.S.W.)* v. *Brewery Employees Association* (4); *Crespin* v. *Colac Co-operative Farmers Ltd.* (5); *Munro's Case* (6). The power is not confined to making laws imposing taxation; it includes (without need of recourse to s. 51 (xxxix.)) power to

(1) (1908) 6 C.L.R. 41.
(2) (1950) 95 Law. Ed. 47 [340 U.S. 42].
(3) (1942) 65 C.L.R. 373, at pp. 412, 424.
(4) (1908) 6 C.L.R. 469.
(5) (1916) 21 C.L.R. 205.
(6) (1926) 38 C.L.R., at p. 200.

make laws with respect to the collection and recovery of tax and any other matters which fairly relate to the broad subject of taxation. The only limits to the exercise of the power are those to be found in the Constitution itself. The case for the defendants may be presented in alternative ways. The first submission is that the No. 1 and No. 2 Acts impose taxation and the Administration Act provides machinery in a manner similar to that of the assessment Acts commonly related to such Acts as those imposing income or land tax. The alternative is that, if no tax is imposed, the legislation as a whole provides a scheme for the collection of income tax. The plaintiffs have sought to present the defendants with a dilemma by saying that, if the No. 1 and No. 2 Acts impose taxation, they conflict with s. 55 of the Constitution, and, if they do not impose taxation, they are not within any power in the Constitution. As to the first submission, the question is what the Act (No. 1 or No. 2) does, not whether it uses some conventional form of words found in other taxing Acts. In so far as the argument is that Parliament has " avoided " the conventional words, it does not affect the substance of the matter. There may well have been reasons of policy for that course. As to what is a tax, see *R.* v. *Barger* (1); *Quick & Garran, Constitution of the Commonwealth* (1901), p. 550; *Commonwealth & Central Wool Committee* v. *Colonial Combing, Spinning & Weaving Co.* (2); *Matthews* v. *Chicory Marketing Board (Vict.)* (3); *Parton's Case* (4); *Cooley* on *Constitutional Limitations*, 8th ed. (1927), pp. 986, 1030; *Willoughby's Constitution of the United States*, 2nd ed. (1929), p. 666. Except for *Hopper's Case* (5), which, it is submitted, does not support the proposition that the exaction here in question is not a tax because it is temporary, no authority was produced for the proposition, and —it is submitted—it is unsound. It does not seem important to the defendants to present any view as to whether the exaction here in question is or is not an excise, but the defendants would say—if they are obliged to present a view on the matter—that it is not an excise; it has rather the characteristics of a direct tax. It may be observed that, if there is to be added to the test of what is an excise, the question whether the exaction is permanent or temporary, the result may be curious as between the supposedly exclusive power of the Commonwealth and the taxing power of the States. For present purposes s. 4 (4) of the No. 1 Act (and the same applies to the No. 2 Act) has no necessary relation to income

(1) (1908) 6 C.L.R., at p. 68.
(2) (1922) 31 C.L.R. 421, at pp. 463, 464.
(3) (1938) 60 C.L.R., at p. 276.
(4) (1950) 80 C.L.R., at p. 298.
(5) (1939) 61 C.L.R. 665.

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tax. It relates to s. 4 (3), which, as to future years, depends on Parliament fixing a proportion. The deduction under s. 4 (1) will continue provisionally to be the one-fifth, but the whole of that amount may have to be refunded unless Parliament deals with the matter by another enactment. In so far as it may be necessary to read the Administration Act with the No. 1 Act or the No. 2 Act, it is submitted that there is nothing in s. 25 of the Administration Act to alter the nature of the No. 1 Act or the No. 2 Act as a taxing Act; and s. 6 of the Administration Act, on its own words, is only machinery for the collection of the tax; it does not impose tax. The fact that those who pay tax under one Act obtain benefits under another Act in that they do not have to pay double taxation does not destroy the character of the first Act as a taxing Act. It is not correct to describe the exaction under the first Act as borrowed from the taxpayer or as being his money held in suspense pending a future event. It is paid into the Consolidated Revenue and loses its identity. It is not in any sense held on a special account for the taxpayer, to be returned in so far as it is not used on his behalf. If it was necessary to assign the tax to a particular category, it would seem to be a kind of income tax rather than an excise. [He referred to *Munro's Case* (1).] As to s. 55 of the Constitution, it applies rather to the framework of individual Acts than to what might be called schemes of which individual Acts form a part. It may well be that, although two Acts are separately enacted, they are so expressed that they may have to be treated as one for the purposes of s. 55, but that is not the case here, and it has not been shown that either branch of s. 55 has been infringed. Authorities which warn against applying s. 55 too readily are *Osborne* v. *The Commonwealth* (2); *Harding's Case* (3); *Resch's Case* (4). If the plaintiffs contend that s. 4 (4) of the No. 1 or No. 2 Act by providing for refunds infringes s. 55 by dealing with a matter other than the imposition of taxation, the answer is, first, that it does not, and, secondly, that—on ordinary principles of severability—s. 4 (4) can be struck out without any alteration of the substance of the law. The Administration Act is not within s. 55; it will remain part of the statute law and will deal adequately with the matter of refunds. [He referred to *Munro's Case* (5).] The defendants' alternative argument is that, if none of the legislation in question imposes a tax, the Acts as a whole are laws with respect to taxation in that they

(1) (1926) 38 C.L.R., at p. 216.
(2) (1911) 12 C.L.R., at pp. 337, 353, 364.
(3) (1917) 23 C.L.R., at p. 134.
(4) (1942) 66 C.L.R., at p. 211.
(5) (1926) 38 C.L.R., at p. 185.

provide a scheme for the collection in advance of income tax. The failure of this argument would—it is submitted—tend to confirm the defendants' first submission. One of the arguments put by the plaintiffs against the submission now being made was that the legislation was too remote from the main head of power to be ancillary to it. This seems to depend on the supposition that s. 51 (xxxix.) of the Constitution must be invoked to support the argument. That point has already been dealt with; what the defendants rely on is s. 51 (ii.). A possible view is that for the current year the Act has a sufficient relation to income tax, but that next year or thereafter the relation may not be sufficient. If so, there is no reason why the Act should not be allowed full force at present, whatever its fate might be later. This would be a sort of severance which presents no difficulties. The Court is not required to ignore the exceedingly high prices which have been obtained for wool recently. The result has been that the previous provisions made for provisional tax have become quite inadequate to the unexpected and very great increase in woolgrowers' incomes. A great deal of the plaintiffs' attack on this aspect of the matter has been based on the fact that the flat rate levied on wool will not work out evenly as between individuals. This is an attack rather on the policy than the validity of the legislation. After all, the provisional-tax legislation itself is only a rough-and-ready method of collecting tax in advance; it is inevitable that it will work some hardship in individual cases. Another attack was that collection in advance of the imposition of the tax was involved. This seems particularly linked with s. 51 (xxxix.) of the Constitution, which has already been dealt with. The head of power, if it includes within it the provision of machinery for the collection of taxes in advance, must be wide enough to cover the case of taxes which Parliament considers will probably be imposed. It is an odd way to read s. 12 of the Administration Act as manifesting an intention that the amounts deducted are not to be repaid, although it is obvious that they will not be needed to meet the tax liability. All that the section does is to provide that cases of hardship may be specially dealt with. To deal with all cases in that way would impose an insuperable burden as a matter of administration.

R. M. Eggleston K.C., in reply. On the question whether the challenged legislation can be supported on the basis that it makes provision for the collection in advance of income tax, the burden is on the defendants to show that the legislation is within the power—that it is adapted to the end which they suggest. Their

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argument really did not deal with this question at all. It treated the plaintiffs' argument as being directed to the injustice of the legislation and as not going to validity; thus, it passed by the real point. It did not discover any sufficient positive indications in the legislation of a connection with the collection in advance of income tax to bring it within power. In this connection it is relevant—in considering what the legislation really does—to point out the disparity between the flat rate of the levy on wool and the differential rates of income tax. This shows plainly that the legislation is not really concerned with the collection in advance of income tax. What it is concerned with is to get out of the hands of the woolgrowers for a time a percentage of the proceeds of the wool. It is conceded—indeed, it has not been suggested otherwise—by the plaintiffs that legislation which otherwise would validly impose a tax is not to be invalidated because of some extraneous "motive". Thus, the defendants' purported reply to what was said to be the plaintiffs' argument on this point was misconceived and the authorities cited on the matter of "motive" were irrelevant. [He referred to *Bank of New South Wales* v. *The Commonwealth* (1).] The defendants' argument was largely based on the recent great increase in the price of wool, but it seemed to assume that the price would continue to rise from year to year. When the challenged legislation was passed no-one knew whether prices would continue to increase or drop during the current wool season; certainly no-one knew that prices would continue to increase year after year so long as the legislation operated. Accordingly, the defendants get little—if any—assistance from the fact of the recent increase. It seems a peculiar kind of incidental legislation which says: "We will take money now and hold it until we decide—it may be eighteen months hence—whether or not we are going to impose a tax". It would be comparable with an acquisition of property which was taken merely in case the Commonwealth decided that it would some day need property under some law not yet passed without any specification. It does not follow—as was submitted by the defendants—that, if the legislation is not incidental to the collection of income tax, it must be within s. 51 (ii.) of the Constitution as directly imposing a tax. It has been said that the plaintiffs did not produce any authority showing that a compulsory taking of money which is merely temporary is not taxation. It is not for the plaintiffs to produce any such authority. It is for the defendants to produce authority to the contrary, if they can find any, and it is significant

(1) (1948) 76 C.L.R. 1, at p. 168.

that none such has been produced. A possible view of the legislation is that it provides inseparably for a levy which as to what is retained is a tax and as to what is refunded is not a tax. That, of course, would not help the defendants; and, so far as the plaintiffs are concerned, it is put merely as showing that the rejection of the conclusion that the legislation is not incidental to income tax does not necessarily lead to the conclusion that it is another kind of impost properly called taxation. The defendants' argument involves the proposition that anything which is exacted compulsorily and goes into Consolidated Revenue and is used for public purposes is a tax. That it goes into Consolidated Revenue cannot be the test; loan moneys, for example, also go into Consolidated Revenue. The proposition also presents the difficulty as to penalties under the *Income Tax Assessment Act* which was pointed out in *Jolly* v. *Federal Commissioner of Taxation* (1). See also *Federal Commissioner of Taxation* v. *Trautwein* (2). Moreover, it would raise questions as to the validity of an Act such as the *Life Insurance Act* 1945 (see ss. 26, 29), under which deposits are required. As to the question of the incorporation of the Administration Act in each of the Deduction Acts, in relation to the argument on s. 55 of the Constitution, it has already been submitted that there is inherent evidence of intention as to severability. A further point is that the extent of the tax—if it is a tax—cannot be ascertained without reference to the Administration Act, so that it is an essential part of the scheme. As to the defendants' argument that s. 4 (4) of each of the Deduction Acts can be severed, leaving the rest of the scheme standing (with the Administration Act to deal with refunds), the remarks of *Isaacs* J. in *Munro's Case* (3) were relied on. Those remarks, so far as they bear on the present case, are quite inconsistent with what *Isaacs* J. said in *Harding's Case* (4) and are—it is submitted—unsound. If—as the plaintiffs contend—an assessment Act (here the Administration Act) read with a taxing Act (here the No. 1 or No. 2 Deduction Act) operates so as to deal with more than one subject of taxation, the taxing Act is invalidated by s. 55 of the Constitution and it is immaterial to decide whether anything is left of the assessment Act. Moreover, it is not correct that the severance of s. 4 (4) would leave a workable scheme; without it s. 11 (2) of the Administration Act could not operate. It is submitted also that, for the purposes of s. 4 (4) of the Deduction Act, the provisions of

(1) (1935) 53 C.L.R. 206, at p. 211.
(2) (1936) 56 C.L.R. 211.
(3) (1926) 38 C.L.R., at p. 185.
(4) (1917) 23 C.L.R., at p. 134.

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ss. 10 and 12, as well as s. 11, of the Administration Act must be taken into account.

Cur. adv. vult.

The following written judgments were delivered :—

LATHAM C.J. The plaintiffs Desmond Carty Moore and Thomas Anthony Darcy are producers of wool within the meaning of the *Wool Sales Deduction (Administration) Act* 1950 and the *Wool Sales Deduction Act (No.* 1) 1950 and the *Wool Sales Deduction Act (No.* 2) 1950. (I shall hereafter refer to these Acts respectively as the Administration Act, Act No. 1 and Act No. 2.) The plaintiffs are owners of wool to which the Administration Act and one or other of the other Acts apply. The wool is held by wool-broking companies for disposition on behalf of the plaintiffs. The plaintiffs intend to sell the wool through the brokers either otherwise than for delivery out of Australia (the case to which Act No. 1 applies) or to export the wool (in which case Act No. 2 would apply). In the former case the brokers and the plaintiffs would be liable under Act No. 1 and the Administration Act to pay to the Commonwealth one-fifth of the sale value of the wool as defined in s. 3 of Act No. 1. In the latter case the brokers and the plaintiffs would be liable under Act No. 2 and the Administration Act to pay to the Commonwealth one-fifth of the appraised value of the wool as determined in accordance with Act No. 2, s. 3. Wool producers receive credit for payments made by brokers on account of their wool, and the liability of the broker to a wool producer is discharged *pro tanto* by payments made by him under the Act to the Commissioner of Taxation (Administration Act, s. 6). The Administration Act contains in s. 6 (1) (b) provisions which apply the Acts to producers who dispose of their wool direct and not through brokers. Payments due under the Acts are made to the Commissioner of Taxation. Upon payment being made, a wool-deduction certificate is issued to the producer—Administration Act, s. 8. A producer is required to forward all wool-deduction certificates delivered to him in respect of wool sold, disposed of, or exported in a year of income to the commissioner with the return which he is required to furnish in respect of that year of income under s. 161 of the *Income Tax Assessment Act* 1936-1949—Administration Act, s. 10. Under the last-mentioned section the commissioner is required to credit the amount of the certificate in payment or part payment of net income tax payable in respect of the income of that year of income. If the amount of the wool-deduction certificate exceeds the net tax the excess amount is

paid to the producer, and if no income tax is payable an amount equal to the amount of the certificate is paid to him.

If under a later Act the rate of deduction is reduced in respect of any one year as compared with the previously applicable rate, the commissioner is required to make appropriate refunds—Administration Act, s. 11. This section also provides that if the proportion of the sale value of wool for a financial year for the purposes of Act No. 1 and Act No. 2 is not fixed before the end of that year the commissioner shall refund to a producer the amount paid by him under the Acts in relation to wool sold, disposed of or exported in that financial year, or, where he delivers a wool-deduction certificate in relation to that year, the commissioner shall pay to the producer an amount equal to the amount of the certificate. Section 12 provides for modification of the application of the Act in cases of hardship. In such cases the commissioner may credit the amount of a wool certificate against taxation liabilities in respect of prior years, and he may also, if, in the opinion of the commissioner, the amount of the certificate exceeds the probable amount of relevant income tax payable, make a payment to the producer of the amount of the excess.

The plaintiffs contend that the three Acts are invalid, and, alternatively, that the sections of the Acts which declare that persons shall be liable to pay moneys to the Commonwealth or to the commissioner are invalid. These sections are, in Act No. 1, s. 4 (1) and (2), and in Act No. 2, s. 4 (1) and (2). These are the sections in these Acts which provide that producers of wool shall, in the cases to which the sections apply, be liable to pay to the Commonwealth one-fifth of the sale value or of the appraised value of the wool. The sections in the Administration Act which are attacked under this alternative claim are the following:—*Section* 6 (1). This section provides for brokers deducting moneys which, apart from the Act, would be payable to the owner of the wool, and paying the prescribed proportion of that amount to the commissioner when the amount received by the broker is in excess of £20. Section 6 contains corresponding provisions dealing with persons who purchase wool direct from a producer and not through a broker or other person registered under s. 5 of the Administration Act. *Section* 7. This section provides for the time within which payments must be made to the commissioner by brokers and other persons. *Section* 17. Section 17 (1) and (5) provide for the time within which producers must make payment to the commissioner. *Section* 18. This section provides that the commissioner may sue for and recover amounts payable under the Act. *Section* 19.

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Sub-sections (1) and (3) provide for penalties for non-payment of moneys due under the Act.

The plaintiffs claim declarations that the Acts and, alternatively, that the provisions specifically mentioned, are invalid, and an injunction restraining the defendants and each of them from putting the Acts into force against the plaintiffs. The defendants have demurred and this proceeding is the argument upon the demurrer.

The plaintiffs contend, in the first place, that none of the Acts are laws which are authorized by the Constitution of the Commonwealth, s. 51 (ii.), which provides that the Parliament shall have power to make laws with respect to taxation. It is argued that the laws are not laws with respect to taxation, but that they are laws for freezing moneys otherwise receivable by wool producers and holding those moneys against a possible future income-tax liability. It is contended that the Commonwealth has no power to obtain and retain moneys, whether for the purpose of preventing inflation or otherwise, under the guise of imposing taxation. The plaintiffs rely upon the fact that the moneys of the wool producers which are exacted and held under the Act may bear no relation whatever to the amount of income-tax liability against which they are said to be held.

The plaintiffs further submit that if, contrary to the contention already mentioned, the Acts are held to be laws with respect to taxation, they are invalid because they infringe s. 55 of the Constitution. Section 55 is as follows :—" Laws imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect. Laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only ; but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only." It is argued that if Acts Nos. 1 and 2 are laws with respect to taxation they are laws imposing taxation. It is said that they incorporate the provisions of the Administration Act and that the Administration Act is not a law dealing only with the imposition of taxation because it provides for the collection of tax and the application of moneys received under the alleged tax and that the Act is therefore " of no effect "—so that the whole scheme breaks down. It is further argued that the Administration Act is also a law imposing taxation because it declares that persons shall be liable to pay moneys to the Commonwealth or a commissioner. Such a law, therefore, must deal with one subject of taxation only.

If it deals with more than one subject of taxation it must be void under the second part of s. 55. The Administration Act, viewed as a law imposing taxation is, it is contended, a law which deals with a tax upon wool and also with income tax, and therefore it deals with two subjects of taxation. Finally, it is contended that Act No. 1, relating to wool sold otherwise than for delivery out of Australia, if it is a law with respect to taxation, is a law which imposes a duty of excise. Similarly, Act No. 2, which relates to exported wool, is an Act dealing with duties of customs. The final provision in s. 55 requires such laws to deal respectively with duties of excise only or with duties of customs only. It is contended that the Administration Act deals with duties of customs and with duties of excise together, that Act No. 1 deals with duties of excise, and, because it incorporates the Administration Act, also with income tax, and that Act No. 2 deals with duties of customs, and also, because it also incorporates the Administration Act, with income tax.

In my opinion all three Acts are laws with respect to taxation. The object and the operation of the laws is to make a compulsory exaction of money by law from a subject. The moneys collected are paid into consolidated revenue—Administration Act, s. 25—in accordance with the requirements of the Commonwealth Constitution, s. 81. The moneys can then be spent for any purpose for which the Commonwealth may lawfully appropriate money. These moneys are not charges for services, they are not held in trust, nor are they subject to any special provisions regulating their control or disposition. They are, for example, very different from the moneys received by the Commonwealth Bank and held in special accounts under the *Banking Act* 1945, s. 20.

Section 25 of the Administration Act provides that there shall be payable out of the Consolidated Revenue Fund "(which is, to the necessary extent, hereby appropriated accordingly) such amounts as the commissioner becomes liable to pay in accordance with the provisions of this Act". Thus the commissioner is entitled and bound to pay to wool producers out of Consolidated Revenue amounts determined in accordance with the provisions of the Act, e.g., s. 6. These amounts, as already stated, depend upon the relation of the amount of wool-deduction certificates which have been forwarded to the commissioner by a producer to the amount of income tax, payable normally in respect of a subsequent year, but possibly, if, under s. 12, the hardship provisions are applied, payable in respect of an earlier year. These provisions create a statutory liability in the Commonwealth to

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pay a sum of money determined in the manner stated. There is no holding of money on account of producers. There is no repayment of identical money to the respective producers. The money which is collected under the Act goes into Consolidated Revenue and is available for expenditure in the same manner as any other money. The Commonwealth, however, is bound to make out of Consolidated Revenue what in the Acts are described as payments or refunds to producers. The acceptance of this liability by the Commonwealth does not affect the character of the original imposition of the liability as an exaction made from the subject by the Government under legislative authority for public purposes.

Parliament might have provided for the payment of one-fifth of the value of the wool without any provision for refunds or for crediting the amount of deductions against income tax. Such a law would plainly have been within power. The addition of provisions for payment to, or crediting to producers, sums of money at a subsequent date cannot render such a law invalid. Federal legislation may validly provide that moneys shall be collected as taxes subject to subsequent adjustment to procure accuracy in final assessment of liability. Such a provision is to be found in many taxation Acts; for example, in the *Income Tax Assessment Acts* there are provisions requiring prompt payment of a liability as assessed by the commissioner notwithstanding that the taxpayer is entitled to lodge and may have lodged objections, which objections may ultimately be upheld. So also ss. 221A et seq. of the *Income Tax Assessment Act* 1936-1949 relating to collection of income tax and social services contribution by instalments provide for payment of taxes in advance, the amount for which the taxpayer is really liable to be ascertained after the payments have been made. I refer also to the provisions contained in the *Income Tax Assessment Act* 1936-1949, ss. 221YA et seq., relating to provisional tax. These are provisions for payment in one year of an amount which is estimated as being the amount which will probably be payable in a following year. Rates of income tax may be changed at any time. But deductions to which a person is entitled in one year may be very much greater than those which he was able to claim in the preceding year. Such matters will affect the amount of tax which he finally should pay in respect of a particular year. All the provisions mentioned are provisions for payment of tax in advance when the amount payable cannot be accurately estimated. The provisions in the legislation under consideration are similar in character. I can see no reason for holding that any of them are invalid upon the ground suggested.

The plaintiffs contend that the legislation cannot be described as a law with respect to taxation because the amount collected bears no relation to the income tax (if any) which may ultimately become payable. I can see no sound objection to legislation which provides that when people have money they shall be required to pay it to the revenue authorities for the purpose of making provision in advance against possible future taxation liability. Such a provision is directly incidental to obtaining payment of taxes.

The plaintiffs made a particular point with respect to provisional tax. The ordinary income tax was said to be a regular annual tax. (Of course it could be abolished or decreased or increased at any time by Parliament.) The provisional tax, however, according to present practice, is fixed from year to year. Thus at the present time no provisional tax has been fixed in respect of the year 1951-1952. The money collected under the three Acts now under consideration would be retained to be applied in respect of liability for that future potential tax. It was contended that such a law was not a law with respect to taxation. In my opinion a law which obtains money in advance to meet taxation of which Parliament contemplates the imposition is a law with respect to taxation. It is a means of getting in money to meet a tax liability which is in the contemplation of Parliament.

It was contended that the real object of the Acts was to freeze moneys which belonged to wool producers so as to limit inflation. This object does not appear from the terms of the Act, but, even if it were established in some proper manner that the legislature had this object in view, such a fact would not invalidate the Act. It has been decided many times that the object which the legislature wishes to accomplish does not invalidate a law which is made with respect to a matter upon which Parliament has power to make laws. I refer to what I said upon this matter in *South Australia & Victoria* v. *The Commonwealth* (*Uniform Tax Case*) (1).

I come now to the objections based upon the Constitution, s. 55, which has already been quoted.

In *Cadbury-Fry-Pascall Pty. Ltd.* v. *Federal Commissioner of Taxation* (2) I have stated my conclusions as to the effect of s. 55 in the light of the decisions of the Court and I repeat what I then said with reference to the distinction between Tax Assessment Acts and Tax Acts (3) :—" Acts of the former type provide means for assessing and collecting tax—they give authority to officers

(1) (1943) 65 C.L.R. 373, at pp. 412, 424-426.

(2) (1944) 70 C.L.R. 362, at pp. 372, 373.

(3) (1944) 70 C.L.R., at p. 373.

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to assess and collect the tax, and they impose duties upon persons to make returns in order to make such assessment and collection possible. The Tax Acts contain the grant of money—they impose the burden upon the people. It is the latter Acts and not the former which have been regarded as imposing taxation, and therefore as not capable of originating in the Senate or of being amended by the Senate."

I continued :—" This practice has been recognized by this Court as carrying out the constitutional provisions upon a correct basis. It has been held on several occasions that various Assessment Acts do not impose taxation, and it has been so held though such Acts contain provisions that a person should be liable to pay tax or be chargeable with tax."

I refer then to *Osborne* v. *The Commonwealth* (1); *Federal Commissioner of Taxation* v. *Munro* (2); and *Resch* v. *Federal Commissioner of Taxation* (3) as authorities for the statements I made. Without repeating at length the reasoning upon which the propositions stated depend, I apply these conclusions to the present case.

Act No. 1 and Act No. 2 are laws " imposing taxation ". All three Acts are Acts which " deal with the imposition of taxation ". None of them deal with any other subject than the imposition of taxation. Provisions for the assessment, collection and recovery of tax are provisions which deal with the imposition of taxation, even though only those which make the grant of the tax are to be regarded as provisions actually imposing taxation. The provision for crediting payments made under these Acts against income-tax liability is a provision for a means of payment of income tax and it therefore " deals with the imposition of taxation ".

Accordingly, the Acts do not infringe the first part of s. 55, which provides that laws imposing taxation shall deal only with the imposition of taxation and that any provision therein dealing with any other matter shall be of no effect.

The second paragraph of s. 55, however, provides that laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only. It is contended by the plaintiffs that these laws are laws imposing taxation and that they deal with more than one subject of taxation in the manner already stated, i.e., with excise duties and income tax and with customs duties and income tax. This provision, however,

(1) (1911) 12 C.L.R. 321.
(2) (1926) 38 C.L.R. 153.
(3) (1942) 66 C.L.R. 198.

refers only to laws imposing taxation. Act No. 1 and Act No. 2 are such laws. They contain no reference to any tax other than the tax imposed by those Acts themselves. They contain no reference to income tax. They deal with one subject of taxation only.

The final clause of s. 55 provides that laws imposing duties of customs shall deal with duties of customs only and that laws imposing duties of excise shall deal with duties of excise only. If the laws do impose such duties here again the answer to the plaintiffs' argument is that Act No. 1 and Act No. 2 are the Acts which impose duties of customs or excise and they each deal only with one of these subjects.

It is said, however, that Acts No. 1 and No. 2 incorporate the Administration Act, because in s. 3 (2) of each Act it is provided that expressions used in the Act have the same meaning as they have in the Administration Act. It is argued that the Administration Act is therefore incorporated with each of the other two Acts and that the incorporation of the Administration Act in the other Acts which impose taxation produces the consequence that those Acts deal with other matters than the actual imposition of taxation. But, first, Act No. 1 and Act No. 2 do not "incorporate" the Administration Act. They merely refer to the Administration Act for the meaning of expressions. They do not incorporate the Administration Act in any other sense than that in which it may be said that all Acts of the Commonwealth Parliament incorporate the *Acts Interpretation Act*. Secondly, if Acts Nos. 1 and 2 did incorporate the Administration Act and if that Act was an Act which dealt with matters other than the imposition of taxation the only result would be that that Act as incorporated in the other Acts would be of no effect. But the Administration Act itself as independently enacted would remain in existence and in operation.

Accordingly I am of opinion that Acts No. 1 and No. 2 are Acts imposing taxation, that they each deal only with the imposition of taxation, that they each deal with one subject of taxation only, however those subjects may be described, and that the Administration Act is not an Act imposing taxation though it is an Act which deals with the imposition of taxation.

In my opinion, therefore, the demurrer should be upheld. As a determination of the argument upon this demurrer determines the whole cause of action, the order of the Court should be that the demurrer is allowed with costs and that judgment is given in the action for the defendants with costs.

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DIXON J. The purpose of this suit is to obtain a decision that the *Wool Sales Deduction Acts* are unconstitutional and void. The Acts are Nos. 29, 30 and 31 of 1950, all assented to on 2nd December 1950. The question is raised by a demurrer to the statement of claim. The short title of Act No. 29 is the *Wool Sales Deduction (Administration) Act* 1950 and the long title an Act to provide for the Collection and Recovery of Amounts payable under the *Wool Sales Deduction Act (No.* 1) 1950 and the *Wool Sales Deduction Act* (No. 2) 1950 and for the application of those amounts. The short title of Act No. 30 is the *Wool Sales Deduction Act (No.* 1) 1950 and the long title an Act to provide for the Payment to the Commonwealth of a Proportion of the Sale Value of Wool sold or otherwise disposed of by Producers on or after 28th August 1950 otherwise than for Delivery out of Australia. The short title of No. 31 is the *Wool Sales Deduction Act (No.* 2) 1950 and the long title an Act to provide for the Payment to the Commonwealth of a Proportion of the Appraised Value of Wool exported from the Commonwealth by Producers on or after 28th August 1950.

The plan disclosed by these three statutes is worked out by complicated provisions, the text of which must be studied if the exact operation of the legislation is to be understood, but in outline the plan may be briefly stated. It consists of the following steps. First, a liability is imposed upon the producer of shorn wool who (a) sells it or (b) exports it. The liability is to pay to the Commonwealth a proportion of, in the one case, the price and, in the other case, the value (as appraised) of the wool. Secondly, the proportion is fixed at one-fifth for the present financial year, but the fixing by Parliament of another fraction for next financial year is provided against; if, however, it is not done one-fifth is to stand as the proportion for that year. Thirdly, in the case of sale, the wool-selling broker must deduct the proportion from the price and pay it to the Commissioner of Taxation and give his client a certificate of the amount: in the case of export the producer must pay the proportion of the value to the Commissioner of Taxation before he exports the wool and the commissioner must give him a certificate of the amount. Fourthly, the producer is to send in the certificates with his income-tax return for the year of income in which the wool is sold or exported; the commissioner is to credit the amount they show against his liability for tax for that year and provisional tax for the next year after deduction of provisional tax for the current year and then against his liability for past income tax if there be any such liability undischarged. If there be any unapplied residue of the amounts of the certificates,

it is to be repaid to the producer. Fifthly, if a proportion is fixed by a statute for a subsequent year and it differs from that prevailing at the opening of the year, the necessary adjustments are to be made in the amounts of the certificates given in the meantime and the differences paid to or by the producers accordingly; and if for two consecutive years no statute is passed specifically fixing the proportion for the year of income, then, as I read the legislation, its operation ceases or is suspended until that is done. At any time the operation of the Acts No. 30 and No. 31 may be terminated by proclamation. These Acts deal with the imposition of the liability, the amount of the proportion, and its continuance from one year to the next and the power to terminate the Acts by proclamation. They each say that expressions used in the respective Acts shall have the same meaning as in Act No. 29 and they expressly provide that the sub-section continuing the proportion from one year to the next shall be subject to the provisions contained in Act No. 29 for refunds where a less proportion is fixed for a financial year after its commencement and where no proportion is fixed for a financial year before the end of the financial year.

Except for these provisions the plan of the legislation is worked out in Act No. 29, which bears to Acts No. 30 and No. 31 the same relation as an Assessment Act would to Taxing Acts according to the procedure which the Parliament has commonly followed in dealing with the imposition, collection and management of taxes.

The validity of the legislation thus briefly described is attacked upon the ground that it is outside s. 51 (ii.) (taxation) and outside s. 51 (iv.) (borrowing) and all other powers, and that if contrary to this contention it is an exercise of the power conferred by s. 51 (ii.) to make laws with respect to taxation, then it involves a contravention of s. 55 on the ground that in so far as Acts No. 30 and No. 31 are laws imposing taxation they deal with more than the imposition of taxation and further the taxes they impose are duties of customs and of excise and the Acts do not respectively deal with duties of customs only and with duties of excise only.

With respect to the primary contention that the legislation is outside s. 51 (ii.) and s. 51 (iv.) and every other power, it is said that according to its true character it is legislation for taking the wool producers' money for a time, indefinite though ascertainable, and then restoring it, either by repayment or by applying it to the satisfaction of a liability to tax which may arise, and that the object is to freeze the funds so taken in order that they may not form a further contributory cause of monetary inflation.

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The conclusion which I have reached is that the legislation does not itself impose a tax or taxes but that it is valid on the ground that it amounts to a provision ancillary to levying and collecting income tax and is an exercise of the power to make laws with respect to taxation, a subject of which it forms an incident. The object ascribed to the legislation appears to me to amount to no more than an external motive or purpose incapable of invalidating the statutes. This conclusion imports a denial of the proposition that the payments for which Acts No. 30 and No. 31 make the wool producers liable are themselves distinct taxes. It will be seen that the denial involves one step along the path which the plaintiffs take in the first instance in their attempt to show that the legislation is unconstitutional and void; for it is a step away from the centre of the power to make laws with respect to taxation. But it is a step which necessarily means that the secondary or alternative argument of the plaintiffs cannot arise, namely, the argument that the legislation infringes upon one or other limb of s. 55 of the Constitution.

I shall therefore state first why, in my opinion, the legislation does not impose a new or distinct tax. To begin with, the money is either used to satisfy an existing tax, namely, income tax, actual or provisional, or else it is refunded. This is an important but I do not say decisive consideration. It is not decisive because the imposition of two taxes is conceivable where one is to be applied in reduction of the other. There is nothing impossible in a provision, if the Parliament chose to make it, by which, to take an imaginary example, payments of land tax should be treated as satisfying income tax *pro tanto*. It would remain a land tax. But here the purpose to which the wool-sales deductions are to be applied is the satisfaction of assessed income tax or provisional income tax; otherwise they are to be refunded. It is the only ostensible purpose for which payment of the money is exacted. Then Act No. 30 is an attempt to intercept part of the gross returns which, unless the circumstances were most exceptional, must form part of the current assessable income of the persons whose taxable income and provisionally taxable income is to supply the sole basis for a title on the part of the Commonwealth to retain the money once an assessment is made. Act No. 31 is an attempt to anticipate the sale and so to speak proleptically to intercept the proportion of the price and operates in the same way. In the third place the legislation is framed with an evident intention that the liability should not be a tax. We are only too well accustomed to the manner in which legislation for the imposition

and the management of a tax is constructed and expressed. It is evident that in this legislation it has all been avoided with meticulous care. It is true that the device is employed of framing a general Act (No. 29) upon analogy to an assessment Act and Acts dealing specifically with liability (Nos. 30 and 31) upon analogy to taxing Acts. But it is equally evident that that is because it was feared that it would be argued that in spite of the avoidance of the terminology of taxation there was an imposition of a tax or taxes. The separation of the Acts is a tried and venerated procedure for escaping the hitherto ineffectual menaces of s. 55. Both the short and long titles of the Acts are significant. The general Act is an Administration Act and the special Acts are *Wool Sales Deduction Acts*.

But while for these reasons I do not think that the wool-sales deductions are in themselves taxes, I am unable to go with the plaintiffs in regarding the legislation as so divorced from the subject of taxation as to fall outside the scope of the power conferred by s. 51 (ii.). Needless to say, I treat the power as covering what is incidental to the imposition and collection of taxation. Everything which is incidental to the main purpose of a power is contained within the grant itself: *Le Mesurier* v. *Connor* (1). The plaintiffs' argument did not deny—it could not deny—that as the wool-sales deductions were applicable and applicable only to the satisfaction of liabilities for income tax or provisional tax, they were given a connection with that tax or those taxes. But it was said that this only amounted to taking income tax as a peg upon which to hang the legislation and that it could not operate to make the legislation auxiliary or ancillary to the imposition and collection of income tax. In support of this view, reliance was placed for the plaintiffs on the effect which a number of provisions produced. A very obvious consideration was placed first among the matters adduced. It is that the amount taken as a deduction from the sales price or the appraised value of the wool sold or exported has no necessary or logical relation to the *quantum* of the liability for income tax. The amount of a wool producer's income tax for the year of income would depend upon a large number of the almost countless factors which may go into an assessment based upon the *Income Tax and Social Services Contribution Assessment Act* 1936-1950. No-one, so it was contended, could say that twenty per cent of the gross proceeds of the sale of his wool would be a fair provision against income tax upon the taxable income of the year. In a great measure this

(1) (1929) 42 C.L.R. 481, at p. 497.

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must be conceded and it is no doubt a consideration to be weighed. But the legal effect of the consideration is reduced if the view is adopted and is kept in mind that the power goes further than enabling the legislature to collect in advance moneys estimated to represent the probable tax of the individual considered as a separate taxpayer. It is, in my opinion, open to the legislature to lay down a general rule, to fix a flat rate, which in its judgment appears reasonably appropriate for the generality of cases. No doubt there are natural limits to what may be so fixed and if the figure is seen to go beyond what reasonably could be regarded as an anticipatory provision for tax the Court would say that that could not be its true character.

Perhaps among the matters relied on for the plaintiffs the second that should be mentioned is the operation of s. 10 of the Administration Act (No. 29) in placing provisional tax among the purposes to which the wool-sales deductions are to be applied. Section 10 operates to make the deductions applicable first in satisfying the balance remaining after the provisional tax of the previous assessment has been deducted from the sum of the tax and provisional tax assessed in the assessment made upon the bases of the year of income in which the sale or exportation of wool occurs. As the provisional tax of the previous assessment ought ideally to cover the tax of the current assessment, it is said that this really means that the wool-sales deductions are applied substantially in satisfying the provisional tax—that is to say, the provisional tax intended to cover the tax of the ensuing year. It is pointed out that the liability for provisional tax rests on an annual enactment for each specific year. Unlike ordinary income tax, the rates of the prior year are not continued in the absence of a fresh taxing Act. Compare, for example, s. 14 with s. 13 (2) of Act No. 49 of 1950, and see s. 221YB (3) of the *Income Tax Assessment Act* 1936-1949. Thus the wool-sales deductions, so it is contended, are made applicable in effect for a provisional tax not yet imposed. Accordingly, the argument is that there is no such connection in reality with an impending or accruing liability to income tax as would give to the wool-sales deduction the complexion of an exaction in aid of or ancillary to the collection of income tax. This argument appears to me to neglect Div. 3 of Part VI. of the *Income Tax and Social Services Contribution Assessment Act* 1936-1950, which at least shows that provisional tax is established as a statutory institution even if s. 221YB (3) does require an annual taxing enactment. What is more important it exaggerates the probability that the actual tax will correspond in amount with the provisional tax of

the prior year. The legislation is the outcome of ever-rising prices of wool. However, the basal answer to the argument is that there is no reason why the legislation should not take part of the gross income in anticipation of an assessment of tax liability upon the net income, even if the liability will be the residual result of a calculation one element of which is a tax annually imposed so that another statute will be necessary, that other statute being customarily enacted.

A third consideration upon which reliance is placed for the plaintiffs is the implication involved as, it is said, in s. 12, when it enables the commissioner, in a case where the producer has suffered loss or is in such circumstances that the application of the Act would entail hardship, to take one or other of certain courses, including the course of paying the producer the excess of his wool certificates over the anticipated amount of the net tax. The implication, it is said, is that without hardship the amount of the certificates would be retained although the anticipated net tax might be very much exceeded. That, it is argued, means that the money is not retained really to answer the expected income tax and provisional tax.

I do not think that any more can be deduced from s. 10 than that the regular application of the machinery set up by the legislation should go on except in cases of hardship, notwithstanding that a wool producer might, if his case were examined separately, be able to show that the wool-sales deduction exceeds his probable net tax.

Fourthly, great emphasis was placed upon the effect ascribed to s. 4 (1), (3) and (4) (b) of Acts No. 30 and No. 31 when read with s. 6 (1) (b) and s. 11 (2) (b) of Act No. 29. The meaning given to s. 4 (3) of Acts No. 30 and No. 31 is that, in the absence of a new enactment each year fixing the proportion for the current year of income, the proportion in force for the previous year would operate and that this might go on *toties quoties* indefinitely. But s. 4 (4) (b) of those Acts and s. 11 (2) (b) of Act No. 29 would require repayment if before 30th June of the year no such Act was passed. Thus the legislation would go on for an indefinite number of years, unless the legislature interfered, impounding the money for a period not exceeding twelve months, never applying it to income tax and requiring its repayment at the end of the financial year. From this it was said to appear that the legislation was but a device to impound the money for twelve months or less. I do not think that the argument correctly construes s. 4 (3) of Act No. 30 and of Act No. 31. The provision means that if the

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Parliament omits for one financial year specifically to fix the proportion, then for the next year the previous proportion shall apply. But that is not a "fixing" of the proportion so that it will again apply if in the succeeding year the Parliament repeats its failure to fix a proportion. "Fix" means fix specifically. There is therefore not an indefinite repetition of payments and repayments of the deductions. The sections mentioned are no more than machinery to deal with any one year in which contrary to expectation the Parliament passes no specific Act fixing the proportion. A second consecutive failure means that the legislation is spent. Finally it is pointed out that, subject to s. 171 of the *Assessment Act* 1936-1950, the commissioner may withhold an assessment indefinitely and thus avoid making a repayment of any surplus of the wool-sales deduction. That may be a defect in the legislation but it does not show that it is not ancillary to income tax. Certainly there is nothing to suggest that such inaction by the commissioner was contemplated. It was doubtless assumed that he would perform his functions in good faith, even if a credit balance to the taxpayer might result.

I have dealt with the foregoing matters separately, but it is, of course, right to consider them cumulatively. Doing so, however, I do not think that they show that the "object" of the Act as appearing from its provisions was not ancillary to income tax.

It has, in my opinion, an operation according to its provisions in support of the assessment and collection of income tax and provisional tax and it is immaterial what motive may have actuated the legislature to enact it.

I think that the attack on the validity of the legislation fails.

The demurrer should be allowed.

McTIERNAN J. The demurrer should, in my opinion, be allowed.

There is no need to repeat the provisions of the three Acts which are in question.

The *Wool Sales Deduction Acts* impose a liability on the producers of wool, who are subject to their provisions, to pay money to the Commonwealth. This liability is, in my opinion, a direct tax on the persons upon whom it is imposed, because the money is exacted from them by law, is payable to the Executive Government of the Commonwealth, and forms part of the Consolidated Revenue of the Commonwealth. These effects are produced by each Act and s. 81 of the Constitution of the Commonwealth. Accordingly the liability to which the Act subjects the wool producers to whom it applies has the leading characteristics of taxation.

Each of the Acts is, in this view, a law with respect to taxation and is valid under par. (ii.) of s. 51 of the Constitution of the Commonwealth. It would follow from this view that it was necessary for the Parliament to conform with s. 55 of the Constitution in passing these Acts, because each of them is a law imposing taxation. It is clear from the provisions of each Act that Parliament did conform with s. 55 because there is no provision in either Act dealing with any matter other than the imposition of taxation and neither Act deals with more than one subject of taxation.

The *Wool Sales Deduction (Administration) Act* 1950 provides for the following three purposes, the collection and the recovery of the amounts payable under the *Wool Sales Deduction Acts* and the manner of the application of those moneys. The operation of the Act is limited to those three purposes only and it is therefore not a law imposing taxation. For this reason the *Wool Sales Deduction (Administration) Act* does not raise any question in respect of s. 55 of the Constitution. But by reason of its subject matter it is a law with respect to the subject of taxation. The power to make laws providing for the collection and recovery of taxation is necessarily contained in the power to make laws with respect to taxation granted by s. 51 (ii.) of the Constitution to the Parliament. The third purpose for which the *Wool Sales Deduction (Administration) Act* provides, that is the application of the moneys collected or recovered under either of the other two Acts, is its novel feature. The provisions of the Act giving effect to this purpose, authorize the application of wool deduction certificates in payment of income tax, and provisional tax, and refunds of money collected in excess of those liabilities. These provisions are made with respect to the subject of taxation and are within the power granted by s. 51 (ii).

The policy underlying the Act is not a matter for the Court. The question for the Court is whether each of the Acts is within the power given by the Constitution to the Parliament to make laws with respect to taxation. Subject to the Constitution, this is a plenary power. Each of these Acts stands so distinctly on that power and is so carefully framed to avoid any collision with s. 55 of the Constitution that I think that the challenge to it must fail. The arguments in support of the challenge are reviewed and dealt with in the judgments which precede mine. I do not think it is necessary to add anything to what has been said on those points.

WEBB J. I would allow the demurrer for the reasons given by *Dixon* J., but I desire to add a few words.

I think all three statutes Nos. 29, 30 and 31 deal with payments on account of income tax, including provisional tax, and not with payments in lieu of income tax.

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As every penny obtained under the three statutes is applied to the payment of income tax, or refunded, I think it is natural to conclude that all three statutes provide for payments on account of income tax. I can see reasons why payments of an existing tax should be advanced, but can suggest no reason why a new tax should be imposed only to be applied exclusively to the liquidation of an existing tax liability. It is true that, if so regarded, all three statutes are incidental to the imposition of income tax, and that the provisions of all three could validly have been included in a single statute. But Parliament must be careful to observe the directions and to keep within the limits of the powers given by the Commonwealth Constitution. There was a risk of infringing s. 55 if Acts Nos. 30 and 31 were held to impose taxation, seeing that they contained provisions bearing on the application of the required payments. On the other hand, if they were held to be payments on account of income tax, and not new taxes, there was a risk that they might be held to exceed the limits of the powers to enact incidental legislation, the implied power in s. 51 (ii.) and the express power in s. 51 (xxxix.) of the Commonwealth Constitution. The Chief Justice and *McTiernan* J. have stated reasons why s. 55 is not infringed if the payments are held to be new taxes. But I see no reason why all three statutes should not be held to be within the power to enact incidental legislation. The only difficulty arises in connection with provisional income tax, because the payments are required by Nos. 29, 30 and 31 before the provisional tax is authorized. But it is foreshadowed, and, in my opinion, the payments are incidental to this legislation. The three Acts deal with a matter which is an incident in the execution of an existing power : see the observations of Lord *Haldane* L.C. in giving judgment for the Privy Council in *A.-G. for the Commonwealth* v. *Colonial Sugar Refining Co. Ltd.* (1).

It is likely that any new taxes or payments in advance of existing taxes will tend to counter inflation, but that would not justify the Court in holding that they are not taxation measures. It may be, however, that the payments are required for heavy urgent expenditure of the Commonwealth, which is not unusual in such times. The payments are fixed without regard to the amount of income tax that will ultimately be payable in the individual cases, but any provision for a payment in advance would necessarily be more or less arbitrary. The matter is one of degree and does not go to validity, unless perhaps the proportion taken is unreasonable. That is not the case here.

(1) (1914) A.C. 237, at p. 256 ; 17 C.L.R. 644, at p. 655.

FULLAGAR J. The attack on the legislation in question in this case was based on two alternative grounds. It was said, in the first place, that neither the *Wool Sales Deduction Act* (*No.* 1) (Act No. 30 of 1950) nor the *Wool Sales Deduction Act* (*No.* 2) (Act No. 31 of 1950) was a law with respect to taxation. Neither Act, therefore, could be supported under s. 51 (ii.) of the Constitution, and there was clearly, it was said, no other paragraph of s. 51 which could sustain either Act. It was said, in the second place, as to each Act, that, if it was a law with respect to taxation, it was a law imposing taxation, and was so incorporated with the third Act in question (the *Wool Sales Deduction* (*Administration*) *Act*— No. 29 of 1950) as to involve a contravention of s. 55 of the Constitution. Each of the arguments involves reading the Administration Act (No. 29) with each of the two Deduction Acts (Nos. 30 and 31). This is, of course, necessary for the purpose of ascertaining whether Act No. 30 or Act No. 31 is a law with respect to taxation or a law imposing taxation. But the second argument, if I have followed it correctly, goes further, and, for the purposes of applying s. 55, treats the three Acts as constituting, in effect, two pairs. The first pair consists of Nos. 29 and 30, and the second pair of Nos. 29 and 31, and each pair constitutes a "law" within the meaning of s. 55. Whether this can properly be done or not is a matter which I need not consider, because I have come to the conclusion that Acts Nos. 30 and 31 are not laws imposing taxation, so that no question arises under s. 55.

The argument for the plaintiffs can be stated in the form of a dilemma as follows. The laws in question either are laws imposing taxation or are not laws imposing taxation. If they are *not* laws imposing taxation, they are not laws with respect to taxation, and so are not supported by s. 51 (ii.). (No other paragraph of s. 51 could be seriously suggested as supporting them.) If they *are* laws imposing taxation, they are laws which contravene s. 55. The dilemma is not a logically conclusive dilemma, nor was it, of course, suggested by counsel that it was. For a law may be a law with respect to taxation, and yet not a law imposing taxation : the first horn of the dilemma *may* be true in this case ; it is not necessarily true. But the fact that the argument can be stated in this way suggests that it is convenient to consider first whether Acts Nos. 30 and 31 are laws imposing taxation.

I do not think that Acts Nos. 30 and 31 are laws imposing taxation. I have not thought that the question is by any means an easy question, or a question to which the answer is obvious.

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There is clearly in each case an exaction of money for the use of the Crown. If Acts Nos. 30 and 31 stood alone, it would at least be difficult to avoid the conclusion that each "imposed" a tax. But they do not stand alone. The exaction in each case is subject to the provisions of Act No. 29. I do not consider it necessary to set out in detail, or even in substance, the provisions of Act No. 29. It is sufficient to say that that Act provides machinery for the collection of the amount of "deductions" in certain cases, and for the issue of certificates setting out the amounts paid by or on behalf of the producer in every case. Payment is in every case to be made to the Commissioner of Taxation, to whom is entrusted the general administration of the Act. The producer is to forward his certificate to the Commissioner with his return of the income derived by him in the year of income in which he has sold or exported the relevant wool. The Commissioner in his assessment is then to credit the producer with the amount appearing in the certificate, and the tax payable is reduced accordingly to a smaller amount or to nil. If the amount appearing in the certificate exceeds the total amount of tax payable, the Commissioner is to refund to the producer the difference. There are special provisions for special cases, and in particular a special provision for a discretionary relaxation of the provisions of the Act in cases where its strict application would entail hardship on a producer.

Viewed in the light of the provisions of Act No. 29, the true nature and substance of the exactions made by Acts Nos. 30 and 31 respectively becomes, in my opinion, reasonably clear. They are exactions by way of payment in advance on account of future liability to pay income tax. Whether the money exacted is to be retained by the Crown in whole or in part, or is to be refunded in whole or in part, depends on the amount of income tax subsequently ascertained to be payable. The exactions are conditioned from first to last by the provisions of Act No. 29, which relate them unequivocally to the income tax. Acts Nos. 30 and 31 do not "impose" taxation. The only relevant "imposition" of taxation is effected by the annual Income Tax Acts.

If it were reasonably clear on the face of Acts Nos. 30 and 31 that the obligation to the Crown which they create was an obligation to pay a particular kind of tax which was not an income tax, I think I would agree that the character of the obligation so created would not be altered by the mere fact that another Act provided for an ultimate crediting against income tax of the amounts paid. A land tax would not cease to be a land tax simply because the amount of the tax paid was to be credited against a subsequent

income-tax liability or was to be deducted from assessable income for the purpose of assessment to income tax. Nor would the Act which imposed the liability to land tax cease for any such reason to be an Act imposing taxation. But, in my opinion, Acts Nos. 30 and 31 do not on their face create an obligation to pay a particular kind of tax which is not an income tax. I gravely doubt whether, even if those Acts had stood alone, they would have been rightly regarded as imposing respectively a duty of excise and a duty of customs. The taxes, if taxes they be, are, not only in form but in substance, direct and not indirect. They cannot be effectively " passed on " and, of course, are not intended to be " passed on ". Moreover, in the case of Act No. 30, the liability is not made to depend, either directly or (as in *Matthews* v. *Chicory Marketing Board* (1)) inferentially, on production or on quantity produced or sold. And, although, in the case of Act No. 31, it may be said that it is the act of exportation that brings the liability into existence, it does not follow that the exaction is a true export duty. Being a producer of wool seems to be the really critical factor. If Acts Nos. 30 and 31 had stood alone, I should have thought that there was a very great deal to be said for the view that the tax, if tax it be, was really an income tax—a tax on gross income from a particular source, ascertained in the one case by reference to " sale value " as defined, and in the other case by reference to " appraised value " as defined. The use of artificial standards for the purpose of quantifying " income " is a familiar phenomenon, and does not necessarily deprive a tax on sums so calculated of its character as a tax on income : *British Imperial Oil Co. Ltd.* v. *Commissioner of Taxation* (2). It is not however, necessary, in my opinion, to determine what would have been the proper category to which to refer the exactions in question if Acts Nos. 30 and 31 had stood alone. The point is that the legislature has not by either Act unequivocally characterized the exaction. It appears indeed to have studiously avoided doing so. It does not call it a tax. It has refrained from using any of the familiar formulae for the imposition of taxes. It has, in my opinion, deliberately left the nature of the exaction in each case to be ascertained by reference to Act No. 29. And, when we refer to Act No. 29, we see, I think, that no special or independent character can be ascribed to those exactions as taxes. Acts Nos. 30 and 31 do not (to adopt Mr. *Adam's* phrase) impose taxes " in their own right ". Their provisions are ancillary or incidental

(1) (1938) 60 C.L.R. 263.

(2) (1925) 35 C.L.R. 422.

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to an imposition of taxation already effected by existing legislation and contemplated as continuing from year to year.

If this is, as I think it is, the correct view of the three Acts as a matter of construction, it cannot matter whether the legislature was or was not concerned with securing the discharge of potential future liabilities in respect of income tax, or was or was not concerned rather with the desirability of checking the inflationary influence of abnormally high wool prices. It cannot matter whether the ultimate purpose of the Act was to meet some exigency of the Treasury by collecting income tax in advance, or to "freeze" certain moneys which, if left in circulation, might injuriously affect the financial stability of the country. These things are matters of policy, with which courts cannot concern themselves, and which indeed they have no means of satisfactorily ascertaining. What matters in cases of this kind is what the Act does, not the ultimate purpose which it was intended to serve. What an Act does is to be ascertained by an examination of its terms. In some cases evidence as to the practical effect of an Act may be admissible, but obviously no question of admissibility of evidence arises in this case.

The view which I have expressed means, of course, that, while neither Act No. 30 nor Act No. 31 is a law imposing taxation, all three Acts are laws with respect to taxation, and valid under s. 51 (ii.) of the Constitution. On this view no question arises under s. 55 of the Constitution.

A number of subsidiary points were discussed in the course of argument before us, to which I have not thought it necessary to refer specifically. There is one point, however, which is of some general importance, and, since it was fully argued, it is perhaps desirable to express an opinion on it, although I have not regarded it as having a decisive, or even an important, bearing on the questions actually in issue in the case. It relates to the combined effect of s. 11 of Act No. 29 and s. 4 (3) and (4) of each of the other two Acts. In my opinion, the "fixing" of the proportion of sale value or appraised value, which is contemplated by s. 4 (3) of Acts Nos. 30 and 31 is a specific fixing by direct enactment. Section 4 (3) can only operate for one year after the end of a financial year in which there has been such a specific "fixing". Section 4 (2) itself specifically fixes the "proportion" for the financial year 1950-51 at one-fifth. The Parliament may "fix" the same or some other "proportion" for the financial year 1951-52. If the financial year 1951-52 comes to an end without any such specific "fixing", then the "proportion" for that year is one-fifth. It is

" fixed " at one-fifth by s. 4 (3). But s. 4 (3) does not then " fix " it for the financial year 1952-53. If the financial year 1952-53 comes to an end without any further specific " fixing ", then s. 11 (2) of Act No. 29 applies, and from this time onwards the Acts are inoperative unless and until the Parliament during any particular financial year " fixes " for that financial year a " proportion ". The Parliament can, of course, at any stage alter the whole basis of the scheme, but this is, I think, the scheme as it stands, and the scheme on which s. 11 of Act No. 29 is designed to operate.

In my opinion, the demurrer should be allowed.

KITTO J. This is a demurrer which raises for decision the question whether the *Wool Sales Deduction Act* (*No.* 1) 1950, the *Wool Sales Deduction Act* (*No.* 2) 1950, and the *Wool Sales Deduction* (*Administration*) *Act* 1950 are valid enactments of the Commonwealth Parliament. It will be convenient to refer to the Acts as the No. 1 Act, the No. 2 Act and the Administration Act respectively.

The attack on the validity of the Acts was put in the form of a dilemma. It was said that either the No. 1 Act and the No. 2 Act are laws imposing taxation or they are not; if they are, they are invalid for non-conformity with s. 55 of the Constitution; if they are not, they are invalid as not being within the scope of any power of the Parliament. If the argument so put is well-founded, the Administration Act also must be invalid.

The first question, then, is whether the No. 1 Act and the No. 2 Act are laws imposing taxation. Section 4 of each Act creates an obligation upon a producer of wool to make a payment to the Commonwealth. It is argued that the payment is compulsory and is enforceable by law; that it is made compulsory by a public authority for public purposes, namely, the general purposes of the Commonwealth; that it is not in the nature of a payment for services rendered; and that it therefore exhibits the distinguishing characteristics of a tax, which were mentioned in *Matthews* v. *Chicory Marketing Board* (*Vict.*) (1) and *Parton* v. *Milk Board* (2).

The true nature of the payment which the No. 1 Act and the No. 2 Act require a producer to make cannot be decided without regard to the provisions of the Administration Act, for it is clear on the face of all three Acts that together they form one entire scheme. The fact that the scheme is divided into separate enactments is indicative of nothing but the draftsman's resolve to

(1) (1938) 60 C.L.R. 263, at p. 276.

(2) (1950) 80 C.L.R. 229, at pp. 251, 258, 259, 268.

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minimise, if not to avoid, the risk of infringing s. 55 of the Constitution in case it should be held that taxation is imposed. The scheme must necessarily be considered as a whole, and its main features are these: (i) The amount to be paid by a producer to the Commonwealth is a proportion of the sale value (i.e., the sale price or the fair and reasonable value as determined under the Administration Act) of wool which he sells or otherwise disposes of otherwise than for delivery by him out of Australia, and a proportion of the appraised value of wool which he exports. (ii) The proportion in each case is such proportion as is fixed by the Parliament for the financial year in which the wool is sold or otherwise disposed of, or is exported. (iii) The payment may be made by the producer himself, or on his account by a person who receives an amount in excess of £20 in respect of wool sold by him on the producer's behalf or a person who purchases wool from the producer. (iv) Whichever be the method of payment, a wool-deduction certificate is to be delivered to the producer showing the amount of the payment. (v) The producer is to forward all wool-deduction certificates delivered to him, in respect of wool sold, disposed of or exported in a year of income, to the commissioner with his income-tax return in respect of that year of income. (vi) When the producer's income tax in respect of that year of income has been assessed, the commissioner is to credit the amount of any wool-deduction certificate received from the producer against the "net tax" (if any) payable by the producer in respect of the income of that year of income, and is to pay him the amount of any excess. ("The net tax" means the amount remaining after deducting, from the sum of the income tax assessed in respect of the producer's income of the year of income and the provisional tax (if any) payable in respect of his income of the next succeeding year of income, the provisional tax (if any) paid by him in respect of his income of the first-mentioned year of income.) (vii) Where the proportion for a financial year for the purposes of the No. 1 Act and the No. 2 Act is fixed after the commencement of that financial year and is less than the proportion fixed for the immediately preceding financial year, the commissioner is to refund to the producer so much of the amount previously paid by him or on his account as exceeds the amount which would have been payable if the proportion fixed had been fixed before the commencement of the year; and where the proportion is not fixed before the end of the financial year the commissioner is to refund to the producer the amount paid by him or on his account. (viii) All moneys received by the commissioner are to form part of the

Consolidated Revenue Fund, and there shall be payable out of that Fund (which is appropriated accordingly) such amounts as the commissioner becomes liable to pay in accordance with the Act.

From this brief outline of the scheme it will be seen that the payments which the No. 1 Act and the No. 2 Act require to be made are payments upon statutory terms, and the terms include the very important provisions referred to in (vi) above. Thus the Acts in their combined effect do not operate to deprive a producer permanently of more than he will have to pay in any event for income tax and provisional tax; and in so far as he is temporarily deprived of any amount exceeding his liability for those taxes the excess is refundable to him as soon as that liability is assessed. Of course no part of the precise moneys he pays ever becomes repayable to him. The whole goes into Consolidated Revenue and is expendible by the Commonwealth accordingly; but, to the extent to which the Consolidated Revenue Fund is swollen by a producer's payments in excess of his income tax and provisional tax, the same Fund is appropriated for his reimbursement. The only benefit which the Treasury derives from the Acts is that it gets in an amount equal to the producer's taxes before they would otherwise be payable, and it has the use of any refundable moneys in the interval between their payment and the ascertainment of their amount by the assessment of the taxes. The obverse of this is that the only loss which the Acts cause to the producer is the loss of the use of the moneys he pays between the date when they are paid and the date when his taxes are assessed. The fact that he will suffer that loss cannot be decisive to show that the Acts impose a tax.

These considerations point towards the conclusion that the No. 1 Act and the No. 2 Act, operating in conjunction with the Administration Act, do not impose a tax of their own, but provide a method by which income tax and provisional tax are collected in advance of assessment. It may be conceded that the mere fact that the amounts which the Acts make payable are to be treated as satisfying, not only the producer's liability under the Acts, but also his liability for income tax and provisional tax, would not suffice without more to establish that those amounts are not taxes. Separate obligations to pay money to the Commonwealth may, no doubt, be so created that each of them is a tax, notwithstanding that a payment in respect of one is to operate as *pro tanto* satisfying the other, and even notwithstanding that any excess of one over the other is to be refunded. But it is not

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true to say that there are necessarily two taxes wherever the Parliament imposes upon a person two obligations to pay money to the Commonwealth for its general purposes otherwise than for services rendered. One obligation may be a tax while the other may be an auxiliary obligation created to facilitate collection of the tax. That that is the position in the present case seems to me to be the proper conclusion from the fact that, not only does the right to a refund of any excess arise immediately upon the assessment of a producer's income tax and provisional tax, but the payments to be made under the No. 1 Act and the No. 2 Act are payments of a proportion of a gross sum which in the normal course of events will enter as an ingredient into the calculation of the net sum upon which the income tax and provisional tax will be assessed. This is recognized and emphasized by s. 24 of the Administration Act, which provides that an amount paid or payable under the Act is not allowable as a deduction in ascertaining the taxable income of a person under the *Income Tax Assessment Act*. Thus a producer must bring his whole receipts from wool into his assessable income under the latter Act, and is to be assessed under that Act without regard to the payments he will have made under the *Wool Sales Deduction Acts*, these payments being treated, so far as not refundable, as advance payments of the taxes so assessed. The provisions of the Administration Act relating to crediting against "net tax" appear to me to be of the very essence of the scheme which the three Acts embody, and reveal that scheme as a means by which payments on account of income tax and provisional tax are made collectible at the moment when a producer so deals with his wool that, according to the ordinary run of cases, he becomes entitled to receive, then or later, moneys upon which, subject to deductions, those taxes will be levied.

I am therefore of opinion that the No. 1 Act and the No. 2 Act do not impose taxes and are not laws imposing taxation within the meaning of s. 55 of the Constitution. The plaintiffs contend that on that view the Acts cannot be supported under any provision of the Constitution. They are clearly not laws with respect to borrowing money on the public credit of the Commonwealth within the meaning of s. 51 (iv.) of the Constitution. The plaintiffs' submission is that they cannot be supported under s. 51 (ii.) of the Constitution as having the character of laws with respect to taxation, and that in truth they are laws with respect to a matter wholly outside any power of the Parliament, namely, the temporary lodgment of moneys with the Commonwealth for the purpose of

"freezing" them, in the sense of withdrawing them from circulation as a means of combating the inflationary tendencies of the times. This submission ascribes to the legislature an object or policy as to a matter which is not within any power which the Constitution confers; but, when the considerations upon which the submission is based are examined, they appear to me not to disclose any sufficient reason for denying to the Acts the character which I think should be conceded to them, namely, the character of laws incidental to the imposition of income tax and provisional tax.

In the first place it is pointed out on behalf of the plaintiffs that the amount made payable by a producer is an arbitrarily selected proportion of either the sale value or the appraised value of his wool, having no relation to the amount of tax he will be liable to pay in accordance with the *Income Tax Assessment Act*. It is said that a complete absence of any relation between the amount of a producer's liability under the *Wool Sales Deduction Acts* and the amount of his liability under the *Income Tax Assessment Act* is underlined by s. 12 of the Administration Act. That section gives the commissioner certain discretionary powers, exercisable if he is satisfied that the producer has suffered such a loss or is in such circumstances that the application of the Act would entail hardship upon him; but it confers no such powers if the commissioner is satisfied only that no income tax or provisional tax will be payable by the producer. It was also pointed out that the payment to be made under the Acts is a proportion of a gross amount, whereas income tax and provisional tax are assessed upon a net amount arrived at by making statutory deductions from gross income receipts. Considerations such as these, however, are by no means conclusive to show that the Acts do not in truth provide a means for the collection of income tax and provisional tax in advance of assessment. Any scheme for the collection, before assessment, of taxation as complicated in character as that for which the *Income Tax Assessment Act* provides must necessarily be more or less arbitrary, and must almost certainly result in the payment, by every person to whom it applies, of an amount different from the amount of tax he will ultimately be found liable to pay. Such a scheme must be framed on general lines, and therefore must fail to make adequate allowance for the circumstances of individual cases. The absence of any attempt to make the liability of an individual under the Acts approximate, even roughly, to his probable liability under the *Income Tax Assessment Act* is a natural consequence of the generality of their application and does not justify the conclusion that the Acts are

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not really laws with respect to the collection of income tax and provisional tax.

It was also said that the provisions for crediting payments made under the Acts against income tax and provisional tax do not show that the operation of the Acts is ancillary to taxation, because provisional tax is not yet imposed save in respect of the income of the year ending on 30th June 1951 (see *Income Tax and Social Services Contribution Act* 1950, s. 14), and it may not be imposed in respect of the income of subsequent years during which the Acts now in question may continue in force. The obligation of the Acts is therefore said to be imposed, not in respect of an actual tax liability provided for by the Parliament, but as an independent obligation which attaches whether or not a future tax liability is so provided for. This argument allows only for the case of a producer whose taxable income is constant, for the point of it is that such a producer can never have a liability for income tax as distinguished from provisional tax, against which his payments under the Acts can be credited (assuming that taxation rates do not arise), since the provisional tax he pays in each year will equal the income tax payable in respect of that year. One answer, however, is that the Acts operate in relation to a system established by the *Income Tax Assessment Act* under which annual Acts imposing provisional tax are contemplated. A law is not to be denied the character of a law in aid of the collection of a tax simply because the tax on account of which the collection is to be made has not yet been imposed, when the legislature has already set up the machinery for its imposition and has shown by statute that it contemplates and, indeed, intends to impose it. A second answer is that it cannot be assumed that the income of a wool producer will not increase from year to year, or that income-tax rates will not rise. If either event happens, the provisional tax paid by the producer in a given year will not satisfy his liability for income tax in respect of that year's income, and the payment made by him or on his account under the *Wool Sales Deduction Acts* will be available to meet the deficiency. Income tax is imposed by s. 13 of the *Income Tax and Social Services Contribution Act* 1950 (No. 49), at specified rates for the financial year which commenced on 1st July 1950 and (until superseded) for all financial years thereafter. Thus the collection of moneys under the *Wool Sales Deduction Acts* is incidental, not only to provisional tax not yet imposed, but to income tax already imposed.

A still further contention is that the Parliament may not specifically fix a proportion, for the purposes of the No. 1 Act

and the No. 2 Act, for future financial years, and that the consequence, if it omits to do so, will be that so long as the Acts remain in force moneys will continue to become payable to the Commonwealth under them, only to be refunded pursuant to s. 11 of the Administration Act at the end of each financial year. The assumption upon which the contention is based is that sub-s. (3) of s. 4 of the No. 1 Act and the No. 2 Act is capable of a constantly repeating operation. This cannot be so unless the proportion which that sub-section provisionally fixes for a given year pending a specific fixation by the Parliament for that year is to be regarded in the next financial year, if no proportion is specifically fixed, as "the proportion fixed for the immediately preceding financial year". In my opinion sub-s. (3) has not this effect. The governing words "until a proportion is fixed by the Parliament for a later financial year" presuppose that a proportion for the later financial year will be fixed by the Parliament before the end of that year, and on that supposition they limit the operation of the sub-section to the period anterior to that fixation. If a proportion is fixed, i.e., by specific enactment operating in the later financial year, the operation of the sub-section in respect of that year is exhausted. If the year passes without a proportion being so fixed, the sub-section cannot be taken thereafter to have fixed a proportion for that year, for, according to the natural sense of its terms, it speaks only while it is still possible for a specific fixation to be made in that year.

Sub-section (4) makes it plain that sub-s. (3) is intended to have this limited operation only. It expressly makes that sub-section subject to the provisions of certain provisions of the Administration Act which are to be found in s. 11 of that Act. Section 11 deals in sub-s. (1) with the case where the proportion of the sale value or the appraised value for a financial year for the purposes of the No. 1 Act and the No. 2 Act is fixed after the commencement of that financial year and is less than the proportion fixed for the immediately preceding year; and it deals in sub-s. (2) with the case where the proportion of the sale value (the words "or appraised value" have been omitted, apparently by an error in drafting) for a financial year for the purposes of the No. 1 Act and the No. 2 Act is not fixed before the end of that financial year. In each of these cases the section provides for a refund to a producer in respect of an amount paid by him under the No. 1 Act and the No. 2 Act, and for a payment to a producer in respect of an amount which a wool-deduction certificate shows to have been paid by another person on his account.

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The expression "the proportion . . . fixed for a financial year" in s. 4 (4) of the No. 1 Act and the No. 2 Act, and in s. 11 of the Administration Act, must necessarily refer to a proportion specially fixed by the Parliament for the financial year in question, as distinguished from the proportion provisionally fixed by s. 4 (3) of the No. 1 Act and the No. 2 Act. If the expression "the proportion fixed" has this meaning in these provisions, it must have the same meaning in s. 4 (3) of the No. 1 Act and the No. 2 Act; and, if so, s. 4 (3) cannot have the operation which the argument under consideration assumes.

In the result I am of opinion that the Acts challenged in these proceedings operate to facilitate the collection of taxes to become payable in accordance with the *Income Tax Assessment Act*, and that they therefore have the character of laws with respect to taxation within the meaning of s. 51 (ii.) of the Constitution.

I would accordingly allow the demurrer.

Demurrer allowed with costs. Judgment in action for defendants with costs.

Solicitors for the plaintiffs, *Moule, Hamilton & Derham.*

Solicitor for the defendants, *K. C. Waugh*, Crown Solicitor for the Commonwealth.

E. F. H.