[HIGH COURT OF AUSTRALIA.]

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

AND

FEDERAL COMMISSIONER OF TAXATION RESPONDENT.

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ADELAIDE, *Sept.* 21, 24, 25;

SYDNEY, *Nov.* 5.

Kitto J.

Estate Duty (Cth.)—Company shares—Valuation—Principles to be applied—Company engaged in pastoral pursuits in semi-arid areas—Weight to be attached to results in past years—Allowance for reserves—Estate Duty Assessment Act 1914-1942.

The estate of a deceased person included a small proportion of the issued shares of a company which owned and operated four grazing properties. One property had been and one was about to be converted from sheep to cattle, and the other two were sheep stations. All were in semi-arid areas and subject to special hazards. The company's shares were not quoted on a stock exchange.

Held that in applying ordinary principles of valuation to the valuation of shares, it should be recognised that ordinarily a purchaser is likely to be influenced, as to price, mainly by his opinion concerning the dividends which the shares may reasonably be expected to produce. In the present case, having regard to the nature and characteristics of the company's business, a hypothetical purchaser buying at the date of death of the deceased would have looked for a high assets-backing for the shares, as well as for a high average dividend arrived at after making substantial allowances for reserves.

The selection of suitable test periods, and the adjustments to be made in using the company's accounts of the selected periods in order to estimate the profits which might have been regarded at the date of death as likely to be made by the company in the future, considered.

How far the profits made by the company in years subsequent to the date of death might be taken into account, considered.

APPEAL under *Estate Duty Assessment Act* 1914-1942.

This was an appeal to the High Court against an assessment under the *Estate Duty Assessment Act* 1914-1942 to estate duty on the estate of Mabel Fairfax Braund, who died on 17th October 1946.

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The appeal was lodged by Elder's Trustee and Executor Company Limited, the administrator of the estate of the deceased.

The relevant facts are sufficiently set forth in the judgment hereunder.

E. Phillips K.C. (with him *J. J. Redman*), for the appellant.

K. L. Ward K.C. (with him *A. K. Sangster*), for the respondent.

Cur. adv. vult.

Nov. 5.

Kitto J. delivered the following written judgment :—

This is an appeal under s. 24 of the *Estate Duty Assessment Act* 1914-1942 (Cth.) against an assessment by the Deputy Commissioner of Taxation, Adelaide, of the estate duty payable in respect of the estate of one Mabel Fairfax Braund deceased, who died on 17th October 1946. The appellant company is the administrator of the estate.

The estate included 660 shares of £12 15s. 0d. each, all fully paid, in the capital of the Beltana Pastoral Company Limited, and 2,720 shares of 12s. each, all fully paid, in the capital of Milo Pastoral Company Limited. The appellant made a return under the Act, in which it attributed to the shares in the Beltana Pastoral Company Limited a value of £1 8s. 2d. each, and to the shares in Milo Pastoral Company Limited a value of 7s. 7d. each. The deputy commissioner made an assessment of estate duty on the footing that the value of the former shares was £5 4s. 10d. each and the value of the latter shares was 14s. each.

To this assessment the appellant lodged an objection, contending that the values so adopted by the deputy commissioner were excessive. The objection was disallowed, and at the request of the appellant it was treated as an appeal and forwarded to this Court. At the hearing, it was announced that agreement had been reached in relation to the shares in Milo Pastoral Company Limited, and accordingly the only matter for determination is the value of the shares in the Beltana Pastoral Company Limited (which I shall call the company) as at 17th October 1946.

The company was incorporated in 1898 under the *Companies Act* 1892 (S.A.). It is and at all material times has been engaged in pastoral pursuits on four large properties in the semi-arid parts of South Australia, known respectively as Cordillo Downs, Murnpeowie, Mount Lyndhurst, and Beltana. The company's issued capital at the death of the deceased was divided into 18,975 shares of £12 15s. 0d. each. The shares were all of one class and they were all fully paid. There were some forty-three shareholders, who were largely legatees of the persons who had been members of a partnership which worked the properties before the formation of the company. Each share carried one vote in a general meeting, and all elections and questions were to be decided by a majority in number of the votes. No restriction upon transfer of shares was created by the articles of association, save that the directors were given an option to refuse to register any proposed transfer, a refusal being subject to appeal to a general meeting. The articles contained no other provision which might affect the value of the shares, and the case has not been put as one in which any notional alteration of the memorandum or articles to comply with the requirements of a stock exchange is necessary by reason of s. 16A (1) (a) of the *Estate Duty Assessment Act.* The shares were not quoted in the official list of any stock exchange, but the deputy commissioner did not elect to value them on a liquidation basis under the authority of s. 16A (1) (c), and the Court has not been invited to adopt that statutory basis of valuation.

The problem, then, is to value the deceased's 660 shares as at the date of his death. The test to be applied is the same as that which determines value in the assessment of compensation upon a compulsory purchase. It will be necessary, in the course of applying this test, to consider separately each of the company's four properties, not for the purpose of valuing the properties themselves, as would be the case if they or undivided interests in them had been owned by the deceased, but in order to give due weight to the considerations relating to them which would have affected a hypothetical purchaser buying the shares at the date of the death and attending to all relevant business considerations affecting the shares. Such a purchaser would have been acquiring only the rights of which the shares consisted under the constating instruments of the company and the general law. The right to participate in the proceeds of sale of the properties in a winding-up would of course be included; but ordinarily a purchaser of shares does not buy with a view to a winding-up, and his opinion of the capital value of the company's assets therefore is not what mainly influences him in fixing upon a price. He requires to feel assured that his money will be fully represented by realisable assets in the event of a winding-up, but his main concern is with the dividends which he thinks the shares may reasonably expected to produce, having regard to the nature and the characteristics of the business in which the

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assets are employed. See generally, *McCathie* v. *Federal Commissioner of Taxation* (1); *Commissioner of Succession Duties (S.A.)* v. *Executor Trustee and Agency Co. of South Australia Ltd.* (2). With these considerations in mind, I turn to the facts concerning the four properties.

(1) *Cordillo Downs.* This property (which will be referred to as Cordillo) comprises 3,040 square miles in the extreme north-east corner of South Australia. The nearest point for trucking stock is at a distance of 450 miles. The annual rainfall over sixty-eight years has averaged 6.51 inches, but it has fluctuated between a maximum of sixteen inches and a minimum of .74 of one inch. It was for many years conducted as a sheep station, carrying in 1931 over 20,000 sheep. Like large portions of the interior, the country had been overstocked in the early days. What happened may best be described by quoting from the evidence of Mr. McLennan, the general manager and a practical man of great experience: "The old managers had nothing to go on to say what the country would carry, and, during the years when there was rainfall, that country carried a lot of stock. Then there were big losses and they bred up again. In those days, the price of sheep was very low. Therefore, they had to carry the numbers to meet commitments and expenses. In the early period, most of the tanks, wells and bores were put down, and there were big improvement expenses to be met, and that is largely the reason for carrying the large numbers. As regards the deterioration of that country, and not only that country but a large area of country throughout the semi-arid portion of Australia—this applies in general to most of the area—if you go onto the Darling or the Barrier, or wherever you go, the same remarks apply; all that country was overstocked. They thought that the carrying capacity of the country was considerably higher than it proved to be.

In consequence, the bushes were eaten out and tramped out to a certain extent, especially around the waters. That allowed the country to start to drift, and those drifts further deteriorated the country by blowing away from certain parts and leaving bare scalded country and forming sand-drifts or sand-hills, which, although they grow an abundance of food in a good season or after rain, have no stability. What grows on the sand-drifts or sand-hills goes with the first hot wind or two. It withers up, and the country starts to drift again.

(1) (1944) 69 C.L.R. 1, at pp. 10, 11.

(2) (1947) 74 C.L.R. 358, at pp. 361, 362.

In a drought, once the country starts to drift it only wants a very light wind to start the sand-drifts again, and, in a severe drought, we get anything up to two or three dust storms a week, and they are really dust storms.

In a good season, when the country has a covering of feed, we can get a fairly strong wind without any sand-drift at all. It is when the country gets bare that the sand starts to drift."

From 1932 to 1937 the property was left unstocked after bad seasons had caused heavy losses, and, although about £3,500 a year was spent in maintenance, the improvements on it, and particularly the netting fences, deteriorated. Then sheep were tried again, but it was found that the depredations of dingoes made it hopeless to carry on the property as a sheep station. For that reason, in 1939 the company decided to devote Cordillo to cattle, which are not nearly as seriously affected as sheep by the attacks of dogs. The change was completed by 1942 and the numbers were gradually built up from 2,754 in January 1943 to 5,365 in January 1946. The carrying capacity in the conditions existing in October 1946 was estimated by Mr. McLennan at about three beasts to the square mile, and by Mr. Grunike and Mr. Mortimer at about two to the square mile, but it varies greatly according to seasonal conditions, and in a period of severe drought heavy losses of cattle are inevitable. Mr. McLennan's opinion is that in that type of country there is a cycle of fourteen or fifteen years in which there are about two good seasons, four or five average seasons, five or six dry seasons, and two very dry seasons or " clean-up droughts ". In October 1946 conditions were dry and anxiety was being felt lest the expected summer rains might not come and severe losses might ensue. I do not place much emphasis on this, however, because a person buying shares in the company at that date would be much more concerned with the return he would be likely to get over a long period than with the prospects of the immediate future. What is important is that the enterprise on Cordillo is always attended by serious risks. Any grazing business must face uncertainties of seasonal and market conditions; but in country such as that in which Cordillo is situated the danger of disastrous droughts is ever-present. To cope with this danger is a matter of great difficulty, for, as Mr. McLennan pointed out in his evidence, you can only shift cattle from that country in the months while the weather is cool. You have to make your decision early, and the farther the property is from the rail-head the earlier you must decide whether to move the cattle or take whatever consequences the weather may bring.

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(2) *Murnpeowie.* This is a property of 3,280 square miles, situated eighty miles north-east of Farina, the nearest trucking centre. Its annual rainfall over fifty-eight years has averaged 4.53 inches, fluctuating sharply between twelve inches and one inch. The risks I have described in relation to Cordillo exist here also. Murnpeowie was a sheep station until 1947, carrying over 45,000 sheep in 1932; but, like Cordillo, it deteriorated as sheep country, and in 1944 an exceptional flood wrought havoc to the fences. The result was that the ravages of dogs increased, and heavy losses of sheep occurred in 1945. It would have required great expense to restore the improvements necessary to continue to run sheep successfully. Consequently from 1945 a change to cattle was in contemplation. It was apparent in October 1946 that the change was inevitable and it was made in 1947. The safe carrying capacity for cattle was estimated by Mr. McLennan at two and one-third beasts per square mile, but by Mr. Grunike and Mr. Mortimer at one and two-thirds to the square mile.

(3) *Mount Lyndhurst* has an area of 1,334 square miles and adjoins the southern boundary of Murnpeowie. It is thirty miles from the Lyndhurst siding. Over 73 years its rainfall has averaged 5.97 inches per annum. Since 1880 the maximum has been eleven and a half inches (in 1892) and the minimum has been two inches (in 1940). This property is and always has been used for sheep. Its growth of saltbush and blue bush, which once was considerable, has been much diminished by overstocking and successive droughts; erosion due to overstocking has resulted in the formation of scoured grooves, and these tend to carry off rainwater which otherwise would soak in. The numbers of sheep on the station have varied greatly. In January 1941 they reached a peak figure of 34,896 and they were 33,938 in January 1945. Drought conditions reduced the number to 18,864 in January 1946, but it reverted to 25,336 by January 1947. The carrying capacity is about twenty sheep to the square mile.

(4) *Beltana,* the most southerly of the four stations, is a property of 600 square miles, lying on the eastern side of the north-south railway line, three hundred miles from Adelaide and two miles from a railway siding. The annual rainfall, varying between eighteen and a half inches (in 1872) and two and a quarter inches (in 1902), has averaged eight and a quarter inches over a period of seventy-nine years. It is regarded as reasonably safe country, because, unlike the other properties which depend mainly upon summer rains, it may receive either summer or winter rain. It has a fair amount of edible bush, and includes both soft hill country,

which is quickly affected by drought conditions, and hard drought-resisting country. The property has always been used as a sheep station. It has its pests, but is not much affected by dogs. Drought caused serious losses in 1944, reducing the number of sheep from 14,143 to 3,451. By January 1947 the number had risen only to 5,026. The limit of its carrying capacity is about 14,000 sheep.

It will be seen that in October 1946, the company had one cattle station, one station then running sheep but about to be converted to cattle, and two sheep stations. All were risky concerns. A purchaser of shares in the company would naturally make allowance in his price for the inevitability of losses in some years. Mr. McLennan regarded the company's business as partaking so much of the character of a gamble that it was no better than a poker school. This, I think, overstates the position. The company was being managed by directors of experience and integrity, and its general manager, Mr. McLennan himself, I judge to be a man of much ability and sagacity. The members of the company included a strong financial group. All concerned must have taken the view which Mr. McLennan conceded in the witness box, namely, that there was a reasonable chance of running the business with a reasonable profit. It would be quite wrong to value the shares as if they were lottery tickets. They represented an investment in a going concern which, with all its hazards, was obviously considered, by persons competent to judge, as a sound business proposition. The risks inseparable from it, however, must necessarily affect the rate of return which an investor would expect to receive on his outlay and it is that rate of return which I shall consider first.

Four witnesses gave evidence on this topic. Three were called on behalf of the appellant, namely, Mr. Grunike, who is a qualified accountant and has been the secretary of the company for many years; Mr. Steele, who is a chartered accountant; and Mr. Crace, who is a qualified accountant and is the manager of the investment department of the appellant company. One witness was called on behalf of the commissioner, namely Mr. Adamson, who is a chartered accountant.

Mr. Grunike thought that an investor in the company would expect dividends at an average rate of $12\frac{1}{2}\%$ over a considerable period. Mr. Steele thought that the shareholders' funds employed in the business, which he took at £194,878, should earn $8\frac{1}{4}\%$ on the average, which would mean a dividend of about $6\frac{1}{2}\%$. Mr. Crace considered that most people would expect dividends averaging more than 10%. Mr. Adamson at first thought that it would be reasonable to expect a dividend yield of 12%, and that to provide

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for proper reserves a profit yield of 15% after deducting tax should be allowed for; but he reduced these figures to 10% and $12\frac{1}{2}$% respectively because he considered that the tangible assets-backing was so disproportionately large that an adjustment of yield should be made.

I do not feel impressed by Mr. Steele's view. It seems to me to be obviously too low; it is out of line with the views of all the others; and, while I do not doubt Mr. Steele's sincerity as a witness, I am unable, on a consideration of his evidence as a whole, to feel confidence in the soundness of his approach to the matter. To Mr. Adamson's evidence I feel justified in attaching great weight. Nevertheless I think that he overestimated the significance which the assets-backing position would be likely to have for a prospective investor. In a company such as the Beltana company I think that an investor would expect a very high degree of security for his money as well as expecting a high dividend yield, and would be inclined to make little, if any, allowance in his price for the fact that on book figures the shareholders' funds are much more than adequately represented by assets. On the whole I think a safe view, consistently with the evidence of Mr. Grunike and Mr. Crace and with Mr. Adamson's first thoughts, is that a purchaser of shares would look for an average dividend of 12%. I accept Mr. Adamson's view that allowance should be made for reserves at the rate of 20% of net profits and that a purchaser would therefore arrive at his price on an expectation of a 15% average net profit after deducting tax. This allowance for reserves appears to me not to be excessive, especially as in January 1946 the company had on its books an accumulated loss of £47,053.

The next problem is to find what average profit a prospective purchaser buying in October 1946 would be likely to anticipate that the company would make in the future. This problem presents unusual difficulty. In most cases in which shares have to be valued, it is possible to select a number of past years the results of which may fairly be relied upon to give an indication of the probable results of future years. In the case of the Beltana company, however, there were features which must necessarily have cautioned an investor against placing too much reliance on the figures of past years. He would inevitably leave out of account the years before the depression, because conditions were vastly different. The properties, particularly Cordillo and Murnpeowie, have deteriorated since then, and no fair comparison is possible in regard to market prices, expenses of management, and labour conditions. Moreover, Cordillo and Murnpeowie were then profitable sheep stations, whereas their future was concerned with cattle-raising. From the depression up to 1939, again there were factors which preclude reliance upon the results of those years. Cordillo was being rested, Murnpeowie was still a sheep station, prices were comparatively low, and the generally adverse conditions are reflected by the fact that while the company's reserve account had a credit balance of £85,746 in 1929, its books showed an accumulated loss of £41,842 in 1939. The intervening years included only two years which produced a profit.

From 1940 to 1945 inclusive, profits were made, but they totalled only £39,503 for the six years; and in 1946 (i.e. the year ended 31st January 1946) there was a loss of £18,859. In this period the change to cattle was made on Cordillo and the stocking up of that station was in progress; Murnpeowie was reaching the end of its career as a sheep station; wool was being sold under the appraisement scheme; and prices for both wool and cattle were lower than it was confidently expected in October 1946 that they would become. The company was in fact about to enter a substantially new era.

Mr. Steele and Mr. Crace based their calculations upon the figures relating to the period of fifteen years prior to 1946. Fifteen years, according to their evidence, is the period normally taken into consideration in estimating future profits of a pastoral business. But I must assume that a hypothetical purchaser would know that the factors which operated in relation to the company during the fifteen years preceding 1946 differed in substantial respects from the factors which would affect the company's business after 1946; and in my opinion the difference was so significant that resort to the figures of the fifteen year period would be more likely to mislead than to be of any real assistance in the task of finding the real value of the shares in October 1946. Likewise no useful purpose is to be served by regarding the fact that over a twenty year period, which included the depression years, there were dividends averaging £7,500 per annum.

Mr. Steele's evidence I think I should put wholly on one side. He not only took a period which I regard as affording no useful guide to the future, but, finding that over that period there was a loss, he adopted a procedure which amounted to capitalising the total of the average loss and the average profit which he thought ought to have been made. It is enough to say that his valuation appears to me to have no relation to reality.

Mr. Crace's calculations, apart from being founded on the figures of an unhelpful period, involved too great a degree of arbitrariness. I do not overlook the fact that he is a man of much experience in

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investment problems and he gave his evidence very fairly; but his judgment that the shares were worth only £2 each was not supported by reasoning which commends itself to me.

Mr. Adamson alone approached the problem in a manner which gives me much real assistance. First, he took Cordillo alone, and rejected all figures relating to the years before that station had become reasonably stocked with cattle. Taking the two remaining years, ended 31st January 1945 and 1946, he made adjustments to cattle values at the beginning and end of the period, eliminated expenditure not attributable to cattle raising, and provided for income tax at the company rate of 6s. in the pound. This resulted in a gross annual profit of £13,599, a net annual profit (subject to tax) of £7,099, and a net annual profit, (after deducting tax), of £4,970. Despite the shortness of the period selected, he accepted these two years as giving a conservative indication of the future, as they were years of neither extreme drought nor extreme prosperity, and years in which the herd had not been fully built up. I shall not set out in detail the steps by which Mr. Adamson reached his result. They appear in Exhibit 2 and seem to me to be reasonable and proper steps. Allowing for the fact that they necessarily involve some measure of estimate, I see no reason to criticise them except on one point which will be mentioned later. The net annual profit subject to tax may be tested by the evidence of the two practical cattle men who gave evidence, Mr. McLennan and Mr. Mortimer. The former regarded the carrying capacity of Cordillo as three beasts to the square mile, which equals 9,000 beasts, and he said that he would expect an average net profit of 25s. to 30s. per head. The latter estimated the carrying capacity at two beasts per square mile or 6,000 beasts, and he expected a net profit of 20s. to 25s. per head. A net profit of £7,099 would represent about 23s. 6d. per head on 6,000 beasts.

Next, Mr. Adamson took the other three stations. In October 1946 Murnpeowie was about to become a cattle station and past figures all related to its use as a sheep station. However, he assumed that the change would not have been made unless cattle would be at least as profitable as sheep. He selected as his test period for the three stations the nine years ended 31st January 1945 in which there were neither large profits nor large losses. Earlier years and the year ended 31st January 1946 he left out of account as specially bad years. I think this was reasonable, as losses of cattle on Murnpeowie might well not be as heavy in bad years as losses of sheep, and the profits on sheep were kept down by the operation of the appraisement system in five of the nine years selected. The gross profit for these years was £40,445 for Murnpeowie and £15,245 for Mount Lyndhurst and Beltana, making a total of £55,690. Subtracting income tax at the company rate of 6s. in the pound, and adjusting the values of sheep to allow for the differences between book values and real values, Mr. Adamson reached a net profit after tax of £55,632 for the nine years, or an annual average of £6,181. He then made a further adjustment in respect of annual savings which might be expected to be made in respect of depreciation on improvements and vermin destruction (less tax), and reached an estimated annual maintainable profit, after deducting tax, of £7,292.

This estimate receives some support from the evidence of the practical men. Taking the carrying capacity of Murnpeowie at the figure agreed upon by Mr. Grunike and Mr. Mortimer, viz. one and two-thirds beasts per square mile (Mr. McLennan having said two and one-third), and taking the net profit at 20s. per head, there would be a net profit of £5,466 from Murnpeowie, or £3,826 after deducting tax. If the profit were 30s. per head the net profit after tax would be £5,740. Thus Mount Lyndhurst and Beltana would need to produce only £3,466 or £1,552, as the case may be, in order to justify the estimate of £7,292.

The figures thus reached in respect of all four stations totalled £12,262, of which Mr. Adamson considered 20%, or £4,442, would be carried to reserve, and £9,810 would be available for distribution to shareholders.

I now turn to some of the criticisms of Mr. Adamson's calculations, which were offered by counsel for the appellant.

First, he pointed out that the Beltana station, considered alone, produced a loss over the nine year period on which Mr. Adamson relied, and to that extent he said that Mr. Adamson had capitalised a loss. I think, however, that it was reasonable to include Beltana with Mount Lyndhurst and Murnpeowie for consideration as a combined undertaking. Overall, they produced a substantial profit, and to deduct a loss on Beltana from the profits on the other two stations not only favours the appellant but gives, to me at least, an added feeling of satisfaction in view of the necessity to make allowance for the essentially incalculable risks of the enterprise. On the other hand, the exclusion of the 1946 year from the test period selected, which was the subject of counsel's next criticism, was justified in my view, because there was in that year the second largest loss in the whole history of the company, and, as I have stated already, that loss was made while Murnpeowie was still struggling as a sheep station although its unsuitableness for sheep was already recognised.

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Next, counsel criticised certain adjustments which Mr. Adamson made to the figures derived from the accounts in respect of Cordillo. Mr. Adamson reduced the figures for wages and rations by 10% on account of the fact that in the two years he was considering the station was being developed for cattle and he thought that some non-recurring expenditure would be included in the figures. The 10% was an arbitrary amount, but the actual experience of the ensuing years proved it to be not far out, and I propose to accept this adjustment. Then Mr. Adamson reduced also the amounts charged in the books for maintenance and depreciation of improvements and maintenance of plant, on the grounds that these items would be considerably less for a fully-stocked cattle station, and that a considerable portion of the improvements which had deteriorated were virtually abandoned as unnecessary for cattle. In my opinion the adjustments he made on these items were justified, except in the case of depreciation on improvements. A purchaser of shares would, I think, feel bound to assume that the company would almost certainly continue to treat this item as a revenue charge in relief of capital, and I do not think that a reduction of more than 10% in the amount of it was warranted. In fact the depreciation charged in respect of improvements in the ensuing years was not far short of the amount charged in the relevant two years. The result of making this correction (after allowing for tax) is to increase the average annual profit on Cordillo by £505.

The only other criticism I should mention—and it is one which I was inclined to make myself during the hearing—relates to the adjustments which Mr. Adamson made in the book values of cattle on Cordillo and sheep on the other stations. As regards the cattle on Cordillo, the criticism is that the effect of the adjustments is to treat the profit of the period as including an unrealised profit which was contained in the cattle. Mr. Adamson's explanation, however, appears to me to dispose of this point. He did not aim to bring the values up to the level of selling prices and so to anticipate profits; what he did was to recognise that his test period was one in which the herd was being bred up to its proper carrying capacity, that natural increase was represented in the books by nominal figures adopted (quite rightly) for taxation purposes, and that it was necessary, in order to get a picture which would be fairly comparable with an ordinary trading enterprise, to attribute to the stock a value corresponding with ordinary cost prices. As regards the sheep on the other stations, what Mr. Adamson did was to substitute for the values adopted for taxation purposes the real values of the sheep—or the stations—as ascertained by inquiries from Kidman &

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Co., who owned adjacent properties. These adjustments appear to me, on reflection, to be correct in principle, for the real value of the shares cannot be diminished by reason of the fact that in the years chosen for the purpose of obtaining an indication of future profits the company had kept its books on the basis of artificial opening and closing stock figures which were right enough for taxation purposes but which differed from those which would appear in future accounts if they should be kept on a normal trading basis. The actual values adopted by Mr. Adamson were not challenged.

In the result, I think I should follow the general lines of Mr. Adamson's evidence, and base my valuation of the shares on the footing that Cordillo would be likely to produce an average maintainable profit, after deducting tax, of £4,465, and the other three stations £7,292, making a total of £11,757. Capitalising this sum at 15%, a capital sum of £78,380 or £4 2s. 7d. per share is obtained. (To this Mr. Adamson would add 1s. 5d. per share to represent return from investments in Commonwealth Bonds and shares, but the investments had almost disappeared by 31st January 1946, and I do not think that an additional amount under this head should be included in the calculation.) On the whole it seems to me that a round figure of £4 2s. 6d. per share is as near as one can get to the real value of the shares at the date of death. It may be mentioned as affording some degree of confirmation, that Mr. Grunike, having an intimate acquaintance with the company's affairs, was prepared, without committing himself to detailed calculations, to place a value of something under £4 each on the shares as at October 1946.

I have not so far referred to the very large profits which in fact were made in the years following the date of death. While it is always permissible in these cases to look at events occurring after the date as at which the valuation is to be made, in order to obtain the benefit of any light which those events may throw upon the realities of the situation existing at the death, I was not asked by counsel for the commissioner, and I do not think it would be right, to base any calculation of value in this case on the phenomenally high profits of the years since 1947. At the same time, I have borne in mind, when considering the various steps in Mr. Adamson's approach to the matter, that, while conservatism is justified and indeed required in view of the inevitability of bad years in the company's business, the results of recent years have shown that the degree of optimism which was felt in 1946 was soundly based.

The appellant succeeds in reducing the commissioner's valuation by something over one-quarter of the amount in issue. On the

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whole, I think that the proper order as to costs is that the respondent pay one-quarter of the appellant's costs of the appeal.

The order I make is as follows :—

Appeal allowed. Assessment set aside. Liberty to the respondent to re-assess the appellant on the basis that the 660 *shares of* £12 15*s*. 0*d*. *each held by the deceased at her death in the Beltana Pastoral Company Limited are to be valued at* £2,722 10*s*. 0*d*. *Respondent to pay one-quarter of the appellant's costs of the appeal, such costs including the costs of the shorthand notes. Liberty to apply.*

Solicitors for the appellant : *Finlayson, Phillips, Astley & Hayward.*

Solicitor for the respondent : *D. D. Bell*, Crown Solicitor for the Commonwealth of Australia.

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