paid by the company " in respect of or in relation to " an employment of the appellant by the Crown in the armed forces. I would respectfully agree with this. The payments were not in any real sense rewards for services rendered to the Crown. For the rest, the learned Judges accept the decision of *Fair* J. as correct and express the opinion that periodicity of payment affords no ground for distinguishing between the two cases. *Myers* C.J. and *Northcroft* J. in a joint judgment say :—" Nor do we think that what is referred to in some of the cases as the ' periodicity ' of the payments makes any difference " (1).

The point to be observed about the second *Louisson Case* (2) is that it proceeds wholly on s. 79 (1) (*b*) of the *Land and Income Tax Act* 1923. The question in connection with which *Fair* J. in the earlier case had regarded the " lump sum " character of the payment as relevant was the question whether the case fell within s. 79 (1) (*h*), that is to say, the question whether, apart from any category specifically mentioned in the Act, the payment fell within the ordinary conception of " income ". But in the later case no reference appears to be made to this latter question either in the argument of counsel for the commissioner or in any of the judgments. Counsel seems to have proceeded on the view that, if the receipts in question could not be related to any employment in the relevant sense, they amounted to " mere gifts " and could not be " income " within the meaning of the Act. Some colour may be said to be given to this assumption by such English cases as *Beynon* v. *Thorpe* (3) and *Stedeford* v. *Beloe* (4), but it is to be remembered that the *sole* question in England in such cases has been whether a particular receipt falls within the terms of a particular description in a schedule which deals with profits or gains arising from an office or employment. At any rate no such assumption can be made with respect to the Commonwealth *Income Tax Assessment Act*, and for this reason it appears to me that the second *Louisson Case* (2) should be regarded as supporting the view that this case falls outside the definition of " income from personal exertion " and outside s. 26 (*e*), but otherwise as having no bearing on the present case.

It seems to me that the appellant's receipts from Macdonald, Hamilton & Co. must be regarded as having the character of income. They were regular periodical payments—a matter which has been regarded in the cases as having some importance in determining

(1) (1943) N.Z.L.R., at p. 9.
(2) (1943) N.Z.L.R. 1.
(3) (1928) 14 Tax Cas. 1.
(4) (1932) A.C. 388.

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whether particular receipts possess the character of income or capital in the hands of the recipient, see e.g. *Seymour* v. *Reed* (1) and *Atkinson* v. *Federal Commissioner of Taxation* (2). This consideration, while not unimportant, is not decisive. What is, to my mind, decisive is that the expressed object and the actual effect of the payments made was to make an addition to the earnings, the undoubted income, of the respondent. What the employing firm decided to do, and what it really did, in relation to the respondent and others in the same position, was " to make up the difference between their present rate of wages and the amount they will receive ". What is paid is not salary or remuneration, and it is not paid in respect of or in relation to any employment of the recipient. But it is intended to be, and is in fact, a substitute for—the equivalent *pro tanto* of—the salary or wages which would have been earned and paid if the enlistment had not taken place. As such, it must be income, even though it is paid voluntarily and there is not even a moral obligation to continue making the payments. It acquires the character of that for which it is substituted and that to which it is added. Perhaps the nearest parallel among the many cases cited to us is to be found in *Commissioner of Taxes (Vict.)* v. *Phillips* (3). Phillips was managing director of a company under a contract for a term of years. That company entered into an agreement with another company which necessitated the retirement of Phillips from his position. By way of " compensation " the company agreed to pay Phillips the same amounts at the same times as it would have been obliged to pay him if he had continued in his position until the expiration of his term of employment. The payments made by way of " compensation " were held to partake of the same nature as the payments which would have been made if the employment of Phillips had continued. The payments in that case were made in pursuance of a binding contract, whereas the payments in the present case were voluntary. But the nature of the payments was the same in both cases, and what was said in *Phillips's Case* (3) applies *mutatis mutandis* to this case. In a joint judgment *Dixon* and *Evatt* JJ. said :—" No prima facie reason exists for regarding as instalments of capital annual payments which are taken in place of the contractual rights " (4) given by the original contract. And again :—" In these circumstances they " (i.e. the payments under the substituted

(1) (1927) A.C. 554, at p. 570.
(2) (1951) 84 C.L.R. 298.
(3) (1936) 55 C.L.R. 144.
(4) (1936) 55 C.L.R., at p. 156.

contract) " must . . . be regarded as of the same nature as the payments they replace " (1).

The question asked by the case stated should, in my opinion, be answered : Yes.

Question in the case stated answered : Yes. Costs of the case stated reserved for the Justice disposing of the appeals.

Solicitor for the appellant, *D. D. Bell*, Crown Solicitor for the Commonwealth.

Solicitors for the respondent, *Vincent J. Brady, Donald & Co.*

J. B.

(1) (1936) 55 C.L.R., at p. 157.

Reversed P.C.
88 CLR 413.

[HIGH COURT OF AUSTRALIA.]

THE SQUATTING INVESTMENT COMPANY LIMITED . . . . . } APPELLANT;

AND

FEDERAL COMMISSIONER OF TAXATION RESPONDENT.

H. C. OF A. 1952-1953.

1952.

MELBOURNE, *Oct.* 21, 22, 23, 24.

1953.

SYDNEY, *April* 13.

McTiernan, Williams, Webb, Fullagar and Kitto JJ.

Income Tax (Cth.)—Assessable income—"Income"—Acquisition of wool supplied by grower in course of business—Payment of full proceeds due—Subsequent gratuitous payment to class ascertained by criterion based on amount of wool supplied—"Income from personal exertion"—"Proceeds of . . . business carried on by taxpayer"—"Bounty or subsidy received in or in relation to carrying on of a business"—Income Tax Assessment Act 1936-1949 (*No.* 27 *of* 1936—*No.* 66 *of* 1949) *ss.* 6, 25, 26 (*g*)—*Wool Realization (Distribution of Profits) Act* 1948 (*No.* 87 *of* 1948) *ss.* 7, 28, 29—*Wool Realization Act* 1945-1946 (*No.* 49 *of* 1945—*No.* 77 *of* 1946), *ss.* 9, 10—*National Security (Wool) Regulations* (*S.R.* 1939 *No.* 108—*S.R.* 1943 *No.* 88), *reg.* 30.*

In 1939 a Wool Purchase Arrangement was made between the Governments of Great Britain and the Commonwealth of Australia, whereby the former Government agreed to purchase all wool produced in Australia for the period of the war and one wool year thereafter, except wool required for the purpose of woollen manufacture in Australia. It was a term of this arrangement that the two Governments would divide equally any profit arising from the resale by the Government of the United Kingdom outside the United Kingdom of wool bought pursuant to the arrangement. To give effect to this arrangement, the *National Security (Wool) Regulations* were notified which set up a Central Wool Committee charged with the administration of the regulations and empowered under reg. 30 (2) to deal in its absolute discretion with any moneys received by it under or in consequence of the arrangement. The regulations provided for the sale of all wool by appraisement, and for the passing of the property in every parcel of wool to the Commonwealth when the final appraisement was completed in the manner prescribed by the instructions of the Central Wool Committee. After appraisement the suppliers

* These provisions are described in the judgments of the Court, *post*.

[EDITOR'S NOTE:—On 6th July 1953 the Judicial Committee of the Privy Council granted special leave to appeal from the decision of the High Court.]

of the wool were paid the whole of the compensation money, to which they were legally entitled, resulting from the compulsory acquisition of the wool. From the inception of the arrangement the Central Wool Committee had contemplated that any profit which the Government of the Commonwealth of Australia received from the Government of Great Britain, in respect of wool sold outside the United Kingdom, would be divided between the persons who supplied wool shorn from the living sheep, and that suppliers of skin wool would not participate. In 1945, in order to dispose of large stocks of carry-over wool held by the United Kingdom under the arrangement, the Governments of Great Britain and the Commonwealth of Australia agreed upon a Disposals Plan under which these stocks of wool were to be transferred into the joint ownerhip of the two Governments, and all wool subsequently acquired pursuant to the scheme was to be held in joint ownership. The ultimate balance of profit or loss arising from the venture was to be shared equally between the Governments of Great Britain and the Commonwealth of Australia. This wool was to be held and disposed of by a joint organization to be incorporated as a private company in England and to have an Australian subsidiary. The Australian subsidiary of this company was the Australian Wool Realization Commission, set up by the *Wool Realization Act* 1945. Section 9 of that Act provided that the Wool Realization Commission should be substituted for the Central Wool Committee and should have, and perform, all the duties, and should have, and might exercise, all the powers, authorities and functions of the Central Wool Committee under, *inter alia*, the *National Security* (*Wool*) *Regulations*. The *Wool Realization* (*Distribution of Profits*) *Act* 1948 made provision for the distribution, both interim and final, of the profit accruing to the Commonwealth as a result of the activities of the Australian Wool Realization Commission. Section 7 provides as follows :—" (1) Subject to this Act, an amount equal to each declared amount of profit shall be distributed by the Commission in accordance with this Act. (2) There shall be payable by the Commission, out of each amount to be distributed under this Act, in relation to any participating wool, an amount which bears to the amount to be distributed the same proportion as the appraised value of that wool bears to the total of the appraised values of all participating wool. (3) Subject to this Act, an amount payable under this Act in relation to any participating wool shall be payable to the person who supplied the wool for appraisement. (4) Where two or more persons jointly supplied participating wool for appraisement, those persons shall, for the purpose of determining their claims in relation to that wool in any distribution under this Act, be treated as one person ". Section 28 provided that no action should lie against the Australian Wool Realization Commission or the Commonwealth for the recovery of any money claimed to be payable under the Act ; and s. 29 rendered moneys payable under the Act inalienable prior to actual receipt.

Held, by *McTiernan*, *Williams* and *Webb* JJ. (*Fullagar* and *Kitto* JJ. dissenting), that moneys paid pursuant to the *Wool Realization* (*Distribution of Profits*) *Act* 1948, did not, for the purposes of the *Income Tax Assessment*

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Act 1936-1949, form part of the assessable income of the persons to whom payments were made, on the grounds, per *McTiernan* and *Williams* JJ., the moneys did not constitute income: they were a voluntary gift, and the mere fact that the class of donees was chosen by reference to the criterion laid down in s. 7 of the *Wool Realization (Distribution of Profits) Act* 1948 did not alter the character of the payment or make the distribution part of assessable income; and accordingly the moneys were not caught by the definition of " income from personal exertion " in s. 6 (1) of the Act as being proceeds of a business carried on by a taxpayer; and per *Webb* J., the sum was a personal gift, and as such, excluded income in the ordinary acceptation of that term, and, on the further ground, per *McTiernan, Williams* and *Webb* JJ., the moneys so received were not a " bounty or subsidy received in or in relation to the carrying on of a business " within the meaning of s. 26 (*g*) of the Act because, per *McTiernan* and *Williams* JJ., the sum was not paid for the purpose of assisting persons to carry on a business at the time the sum was paid or to commence a business in the future, and, per *Webb* J., the provision is a compound expression designed to deal with payments received to assist in carrying on a business, and this was not such a payment.

Perpetual Executors Trustees and Agency Co. (W.A.) Ltd. v. *Maslen* (1952) A.C. 215, applied and discussed, and *Ritchie* v. *Trustees Executors and Agency Co. Ltd.* (1951) 84 C.L.R. 553, discussed.

CASE STATED by *Dixon* C.J.

The Squatting Investment Company Limited a company incorporated on 14th April 1882 under the *Companies Acts* (Vict.) owned certain properties namely Thurulgoona Station at Cunnamulla, Queensland; Tondeburine Station at Gulargambone, New South Wales and Quantabone Station at Brewarrina, New South Wales, on all of which properties it carried on, *inter alia*, the activity of wool growing. The wool grown on these properties in the seven seasons from 1939/40 to 1945/46 inclusive was acquired by the Commonwealth pursuant to the *National Security (Wool) Regulations*. By a notice published in the Commonwealth *Gazette* (*Gazette* No. 86 of 24th November 1949) the Minister of State for Commerce and Agriculture declared the amount of £25,000,000 to be available for distribution under the *Wool Realization (Distribution of Profits) Act* 1948, and, pursuant thereto, the sum of £22,851 2s. 8d. was paid to the appellant on 30th November 1949. By notice of assessment dated 13th April 1950, the Commissioner of Taxation of the Commonwealth, included in the assessable income of the appellant for the year ending 31st December 1949 the above-mentioned sum of £22,851.

By notice of objection dated 31st May 1950 the appellant objected to the assessment on the ground that the sum of £22,851 was not

income within the meaning of the *Income Tax Assessment Act* 1936-1949.

The commissioner disallowed the objection, and the appellant, on 31st October 1950, pursuant to s. 187 of the *Income Tax Assessment Act* 1936-1949 requested the respondent to treat the objection as an appeal and to forward it to the High Court of Australia.

At the hearing of the appeal *Dixon* C.J., with the concurrence of the parties and pursuant to s. 198 of the *Income Tax and Social Services Contribution Assessment Act* 1936-1952, stated a case for the opinion of the Full Court of the High Court of Australia.

The following are the relevant portions of the case stated:

5. The *National Security* (*Wool*) *Regulations* were made under the *National Security Act* 1939. The regulations were amended from time to time but not in any respect relevant to this case, save as indicated herein.

6. The regulations were made for the purpose of carrying out an arrangement (hereinafter referred to as "the Wool Purchase Arrangement") made between the United Kingdom Government and the Commonwealth Government at the outbreak of war in 1939 by which the United Kingdom Government purchased all wool produced in Australia for the period of the war and one full wool year thereafter, except wool required for the purpose of woollen manufacture in Australia. The price agreed upon for the wool to be purchased by the United Kingdom Government under the Wool Purchase Arrangement was 10.75 pence (sterling) per pound of greasy wool for the whole clip (13.4375 pence Australian). One of the terms of the Wool Purchase Arrangement was that the United Kingdom Government and the Commonwealth Government would divide equally any profit arising from the resale outside the United Kingdom of wool purchased by the United Kingdom Government under the arrangement.

7. The price per pound of greasy wool agreed to be paid by the United Kingdom Government for the whole of the Australian wool clip (except wool required for the purpose of woollen manufacture in Australia) is hereinafter referred to as "the flat rate purchase price". The flat rate purchase price of 10.75 pence (sterling) agreed upon in 1939 was paid for the wool purchased in the three wool seasons 1939/40, 1940/41 and 1941/42. In 1942 it was agreed between the United Kingdom Government and the Commonwealth Government that the flat rate purchase price should for the 1942/43 season and the following seasons be increased by 15 per cent resulting in a flat rate purchase price of 15.45 pence (Australian) per pound.

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8. Having entered into the Wool Purchase Arrangement with the United Kingdom Government, the Commonwealth, under the regulations, compulsorily acquired all wool produced in Australia, that is to say, not only the wool covered by the Wool Purchase Arrangement which the United Kingdom Government had arranged to purchase, but also the wool required for the purpose of woollen manufacture in Australia, which was excluded from that arrangement. The method of acquisition established by the regulations was to require all wool to be submitted for appraisement under the regulations, which provided that the wool was to vest in the Commonwealth upon appraisement. Thus property in all wool vested in the Commonwealth upon the wool being appraised. The wool excluded from the Wool Purchase Arrangement, i.e. that required for woollen manufacture within Australia, was ascertained after appraisement. Manufacturers who were authorised by the Central Wool Committee to obtain wool were entitled to examine wool after appraisement and to select what wools they required. The wool selected was sold by the Central Wool Committee on behalf of the Commonwealth to the manufacturers and did not form part of the wool purchased by and paid for by the United Kingdom Government. The balance of the wool (being in fact some 85 per cent of the whole) was transferred to the United Kingdom Government.

9. Wool was appraised at the premises of approved wool selling brokers. Appraisements were made in series, that is to say that in a wool selling centre appraisements were held in turn at the premises of each approved wool selling broker. Such a series was called an appraisement series. At the close of each appraisement series the Central Wool Committee notified the United Kingdom Government of the appraised price of wool to be acquired by it pursuant to the Wool Purchase Arrangement and appraised in that series. The United Kingdom Government paid the price of which it was thus notified on the fourteenth day after the close of each appraisement series, and the property in the relevant wool then was considered to have passed to the United Kingdom Government.

10. The United Kingdom Government made the payments referred to in the last preceding paragraph direct to the Central Wool Committee. At the end of each wool season an adjustment was made as between the Central Wool Committee on behalf of the Commonwealth and the United Kingdom Government in order to bring the total of the appraised prices so paid into line with the flat rate purchase price and this was done by the flat rate adjustment referred to in pars. 20 and 21 below. In addition pursuant to the

Wool Purchase Agreement, the United Kingdom Government paid to the Central Wool Committee on behalf of the Commonwealth a " handling charge " of $\frac{3}{4}$d. per pound of wool to cover the expense of handling the wool from the time of appraisement to the point of loading, i.e. from the brokers' stores where appraisement took place to the f.o.b. point and this included storage pending shipment. None of the payments so received by the Central Wool Committee i.e. neither the appraised price nor flat rate adjustment nor handling charges was treated as part of the Consolidated Revenue of the Commonwealth.

11. In addition to the flat rate purchase price received from the United Kingdom Government in respect of wool purchased by the United Kingdom Government pursuant to the Wool Purchase Arrangement, the Central Wool Committee also received from woollen manufacturers in Australia payment for the wool purchased by them from the Commonwealth, i.e. selected by them after appraisement, which did not pass to the United Kingdom Government under the Wool Purchase Arrangement. The price received by the Central Wool Committee for the wool selected by the Australian manufacturers was ascertained in the manner provided by the regulations. The regulations as originally made provided for such sales to be at " appraised prices ". In 1940 the regulations were amended so as to provide that such sales were to be at prices to be fixed by the Central Wool Committee and they were in fact fixed at appraised prices plus a percentage, in 1940/41, $7\frac{1}{2}$ per cent and in 1941/42, 15 per cent. In 1942 the regulations were again amended so as to provide for the price for such wool to be fixed by the Central Wool Committee in accordance with determinations notified to it by the Commonwealth Prices Commissioner, and that system of price fixing continued for the remainder of the duration of the compulsory acquisition by the Commonwealth, i.e. until 30th June 1946. The prices so fixed were again ascertained by reference to the appraised price plus a percentage—in fact 10 per cent.

12. The result of the Commonwealth selling wool to Australian woollen manufacturers at prices ascertained in the above manner was a loss to the Commonwealth at the date when the compulsory acquisition of wool by the Commonwealth ceased of approximately £800,000. This loss arose from the fact that the prices at which the Central Wool Committee on behalf of the Commonwealth sold such wool to manufacturers were less than the prices which the Commonwealth paid to growers in respect of its acquisition of that wool under the regulations, because the percentage addition to the

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appraised price charged to Australian woollen manufacturers was, save in the 1941/42 season, less than the "flat rate adjustment" paid to wool growers in addition to the appraised price—see par. 20 below.

13. However, from the point of view of the supplier of the wool, i.e. the grower who submitted the wool for appraisement, it made no difference whether the wool was purchased from the Commonwealth by the United Kingdom Government under the Wool Purchase Arrangement or purchased from the Commonwealth by an Australian manufacturer. The amount received by the grower and the method of its calculation were the same whatever the ultimate destination of his wool, although the amount received by the Central Wool Committee on behalf of the Commonwealth Government in respect of that wool differed according to whether the Central Wool Committee on behalf of the Commonwealth sold it to an Australian woollen manufacturer or sold it to the United Kingdom Government.

14. The price paid to the grower who submitted wool for appraisement was ascertained by the process of appraisement in accordance with a "Table of Limits" drawn up by the Central Wool Committee pursuant to reg. 17 of the regulations. This method takes into account the nature of wool as a commodity and the need for dividing the flat rate purchase price among the various growers according to the type and quality of the wool submitted for appraisement.

15. The Australian wool clip is of an extremely diversified character and the value of an individual bale of wool cannot be ascertained merely by means of applying the flat rate purchase price to the weight of the wool. The clip contains lots which range from fine merinos to coarse crossbreds and comeback wools, from fleece-wools to such miscellaneous lowgrade wools as locks and crutchings, and there are in addition very great variations in the percentage of impurities i.e. grease, dirt or dust and vegetable matter and in the percentage of moisture. The value of an individual bale of wool depends on a combination of two factors —first the "type" of wool concerned which is determined by degree of fineness, length of staple, degree of fault and other like factors affecting its spinning qualities and ultimate use and, secondly, the "*yield*" i.e. the percentage of wool which will be yielded from the bale after removal of impurities i.e. grease, dirt and vegetable matter. The flat rate purchase price was payable under the Wool Purchase Arrangement for all wool purchased by the United Kingdom Government irrespective of type and yield. Subject

to what is stated in par. 17 of this case the function of the Table of Limits was to provide a basis for the division amongst the wool growers of the price of the whole clip at the flat rate purchase price, so that the suppliers of the fine quality high yield wools would receive an appropriate amount more per pound of wool than the suppliers of low quality and low yield wools. For each type of wool a limit was fixed in the Table of Limits which was the appropriate price for that grade of wool on the basis of a 100 per cent yield where the average price for the whole clip on a greasy basis was the flat rate purchase price. The relative values of the different types of wool and the approximate quantity of each type that might be expected to be produced were known both in the wool industry and to the Central Wool Committee and its advisers who compiled the Table of Limits. The Table of Limits as compiled comprised 928 types and 608 sub-types of wool and it ascribed to each a limit i.e. a price per pound for each such type of wool on the basis of 100 per cent yield. Thus in order to place a price on an individual lot of wool, two processes were required—first it had to be " typed " i.e. classified according to which of the 1,500 odd types it fell into, and, secondly, its " yield " (which was expressed as a percentage) had to be estimated and the resulting price was then that percentage of the " limit " for that type of wool. This process thus gave a price per pound greasy for each lot of wool appraised.

16. It was in this that the process of appraisement consisted—classifying according to type and estimating the yield. Subject to what is stated in par. 17 of this case, each lot of wool submitted for appraisement was thus appraised at a price per pound greasy which represented a price appropriate for that particular lot of wool in a wool season in which the average price of the whole clip was the flat rate purchase price. The Table of Limits was so designed and compiled as to produce the result that the total appraised prices of all wool submitted for appraisement approximated to but did not exceed the price of the whole clip at the flat rate purchase price. This involved the estimation in advance of, amongst other things, the proportions of the various types of wool which were to be produced in the wool year and the yields which might be expected from such wools. The preparation of the Table of Limits was, therefore, a task essential to the administration of the regulations. It is apparent from the nature of the task that it could not be performed with mathematical exactness and that if the total appraised price of the whole clip was exactly the same as the price of the whole clip at the flat rate purchase

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price, it would be nothing more than coincidence. Although exactness of that character could not be attained, substantial accuracy was possible and was attained. There was thus a virtual certainty of a difference between the total appraised price of the wool clip and the total purchase price at the flat rate. What this difference would be depended in part upon the accuracy of the Table of Limits and the estimates upon which it was based and in part upon the accuracy of the appraisements, and it could be ascertained only at the conclusion of each year's appraisements when the whole year's clip had been appraised. At that stage the total of the appraised prices could be ascertained by addition (and as average appraised price calculated) and the total amount represented by the flat rate purchase price could be equally ascertained by application of the flat rate purchase price to the total weight of wool appraised.

17. Pursuant to reg. 17 of the regulations, in the preparation of the Table of Limits, regard was had to the price payable by the United Kingdom Government to the Commonwealth Government under the Wool Purchase Arrangement and the limits were fixed with the object and intention of ensuring that the price per pound payable by the United Kingdom Government for the wool of any wool year, i.e. the flat rate purchase price, would not be exceeded by the average price per pound of the total payments made pursuant to the appraisement of that wool. In fact in all seasons the average appraised price per pound was lower than the flat rate purchase price. Since the compilation of the Table of Limits involved the making of the estimates referred to in par. 16, it was possible that it would fail to achieve the desired object. It was further possible that errors might occur in the process of appraisement, either in the classification by type or in estimating the yield, which could result in a failure to achieve the object aimed at by the Table of Limits and produce an average appraised price either above or below the flat rate purchase price. The nature of the process of appraisement made it impossible to predict with certainty the exact difference between the average appraised price and the flat rate purchase price and moreover the possibilities referred to above made it impossible to predict with certainty whether the average appraised price would be above or below the flat rate purchase price.

18. The Commonwealth, in the administration of the regulations, paid to the wool growers as a whole an amount equal to the value of the whole wool clip at the flat rate purchase price and did so by paying to each grower the equivalent in respect of his wool of

the flat rate purchase price—whether the Central Wool Committee on behalf of the Commonwealth had sold his particular wool to the United Kingdom Government or to an Australian woollen manufacturer. The Commonwealth Government acquired the wool upon appraisement and the Central Wool Committee made payments to the growers in respect of wool so appraised fourteen days after appraisement. Accordingly it was impossible to tell at the time of such payments being made, what the difference between the average appraised price and the flat rate purchase price would be. The Central Wool Committee, therefore, followed the practice of making an initial payment fourteen days after appraisement and then after the conclusion of each wool year when all the figures were available making an adjustment.

19. The possibility that the total appraised price of the whole wool clip would be greater than the value of the clip at the flat rate purchase price made it undesirable to pay over the whole of the appraised price of each lot of wool within the fourteen days after appraisement. To guard against this possibility, the Central Wool Committee made a deduction from the appraised price paid to each grower upon appraisement. This deduction was called "retention money" and in the first wool year of the operation of the regulations (i.e. the 1939/40 wool season) was 10 per cent of the appraised price and in the subsequent years up to, but not including 1945/46, was 5 per cent. This percentage was retained by the Central Wool Committee until the end of the wool season in which the wool was appraised in order that an adjustment might be made if the average appraised price proved to be greater than the flat rate purchase price.

20. At the end of each wool season the Central Wool Committee was able to ascertain the relationship between the total appraised price of the whole clip and the price of the whole clip at the flat rate purchase price. When the difference between these two amounts was ascertained, it was possible to calculate as a percentage the addition which should be made to, or the subtraction which should be made from, the total appraised price in order to equate it to the price of the whole clip at the flat rate purchase price. The price of each lot of wool could similarly be brought into proper relationship with the flat rate purchase price by adding that percentage to, or subtracting it from the appraised price of such lot. That percentage was known as the "flat rate adjustment". In fact in each wool season in which the Commonwealth compulsorily acquired the whole wool clip the total appraised price of the whole clip proved to be less than the price of the whole clip at the

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flat rate purchase price and the flat rate adjustment was, therefore, always made by an addition to the appraised price. It was accordingly not necessary to resort to the retention money in order to find the necessary fund for making the adjustment. On the contrary, in order to give to each wool grower the equivalent in respect of his wool of the flat rate purchase price, it was necessary to pay to him the retention money and also of further sum being the flat rate adjustment in respect of the appraised price of his wool. Retention money and flat rate adjustment were paid to all growers whether their wool was sold by the Central Wool Committee on behalf of the Commonwealth to the United Kingdom Government under the Wool Purchase Arrangement or to Australian woollen manufacturers.

21. One of the terms of the Wool Purchase Arrangement was that at the conclusion of each wool year an adjustment was to be made as between the United Kingdom Government and the Commonwealth by which the United Kingdom Government would pay to the Commonwealth or the Commonwealth refund to the United Kingdom Government as the case might be, the flat rate adjustment in respect of the wool purchased by the United Kingdom Government from the Commonwealth. The amount so calculated was in the events which happened paid by the United Kingdom Government to the Central Wool Committee on behalf of the Commonwealth in the month of July immediately following the conclusion of each wool year and was used by it towards making the flat rate adjustment payment to the wool growers.

22. Because the amount so received from the United Kingdom was calculated only on the appraised price of the wool purchased by it from the Commonwealth, it was not sufficient to enable the Central Wool Committee to make the flat rate adjustment payment in respect of the whole clip. The amount necessary to make the full payment of the flat rate adjustment to the wool growers in respect of wool purchased from the Commonwealth Government by Australian woollen manufacturers was found by the Central Wool Committee from other funds at its disposal, i.e. funds other than those received from the United Kingdom Government as indicated above. These other funds were derived from the percentage addition to the appraised price of wool sold to Australian woollen manufacturers referred to in par. 11 above, and from the operations of the Central Wool Committee pursuant to the *National Security* (*Wool Tops*) *Regulations*. The *National Security* (*Price of Wool for Manufacture for Export*) *Regulations* and from the surplus amount not expended out of the ¾d. per pound handling

charge (which surplus prior to the agreement as to price made in 1942 was retained by the Commonwealth).

23. Accordingly, at the conclusion of each wool season the Central Wool Committee paid to each wool grower the retention money which had been withheld in respect of his wool and also the flat rate adjustment in respect of his wool. The amounts of the flat rate adjustment in each year of the Wool Purchase Arrangement, expressed as a percentage of the appraised price, were as follows :

Wool Season :	1939/40	$8\frac{1}{2}\%$
	1940/41	11%
	1941/42	$9\frac{1}{2}\%$
	1942/43	11%
	1943/44	$11\frac{1}{4}\%$
	1944/45	$12\frac{1}{2}\%$
	1945/46	13.888%

24. In the wool seasons 1939/40-1944/45 inclusive, the exact difference between the average appraised price and the flat rate purchase price was in no case exactly the percentage referred to in par. 23 above but the amount paid to the wool growers by the Central Wool Committee was calculated by reference to those percentages, the amount represented by the difference between those percentages (which were taken to the nearest one quarter of one per cent) and the exact figure being either made up by the Central Wool Committee from other funds at its disposal or carried forward in its books to a subsequent year. The flat rate adjustment was paid to all wool growers irrespective of whether their wool had been purchased from the Central Wool Committee on behalf of the Commonwealth by the United Kingdom Government, so that the Central Wool Committee on behalf of the Commonwealth Government received for it the equivalent of the flat rate purchase price, or had been purchased from the Central Wool Committee on behalf of the Commonwealth by Australian woollen manufacturers, so that the Central Wool Committee on behalf of the Commonwealth Government received for it from the woollen manufacturers the amounts referred to in par. 11 above.

25. In practice, therefore, each wool grower received for his wool its appraised price (which, save in the last year, was paid in two instalments, the second instalment being the retention money) and a further payment expressed as a percentage of the appraised price—the flat rate adjustment.

26. The system of deducting retention money and making the flat rate adjustment, as described in the preceding paragraphs,

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was applied to " participating wool ". For the purposes of the administration of the regulations there was a basic distinction which separated all wool into two categories. This is the distinction between wool obtained from the shearing of live sheep, i.e. " shorn wool ", and wool obtained from the skins of slaughtered sheep, i.e. " skin wool ". The Wool Purchase Arrangement provided, as stated in par. 6 above, that any profit to arise from the resale of wool outside the United Kingdom was to be shared equally between the United Kingdom Government and the Commonwealth Government. The regulations provided by reg. 30 (2) that " any monies which may be received by the Central Wool Committee from the Government of Great Britain under and in consequence of such arrangement (i.e. the Wool Purchase Arrangement) over and above the purchase price payable by such Government thereunder for the wool, and any surplus which may arise, shall be dealt with as the Central Wool Committee shall in its absolute discretion determine ". From the inception of the Wool Purchase Arrangement the Central Wool Committee contemplated that the Commonwealth Government's share of any profit to arise should, if there were any profit, be paid to the wool growers, i.e. the suppliers of shorn wool and not to the suppliers of skin wool. Shorn wool was therefore classified as " participating wool ", i.e. wool the suppliers of which were, according to the intention of the Central Wool Committee, entitled to participate in the Commonwealth Government's share of any profit to arise under the Wool Purchase Arrangement, and the suppliers of which also participated in the flat rate adjustment which as appears above took the form in each year of a further payment. The suppliers of skin wool received the appraised price without deduction of retention money and did not participate in the flat rate adjustment and were not intended by the Central Wool Committee to participate in any profit. Skin wool was, therefore, listed as " non-participating ". Accordingly, all wool submitted for appraisement was, in addition to being appraised according to type and yield under the Table of Limits, listed in the broker's appraisement catalogues as " participating " or " non-participating ".

27. Under the regulations all wool was required to be submitted for appraisement through wool selling brokers. The brokers received the wool into their stores and there arranged for its appraisement. They prepared " appraisement catalogues " which listed the various lots of wool (being lots of one bale or more) submitted for appraisement. The wool was displayed on the appraisement floors for inspection by the appraisers who entered the type and yield of

each lot in the appropriate column in the appraisement catalogue. The appraisement catalogue recorded the name and usual brand mark of the person on whose behalf the wool was submitted for appraisement and in addition, if such was the case, listed the wool as being participating wool.

The wool selling brokers also received on behalf of the persons submitting the wool for appraisement, all payments made by the Central Wool Committee. The Central Wool Committee made the initial payment for participating wool, i.e. appraised price less retention money, to the wool selling broker within fourteen days of the appraisement and paid the retention money and the flat rate adjustment to the wool selling broker before the end of the July immediately following the end of the wool season in respect of which the payments were made.

28. The wool purchased by the United Kingdom Government under the Wool Purchase Arrangement was handled on its behalf by the Central Wool Committee and was dealt with in one of three ways—it was either shipped to the United Kingdom or shipped to other countries after having been sold by or on behalf of the United Kingdom Government to purchasers there, held in Australia for storage or treatment (i.e. scouring, carbonising or reclassing) on behalf of the United Kingdom Government or shipped to the United States of America for storage there pursuant to arrangements made between the United Kingdom and United States Governments. The wool sent to countries other than the United Kingdom was sold either by the United Kingdom Government or by the Central Wool Committee on its behalf at prices (known as " export issue prices ") determined by the United Kingdom Government. The accounts in respect of such sales were kept in England by the United Kingdom Government and it was from these accounts that it was ascertained whether any profit was being made on sales of wool outside the United Kingdom. The account in which these amouts were recorded was known as the " Distributable Profits Account ". However, while large quantities of the wool purchased by the United Kingdom Government remained in store in Australia and elsewhere, it was impossible to determine whether there would ultimately be any such profit or not, and no distribution of profits from this account was in fact made.

29. During the wool year 1945/46 the method of acquisition of Australian wool by the Central Wool Committee up to 15th November, 1945, and after that date, by the Australian Wool Realization Commission (to which reference is made hereafter), was the same as that previously used by the Central Wool Committee and the

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method of payment was also the same save that during that wool season no deduction was made from the appraised price in respect of retention money. The sale of wool by appraisement in accordance with the regulations came to an end on 30th June 1946, by virtue of the Wool Realization Regulations (Statutory Rules 1946 No. 129) made under the *Wool Realization Act* 1945.

30. As a result of negotiations conducted in the year 1945, an agreement was reached between the United Kingdom Government, the Commonwealth Government and the Governments of South Africa and New Zealand upon a plan for the winding up of the wartime wool purchase arrangements and the disposal of the large stocks of wool held by the United Kingdom Government without unduly disturbing the marketing or depressing the price of future wool clips. The agreement so reached was called the " Disposals Plan " and is set out in the schedule to the *Wool Realization Act* 1945-1946. Pursuant to that agreement, the United Kingdom Government arranged for the formation of United Kingdom—Dominion Wool Disposals Limited, a company incorporated in the United Kingdom (commonly called the " Joint Organization ") and each of the other Governments set up a subsidiary of the Joint Organization. The Australian subsidiary is the Australian Wool Realization Commission set up by the *Wool Realization Act* 1945.

31. The Joint Organization was established in 1945 and commenced operations as from 1st August, 1945. The task of the Joint Organization was the disposal of the accumulated surplus of Dominion wool purchased during the war by the United Kingdom Government. The stocks held by the United Kingdom Government on 1st August, 1945, and taken over by the Joint Organization on that date amounted to 10,407,000 bales of which 6,796,000 bales were Australian wool purchased from the Commonwealth by the United Kingdom Government under the Wool Purchase Arrangement. It was agreed that the three Dominion Governments concerned should each acquire a half interest in the stocks of wool from their respective Dominions held by the United Kingdom Government and that the value of such stocks for the purposes of the Disposals Plan, be taken as the original cost of the wool as appearing in the United Kingdom Government books, less the accumulated profits from sales of wool outside the United Kingdom, i.e. the cost of the wool held in store less the balances standing in the Distributable Profits Accounts. Each Dominion Government was to acquire on this basis, a half interest in the stocks of the

wool purchased from it and held by the United Kingdom Government on 1st August, 1945, and was to receive, after due allowance for operating expenses, half the net proceeds of sale of that wool upon its being sold by the Joint Organization. Payment for this half interest was to be made by each Dominion Government to the United Kingdom Government within four years and each Dominion Government's half share in the proceeds of sale by the Joint Organization was to be applied in payment of the amount so payable.

32. The Disposals Plan provided that the Wool Purchase Arrangement should terminate on 31st July, 1945, but further provided (in Pt. I, par. 9 thereof) that for the wool year 1945/46, the first year of the Disposals Plan (known as the interim period and terminating on 31st July, 1946), the method of purchase of wool—viz., appraisement and acquisition—which had operated during the preceding six years, should be continued and (in Pt. III, par. 6) that the United Kingdom Government would be responsible for financing the purchase of all the wool so acquired but that the management and sale of the 1945/46 wool clip should be entrusted to the Joint Organization and that such wool should be dealt with by the Joint Organization in the same manner as the stocks taken over by it as at 1st August, 1945. In Australia the acquisition of the 1945/46 wool clip was administered by the Central Wool Committee until 15th November, 1945, upon which date the Australian Wool Realization Commission took over. The system of acquisition upon appraisement continued until 30th June, 1946 and in the following wool season the sale of wool by auction was resumed—the first of such auctions being held in September 1946. Thereafter all wool, both from new clips and stocks held by the Joint Organization, was disposed of by auction or private sale. Certain small quantities were bought in by the Joint Organization at reserve prices, when other bids at auction did not reach the reserves established pursuant to the Disposals Plan.

33. The stocks of Australian wool taken over by the Joint Organization on 1st August, 1945, consisted of 6,796,000 bales, the original cost of which was £stg. 106,796,829, and at that date the amount standing to the credit of the Distributable Profits Account was £stg. 24,019,740, so that the net cost to the Joint Organization of the opening stock of Australian wool was £stg. 82,777,089, and this figure was used in the first accounts prepared by the Joint Organization as at 30th June, 1947. The figure to the credit of the Distributable Profits Account was subsequently found to have been overstated because certain adjustments (the

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nature of which is not now material) had not been made—the correct figure for the amount to the credit of the Distributable Profits Account as at 31st July, 1945, was subsequently ascertained at £stg. 19,489,233, and the later years' accounts are based on that figure.

34. During the interim period (in which the whole of the 1945/46 clip was purchased) the Joint Organization acquired 2,866,000 bales of Australian wool at a cost of £stg. 46,547,554. In addition to the purchase of the 1945/46 clip, the Joint Organization also bought in during the eleven months ending 30th June, 1947 (i.e. the first year of auction) 64,000 bales of Australian wool at a cost of £stg. 763,248. In the period from the take over on 1st August, 1945, to the end of its first accounting period, 30th June, 1947, the Joint Organization sold 6,529,000 bales of Australian wool for the sum of £stg. 138,273,685. At the end of that accounting period (30th June, 1947), the Joint Organization held a stock of 3,076,000 bales of Australian wool, the original cost of which was £stg. 38,942,444, but which stood in the balance sheet of the Joint Organization at 30th June 1947 at £stg. 19,660,527. At 30th June 1947, the net profit of the Joint Organization for the period 1st August, 1945-30th June, 1947, in respect of Australian wool was £stg. 21,349,884.

35. The operation of the Joint Organization in respect of Australian wool in subsequent years may be summarized as follows :

Year ended 30th June, 1948—			£
Stock at 30th June 1947 . .	3,076,000 bales,	book value	38,942,444
Purchase during year . .	22,298 ,,	cost	231,347
Sales during year	825,559 ,,	price	31,092,880

Profit realized during year—£17,272,237.

Year ended 30th June, 1949—			
Stock at 30th June, 1948	2,271,000 bales,	book value	26,846,728
Purchase during year . .	3,335 ,,	cost	50,567
Sales during year	1,008,000 ,,	price	36,481,185

Profit realized during year—£22,377,505.

Year ended 30th June, 1950—			
Stock at 30th June, 1949	1,254,000 bales,	book value	14,430,678
Purchase during year . .	146 ,,	cost	2,595
Sales during year	857,000 ,,	price	40,360,645

Profit realized during year—£29,702,248.

Stock at 30th June, 1950—379,100 bales, book value £4,452,783

36. The position with respect to profits realized by the Joint Organization in respect of Australian wool up to 30th June, 1950, may be summarized as follows :—

Profit realized—

1st August, 1945-30th June, 1947	£stg.21,349,884
1st July, 1947-30th June, 1948	17,272,237
1st July, 1948-30th June, 1949	22,377,505
1st July, 1949-30th June, 1950	29,702,248
	£stg. 90,701,874

In effect the total profit £stg. 90,701,874 includes an appropriate proportion of the adjusted sum of £stg. 19,489,233 which was on 31st July, 1945 standing to the credit of the Distributable Profits Account. In the year ended 30th June, 1950, payments on account of profit were made to each of the governments interested in the Joint Organization and the amount paid to the Commonwealth Government was £stg. 20,000,000. At 30th June, 1950 the amount standing to the credit of the Commonwealth Government in the books of the Joint Organization as its share of the surplus was £stg. 32,869,163. These profits reflected the very substantial increases in world prices for wool (as well as other commodities) after the resumption of the sale of wool by auction in September, 1946. The extent of these increases in world wool prices is indicated by the following table of prices based upon the base figure of 100 being the average over the period 1934/38 :—

	Merino wool (*Average* 64*s.*)	*Crossbred wool* (*Average* 46*s.*)
Base figure (average 1934/38)	100	100
June 1946	144	175
June 1947	213	190
June 1948	413	225
June 1949	359	240
June 1950	546	503

37. The trading operations of the Joint Organization thus consisted of the disposal or realization by sale of the stocks of wool taken over by it on 1st August, 1945, and additional wool purchased by it. The capital with which it acquired those stocks was provided or deemed to have been provided, so far as Australian wool was concerned, equally by the United Kingdom Government and the Commonwealth Government. This amount was provided first by applying to the original cost of the wool the balance standing to the credit of the Distributable Profits Account as at 31st July,

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1945 (which balance was under the Wool Purchase Arrangement to be shared equally between the United Kingdom Government and the Commonwealth Government) and the remainder of the cost was to be provided equally by the two Governments. The United Kingdom Government's share was provided by the transfer of the wool itself and the Commonwealth Government's share was to be paid by the Commonwealth Government to the United Kingdom Government over four years but was to be provided in the first place out of the Commonwealth Government's share of the proceeds of the sale of the wool as it was disposed of by the Joint Organization. In fact the Joint Organization's trading operations were so successful that the Commonwealth Government's share of the remainder of the capital was fully paid out of such proceeds by 30th June 1947 and the sale over the period 1st August 1945-30th June, 1950, of the Joint Organization's stock of wool, resulted after the repayment of the capital cost of its stocks of wool, in the profit of £stg. 90,701,874 referred to in par. 35 above, with a prospect of further profits when the remainder of the stock is sold.

38. The *Wool Realization (Distribution of Profits) Act* 1948 made provision for the distribution among the persons who supplied participating wool for appraisement, of a fund called the " Wool Disposals Profit " which includes the Commonwealth Government's share in the ultimate balance of profit arising from the transactions of the Joint Organization. By s. 6 (1) of the Act it is provided that the Minister may, if he is satisfied that the financial position under the Disposals Plan justifies his so doing, by notice published in the *Gazette*, declare an amount to be available for distribution under the Act out of the expected net profit. By a notice published in the Commonwealth *Gazette* (*Gazette* No. 86 of 24th November, 1949) and bearing date 24th November, 1949, the Minister of State for Commerce and Agriculture declared the amount of £A.25,000,000 to be available for distribution under the *Wool Realization (Distribution of Profits) Act* 1945. Annexed hereto as Appendix E is a copy of the said declaration.

39. Pursuant to the regulations, the appellant submitted for appraisement all wool grown on its properties in the wool seasons 1939/40 to 1945/46 inclusive and all such wool was duly delivered to the Commonwealth by Goldsbrough Mort & Co. Ltd., the wool selling broker through whom the same was submitted for appraisement. All such wool was duly appraised and was listed as " participating wool " in the appraisement catalogue used by the appraisers for the purpose of such appraisement.

40. The appraised price of the wool submitted for appraisement by the appellant in each of the wool seasons 1939/40 to 1945/46 was as set out below :—

"*Thurulgoona Station*", *Cunnamulla, Queensland*—

	£	s.	d.
1939/40	29,536	3	4
1940/41	28,606	9	2
1941/42	18,022	3	1
1942/43	26,166	14	5
1943/44	29,960	18	8
1944/45	21,148	6	1
1945/46	18,749	9	9
	£172,190	4	6

"*Tondeburine Station*", *Gulargambone, N.S.W.*—

	£	s.	d.
1939/40	Nil		
1940/41	397	2	3
1941/42	10,068	14	0
1942/43	11,783	2	7
1943/44	14,523	7	0
1944/45	9,722	0	10
1945/46	12,479	1	7
	£58,973	8	3

"*Quantabone Station*", *Brewarrina, N.S.W.*—

	£	s.	d.
1939/40	21,768	8	7
1940/41	24,180	18	6
1941/42	17,225	6	8
1942/43	47,896	9	5
1943/44	4,350	12	5
1944/45	11,989	15	11
1945/46	8,880	5	1
	£136,291	16	7
TOTAL	£367,455	9	4

The appraised prices as set out above were duly received by the appellant and in each wool season, save the 1945/46 season, were

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received in two instalments viz. appraised price less retention money within fourteen days of appraisement, and retention money in the month of July immediately following the conclusion of the wool season. The figures set out above include the amount of retention money.

41. In addition to the appraised price as set out in par. 40, the appellant received from the Central Wool Committee and the Wool Realization Commission a further amount in respect of each wool season, being the amount of flat rate adjustment. The amounts received in respect of the flat rate adjustment were received in the month of July immediately following the conclusion of each wool season and were as follows :—

"*Thurulgoona Station*", *aforesaid*—	£	s.	d.
1939/40	2,510	11	6
1940/41	3,146	14	2
1941/42	1,712	2	1
1942/43	2,878	6	10
1943/44	3,370	12	1
1944/45	2,643	10	9
1945/46	2,606	3	7
	£18,868	1	0

"*Tondeburine Station*", *aforesaid*—	£	s.	d.
1939/40	Nil		
1940/41	43	13	8
1941/42	956	10	7
1942/43	1,296	2	11
1943/44	1,633	17	6
1944/45	1,215	5	1
1945/46	1,734	11	10
	£6,880	1	7

"*Quantabone Station*", *aforesaid*—	£	s.	d.
1939/40	1,850	3	2
1940/41	2,659	18	0
1941/42	1,636	8	2
1942/43	5,268	12	4
1943/44	489	8	11
1944/45	1,498	14	6
1945/46	1,234	7	1
	£7,787	9	0

47. The parties desire that the questions raised by the said appeal should be determined by the Full Court of the High Court and I accordingly state the following questions for the opinion of the Full Court: (i) Is the sum of £22,851 referred to in par. 42 above assessable income of the appellant within the meaning of the *Income Tax Assessment Act* 1936-1949? (ii) If so, was the said amount part of its assessable income in the year ended 31st December, 1949, or in some other and what year or years?

D. I. Menzies, Q.C. (with him *K. A. Aickin*), for the appellant. There are three possibilities as to the sum of £22,851 received by the appellant: 1. that it is part of the proceeds of wool which was acquired; 2. that it is a gift connected or associated with the growing of wool, so as to be taxable; 3. that it is a gift made to a class of persons designated by the Act, and without reference to any income earning activity. Section 8 of the *Wool Realization (Distribution of Profits) Act* 1948 is one of a number of provisions which provide for the payment to be made other than to the supplier of the wool. Nor is it the case of some right which the supplier had, devolving upon some other person. Section 7 (3) provides that in certain cases the supplier shall get the money, but in other cases somebody other than the supplier shall get the money.

[WEBB J. The section is selective, but not on the basis of rights.]

It is selective because it selects the object of the bounty. Section 10 does no more than give the commission, in the circumstances to which it relates, a very wide discretion to pay no money at all, or to pay it to whom it chooses. Section 11 is similar to s. 9 in that it does not say that the grant from the proceeds shall be deemed to be part of the estate of the deceased person, but it merely provides that the person to whom the money shall be paid is the personal representative. It then provides that, having received it he shall hold it in a certain way. Section 20 assumes that there is a payment to be made, but that there is doubt as to the identity of the payee. It does not provide for a case where there is doubt as to whether any payment should be made at all. Under the *National Security (Wool) Regulations*, regs. 14, 15 and 30, it is clear that if there was any profit distributed under reg. 30, it would be a profit upon which suppliers of wool had no claim. Any moneys that remained in the hands of the Central Wool Committee by virtue of the operation of the regulations belonged to the Commonwealth. Any such profits as there were, were under the

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original *National Security* (*Wool*) *Regulations* to be dealt with as the Central Wool Committee should in its absolute discretion decide, and no person had an enforceable claim to any part of those moneys. That discretion was never exercised. The substitution in 1945 of the Wool Disposals Plan for the Wool Purchase Arrangement was the adoption of an altogether new plan, and not merely an alternative way of carrying out that arrangement. Any profit which accrued to the Commonwealth under the Wool Disposals Plan belonged to the Commonwealth and no commitment of any kind was made with respect to the distribution of that profit. Until the passing of the *Wool Realization* (*Distribution of Profits*) *Act* 1948 there was nobody entitled to share in the Commonwealth Government's profit, and, upon the passing of the Act, the only persons who could share in the distribution of that profit were those designated by the Act. The criterion laid down for determining those who would share in that profit is the supply of shorn wool, and not merely to have been a wool grower. Of course it was unlikely that the Central Wool Committee would exercise its discretion except in favour of wool growers.

[McTIERNAN J. If a son expects to get a legacy from his father that does not make it taxable.]

Perpetual Executors Trustees and Agency Co. (*W.A.*) *Ltd.* v. *Maslen* (1) is authority for the proposition that the payment of money under the *Wool Realization* (*Distribution of Profits*) *Act* 1948 is a gift to individual persons.

[McTIERNAN J. If a personal gift is made to a son it is given in the character or capacity of a son as such. In this case it is given to the donee in its capacity as a supplier of wool. Can it thereafter be called a personal gift ?]

Yes, because it is independent of the fact, at the time it is given, of whether or not he is carrying on business. The grower may have retired or changed his occupation.

[McTIERNAN J. But does not the whole matter arise out of something in the sphere of business ?]

It may be that the person who supplied the wool for appraisement was not at the time carrying on the business of a wool grower, or, indeed, any business at all.

[WILLIAMS J. Yes, but a large percentage were wool growers.]

That does not matter because it is not the circumstance upon which Parliament has seized to determine whether or not they should receive the gift.

(1) (1952) A.C. 215.

[FULLAGAR J. Take the case of a retired employee who after a prosperous year is paid a sum by the company by whom he was employed prior to retirement. Would that be taxable ?]

No. [He referred to *Stedeford* v. *Beloe*, per Viscount *Dunedin* (1).]

[McTIERNAN J. referred to *Blakiston* v. *Cooper* (2).]

In *Ritchie* v. *Trustees Executors and Agency Co. Ltd.* (3) the question was whether money paid to trustees of a settlement under the *Wool Realization* (*Distribution of Profits*) *Act* 1948 was income or corpus in the hands of those trustees. It has no bearing on the present case in that it was open to the trustees to treat the money either as income or corpus. The question was : in what character did they treat it ? The problem is different here. [He referred to *Corbett* v. *Commissioners of Inland Revenue* (4).] The present case is on all fours with *Stedeford* v. *Beloe* (5). There it was because the man had been a headmaster that he received a pension, but that did not make it income. It was a gift and it was not associated with any income-producing operation at the time he received it.

[McTIERNAN J. So much had happened that the original source had been exhausted.]

Yes, he had received all that he was entitled to as a headmaster and then he got something additional because he had been a headmaster. Our case is in exactly the same position. We submitted wool for appraisement, and were paid for it and now we receive something additional because we had submitted it for appraisement. *John Cooke & Co. Pty. Ltd.* v. *Commonwealth* (6) is authority for the proposition that the profits distributed under this Act form no part of the proceeds of wool submitted for appraisement. That case was approved by the Privy Council (7). [He referred to *Commissioner of Taxes* v. *British Australian Wool Realization Association Ltd.* (8) ; *Commissioner of Taxes* v. *Union Trustee Co. of Australia Ltd.* (9). *In the Estate of W. O. Watt* (*Dec'd.*), per *Ferguson* J. (10).] Our submission that the payment in question here is not income is supported by *Stedeford* v. *Beloe* (5) ; *Beynon* v. *Thorpe* (11) ; *Seymour* v. *Reed* (12) ; *Calvert* (*Inspector of Taxes*) v. *Wainwright* (13). When *Atkinson* J. in *Calvert* v. *Wainwright* (14) referred to the distinction between the ordinary tip and the £10

(1) (1932) A.C. 388, at pp. 389, 390.
(2) (1909) A.C. 104.
(3) (1951) 84 C.L.R. 553.
(4) (1938) 1 K.B. 567.
(5) (1932) A.C. 388.
(6) (1922) 31 C.L.R. 394.
(7) (1924) 34 C.L.R. 269.
(8) (1931) A.C. 224, at p. 238.
(9) (1931) A.C. 258.
(10) (1925) 25 S.R. (N.S.W.) 467, at pp. 486, 487, 489 ; 42 W.N. 191.
(11) (1928) 14 Tax Cas. 1.
(12) (1927) A.C. 554.
(13) (1947) K.B. 526.
(14) (1947) K.B., at p. 527.

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at Christmas in the case of a taxi-driver I think it probable, that what his Lordship had in mind was that when you have been driven home carefully and pay your fare and then pay the standard tip, the taxi driver has all that can be expected in relation to those services. But when you present him with £10 at Christmas that is merely an expression of goodwill. It is now necessary to examine s. 26 of the *Income Tax Assessment Act* 1936-1949 to see whether there is any special provision which subjects these payments to tax, notwithstanding that their character is something other than income.

[*A. D. G. Adam* Q.C. We rely only on s. 26 (*g*).]

The payments in question are not caught by s. 26 (*g*) of the *Income Tax Assessment Act* 1936-1949. All gifts could be described as bounties. But the word " bounty " is associated with the word " subsidy " in s. 26 (*g*) and they have been used to describe that sort of gift which is made for the purpose of assisting somebody to carry on a business. The payments in the present case are not made to encourage the wool grower to carry on the business, but it is in relation to a past transaction already closed. If the payment is to be regarded as part of the proceeds of the wool, it should be spread over the six years in which the wool was disposed of [He referred to *Inland Revenue Commissioners* v. *Newcastle Breweries Ltd.* (1).]

A. D. G. Adam Q.C. (with him *G. H. Lush*), for the respondent. Whether the payments in question are " income " should be determined on commonsense principles, common usages and accepted business ideas. [See *Scott* v. *Commissioner of Taxation*, per *Jordan* C.J. (2); *Attorney-General of British Columbia* v. *Ostrum* (3); *J. Gliksten and Son Ltd.* v. *Green*, per Lord *Buckmaster* (4); per Viscount *Dunedin* (5).]

[FULLAGAR J. referred to *Federal Commissioner of Taxation* v. *Wade* (6).]

It has been held in many cases where property has been acquired compulsorily that the compensation must be brought into account as representing trading stock. [He referred to *Commissioners of Inland Revenue* v. *Newcastle Breweries Ltd.* (1).]

[KITTO J. referred to *Wade's Case*, per *Dixon* J. and *Fullagar* J. (7).]

(1) (1927) 12 Tax. Cas. 927.
(2) (1935) 35 S.R. (N.S.W.) 215, at p. 219; 52 W.N. 44.
(3) (1904) A.C. 144, at p. 147.
(4) (1929) A.C. 381, at p. 384.
(5) (1929) A.C., at p. 385.
(6) (1951) 84 C.L.R. 105.
(7) (1951) 84 C.L.R. at pp. 112, 113.

The payment in the present case bears the character of part of the price for the wool submitted for appraisement. It is not a mere personal gift in the sense of a gift on personal grounds. The words " personal gift " are ambiguous, as is seen in the *Tips Cases* and which was commented upon in *Calvert* (*Inspector of Taxes*) v. *Wainwright* (1). They may mean a gift to a person individually such as a gift to a woman, subject to a restraint on anticipation. It would be a personal gift which had to be received by her personally. Or a gift may be a personal gift in the sense that it is given to a person on personal grounds such as a wedding present. Moreover a gift which is really a further remuneration for services rendered may be a personal gift. In *Maslen's Case* (2) the Privy Council in using the expression " personal gift ", were drawing a distinction between a gift which might be taken by an assignee of the supplier of the wool as distinct from a gift which was to be received by the supplier of the wool, and by him only. If the true character of the payment was a further payment on account of wool submitted, it does not matter for taxation purposes that it was voluntary. See *Ritchie* v. *Trustees Executors & Agency Co. Ltd.* (3). In *Ritchie's Case* (3) the whole problem was the true character of the payment made under the act itself—whether it had an income nature or not. In *Maslen's Case* (2) the question was as to the destination of the payment in question and not the character in which the person who received it took it. Where the Privy Council speaks of the payment being a " true gift " (4) what is meant is that it was a voluntary payment, not pursuant to any prior legal obligation.

[WEBB J. If the payment was a profit to the wool grower, you could hardly, by giving him his own asset, say that it was the subject of a gift to him.]

It is a gift only in the technical sense in that prior to the Act no grower could claim more than the appraised price. If *Maslen's Case* (2) is put aside as not affecting *Ritchie's Case* (3), the latter case establishes that the character of this payment is that of further proceeds for the wool which was submitted for appraisement.

[FULLAGAR J. referred to *Seymour* v. *Reed* (5).]

In income tax law you look to the substantial character of the payment, not to technicalities as to whether it was technically a sale or whether the payments were technically proceeds of a sale. If the payment in *Ritchie's Case* (3) was income for the purposes of the trust, and that conclusion was arrived at unhampered

(1) (1947) K.B., at p. 527.
(2) (1952) A.C. 215.
(3) (1951) 84 C.L.R. 553.
(4) (1952) A.C., at p. 229.
(5) (1927) A.C. 554.

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by any special provision in the trust instrument, what reason is there for denying the same payment the character of income from the point of view of the *Income Tax Assessment Act* where " income " is not defined, but is left to cover what is in its nature income. The fact that a payment is voluntary is not critical in deciding whether it is income. [He referred to *Herbert* v. *McQuade* (1); *Poynting* v. *Faulkner* (2); *Turner* v. *Cuxon* (3); *Wing* v. *O'Connell*, per *FitzGibbon* J. (4); *Corbett* v. *Duff* (5); *Lincolnshire Sugar Co. Ltd.* v. *Smart*, per Lord *Macmillan* (6).] In s. 26 (*g*) of the *Income Tax Assessment Act* 1936-1949 the word " bounty " has its ordinary meaning of a gift by the Sovereign personally, or, by the State. There is no justification for colouring the meaning of the word from its association with the word " subsidy ". It is received in the carrying on of the appellant's business. As s. 26 (*g*) uses the word " received " and not " paid " no question of the purpose for which the bounty is made arises. If the payment is susceptible to tax it is to be brought into charge in the year in which it was received and not in any earlier year. Prior to the passing of the Act in 1948 there was no legal right to this payment and nothing which could have been brought into any profit and loss account.

K. A. Aickin, in reply. [He referred to *British Australian Wool Realization Association Ltd.* v. *Commissioner of Taxes* (7); *In the Estate of W. O. Watt (Dec'd.)*, per *Ferguson* J. (8); *Simon's Income Tax*, vol. 3, pp. 52-65; *Stedeford* v. *Beloe*, per Lord *Hanworth* M.R. (9); per *Romer* L.J. (10).]

Cur. adv. vult.

1953, April 13.

The following written judgments were delivered :—

McTIERNAN AND WILLIAMS JJ. The questions in the case stated ask (i) whether the sum of £22,851 paid by the Australian Wool Realization Commission to the appellant company on 30th November, 1949, formed part of the assessable income of that company within the meaning of the *Income Tax Assessment Act* 1936-1949 and, if so, (ii) was the amount part of its assessable income in the year ended 31st December, 1949, or in some other and what year or years. The appellant is a company which has

(1) (1902) 2 K.B. 631.
(2) (1905) 21 T.L.R. 560; 5 Tax Cas. 145.
(3) (1888) 22 Q.B.D. 150.
(4) (1927) I.R. 84, at pp. 105 *et. seq.*
(5) (1941) 1 K.B. 730.
(6) (1937) A.C. 697, at pp. 705, 706.
(7) (1929) R. & McG. (1928-30) 240, at p. 246.
(8) (1925) 25 S.R. (N.S.W.), at p. 487; 42 W.N. 191.
(9) (1931) 2 K.B. 610, at pp. 618, 619.
(10) (1931) 2 K.B., at p. 625.

adopted as its accounting year the period of twelve months commencing on 1st January and ending on 31st December in each year instead of the usual accounting period from 1st July in one year to 30th June in the following year. The Australian Wool Realization Commission is a body set up and incorporated by the *Wool Realization Act* 1945-1946 as the subsidiary in Australia of the Joint Organisation set up and incorporated under the Disposals Plan set out in the schedule to that Act. The sum of £22,851 is the appellant's share of a distribution of profits authorized by the *Wool Realization* (*Distribution of Profits*) *Act* 1948.

The case stated gives a detailed account of the manner in which the Australian wool clip was acquired and is being disposed of during and after the recent world war. It is unnecessary to set out these facts in any detail again. They have been discussed in three decisions of this Court; namely, *Ritchie* v. *Trustees Executors and Agency Co. Ltd.* (1); *Maslen* v. *Perpetual Executors Trustees & Agency Co.* (*W.A.*) *Ltd.* (2) and *Poulton* v. *Commonwealth*, a recent decision of *Fullagar* J. (3). *Maslen's Case* (2) went on appeal to the Privy Council and is reported (4). The statement of facts in *Ritchie's Case* (1) was objected to in certain respects by counsel for the appellant. At the time of the present argument the judgment in *Poulton's Case* (3) had not been delivered. The issues in all three cases were different from the present issue. It is sufficient to say that for the purposes of this appeal the facts, if they differ from the facts stated in the judgments in the other cases, must be taken to be the facts set out in the case stated. These facts need not be repeated in great detail. Some only are of particular importance on the present issue.

On the outbreak of war an arrangement was made between the Governments of the United Kingdom and the Commonwealth by which the former Government agreed to purchase all wool produced in Australia for the period of the war and one wool year thereafter, except wool required for the purpose of woollen manufacture in Australia. The price to be paid for the wool was at a flat rate of 10.75 stg. (13.4375A) pence per lb. of greasy wool for the whole clip. (Subsequently increased by 15 per cent for the 1942/43 and following seasons.) The important term in that arrangement for present purposes is the term that the Governments would divide equally any profit arising from the resale outside the United Kingdom of wool purchased by the Government of the United Kingdom under the arrangement. To carry the arrangement

(1) (1951) 84 C.L.R. 553.
(2) (1950) 82 C.L.R. 101.
(3) Unreported.
(4) (1952) A.C. 215.

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into effect the *National Security* (*Wool*) *Regulations* were enacted which set up a Central Wool Committee charged with the administration of the regulations and all matters arising out of the arrangement.

The regulations provided that no person should sell or buy any wool or wool tops, except in accordance with the regulations. They also provided that the sale of wool should be by appraisement and the property in every parcel of wool submitted for appraisement should pass to the Commonwealth when the final appraisement was completed in the manner prescribed by the instructions of the Central Wool Committee governing appraisement. It was necessary to appraise the wool because the Australian wool clip is of a diversified character and the value of a particular bale of wool could not be ascertained by applying the flat rate purchase price to the weight of the wool. By the method of appraisement adopted the total price received from the United Kingdom calculated at the flat rate was divided among the suppliers of the wool according to the value of the wool supplied.

Regulation 30 provided that (1) all moneys payable by the Government of Great Britain under the arrangement made by that Government with the Commonwealth for acquiring Australian wool should be received by the Central Wool Committee and out of such moneys the Central Wool Committee should defray all costs, charges and expenses of administering these regulations, and make the payments for wool to the suppliers. (2) Any moneys which might be received by the Central Wool Committee from the Government of Great Britain under or in consequence of such arrangement over and above the purchase price payable by such Government thereunder for the wool and any surplus which might arise should be dealt with as the Central Wool Committee should in its absolute discretion determine.

Pursuant to the regulations the whole of the Australian wool clip in each year during hostilities was acquired by the Commonwealth and the suppliers of the wool, in the manner set out in the case stated, received the whole of the compensation moneys to which they were legally entitled resulting from the compulsory acquisition of their wool. But the Central Wool Committee, from the inception of the wool purchase arrangement, had contemplated that any profit which the Commonwealth Government received from the Government of Great Britain in respect of wool sold outside the United Kingdom would be divided between the persons who supplied wool shorn from the living sheep, who would ordinarily be wool growers, and that the suppliers of skin wool would not

participate. Mainly for this reason shorn wool was classified in the brokers' catalogues as "participating wool" and skin wool as "non-participating wool". To give effect to this term of the arrangement the Government of Great Britain opened a divisible profits account in which a record was kept in the United Kingdom of the sales of wool in other countries so that it could be ascertained whether any profit was being made on the sale of wool outside the United Kingdom. However, while large quantities of the wool purchased by the United Kingdom remained in store in Australia and elsewhere, it was impossible to determine whether there would eventually be any such profit or not and no distribution of profits from this account was ever made.

The end of hostilities found the United Kingdom the owner of large stocks of wool, much of it held in Australia for storage or treatment or stored in the United States of America, purchased from the Commonwealth under the arrangement and wool purchased from New Zealand and South Africa under similar arrangements. A similar problem to that which arose at the end of the first world war again arose, namely, how to dispose of the stocks of carry-over wool in such a way as not to spoil the market and prejudice not only their disposal value but also the sale value of the current clips. As a result of negotiations conducted in the year 1945, an agreement intended to overcome this problem was reached between the Governments of the United Kingdom, Australia, New Zealand and South Africa and was called the Disposals Plan. To give effect to this agreement the Commonwealth Parliament passed the *Wool Realization Act* 1945, which came into force on 15th November, 1945. The plan is printed in the schedule to that Act. Pursuant to the agreement the United Kingdom arranged for the formation of United Kingdom—Dominion Wool Disposals Limited, a company incorporated in the United Kingdom (commonly called the Joint Organisation), and each of the other Governments set up a local subsidiary of the Joint Organisation. The Australian subsidiary is the Australian Wool Realization Commission set up by the *Wool Realization Act* 1945.

The disposals plan provided that the stock of Dominion grown wool in the ownership of the United Kingdom at 31st July, 1945, would be transferred to the joint ownership of the United Kingdom Government and Dominion Government concerned and all wool subsequently acquired under the scheme would be held in joint ownership. It provided that the functions of the principal company would be primarily to buy, hold and sell wool as agent of the four Governments and generally to administer the scheme agreed upon

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between them. It provided for the purchase by the United Kingdom, by the existing methods of appraisement and bulk purchase, of the whole clip for the wool year 1945/46 (called the interim period) which was to become the joint property of the United Kingdom and Dominions concerned. After that year the usual practice of selling wool by auction was to be resumed but the Joint Organisation, through its subsidiaries, was to lift wool offered at auction (from stocks or current clips) for which the reserve price fixed by the Joint Organisation or better was not offered by a commercial buyer.

The plan provided for the necessary capital contributions to be provided by the United Kingdom and Dominions and for the operating expenses of the Joint Organisation in carrying out the plan. It provided that the United Kingdom and the Dominion concerned would each take up 50 per cent of the original capital represented by the opening stock of wool grown in that Dominion to be handed over to the Joint Organisation. The opening stock was to be taken in by the Joint Organisation at its original cost (including f.o.b. payments) less the amount accumulated in the divisible profits accounts. In the case of Australia the opening stock was 6,796,000 bales the original cost of which was £stg. 106,796,829, the amount to the credit of divisible profits account was £stg. 19,489,223, so that the Commonwealth Government assumed a liability of over £stg. 40,000,000.

The fund which until then, subject to a profit being finally realised, was in the discretion of the Central Wool Committee disappeared as a separate fund. Section 9 of the *Wool Realization Act* 1945 provided that the Wool Realization Commission should be substituted for the Central Wool Committee and should have and perform all the duties and should have and might exercise all the powers authorities and functions of the Central Wool Committee under, *inter alia*, the *National Security* (*Wool*) *Regulations*. Section 10 provided that any reference in the *National Security* (*Wool*) *Regulations* to the arrangement made between the Government of Great Britain and the Government of the Commonwealth should include and be deemed at all times, on and after 1st August 1945, to have included a reference to the Disposals Plan. It may be that, if there had been no further legislation, any ultimate profit the Commonwealth received from the operation of the Disposals Plan could have been disposed of in the discretion of the Commission and it may be assumed that this disposal would have been in accordance with the intention already mentioned. But the matter

was not left there for, as will be seen, the Commonwealth Parliament stepped in and itself provided for the distribution of this profit.

Payment of the Dominions' shares of the original capital was to be made in four annual instalments to which the Dominions' shares of the proceeds of sale by the Joint Organisation and of the net profit during the interim period were to be applied. The United Kingdom was to be reimbursed by each Dominion for half of the cost of the new clip of that Dominion purchased by the United Kingdom in the interim year and unsold at the end of the wool year. Each Dominion and the United Kingdom were to share equally in the provision of any further capital required by the Joint Organisation during the operation of the scheme for " bought-in " new wool of that Dominion.

The plan provided that the operating expenses of the Joint Organisation should be borne equally between the industry and the Joint Organisation itself; that the share of the industry would be paid by the Dominion Governments primarily from the proceeds of a contributory charge on all sales of new clip wool and the share of the Joint Organisation would be made by deduction from the proceeds of sales by the Joint Organisation before application to capital repayment. The plan provided that, after deduction of one-half of the operating costs, the proceeds of all sales by the Joint Organisation together with certain other sums would be used for repayment of capital equally between the United Kingdom and the Dominion Government concerned. The ultimate balance of profit or loss arising from the transactions of the Joint Organisation in the wool of any Dominion would thus be shared equally between the United Kingdom and the Government of that Dominion. The plan provided that payments would be so adjusted that each Government would receive the sum to which it was entitled under the scheme, irrespective of any tax chargeable by the United Kingdom Government or a Dominion Government on profits arising from the operations of the Joint Organisation or its subsidiaries.

It will be seen that the Disposals Plan introduced a complete departure from the agreement in the wool purchase arrangement that the Commonwealth should receive half of the profits (if any) arising from the sale by the Government of Great Britain outside the United Kingdom of wool purchased under that arrangement. That agreement imposed no financial obligations on the Commonwealth whatever. The whole task of disposing of the wool was left to the United Kingdom. If that disposal resulted in a profit half of that profit was to become the property of the Commonwealth.

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If it resulted in a loss the United Kingdom had to bear the whole of the loss. Under the *National Security* (*Wool*) *Regulations* the Central Wool Committee had complete discretion as to the manner in which that profit was to be distributed. The profit was not to be paid into Consolidated Revenue. It was to be paid to the Central Wool Committee, and that fact, together with the classification of shorn wool as " participating wool ", raised an expectation that, in accordance with the intention of the Central Wool Committee already mentioned, the Commonwealth's share of any profit to arise under the Wool Purchase Arrangement would be distributed amongst the suppliers of shorn wool. Under the Disposals Plan the Commonwealth agreed to contribute large sums of capital and to become the joint owner with the United Kingdom of the stocks of Australian wool then undisposed of, the 1945/46 new clip to be acquired by appraisement, and any other Australian wool purchased by the Joint Organisation when the normal system of auction sales was resumed.

As a result of the plan the Joint Organisation, on behalf of the United Kingdom and the Commonwealth Governments, became engaged in a huge business of reselling the carry-over wool, acquiring and realising the 1945/46 clip and purchasing new wool at auction and realising this wool. Out of these proceeds of sale, half the operating expenses were first to be paid and the United Kingdom and the Commonwealth Governments were then to be repaid their capital contributions in full if the proceeds of sale were sufficient for that purpose and, if they were not, *pari passu*.

The business might have made a profit or a loss. In fact, it will make a large profit. It will be a profit made out of the process of realising the whole of the wool in question. If the wool had been owned jointly by private individuals, these profits might have been liable to be assessed for income tax under relevant laws. But naturally the Governments did not want to tax themselves and the Disposals Plan contains the provision with respect to taxation already mentioned.

The Commonwealth Government decided to distribute its share of the profit amongst the persons who supplied " participating wool " for appraisement and for that purpose passed the *Wool Realization* (*Distribution of Profits*) *Act* 1948. It is intituled " An Act to provide for the Distribution of any ultimate Profit accruing to the Commonwealth under the Wool Disposals Plan, and for other purposes ". The Act provides machinery for the distribution of this profit by authorizing interim distributions out of the expected net profit and a final distribution when that profit has been finally

ascertained. Part III of the Act which is headed "Persons Entitled", containing ss. 7-14, defines the persons who are to share in these distributions. Section 7 is the leading section. Its text is as follows :

"7.—(1.) Subject to this Act, an amount equal to each declared amount of profit shall be distributed by the Commission in accordance with this Act.

(2.) There shall be payable by the Commission, out of each amount to be distributed under this Act, in relation to any participating wool, an amount which bears to the amount to be distributed the same proportion as the appraised value of that wool bears to the total of the appraised values of all participating wool.

(3.) Subject to this Act, an amount payable under this Act in relation to any participating wool shall be payable to the person who supplied the wool for appraisement.

(4.) Where two or more persons jointly supplied participating wool for appraisement, those persons shall, for the purpose of determining their claims in relation to that wool in any distribution under this Act, be treated as one person".

Sections 28 and 29, which are not contained in Pt. III, should also be noticed. Section 28 provides that :

"No action or proceedings shall lie against the Commission or the Commonwealth for the recovery of any moneys claimed to be payable to any person under this Act, or of damages arising out of anything done or omitted to be done by the Commission in good faith in the performance of its functions under this Act".

Section 29 provides that :

"Subject to this Act and the regulations, a share in a distribution under this Act, or the possibility of such a share, shall be, and be deemed at all times to have been, absolutely inalienable prior to actual receipt of the share, whether by means of, or in consequence of, sale, assignment, charge, execution or otherwise".

The meaning and effect of Pt. III of the Act and s. 29 received the close attention of the Privy Council in *Maslen's Case* (1). It is clear from the judgment of Lord *Porter* that the Board were of opinion that the amount distributed to each supplier under s. 7 was a voluntary personal gift to that supplier and that, apart from any special provisions in the Act, it became his property to do with as he pleased. The Act contains certain special provisions

(1) (1950) 82 C.L.R. 553.

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where the supplier has become bankrupt, or has died, or the supplier was a trustee, or a company which has become defunct, or a partnership which has been dissolved. It also contains a special provision where a mortgagee supplied the wool pursuant to the terms of his security. For instance s. 10 provides that where participating wool was supplied for appraisement by a company which is defunct or by a partnership which has been dissolved the rights, duties and liabilities of a person to whom an amount is paid in respect thereof shall be the same as if it were part of the proceeds of a sale of the wool by the company or partnership made at the time of the supply of the wool for appraisement. Section 13 provides that where participating wool was supplied for appraisement by a mortgagee the mortgagee shall have and be subject to the same rights, duties and liabilities in respect of the amounts paid to him under the Act in relation to that wool as if that amount were part of the amount which was paid on the appraisement of the wool. This provision was obviously inserted so that the mortgagee would have to hand over to the owner of the equity of redemption in the wool the whole or such part of the amount he received as was not required to satisfy the mortgage debt. None of these special provisions are directly relevant in the present case for the wool was supplied by the appellant company and this company is still a going concern actively engaged in the business of growing wool. In the absence of authority it might, however, be contended that these special provisions throw a light on the general intention of Pt. III of the Act and indicate that the Commonwealth Parliament intended that all distributions under the Act should be regarded as extra payments of price for participating wool. But this contention would not be consistent with the construction the Board placed on Pt. III in *Maslen's Case* (1). The Privy Council has held, it seems to us, that these special provisions are not sufficient, even in the particular cases to which they refer, to place the payments in the same category as those received as of legal right for the wool supplied. That was the argument for the respondents which their Lordships rejected. They decided that even in these special cases the provisions in question are directed only to identifying the persons who are to be the ultimate recipients of the personal gift. They did not go further and stipulate that they are to be regarded for all purposes as if they were the result of a contract or debt which came into existence when the wool was supplied for appraisement. "So to construe

(1) (1950) 82 C.L.R. 101.

the wording would be to do violence to the admitted fact that it is a gift ".

In *Maslen's Case* (1), Connolly and Laffer were carrying on in partnership a pastoral business in Western Australia under the name of the Mardathuna Pastoral Company and supplied participating wool to the Commonwealth under the *National Security* (*Wool*) *Regulations*. By a deed of assignment dated 17th June, 1946, Connolly assigned to the respondents all his right title and interest in . . . the benefit of all contracts and engagements and book debts to which Connolly and Laffer might be entitled in connection with the said business together with all other assets of the business. By another deed dated October 2nd, 1946, Laffer assigned his half share to the first of the respondents. Connolly died on 28th December, 1946, and a sum of money was paid in 1949 by the Australian Wool Realization Commission to the appellants as the personal representatives of the assignor in his capacity as a former partner in a dissolved partnership as the share of that partnership in a distribution of sums under the *Wool Realization* (*Distribution of Profits*) *Act* in respect of participating wool supplied by it. The Privy Council held that the sum paid by the Commission under the Act was neither a debt nor an asset of the business, nor was it ever partnership property, but was a personal gift to the individual parties concerned and that accordingly it did not pass under the assignment to the respondents. . . . " as their Lordships have said, the sum paid is neither a debt nor an asset of the business nor was it ever partnership property. In their view it is a personal gift to the parties concerned ".

To our mind the construction which their Lordships have placed on Pt. III of the Act greatly assists the appellant here. The only provisions in the *Income Tax Assessment Act* which can be relied upon in support of the claim that the sum in issue is part of its assessable income are : (1) that portion of the definition of " income from personal exertion " which provides that such income includes the proceeds of any business carried on by the taxpayer ; and (2) that portion which provides that such income includes any amount received as a bounty or subsidy in carrying on a business. (This portion refers to s. 26 (*g*) of the Act which provides that the assessable income of a taxpayer shall include any bounty or subsidy received in or in relation to the carrying on of a business, and such bounty or subsidy shall be deemed to be part of the proceeds of that business.) The first provision does not mean that all the

(1) (1950) 82 C.L.R. 101.

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proceeds of a business are assessable income. All that it means is that the proceeds of a business which are assessable income by reason of some statutory provision or because they are income according to ordinary usages and concepts of mankind are to be classified as income from personal exertion and not as income from property. *Colonial Mutual Life Assurance Society Ltd.* v. *Federal Commissioner of Taxation* (1). The contention of the respondent is that the amount in dispute is assessable income because it is income according to ordinary usages and concepts; that it is, though voluntary, a payment for the wool supplied; that it is an addition to the compensation paid for the wool on appraisement and bears the same character as the payments made to discharge the appraised value; that it is, therefore, a further payment of income; that it is stamped with that character upon the proper interpretation of the Act pursuant to which it is paid; that it was received by the suppliers as further proceeds for their wool, and was a statutory payment made for the purpose of supplementing the price already paid so that the suppliers would receive full compensation for what turned out to be the value of their wool in the long run. We cannot accept this contention. The amount in dispute is not, in our opinion, of the same character as the payments made to discharge the appraised value. It is a gift and nothing more than a gift to the appellant. We refer to the illustration suggested by *Williams* J. to Mr. *Adam* during the argument of a wool grower who sold wool to a dealer who made a larger profit than he expected to make on the resale and sent the wool grower a cheque equal to portion of this profit accompanied by a letter explaining that he had done better than he expected out of the deal and would like to send the grower a further cheque as a gift in addition to the amount he had paid for the wool. In such a case the whole of the profit the dealer had made would clearly be part of his assessable income, part of the proceeds of the business he was carrying on, and the payment to the grower would be a voluntary personal gift proceeding from the bounty to the dealer and no more part of his assessable income than a personal gift actuated by any other motive. In *Ryall* v. *Hoare* (2) *Rowlatt* J. discussed the kind of casual profits that were taxable under Case VI of Schedule D. of the *Income Tax Act* 1918 (Imp.) (8 & 9 Geo. 5. c. 40). His Lordship said: "The second class of cases to be excluded consists of gifts and receipts, whether the emolument is from a gift inter vivos, or by will, or from finding an article of value, or from winning

(1) (1946) 73 C.L.R. 604, at p. 615. (2) (1923) 2 K.B. 447.

a bet. All these cases must be ruled out because they are not profits or gains at all" (1). See also *Ayrshire Pullman Motor Services* v. *Commissioners of Inland Revenue* (2); *Waddington* v. *O'Callaghan* (3); *Commissioner of Taxation* v. *Happ* (4).

The position of the Commonwealth in the present case approximates to that of the dealer and the persons who supplied the wool to that of the grower in the illustration. So far as any ultimate profit received by the Commonwealth Government under the Disposals Plan can be regarded as income, it is the income of the Commonwealth. The decision of the Commonwealth Parliament to distribute this profit among the suppliers of participating wool as a voluntary gift cannot make the distribution part of their assessable income just because it is a distribution of a profit on which the Commonwealth might have had to pay income tax if it had been a private individual. The suppliers were not engaged in the business that made the profit. The Governments of Great Britain and the Commonwealth were engaged in that business. The profit the Commonwealth made out of that business belonged to the Commonwealth to dispose of as it chose. The mere fact that it chose to distribute this profit amongst the suppliers of participating wool is not sufficient to make the payment part of their assessable income. There is nothing in the *Wool Realization (Distribution of Profits) Act* to make each payment more than "a true gift to the supplier of the wool". The only connection between the submission of the wool for appraisement and the payments is that the Act uses that criterion for ascertaining who are the donees of the Commonwealth gift and the extent to which they are to benefit. It does not make the payments part of the proceeds of the submission of the wool for appraisement. The only true proceeds of this submission are the compensation moneys. They are the only moneys the Commonwealth was legally liable to pay. Distributions under the *Wool Realization (Distribution of Profits) Act* are payments which the Commonwealth was at complete liberty to make to anyone, and they would be gifts to whomsoever they were made. The choice of a class of deserving donees, whose efforts in the past had made it possible for the profit to be realised, does not alter the character of the payments or make the distributions part of their assessable income. The Commonwealth Parliament could, if it had wished, have said that these distributions should be regarded as assessable income. But it has not said so, and the provisions of ss. 28 and 29 of the *Wool Realization (Distribution of Profits)*

(1) (1923) 2 K.B., at p. 454.
(2) (1929) 14 Tax Cas. 754.
(3) (1931) 16 Tax Cas. 187.
(4) (1952) A.L.R. 382.

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Act appear to us to indicate the contrary. If the distributions are intended to be extra payments of price for the wool supplied for appraisement, it is strange that the persons entitled to the payments have no right of action to recover them from the Commonwealth and such payments are absolutely inalienable prior to their actual receipt.

In the course of the argument we were referred to the long line of English cases which we had occasion to consider in the recent case *Commissioner of Taxation* v. *Dixon* (1) relating to the provisions of the English Income Tax Acts providing that all salaries, fees and other emoluments which come to a person by virtue of his office or employment are taxable even though they be paid voluntarily. This provision finds an echo in s. 26 (*e*) of the *Income Tax Assessment Act* (Cth.). The reasoning in these cases must, we think, be applied with caution when the question is whether a voluntary payment which has some connection with a business operation is part of the proceeds of the business. In *Chibbett* v. *Joseph Robinson and Sons* (2) the respondents, a firm of ship managers, were employed in that capacity by a steamship company, their remuneration consisting in part of a percentage of the company's annual net profits including interest on its investments which were considerable. The company went into liquidation and, *inter alia*, authorized the liquidator to transfer £50,000 of 5 per cent national war bonds to the respondents as compensation for loss of office. In computing the liability of the respondents for income tax and excess profits duty, the sum of £50,000 was included as part of the profits of their business as ship managers. On appeal the General Commissioners decided that it was not a profit and *Rowlatt* J. upheld this finding. In the course of his judgment his Lordship said: "Of course it is true that it is a trade receipt in this sense, that if these people had not been managers they never would have got it. It was not a gift to them as individuals or anything of that sort; it was because they were people of this kind". His Lordship said that the payment was in the nature of a testimonial for what the firm had done in the past. Three other cases to the same effect to which reference may be made are *Beynon* v. *Thorpe* (3), *Cowan* v. *Seymour* (4) and *Stedeford* v. *Beloe* (5) where it was held that voluntary gifts given to a person in appreciation of past services were not taxable. In the last-mentioned case Lord *Dunedin* said, "Now . . . it has been held again and again that a mere

(1) (1952) 86 C.L.R. 540.
(2) (1924) 9 Tax Cas. 48.
(3) (1928) 14 Tax Cas. 1.
(4) (1920) 1 K.B. 500.
(5) (1932) A.C. 388.

voluntary gift is not . . . in the true sense of the word income. It is merely a casual payment which depends upon somebody else's good will" (1). Nothing more appears than that the distributions under the *Wool Realization (Distribution of Profits) Act* are being made to the suppliers of participating wool because they supplied that wool in the past. In the words of *Rowlatt* J. the distributions are gifts to them because they are people of that class.

In the first world war, as in the recent war, the whole of the Australian wool clip was delivered to the Government of Great Britain under the arrangement made with the Commonwealth Government. It was a term of that arrangement that any profit made by the former Government from the sale of surplus wool should be equally divided between the two Governments. The British-Australian Wool Realization Association, usually known as B.A.W.R.A., was formed to take over the Commonwealth's share of the profits, which were by direction of the Commonwealth divided amongst the wool suppliers in the shape of cash, priority certificates and shares in the company. It is unnecessary to set out the scheme in any detail. It is described in the judgment of *Ferguson* J. in *In the Estate of W. O. Watt (Dec'd.)* (2) and in the cases that went to the Privy Council, *Commissioner of Taxes* v. *British Australian Wool Realization Association Ltd.* (3) and *Commissioner of Taxes* v. *Union Trustee Co. of Australia Ltd.* (4). Apparently Queensland income tax was paid on the shares received by the supplier in the latter case. But the Privy Council are careful to say "Whether rightly or not, however, these shares were for Queensland income tax purposes treated as part of the testator's income for the year 1921 in which they were received" (5). In *Watt's Case* (2) the wool profits were still in the absolute disposal of the Commonwealth, although it had decided what it proposed to do with them, when the testator died and it was held that the shares, &c. received by the firm of which he was a member and by his executor after his death pursuant to wool supplied by the firm and the testator in his lifetime were not part of his estate for the purposes of death duty. *Ferguson* J. said: "As the Government had an absolute discretion in the matter, and might either have kept the money or have distributed it amongst whom they chose, the fact that they chose one set of people rather than another cannot change the essential nature of the transaction. When a man of his own free

(1) (1932) A.C., at p. 390.
(2) (1925) 25 S.R. (N.S.W.) 467; 42 W.N. 191.
(3) (1931) A.C. 224.
(4) (1931) A.C. 258.
(5) (1931) A.C., at p. 263.

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will hands his money over to another person to whom he is under no obligation, that is a gift " (1). The decision of the Supreme Court was affirmed on appeal to this Court (2). This passage supports the view that the distributions under the *Wool Realization (Distribution of Profits) Act* are simply gifts to the designated persons and nothing more and should not be equated to the payments the suppliers were legally entitled to receive as compensation for the acquisition of their wool.

It is contended that this view is inconsistent with the reasoning in *Ritchie's Case* (3). In that case the trustees of a settled estate had from time to time submitted for appraisement under the *National Security (Wool) Regulations* wool produced on a pastoral property carried on by them under a power given by the trust instrument. It was held that moneys received, pursuant to the *Wool Realization (Distribution of Profits) Act*, by the trustees as the suppliers of the wool were income of the settled estate and should be treated as a receipt of the pastoral business belonging to the profit and loss account of the year in which they were received. The case does not appear to have been cited to the Privy Council in *Maslen's Case* (4). There are passages in the reasons for judgment which at first sight appear to assist the respondent. In particular it was said that the payments constituted receipts resulting from the operations of wool growing and it was contended that this meant they bore the same character as the appraisement moneys. This and other statements, like those in any other case, must be read " *secundum subjectam materiam* ". The issue in *Ritchie's Case* (3) was different from the issue in the present case. Admittedly the trustees were not beneficially entitled to the payments and the question was whether they should be treated as income or capital in the trust accounts. The fact that the court decided that, in order to determine the respective rights of the life tenant and remainderman, the payments should be treated as income does not mean that the payments were necessarily assessable income of the trust estate. On any view the payments were windfalls—mere casual payments such as a wool grower would seldom receive in addition to the ordinary proceeds of the sale of his wool—and the question has often arisen whether such payments belong to the life tenant or remainderman of a settled estate. In *Halsbury*, 2nd ed., vol. 29, p. 644, it is said : " A tenant for life of settled property is entitled both to the ordinary income of the property, including the income of a fund set aside to provide for portions payable on his death,

(1) (1925) 25 S.R. (N.S.W.), at p. 487 ; 42 W.N. 191.
(2) (1926) 38 C.L.R. 12.
(3) (1951) 84 C.L.R. 553.
(4) (1950) 82 C.L.R. 101.

and to all casual profits which accrue during the subsistence of his tenancy for life, unless the settlement provides otherwise ". Many instances are noted in the footnote to which may be added *In re Lindsay's Settlement* (*No.* 1) (1), in *Re Pomfret's Settlement* (2). The mere fact that the life tenant is entitled to a casual payment does not make it part of his assessable income.

There remains the question whether the £22,851 was a bounty or subsidy received in or in relation to the carrying on of a business within the meaning of s. 26 (*g*) of the *Income Tax Assessment Act*. That paragraph provides that such bounty or subsidy shall be deemed to be part of the proceeds of that business. In our opinion, this provision has no application to the present facts. The payments to which it refers are payments made for the purpose of assisting persons to carry on a business at the time the payments are made or, perhaps, to commence a business in the future. The appellant was, in fact, still carrying on a business of growing and selling wool in November, 1949. But it might not have been doing so. It might then have finally ceased to carry on business. Many suppliers who qualify for payments under Pt. III of the *Wool Realization* (*Distribution of Profits*) *Act* may have ceased to carry on business and the Act, as we have said, contains special provisions relating to suppliers who have died &c. Distributions under the Act cannot be bounties or subsidies within the meaning of par. (*g*) in some cases and not in others. The distributions relate to business operations past and closed, not to current operations. They are not bounties or subsidies within the meaning of the paragraph.

For these reasons we would answer the first question in the negative and the second question does not arise.

WEBB J. In *Ritchie* v. *Trustees Executors & Agency Co. Ltd.* (3) this Court held that payments made under the *Wool Realization* (*Distribution of Profits*) *Act* 1948 were " receipts resulting from the operations of wool growing ". This suggests that those receipts are assessable income as defined by the *Income Tax Assessment Act* 1936-1949 ; at all events as regards those suppliers of wool for appraisement who were also the growers of the wool, as most suppliers were. But it is submitted for the appellant taxpayer that, although *Ritchie's Case* (4) has not been overruled by *Perpetual Executors Trustees and Agency Co.* (*W.A.*) *Ltd.* v. *Maslen* (5), still certain observations in *Ritchie's Case* (4) are inconsistent with

(1) (1941) Ch. 170.
(2) (1952) 1 Ch. 48.
(3) (1951) 84 C.L.R. 553, at p. 580.
(4) (1951) 84 C.L.R. 553.
(5) (1952) A.C. 215.

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the basis of the decision of the Privy Council in *Maslen's Case* (1). In the latter case their Lordships observed (2) that payments under the 1948 Act were " a true gift " to the suppliers of the wool for appraisement and that they were not the result of a contract or debt which came into existence when the wool was supplied for appraisement. That would not have been inconsistent with the payments being assessable income. But their Lordships also referred to the payments as " a personal gift ".

Although in the reasons for judgment in *Ritchie's Case* (3) the payments are not expressly referred to as a gift of any kind it is pointed out (4) that no legal right to these payments had been conferred upon the wool suppliers until the 1948 Act was enacted, and that all that the suppliers had prior to such enactment was an assured expectation. If then the wool suppliers received something to which they had no legal right but only an expectation, it is difficult to see how there could have been anything but a gift. But gifts may be income and liable to tax. It was so held by the House of Lords in *Blakiston* v. *Cooper* (5) where Easter offerings to the clergy were held to be taxable income.

However, as already stated, in *Maslen's Case* (1) their Lordships characterized a payment under the 1948 Act as " a personal gift ". In *Seymour* v. *Reed* (6) Viscount *Cave* L.C. had already held that the net proceeds of a benefit cricket match should be regarded as " a personal gift and not as income from the appellant's employment ". What his Lordship would have held if the gift had been of a proportion of the gate receipts at earlier matches in which the taxpayer had played to the financial benefit of his club we can only speculate. Here the amount of the gift is determined wholly by the value of the wool supplied for appraisement, and yet it is a personal gift. But if it is a personal gift for one purpose, I think it must be held to be a personal gift for all purposes. As I understand the term " personal gift " it is absolute and not relative ; so that if the claim of an assignee of a partnership is defeated by the personal nature of a gift, so too is that of the Income Tax Commissioner. The description by their Lordships in *Maslen's Case* (1) of the payment as " extra proceeds " and " additional payment " may, I think, be disregarded like the expressions " extra profit " and " extra sum" as not intended to indicate the precise quality of the payment. But to the commissioner's claim that it is assessable income the answer is, I think, that the term " personal gift " was

(1) (1952) A.C. 215.
(2) (1952) A.C., at p. 230.
(3) (1951) 84 C.L.R. 553.
(4) (1951) 84 C.L.R., at p. 577.
(5) (1909) A.C. 104.
(6) (1927) A.C. 554, at p. 559.

used to denote that precise quality; that its meaning is certain and not indefinite, is constant and not variable; and that it excludes income in the ordinary acceptation of the term i.e. as the term is used in s. 25 of the *Income Tax Assessment Act*. The quality of personal gift was not attributed to the Easter offerings to the clergy in *Blakiston* v. *Cooper* (1) and those offerings were held to be income; it was attributed to the gift to the cricketer in *Seymour* v. *Reed* (2) and it was held that the gift was not income. In this regard I can see no difference between income from employment or from an office and income from a business. I realize that income may be assessable under s. 25 although it is not from any of those sources. In *Commissioner of Taxation* v. *Dixon* (3) this Court held that gifts that were not derived from such sources were nevertheless income under s. 25. That was because they were periodical and were for the maintenance of the donee and his dependants. That case indicates that even such undoubted personal gifts as charitable payments made e.g. to a pauper in a hospital or other institution for his maintenance therein are income within s. 25. They are not income from personal exertion or from property, apart from the statutory definitions, but they are still to be regarded as income within the ordinary meaning of the term. However, that is because the payments are recurrent, a consideration which had weight with Lord *Phillimore* in *Seymour* v. *Reed* (4). Here, however, we are dealing not with recurrent payments but with a single payment which moreover was not made for the maintenance of a donee and his dependants, as the payments in *Dixon's Case* (3) were assumed to be.

For a time I took the view that the quality of the payment in question here as a personal gift merely gave rise to a doubt as to whether the payment was income within s. 25; but eventually I reached the conclusion that it was decisive in favour of the taxpayer.

The commissioner also relies on s. 26 (*g*) which makes assessable as income "any bounty or subsidy received in or in relation to the carrying on of a business". However, I think, as counsel for the taxpayer submit, that this provision is a compound expression designed to deal with payments received to assist in carrying on a business. This is not such a payment.

I would answer the questions in the case—(i) No. (ii) Does not arise.

(1) (1909) A.C. 104.
(2) (1927) A.C. 554.
(3) (1952) 86 C.L.R. 540.
(4) (1927) A.C., at p. 570.

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FULLAGAR J. This matter comes before the Full Court on a case stated by the Chief Justice in an appeal by the Squatting Investment Co. Ltd. against its assessment to income tax on income derived by it in the year ended 31st December 1949. The calendar year is the company's accounting period for the purposes of the *Income Tax Assessment Act* 1936-1949. The appeal is concerned with certain sums received by the company during the accounting period in pursuance of the *Wool Realization (Distribution of Profits) Act* 1948.

The company is incorporated in Victoria, and carries on (*inter alia*) the business of a wool grower in New South Wales and Queensland. This business was carried on by it during the years 1939 to 1946 inclusive, and the wool grown by it in the seven "wool years" 1939/40 to 1945/46 inclusive was supplied for appraisement and acquired by the Commonwealth under the *National Security (Wool) Regulations*. These regulations were made by the Governor-General under the *National Security Act* 1939 in order to give effect to the "Wool Purchase Arrangement", which was made between the Government of the Commonwealth and the Government of the United Kingdom very shortly after the outbreak of war in September 1939. The effect of the Wool Purchase Arrangement, the main provisions of the regulations, the system of appraisement and the general course of dealing established under the regulations, the position which existed at the termination of hostilities in 1945 and the events which led up to the passing of the *Wool Realization (Distribution of Profits) Act* 1948, are examined and explained in the judgment of the Court in *Ritchie* v. *Trustees Executors & Agency Co. Ltd.* (1). I also had occasion recently to examine these matters at length for a different purpose in *Poulton* v. *Commonwealth* (2). For a general history of the vast undertaking involved I think it sufficient to refer, without repeating it, to what was said in *Ritchie's Case* (1), and to the very clear exposition of details which is contained in the present case stated. It is necessary, however, in order that the questions now arising may be understood, to refer briefly to certain points in that history.

For the wool supplied by it for appraisement during the seven wool years the company received the appraised price (in all except the last year in two instalments) and also a further sum by way of adjustment to what was called "flat rate parity". All amounts so received were assessed as income of the company, and were taken into account as part of its assessable income of the accounting periods in which they were respectively received. This appeal is not concerned with any such amounts, but with certain payments

(1) (1951) 84 C.L.R. 553. (2) Unreported.

made to it by the Wool Realisation Commission out of profits mainly derived from wool acquired by the Commonwealth during the seven wool years.

The Wool Purchase Arrangement provided for the purchase by the United Kingdom from the Commonwealth of all wool produced in Australia (except wool required for purposes of local manufacture) at a specified average price per pound greasy. It also provided that the United Kingdom Government and the Commonwealth Government should divide equally any profit which might arise from the resale by the United Kingdom Government outside the United Kingdom of wool purchased by it under the arrangement. It was in view of this term of the arrangement that reg. 30 (2) of the Wool Regulations provided :—

" (2) Any moneys which may be received by the Central Wool Committee from the Government of Great Britain under or in consequence of such arrangement over and above the purchase price payable by such Government thereunder for the wool and any surplus which may arise shall be dealt with as the Central Wool Committee shall in its absolute discretion determine ". This sub-regulation " conferred upon the Central Wool Committee a discretion to determine how the half share of profits payable by the United Kingdom under the Wool Purchase Arrangement should be dealt with and profits or moneys arising otherwise, as, for instance, from wool tops or wool for manufacture for export. The phrase ' any surplus which may arise ' covered profits or moneys of the second kind " (*Ritchie's Case* (1)). It may be mentioned here that the Central Wool Committee, which was constituted under the regulations, was composed of members representative of the various sections of the Australian wool industry. The Central Wool Committee decided at a very early stage that the same course should be adopted as had been adopted in connection with the similar wool scheme of the war of 1914-1918, and that any profit which might ultimately become available under the arrangement should be distributed among suppliers of shorn wool (i.e. wool shorn from the living sheep) to the exclusion of skin wool (i.e. wool fellmongered from the skins of dead sheep). In pursuance of this decision wool supplied for appraisement was listed in the brokers' catalogues prepared for appraisement purposes as either " participating " or " non-participating ". " Participating " meant " participating in any distribution of profit that may be made ".

The wool purchased from the Commonwealth by the United Kingdom under the arrangement was dealt with in a variety of

(1) (1951) 84 C.L.R., at p. 572.

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ways. Some of it was resold by the United Kingdom Government outside the United Kingdom. The accounts in respect of such sales were kept in England by the United Kingdom Government, and these included a " distributable profits account ". In 1945, however, when the war with Germany came to an end, very large quantities of the wool purchased by the United Kingdom Government remained in store in Australia and elsewhere, and it was quite impossible to determine at that stage whether there would ultimately be any profits to be dealt with in accordance with the Wool Purchase Arrangement. One very serious problem which presented itself was the problem of disposing of the very large stocks of wool held by the United Kingdom Government without unduly disturbing the market or depressing the prices of future wool clips. As a result of negotiations conducted about the middle of 1945, a plan was agreed upon between the Governments of the United Kingdom and the Commonwealth for the winding up of the wool scheme. To this agreement, the Governments of New Zealand and South Africa (which had also sold their entire wool clips during the war years to the United Kingdom) were also parties, but the wool of each Dominion was kept separate and distinct. The plan was called the " Disposals Plan ", and it is set out in the schedule to the *Wool Realization Act* 1945-1946. That Act received the royal assent on the 11th October 1945, and came into force by proclamation on the 16th November 1945, but the plan took effect as from the 1st August 1945.

It will, I think, suffice if I summarise the effect of the Disposals Plan, so far as it related to Australian-grown wool, very much as I summarised it in *Poulton's Case* (1). The stock of Australian-grown wool in the ownership of the United Kingdom at 31st July 1945 was transferred to the joint ownership of the United Kingdom Government and the Commonwealth Government, and was to be held and disposed of by a " Joint Organisation ", which was to be incorporated as a private company in England and was to have an Australian subsidiary. The Australian subsidiary was the Australian Wool Realization Commission, which was constituted and incorporated by the *Wool Realization Act* 1945 (see s. 9 (1)). The United Kingdom and the Commonwealth were each to take up fifty per cent of the original capital, which was represented by the opening stock of Australian-grown wool. The opening stock was to be taken into account at its original cost less the amount standing to the credit of the divisible profits account. (As to the effect of this, see *Ritchie's Case* (2).) Payment of the Commonwealth's

(1) Unreported.

(2) (1951) 84 C.L.R., at p. 574.

share of the original capital was to be made in four annual instalments, but there was provision for each payment to be made out of current profits, if any. The ultimate balance of profit or loss was to be shared or borne equally by the United Kingdom and the Commonwealth. With regard to the wool year 1945/46 (described as the " interim period ") it was agreed that the United Kingdom should purchase the whole clip in the same way as in the six preceding years, but it was to be handled by the Joint Organisation, and the Commonwealth was to reimburse to the United Kingdom one half of the cost of so much of the clip as remained unsold at the end of the wool year. In the following year (1946/47) the normal system of selling wool by auction in Australia was resumed. Actually in that year the Joint Organisation purchased a substantial quantity of Australian wool at auction sales. The plan provided that the operating expenses of the Joint Organisation should be borne equally by " the industry " and the Joint Organisation itself. The contribution to be made by the industry was provided for by Commonwealth legislation—the *Wool (Contributory Charge) Assessment Act* 1945 and the *Wool (Contributory Charge) Act* 1945.

Section 9 (3) of the *Wool Realization Act* 1945 provided :—

" 9. (3) The Commission shall have and perform all the duties, and shall have and may exercise all the powers, authorities and functions, of the Central Wool Committee under—(*a*) the National Security (Wool) Regulations ; (*b*) the National Security (Wool Tops) Regulations ; (*c*) the National Security (Price of Wool for Manufacture for Export) Regulations ; and (*d*) the National Security (Sheepskins) Regulations, and for that purpose (i) the Commission shall, by force of this Act, be substituted for, and be deemed to be, the Central Wool Committee ". Section 10 provided : " 10. Any reference in the National Security (Wool) Regulations to the arrangement made between the Government of Great Britain and the Government of the Commonwealth shall include and shall be deemed at all times, on and after the first day of August, One thousand nine hundred and forty-five, to have included a reference to the Disposals Plan ".

In the years following the year 1945/46 the Joint Organisation made large profits from Australian-grown wool. These profits might perhaps have been dealt with by the Wool Realization Commission by virtue of ss. 9 (3) and 10 of the *Wool Realization Act* 1945 read with reg. 30 (2) of the Wool Regulations. But in fact the Commonwealth Parliament enacted legislation with regard to their distribution. That legislation is contained in the *Wool*

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Realization (Distribution of Profits) Act 1948, which came into force on 21st December 1948. This Act dealt with "the wool disposals profit", which it defined by s. 4 as including the Commonwealth's share of any profit ultimately arising from the operations of the Joint Organisation and also any moneys received by the Commonwealth from the United Kingdom Government in pursuance of an arrangement which had been made for the sharing of profits arising from the disposal of sheepskins acquired under the *National Security (Sheepskins) Regulations*. "The profits in connection with sheepskins, a comparatively minor matter, are thus treated, as might be expected, as an accession to the wool profits" (*Ritchie's Case* (1)).

Section 4 of the Act defines "the net profit" as meaning the amount remaining after deducting from the "wool disposals profit" the expenses and charges of the Commission in administering the Act other than commission payable to brokers. It defines "appraised value" as meaning, in relation to wool, the value at which the wool was appraised under the Wool Regulations. It defines "participating wool" as meaning wool appraised under the Wool Regulations, being wool which was listed as participating wool in the appraisement catalogue used by the appraisers for the purpose of that appraisement. The practice and purpose of cataloguing wool supplied for appraisement as "participating" or "non-participating" have already been explained. Section 4 also defines the expression "declared amount of profit" as meaning an amount which has been specified in a notice published in the Commonwealth *Gazette* in pursuance of s. 6 of the Act.

Section 5 of the Act provides that "As soon as practicable after the wool disposals profit has been ascertained, the Treasurer shall notify the amount thereof in the *Gazette*, and the amount so notified shall, for all purposes of this Act, be the amount of the wool disposals profit". Section 6 (1) provides that "At any time before the wool disposals profit has been ascertained, the Minister may, with the approval of the Treasurer and after consultation with the Commission, and if he is satisfied that the financial position under the Disposals Plan justifies his so doing, by notice published in the *Gazette*, declare an amount to be available for distribution under this Act out of the expected net profit". Sub-section (1) of s. 7 provides that, subject to the Act, an amount equal to each declared amount of profit shall be distributed by the Commission in accordance with the Act. Sub-section (2) of s. 7 provides that "There shall be payable by the Commission, out of each amount to be

(1) (1951) 84 C.L.R., at p. 575.

distributed under this Act, in relation to any participating wool, an amount which bears to the amount to be distributed the same proportion as the appraised value of that wool bears to the total of the appraised values of all participating wool". Sub-section (3) of s. 7 provides that, subject to the Act, an amount payable under the Act in relation to any participating wool shall be payable to the person who supplied the wool for appraisement. The words "subject to this Act", which occur in sub-ss. (1) and (3) of s. 7, refer to provisions of the Act which have no relevance in the present case.

By notice published in the Commonwealth *Gazette* on 24th November 1949 in pursuance of s. 6 (1) of the Act the Minister declared the amount of £A25,000,000 to be available for distribution out of the expected "net profit". In pursuance of this declaration and of s. 7 of the Act, the Wool Realization Commission on 30th November 1949 paid to the appellant company a sum of £22,581, being an amount calculated in accordance with s. 7 (2) of the Act as a percentage of the appraised values of wool supplied by the company for appraisement in the seven wool years and listed in the relevant catalogues as participating wool. The amount paid was arrived at after deducting a "broker's commission" of one half of one per cent in accordance with the Act. It is this sum of £22,581 that is in dispute in the present case. The Commissioner contends that this sum is assessable income of the company. The company contends that it is a receipt of a capital nature. If it be determined that the sum in question is income, the further question will arise whether it is to be treated as income of the year in which it was received or whether it should be distributed proportionally among the years in which the relevant participating wool was supplied for appraisement.

The starting-point of the taxpayer company's argument is that the moneys in question were not paid in pursuance of any legal right vested in it or of any legal duty resting on the Commonwealth or the Central Wool Committee or the Wool Realization Commission. It was a mere voluntary payment—in substance a "gift". The Parliament of the Commonwealth chose, in the exercise of its constitutional powers, to direct the Wool Realization Commission to make the payment out of a particular fund in its hands. It, the company, is the mere recipient of a bounty, and such a bounty is not income any more than is a birthday present.

That the payment was not made in pursuance of any legal obligation must be immediately conceded. During the war of 1914-1918 the entire Australian wool clip of several years was purchased by

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the United Kingdom under an "arrangement" very similar to that which was made on the outbreak of war in 1939, and a scheme was instituted in Australia for the appraisement and acquisition of wool very similar to that which was instituted in 1939. The arrangement provided for the sharing of certain profits between the two Governments. Certain suppliers of wool claimed a right to share in profits ultimately realised, and in the litigation which ensued two things were decided by this Court and affirmed on appeal to the Privy Council. One was that the "arrangement" conferred no legal right cognisable in any court but was a mere political arrangement between Governments. The other was that no supplier of wool for appraisement acquired any right to share in any "profit" which might come to the hands of the Central Wool Committee. No such statute as the Act of 1948 having been passed, it was held that the distribution of profits was a matter for the "wisdom, fairness and discretion of the Central Wool Committee" see *John Cooke & Co. Pty. Ltd.* v. *Commonwealth* (1). That the position was the same under the scheme adopted in the war of 1939-1945 is not open to question, and it is expressly so stated in *Ritchie's Case* (2). It has been generally considered, I think, that suppliers of wool for appraisement acquired on appraisement a legal right to the appraised price. The moneys paid later for adjustment to flat rate parity have never been the subject of any decision, but one would think that the regulations gave no legal right to receive these. And it is entirely clear that there was no legal right to receive any share of any profit.

It by no means follows, however, from the fact that payments under the Act of 1948 must be regarded as "voluntary" that they do not possess the character of income. That payments, which there is no obligation to make to the recipient, may be income, is well illustrated by a long line of English cases of which *Corbett* v. *Duff* (3) is a recent example. Here "the proceeds of any business carried on by the taxpayer" is, by s. 6 of the *Income Tax Assessment Act* 1936-1949, expressly included in the definition of "income from personal exertion". If the receipt in question here is to be regarded as the proceeds of a business carried on by the taxpayer it will be income in his hands and assessable accordingly.

In the English cases, of which *Corbett* v. *Duff* (3) is an example, the question has been whether a voluntary payment is so connected with an office or employment as to be properly regarded as part of the remuneration of that office or employment. If so, it is a

(1) (1922) 31 C.L.R. 394; (1924) 34 C.L.R. 269.

(2) (1951) 84 C.L.R., at p. 577.

(3) (1941) 1 K.B. 730.

profit or gain of that office or employment, and therefore taxable as income. The test generally applied is that stated by Lord *Loreburn* in *Blakiston* v. *Cooper* (1). In *Corbett* v. *Duff* (2), *Lawrence* J. said :—" if the payment, though voluntary, is remuneration for the office or employment, it is taxable, but, if it is personal in the sense that it is given to the person, not as the holder of an office or employment, but as a personal testimonial, it is not ". A similar test should, in my opinion, be applied here. If a wholesale merchant gave a substantial Christmas present to his best customer, the value of the present would not be income. But, if A bought goods from B for £1,000, expecting to resell them for £1,500, and in fact resold them for £2,500, and, if A's heart were so softened by this happy event that he sent to B a cheque for £1,500 instead of £1,000 B would properly take the extra £500 into his profit and loss account as part of the proceeds of the goods and that sum would be liable to assessment as income. It would be part of the proceeds of his business.

The present case appears to me to be very much stronger than the example which I have taken, because, although the payment of a share of wool profit to the taxpayer was voluntary and not obligatory in a legal sense, there had throughout been an expectation and an understanding that the Central Wool Committee would make a distribution of any profit, which might ultimately be realised from the Wool Purchase Arrangement, among the suppliers of shorn wool for appraisement. It was in the light of this expectation and understanding that reg. 30 (2) was enacted. It was at least partly because of it that no wool moneys were ever paid into consolidated revenue, but the vast sums received and paid were received and paid by the Central Wool Committee and its successor, the Wool Realization Commission, each of which bodies was representative of wool interests. It was because of the same expectation and understanding that shorn wool supplied for appraisement was catalogued as " participating " and skin wool as " non-participating ". " Participating " *meant* participating in profit. The fact that the understanding might have been dishonoured, and the expectation disappointed, and the suppliers of shorn wool left without legal redress, cannot alter the nature of the share of profit when the understanding is honoured and the expectation realised. When once the nature of the whole scheme is understood, it seems impossible to avoid the conclusion that the moneys paid under the *Wool Realization (Distribution of Profits) Act* 1948 were in the most real sense part of the proceeds of the wool supplied

(1) (1909) A.C. 104, at p. 107.

(2) (1941) 1 K.B. 730, at p. 740.

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for appraisement, and therefore part of the proceeds of the business carried on by the taxpayer.

In *Ritchie's Case* (1) the question before the Court was not a question of liability to taxation, but I would regard the reasoning of the judgment in that case as decisive of the present case. In that case the trustees of the will of a testator, who died in 1905, were carrying on during the war a pastoral business, in the course of which they supplied wool for appraisement in each of the years 1939/40 to 1945/46 inclusive. The estate was settled by the will, which gave power to carry on the business. The trustees having received their due proportion in a distribution under the *Wool Realization (Distribution of Profits) Act* 1948, the questions arose whether the moneys so coming to their hands were income or corpus of the estate, and, if income, whether they were income of the year of receipt or ought to be distributed among the years in which the wool was supplied in proportion to the appraised value of wool supplied in each year. This Court, affirming the decision of the Full Court of the Supreme Court of Victoria unanimously held that the moneys were income of the estate, and income of the year in which they were received by the trustees. In the course of considering the first question, the Court said :—" It is clear that from the beginning the distribution, in whole or in part, of the Australian share of any surplus arising on divisible profits account was contemplated. The decision was taken administratively that skin wool should be excluded and wool was accordingly submitted for appraisement and appraised as participating and non-participating. That of course implied that the basis of distribution would be appraised value of the wool submitted " (2). After pointing out that there was no legal right to participate in profits the Court said :—" But courts should not be unmindful of the fact that administrative measures and understandings may, according to circumstances, raise an expectation almost as assured of realization as if it rested upon a foundation of legal right " (2). After referring to the contention of the appellants that the moneys belonged to corpus because they " formed an unsought and fortuitous accretion to the estate, the source of which lay in the bounty of the Commonwealth ", the Court said :—" These contentions cannot be sustained. They are based upon isolated points in the transaction ending with the distribution of the wool disposals profit. The course pursued to give effect to the Wool Purchase Arrangement by the acquisition of wool from the grower must be considered as

(1) (1951) 84 C.L.R. 553.

(2) (1951) 84 C.L.R., at p. 577.

an entirety. The receipt of the payments is an actual consequence of the submission of wool for appraisement " (1). The Court added : " It is, of course, true that the Parliament, in the exercise of its legislative power, could have dealt in any manner it chose with the fund. But that legal fact does not determine the character or the consequences of the course which the Parliament actually took or the nature, as between capital and income, in trusts for successive interests, of the amounts distributed. They constitute receipts resulting from the operations of wool-growing. As possible or contingent receipts they were in contemplation when the appraisements were made. The title to receive them when in the end it is placed on a legal basis consists in the submission of shorn wool for appraisement for the purposes of the Wool Purchase Arrangement. The amount is a percentage of the appraised value of the wool so submitted " (2).

It is, of course, not impossible that moneys, which trustees must treat as income in their estate accounts, may constitute a capital receipt for taxation purposes. But the whole of the reasoning in *Ritchie's Case* (3) is quite inconsistent with the view that the moneys now in question constitute a capital receipt for taxation purposes. The judgment is based from beginning to end on the view that those moneys were paid in respect of wool supplied for appraisement in the course of a business carried on by the taxpayer. They are attributable to that wool. They are paid because that wool has been supplied, and their amount is calculated by reference to the appraised value of that wool. They are proceeds of the taxpayer's business.

It was argued that, even if it might have been right to treat as assessable income a share of profit derived by the United Kingdom from sales outside the United Kingdom and distributed by the Central Wool Committee under reg. 30 (2), yet the profit, a share in which was actually distributed under the Act of 1948, was a different profit altogether and was outside the contemplation of the Wool Purchase Arrangement and the Wool Regulations. It is true that the Disposals Plan of 1945 did differ from the profit-sharing provision of the Wool Purchase Arrangement in a number of respects. But this cannot be regarded as affecting the conclusion that in substance and reality any amount distributable under the Act of 1948 in respect of wool supplied by the taxpayer company is part of the proceeds of that wool—part of what resulted to the taxpayer from the supplying of that wool for appraisement. Indeed, although the Disposals Plan involved a different method of pursuing a profit

(1) (1951) 84 C.L.R., at p. 579.
(2) (1951) 84 C.L.R., at p. 580.
(3) (1951) 84 C.L.R. 553.

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and a different source of profit, it was no more than a variation of the original profit-sharing arrangement, and s. 10 of the *Wool Realization Act* 1945, read with reg. 30 (2) of the Wool Regulations, really placed any profit arising from the Disposals Plan in the same position as any profit which might have arisen from the original arrangement. If the point now taken by the taxpayer against the Commissioner had been taken by the Commonwealth against the suppliers of shorn wool, it is safe to say that it would have been regarded as a gross breach of faith. There was a variation of the divisible profits clause of the arrangement between the two Governments, but, as was said in *Ritchie's Case* (1), " The source of the distribution is in effect the fund arising under the divisible profits clause in the Arrangement ".

It was suggested by counsel for the company that the view taken in *Ritchie's Case* (2) did not altogether square with, or must be regarded as modified in some way by, the judgment delivered by Lord *Porter* for the Privy Council in *Perpetual Executors Trustees & Agency Co. (W.A.) Ltd.* v. *Maslen* (3). The suggestion is, in my opinion, entirely without foundation. The question in *Maslen's Case* (3) turned largely on s. 10 (3) of the *Wool Realization (Distribution of Profits) Act* 1948, which makes provision for a case where wool has been supplied for appraisement by a partnership and the partnership has been dissolved before payment of the amount attributable to that wool. There had in the particular case been, some years before 1948, an assignment by one partner to another of his interest in all the partnership assets, including book debts. Their Lordships stressed the fact that moneys paid under the Act were paid by way of bounty, that they were, in effect, a " gift ". The absence of any obligation of any kind to pay anything to growers out of profits has, of course, never been doubted since the decision in *John Cooke & Co. Pty. Ltd.* v. *Commonwealth* (4). In the view of their Lordships it assumed great importance in *Maslen's Case* (3), because it meant that it was impossible that the assignment could carry the share of wool profit which might ultimately be " given " in respect of wool supplied by the partnership. The share payable under the Act of 1948 went, therefore, to the individual partners (or their personal representatives) as the persons designated by the Act to receive it, and its destination was not affected by s. 10 or s. 11 of the Act. Thus their Lordships said :—" The correct view . . . is that it is a true gift to the supplier of the wool.

(1) (1951) 84 C.L.R., at p. 580.
(2) (1951) 84 C.L.R. 553.
(3) (1952) A.C. 215.
(4) (1924) 34 C.L.R. 269.

It is not, and never was, part of the assets of the partnership " (1). And again : " it is a personal gift to the parties concerned, not passing under either assignment, nor is its destination affected by the terms of sections 10 or 11 of the Act of 1948 " (2). The " voluntary " character of the payments was clearly and fully recognised and explicitly stated in *Ritchie's Case* (3) in which an entirely different question arose. Neither case has, in my opinion, any bearing on the other, and there is nothing in *Maslen's Case* (4) to derogate in any way from *Ritchie's Case* (3).

A word should be said in conclusion with regard to the " wool scheme " of the war of 1914-1918. In a matter of such great importance one would naturally look to see if any guidance could be there found, and although no binding authority is disclosed, the position is of interest. The Wool Purchase Arrangement of 1916, like that of 1939, contained a provision that the Commonwealth should be entitled to share in profits which might accrue to the United Kingdom Government on certain resales of wool by that Government. At the end of the war in 1918 a very similar position arose to that which arose in 1945, and a variation of the original agreement between the two Governments was agreed to. The scheme adopted was analogous to, but different in detail from, the Disposals Plan. In *Commissioner of Taxes* v. *British Australian Wool Realisation Association Ltd.* (5) Lord *Blanesburgh*, to use his own words in another judgment delivered on the same day, " traced in outline the history of that great scheme ". Its central feature was the formation of a company, which was incorporated in Victoria on 27th January 1921 under the name of British Australian Wool Realization Association Ltd., and which came to be generally known as " B.A.W.R.A." or " Bawra ". The nominal capital of the company was £25,000,000, divided into shares of £1. The company took over for realization the whole of the surplus wool on hand, and, by direction of the Central Wool Committee, issued 12,000,000 shares and £10,000,000 of what were called " priority wool certificates " to the Australian growers who had supplied shorn wool for appraisement. These shares and certificates represented, of course, the Commonwealth's half share in any profit that might accrue from the realization of the wool taken over by Bawra. For the sake of simplicity, I will refer only to the shares. The proportion of shares issued to each recipient was determined on precisely the same basis as was adopted by s. 7 of the *Wool*

(1) (1952) A.C., at p. 229.
(2) (1952) A.C., at p. 230.
(3) (1951) 84 C.L.R. 553.
(4) (1952) A.C. 215.
(5) (1931) A.C. 224.

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Realization (Distribution of Profits) Act 1948. The shares were listed on the stock exchanges and were readily transferable.

After the war of 1914-1918, as after the war of 1939-1945, there was no legal or equitable right in any supplier to share in any profits. As Lord *Blanesburgh* said, "no individual supplier, however important, ever had in the eye of the law prior to the formation of the Association a right to any part of the Commonwealth Government's share of profits" (1). There was, however, the same expectation and understanding, and the shares were issued and received in full discharge of any obligation which might be held to subsist. The recipients were assessed to income tax in respect thereof by the Federal Commissioner and the State Commissioners, the shares being taken for the purpose of assessment at their market value, which was at the relevant times about 12s. 6d. They were assessed, of course, on the basis that the interest which they received in Bawra represented part of the proceeds of the wool supplied for appraisement—the proceeds of a business carried on. No objection was ever taken to any of these assessments, or, if any were taken, it was not carried to any Court, and the taxes assessed were paid. Very large sums were involved, and it may be safely assumed that this course was not adopted without taking the opinions of eminent counsel. Bawra ultimately sold the wool, which it had taken over, at prices totalling a sum very much larger than the value at which it had been taken into the opening accounts. No dividend was ever declared, but a series of reductions of capital were made, and confirmed by the Supreme Court of Victoria. Ultimately the company went into liquidation, and a final distribution was made in the winding up. The Commissioners sought to tax the amounts received by shareholders in pursuance of these reductions, but the shareholders objected and appealed, and they were ultimately successful in the Supreme Court of Queensland and in the Privy Council: see *Commissioner of Taxes* v. *Union Trustee Co. of Australia Ltd.* (2). The shares, when received, had been treated as income, but the moneys received were received by way of realization of those shares and were capital. The analogy in the present case is, of course, with the original receipt of the shares, and not with the amounts received on the reductions of capital.

The only remaining matter is the question whether the sum in question ought to be treated, as the Commissioner has treated it, as income of the year in which it was received, or ought to be distributed among the years in which the relevant wool was supplied

(1) (1931) A.C., at p. 235.

(2) (1931) A.C. 258.

for appraisement. I think this question also is covered by *Ritchie's Case* (1). The " criterion by which the question of beneficial right must be tested is to be found in the conceptions governing the ascertainment of the income of a pastoral business for a given year ". There was no right to receive this sum or any sum. It could not properly be brought into the profit and loss account until it was received. There is no justification for any re-opening of past profit and loss accounts. For all purposes, including taxation purposes, it seems to me that it is " derived " in the year in which it is received.

The questions asked by the case stated should be answered as follows :—(i) Yes. (ii) The year ended 31st December 1949.

KITTO J. The question to be decided in this appeal is whether an amount paid to the appellant by the Australian Wool Realization Commission in pursuance of the *Wool Realization (Distribution of Profits) Act* 1948 formed part of the income derived by the appellant either in the year of receipt or in an earlier year.

The amount in question was paid to the appellant " in relation to " its " participating wool " : (s. 7 (2)), that is to say in relation to its wool which had been appraised under the *National Security (Wool) Regulations* and listed as participating wool in the appraisement catalogue used by the appraisers for the purpose of that appraisement : (s. 4 (1), definition of " participating wool "). Moreover the amount was paid to the appellant as " the person who supplied the wool for appraisement " : (s. 7 (3)). But it was not money which, before the Act was passed, the appellant had any legally enforceable right to demand, and the Act itself gave the appellant no right enforceable by action or other proceedings : (s. 28).

Although the Commonwealth was not under any unsatisfied legal liability to the appellant, and the amount became payable simply because the Parliament chose to provide for its payment, it is not entirely accurate to call the payment a gift. Nevertheless the word has frequently been used in order to emphasise that there was no antecedent liability which the payment discharged. It must be observed at once, however, that even if it were correct to describe the payment as a gift in the strict sense of the word, the question we have to consider would still await an answer ; for it is a commonplace that a gift may or may not possess an income character in the hands of the recipient. The question whether a receipt comes in as income must always depend for its answer upon a consideration of the whole of the circumstances ; and even in

(1) (1951) 84 C.L.R., at pp. 583, 584.

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respect of a true gift it is necessary to inquire how and why it came about that the gift was made. When, as in the present case, the word " gift ", if it is to be used at all, must be used by way of imperfect analogy, it is specially important to recognise how inconclusive is that word for the purpose of deciding whether the receipt is of an income nature.

I shall not describe in any detail the Wool Purchase Arrangement made between the United Kingdom Government and the Australian Government at the beginning of the war, the provisions and the working of the *National Security* (*Wool*) *Regulations*, or the agreement, embodying the Disposals Plan, which was approved by the *Wool Realization Act* 1945-1946. They are fully discussed in the judgments which have already been delivered, and I need not go over the ground again. The features that stand out as significant for the present problem when the whole history of the matter is surveyed seem to me to be few and clear-cut.

In the first place, the *National Security* (*Wool*) *Regulations* took from a wool grower in the position of the appellant wool which in other circumstances he would have disposed of by the normal method of sale by auction, and they gave him in its place two things. One was a right to receive what reg. 30 (1) described as " the payments for wool ". In the administration of the regulations these payments comprised the appraised value of the appellant's wool (divided into an initial payment and the " retention money " paid at the end of the wool season), and the flat rate adjustment which was the appellant's proportionate share of the excess, ascertained at the end of the season, of the price received by the Commonwealth for the whole clip at the flat rate purchase price over the total appraised value of the whole clip. For the purpose of determining the income or non-income quality of these payments, no real distinction can be drawn between them and a price realized by sale. Indeed the regulations (reg. 15) actually described the compulsory disposition of wool in pursuance of their provisions as a " sale of wool . . . by appraisement ". But that was not all. The grower also got, no less certainly than these payments, a chance of receiving something more, in effect an addition to the price, by an exercise of the discretion which reg. 30 (2) entrusted to the Central Wool Committee. The discretion was conferred as an absolute discretion, but on well-known principles it could not have been validly exercised otherwise than upon grounds within the scope of the regulations. The moneys to which the discretion extended (if any should come into existence) were thus significantly differentiated from moneys intended for the public purse, and solid ground was provided for an expectation

that, as the history of wool in the previous war and considerations both ethical and political would all combine to suggest, any distribution that might be made under reg. 30 (2) would be a distribution to the wool growers who had supplied wool for appraisement. That is to say that any such distribution would be made (not precisely, but as nearly as common knowledge suggests that it was either practicable or necessary to go), to the persons who had supplied shorn wool for appraisement. This expectation was, of course, confirmed by the action of the Central Wool Committee in causing all shorn wool to be designated "participating wool" in the appraisement catalogues, in contemplation, as the case stated sets out, that the Commonwealth Government's share of any profit to arise would be paid to the suppliers of shorn wool. The point which it is important to observe here is that the expectation thus created, resting as it did upon most substantial considerations, arose, together with and no less surely than the moneys which were paid in respect of the appraised value and the flat rate adjustment, in favour of the persons who supplied the shorn wool for appraisement; and together they formed the totality of that which the regulations gave those persons in place of their wool. It must have followed, if there had ever been a distribution under reg. 30 (2), that the question whether moneys distributed to a particular supplier of wool were of an income nature would be answered yea or nay, according as the proceeds of his wool if sold at auction would or would not have constituted an income receipt in his hands. In the vast majority of cases, and certainly in the case of the appellant, whose wool had been produced for sale in the course of a business of growing and selling wool, the moneys received would certainly have had to be brought into the trading accounts, and would accordingly have gone to swell assessable income.

The next point which emerges from a consideration of the history of the matter is that the fund out of which came the moneys now in question, though it was not the identical fund which reg. 30 (2) contemplated, had such a relation to the wool supplied for appraisement that considerations were applicable to it which were not substantially different from those which have just been mentioned. This view was stoutly contested by counsel for the appellant, who contended that it had been too readily accepted by the Court in *Ritchie* v. *Trustees Executors & Agency Co. Ltd.* (1). Counsel pointed out that immediately before the agreement containing the Disposals Plan took effect (as it did in Australia by virtue of the *Wool Realization Act* 1945), the potential sources of distributions to wool

(1) (1951) 84 C.L.R. 553.

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growers by the Central Wool Committee in exercise of its discretion under reg. 30 (2) were of three descriptions: Australia's one-half share of amounts which had been accumulated in an account known as the Divisible Profits Account; other moneys which had already arisen to the Committee; and such further moneys as might be derived from the continued operation of the Wool Purchase Arrangement. Clause 2 (b) of the Financial Plan, which formed Pt. III of the agreement, disposed of the amounts accumulated in the Divisible Profits Account by authorizing the United Kingdom Government to retain them. The *Wool Industry Fund Act* 1946 disposed of all other moneys vested in the Central Wool Committee by diverting them to a Wool Industry Fund which it made applicable for certain purposes not material to be considered. And of course there could not be any further share of profits accruing under the Wool Purchase Arrangement, for that arrangement was brought to an end. The result, it was said, was to destroy the possibility of any distribution being made to wool growers under reg. 30 (2); and the new scheme which came into being was so essentially different from the Wool Purchase Arrangement of 1939 that any moneys that might accrue to the Commonwealth in consequence of its operation must be regarded as completely unaffected by the expectation of further payment which the wool growers had formerly possessed.

The points of difference were certainly not unsubstantial. First, it was pointed out, the Disposals Plan dealt with different wool from that covered by the Wool Purchase Arrangement, for it included the 1945/46 clip and any wool of later clips that might be purchased for the Joint Organization at auction. Moreover, whereas under the Wool Purchase Arrangement the wool to be sold was the property of the United Kingdom Government, under the Disposals Plan the wool dealt with by the Joint Organization was wool held in joint ownership by the United Kingdom and Australian Governments. Further, the profit in which Australia was entitled to share had been limited, under the Wool Purchase Arrangement, to profit on the sale of Australian wool outside the United Kingdom, whereas under the Disposals Plan it extended to profit on the sale of Australian wool wherever it might be sold. Again, instead of the Central Wool Committee being entitled to only one-half of certain defined profits but standing to lose nothing in the event of a loss being incurred on the resale of Australian wool by the United Kingdom Government, the Commonwealth became a shareholder in the Joint Organization, in effect paying for its share over £E40,000,000 (i.e. one-half of the £E82,777,089

mentioned in par. 33 of the case stated). By the same token, under the new plan the Commonwealth was entitled to have some say in the disposal of the wool, whereas under the old plan disposal was a matter for the United Kingdom Government alone. Because of these and other differences, the argument proceeded, the view should be accepted that any profit coming to the Commonwealth under the Disposals Plan not only belonged to it in point of law, but was unaffected by any such considerations favouring the persons who had supplied participating wool for appraisement as those which formerly applied to moneys falling within reg. 30 (2); and for that reason the moneys which the Act of 1948 directed the commission to distribute were moneys which the Commonwealth was in the fullest sense free to dispose of as it saw fit. Add to that the fact that the Act chose as the recipients, not wool growers as such, but the persons who supplied wool for appraisement whether they had grown it or acquired it from the growers, and the right conclusion, it was said, is that the distributions were truly in the nature of gifts which cannot be classified as income, for they arose from the bounty of the Commonwealth to persons chosen by the Commonwealth in exercise of a complete freedom to apply its own moneys as it saw fit, persons chosen for reasons which were personal to them and which had no reference to any carrying on by them of income-producing operations.

To take this view, however, is to get the whole matter out of focus. When the Commonwealth by cl. 2 (b) of the Financial Plan gave up to the United Kingdom Government its half share of the amount standing to the credit of the Divisible Profits Account, it acquired by virtue of cl. 1 of the Disposals Plan an interest as joint owner with that government in the latter's accumulated stocks of Australian wool. Such possibility as there was that further profits might have arisen to the Central Wool Committee from the continued operation of the Wool Purchase Arrangement was, of course, wrapped up in the same stocks of wool. So that Australia's share of realized profit and the Commonwealth's rights under the old arrangement with respect to future profit both went into the acquisition by the Commonwealth of an interest as joint owner of the accumulated wool; and that meant that the wool growers' prospect of having distributions of those profits made to them by the committee under reg. 30 (2) was in effect invested in the Australian wool which the Joint Organization was to turn into money. It is true that the Commonwealth Government also undertook by the Financial Plan to contribute to the Joint Organization fifty per cent of the original capital represented by the opening

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stock of wool; but as it turned out it was able to do this out of its share of the proceeds of sales of wool effected by the Joint Organization; so that the proceeds actually coming to the hands of the Commonwealth must be considered as really standing in the place of the Australian share under the Wool Purchase Arrangement of the profits, realized and prospective, which the Commonwealth gave up by entering into the 1945 agreement. It is also true that the Joint Organization would be selling, not only the accumulated stocks, but also such wool of later clips as it might buy with a view to supporting the market; but this was only a means; the main purpose of the Disposals Plan was to ensure the realization of the accumulated stocks in a manner as advantageous as possible to those who were interested in their profitable sale, while at the same time preventing prejudice to the sale of future clips: see the third paragraph of the preamble to the *Wool Realization Act* 1945. It is also clear that the Commonwealth's share of the profits of the Joint Organization would be received by the Commonwealth itself and not by the Central Wool Committee, and that the manner of their ultimate disposal would be determined by the Commonwealth and not by the committee. But it is evident that in a practical sense, as in a constitutional sense, the power of the Commonwealth to dispose of those profits was not unlimited; and it would be only a partial view of the situation which would lead one to describe the profits as the Commonwealth's own moneys which it might apply as it thought fit. The considerations which had operated to give substantial assurance that the committee would distribute amongst the wool growers any surplus that might have arisen in its hands operated now to give no less assurance that the Commonwealth would distribute amongst the same persons such profits as should become available for distribution by it in consequence of the working of the Disposals Plan.

The Commonwealth having substantially fulfilled, by means of the Act of 1948, the expectations thus existing, what ground can there be for denying to the payments made under the provisions of that Act the same quality as would have belonged to distributions, if there had been any, under reg. 30 (2)? It is nothing to the point that the Act of 1948 selected as the criterion for participation the fact of having supplied the wool for appraisement, as distinguished from the fact of having grown the wool for profit. What is to the point is that in truth and in fact the moneys distributed under the Act to the persons who supplied wool for appraisement cannot be regarded otherwise than as part of the total sum which has taken the place of the wool in the hands of those persons;

and accordingly the principle (of which *Commissioners of Inland Revenue* v. *Newcastle Breweries Ltd.* (1), is perhaps the best-known example), is applicable here, that moneys received from any source, if in truth they represent items of a revenue account, must be regarded as received by way of revenue : *Federal Commissioner of Taxation* v. *Wade* (2).

The Act of 1948 itself could hardly have made the position clearer. It harks back to the appraisement which took place under the regulations, and observes that some of the wool appraised was marked for future participation in distributions, being listed as participating wool. Specifically in relation to each lot of participating wool, it provides for a payment to the persons who supplied that wool for appraisement. The amount to be paid to each such person is regulated by means of a proportion sum, so that the whole of the wool disposals profit shall in the long run be divided amongst those who supplied participating wool, proportionately to the appraised values of their respective contributions to the mass. Subsidiary provisions are added ; but there, in s. 7, at the heart of the statutory scheme, is the clearest recognition that both the individual's qualification to participate and the extent of his participation are referable to his having supplied particular wool for appraisement, and are referable to no other consideration.

This being so, it may seem somewhat odd that support for the contention that the amount received is not income is claimed from the well-known line of decisions upon the question whether gratuitous payments are assessable as profits arising out of the recipient's employment or by reason of his office, within the meaning of English taxing statutes. The distinction those decisions have drawn between taxable and non-taxable gifts is the distinction between, on the one hand, gifts made in relation to some activity or occupation of the donee of an income-producing character, such gifts being variously described as accruing to the donee in virtue of his office (*Herbert* v. *McQuade* (3)), or as remuneration (*Beynon* v. *Thorpe* (4) ; *Seymour* v. *Reed* (5)), or in respect of his past services (*Beynon* v. *Thorpe* (6)), or substantially in respect of his services (*Blakiston* v. *Cooper* (7)) ; and, on the other hand, gifts referable to the attitude of the donor personally to the donee personally, such as those which have been called mere gifts or presents made to the donee on personal grounds (*Seymour* v. *Reed* (8)), mere donations (*Stedeford* v. *Beloe* (9)), gifts moved by the remembrance

(1) (1927) 12 Tax Cas. 927.
(2) (1951) 84 C.L.R. 105, at pp. 112, 123.
(3) (1902) 2 K.B. 631, at p. 649.
(4) (1928) 14 Tax Cas. 1, at p. 11.
(5) (1927) A.C. 554, at p. 559.
(6) (1928) 14 Tax Cas., at p. 14.
(7) (1909) A.C. 104, at p. 107.
(8) (1927) A.C., at p. 559.
(9) (1932) A.C. 388, at p. 391.

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of past services already sufficiently remunerated as services in themselves (*Beynon* v. *Thorpe* (1)), payments peculiarly due to the personal qualities of the particular recipient, or personal gifts as marks of esteem and respect (*Blakiston* v. *Cooper* (2)). The application of the distinction thus drawn ought surely to be that amounts such as that now in question are to be regarded as income if they were received in relation to wool supplied for appraisement in the course of a business carried on for profit. The Act makes it plain that these amounts are made payable in respect of the wool which was supplied and because it was supplied ; not because of any admiration for the personal qualities of the suppliers or because of gratitude for their having supplied wool for which adequate payment was considered to have been made already.

The explanation of the appellant's reliance upon the line of cases just referred to is that in *Maslen's Case* (*Perpetual Executors Trustees & Agency Co. (W.A.) Ltd.* v. *Maslen* (3)), Lord *Porter*, in the course of stating the reasons of the Judicial Committee, described as " personal gifts " certain payments of the very kind with which the present case is concerned. If I understood his Lordship to have used that expression in the sense which it has in the tax cases, I should of course put aside at once any inconsistent view of my own. But when account is taken of the actual problem to which the judgment was addressed, when one considers the precise question raised by the case and the competing views which had been reflected in the judgments delivered in this Court, it becomes, I venture to think, quite clear that in the context of their Lordships' judgment the expression " personal gift " has a meaning which not only affords no support for the argument of the appellant here but tends strongly in the opposite direction.

The amount in question in *Maslen's Case* (3) had been distributed in relation to wool which had been supplied for appraisement by a firm consisting of two partners. After the wool had been so supplied, one of the partners assigned to a third party all his right title and interest as a partner in the assets of the partnership. Thereafter the partnership was dissolved. Upon a distribution being made under the *Wool Realization* (*Distribution of Profits*) *Act* 1948, the question arose whether the destination of the assignor's share in that distribution was affected by the assignment. In this Court (4) *Latham* C.J. and I considered that the question should be answered in the affirmative because of the provisions of sub-ss. (2) and (3) of s. 10 of the Act. Sub-section (2) provides that where participating wool was supplied for appraisement by a partnership

(1) (1928) 14 Tax Cas., at p. 14.
(2) (1909) A.C., at pp. 107, 108.
(3) (1952) A.C. 215.
(4) (1950) 82 C.L.R. 101.

which has been dissolved, an amount which would otherwise be payable to the partnership may be paid by the Commission to any partner; and sub-s. (3) provides that where an amount has been paid in pursuance of the section (and the amount in question in *Maslen's Case* (1) had been so paid), the rights, duties and liabilities of the person to whom it is paid in respect of the amount shall be the same as if it were part of the proceeds of a sale of the wool of the partnership, made at the time of the supply of the wool for appraisement. If the wool supplied for appraisement by the partnership in *Maslen's Case* (1) had been sold by auction instead of being supplied for appraisement, and part of the proceeds of sale had remained outstanding and had come in at the time when the distribution was made under the Act, the assignee would clearly have been entitled to that part of the proceeds of sale; and for that reason the majority of the Court considered that the assignee was entitled to the distribution moneys, not by force of the assignment itself, but by force of the parallelism which s. 10 (3) required to be observed.

Fullagar J. dissented. He considered that the main general provision of the Act was the provision in s. 7 (3) that an amount payable under the Act in relation to any participating wool shall be payable to the person who supplied the wool for appraisement. He pointed out (2) that the general principle of the Act was that the wool produced the profit, and the man who produced the wool should receive the profit. Sub-section (3) of s. 10 his Honour regarded as simply giving a particular legal character to a sum of money, and as doing so without creating the inferential consequences, first, that a debt must be regarded as having been owed to the suppliers of the wool as from the date on which they supplied it, and secondly, that any past transaction affecting debts owing to the suppliers at the time of the transaction must be deemed to have affected a notional debt created by the sub-section.

Now, their Lordships of the Privy Council had to choose, as they said (3), between the two constructions, and they upheld the view of *Fullagar* J. They said (4) that the sums paid by the commission were admittedly nothing but a gift, and (3) that it would do violence to that admitted fact to construe the provisions (of s. 10) as going further than to require a member of a dissolved partnership to account to his former partner, that is to say as going so far as to stipulate that the money should be dealt with as if it were the result of a contract or debt which came into existence when the

(1) (1952) A.C. 215.
(2) (1950) 82 C.L.R., at p. 121.
(3) (1952) A.C., at p. 229.
(4) (1952) A.C., at p. 227.