[HIGH COURT OF AUSTRALIA.]

VICTORIAN EMPLOYERS' FEDERATION APPELLANT;

AND

FEDERAL COMMISSIONER OF TAXATION RESPONDENT.

H. C. OF A. 1957.

MELBOURNE, *May* 23, *June* 11.

KITTO J.

Income Tax (Cth.)—Assessable income—Exemption—Of income of "trade union"—What is—Whether association of employers included—Income Tax and Social Services Contribution Assessment Act 1936-1947 (*No.* 27 *of* 1936—*No.* 11 *of* 1947), *s.* 23 (*f*).

Section 23 (*f*) of the *Income Tax and Social Services Contribution Assessment Act* 1936-1947 makes exempt from income tax, the income of a "trade union".

Held, that the income of an association of employers was not exempt under this provision.

APPEAL under the *Income Tax and Social Services Contribution Assessment Act*.

The Victorian Employers' Federation appealed to the High Court from a decision of a Board of Review disallowing an objection to an assessment of income tax for the year ended 30th June 1947.

The appeal was heard by *Kitto* J. in whose judgment hereunder the facts are set forth.

D. I. Menzies Q.C. and *K. A. Aickin*, for the appellant.

J. A. Nimmo Q.C. and *R. K. Fullagar*, for the respondent.

Cur. adv. vult.

June 11.

KITTO J. delivered the following written judgment:—

This is an appeal under s. 196 of the *Income Tax Assessment Act* 1936-1947 (Cth.), from the disallowance by a Board of Review of an objection to an assessment of income tax based on income derived by the appellant during the year ended 30th June 1947.

The only ground of objection was, in effect, that the appellant's income was exempt from income tax by virtue of par. (*f*) of s. 23 of the Act. That paragraph makes exempt " the income of a trade union and the income of an association of employers or employees registered under any Act or State Act, or under any law in force in a Territory being part of the Commonwealth relating to the settlement of industrial disputes ". The appellant was not in the relevant year registered under any Act of the Commonwealth or of a State or of a Territory relating to the settlement of industrial disputes. Its claim to exemption rests upon the contention that it filled the description of a trade union.

The Act contains no definition of " trade union ". The expression is defined in the *Oxford Dictionary* as meaning " an association of the workers in any trade or in allied trades for the protection and furtherance of their interests in regard to wages, hours, and conditions of labour, and for the provision, from their common funds, of pecuniary assistance to the members during strikes, sickness, unemployment, old age, etc." The appellant is admittedly not a trade union in this sense. It is a company limited by guarantee, a member of which must be an employer of a person or persons in some occupation or an association or representative of an association formed in the interests of such employers or a company, firm or institution. It is concerned, broadly, with promoting the interests of employers. The exemption in s. 23 (*f*) therefore cannot apply to the appellant's income unless in that provision of the Act " trade union " is used in a sense which comprehends associations of employers.

The expression, it is said in a quotation in the *Oxford Dictionary*, came into existence about the year 1830. I have not found any instance of its being used, in the intervening century and a quarter, otherwise than as referring to an association of employees, except where a statutory definition has applied to give it a special meaning. There was no statutory definition before 1871, and as late as 1867 an illustration of its then normal use occurred in the judgment of Sir *Alexander Cockburn* C.J. in *Hornby* v. *Close* (1). The case related to an association of employees which had as one of its objects the relief of sick, disabled and aged members. The question being whether its benevolent purposes made the association a friendly society with respect to which certain provisions of the *Friendly Societies Act* (18 & 19 Vict. c. 63) applied, his Lordship said: " Here we find the very purposes of the existence of the society not merely those of a friendly society, but to carry out the objects of a trades'

(1) (1867) L.R. 2 Q.B. 153.

H. C. OF A. 1957.

VICTORIAN EMPLOYERS' FEDERATION v. FEDERAL COMMISSIONER OF TAXATION.

Kitto J.

union. Under that term may be included every combination by which men bind themselves not to work except under certain conditions, and to support one another, in the event of being thrown out of employment, in carrying out the views of the majority. I am very far from saying that the members of a trades' union constituted for such purposes would bring themselves within the criminal law; but the rules of such a society would certainly operate in restraint of trade, and would therefore, in that sense, be unlawful" (1).

In the same case, *Blackburn* J. spoke (2) of the society's main object as being that of a "trades' union" and of its rules as being void according to the principle of *Hilton* v. *Eckersley* (3). That case he described as "a case of combination by masters", and he added "but the same principle must apply to combinations of men" (2). Indeed in that case itself Lord *Campbell* C.J. had made this clear when he said: "there must be entire reciprocity between liberty to the masters and liberty to the men" (4); and the Court of Exchequer Chamber had said much the same (5). The effect of *Hornby* v. *Close* (6) and a case decided two years later, *Farrer* v. *Close* (7), was to prevent the punishment, under certain provisions of the *Friendly Societies Act*, of the misappropriation of funds belonging to societies of the kind referred to. Parliament immediately dealt with the matter by passing (in 1869) the *Trades Unions Funds Protection Act* (32 & 33 Vict. c. 61). In the operative provisions of the Act no such expression as trades' union was employed. The need for the Act had appeared in cases of employees' associations, but, as it had been made clear in those cases that similar considerations would apply to employers' associations, it is not surprising to find that the remedy was given with respect to any "association of persons having rules, agreements, or practices among themselves as to the terms on which they or any of them will or will not consent to employ or to be employed" (s. 1).

In the meantime a Royal Commission had been considering the reform of the law on the subject generally, including the position under the criminal law of members of an association having purposes in restraint of trade, and its reports led to the passing of the *Trade Union Act* 1871 (34 & 35 Vict. c. 31). The Act of 1869 was repealed (s. 24) and much more extensive provisions were enacted. The leading provisions (in ss. 2 and 3) were that the purposes of any

(1) (1867) L.R. 2 Q.B., at p. 158.
(2) (1867) L.R. 2 Q.B., at p. 159.
(3) (1855) 6 El. & Bl. 47 [119 E.R. 781].
(4) (1855) 6 El. & Bl., at p. 65 [119 E.R., at p. 789].
(5) (1855) 6 El. & Bl., at p. 76 [119 E.R., at p. 793].
(6) (1867) L.R. 2 Q.B. 153.
(7) (1869) L.R. 4 Q.B. 602.

trade union should not, by reason merely that they were in restraint of trade, either be deemed to be unlawful so as to render any member liable to criminal prosecution for conspiracy or otherwise, or be unlawful so as to render void or voidable any agreement or trust. Provision was made for the registration of trade unions (s. 6), and certain advantageous consequences were attached to registration. As in the case of the limited Act of 1869, it was to be expected that the reforms that were made would apply to employers' and employees' associations alike; and this was achieved by defining "trade union" to mean such combination for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, as would, if the Act had not passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade: s. 23. It seems clear that this was an artificial definition which did not accord with ordinary usage at the time. As a text-writer has observed: "It is clear that this definition brings under the term 'trade union' not only trade unions in their ordinary or everyday meaning, i.e. unions of workmen, but also employers' federations (or unions of employers)": *H. Samuels, Trade Union Laws*, 5th ed. (1956), p. 3. If an illustration be desired, beyond those already given, of the contrast existing in 1871 between the ordinary and the defined senses of the expression "trade union", it may be found in a passage in one of the reports of the Royal Commission to which I have referred. The passage, which was quoted by *Cullen* C.J. in *Bank of New South Wales* v. *United Bank Officers' Association* (1), contains the words: "The rules above adverted to, imposing restrictions not only on the members of the unions but also on employers of labour . . ." (2).

I need not trace the subsequent history of trade union legislation in England. In this country the English Act of 1871 (as amended in 1876) was copied, with or without modifications, in each of the then Colonies. In Victoria the Act passed was *The Trades Unions Act* 1884 (48 Vict. No. 822), the existing successor of which is the *Trade Unions Act* 1928 (No. 3788). In each State there is still in force an Act of a similar kind, defining "trade union", for the purposes of the Act, in terms which extend to an employers' as well as an employees' association. In popular use, however, the expression still conforms to the dictionary definition I have quoted; and

(1) (1921) 21 S.R. (N.S.W.) 593; 38 W.N. 232.

(2) (1921) 21 S.R. (N.S.W.), at p. 606; 38 W.N., at p. 232.

H. C. OF A. 1957.

VICTORIAN EMPLOYERS' FEDERATION v. FEDERAL COMMISSIONER OF TAXATION.

Kitto J.

the question is whether it is used in that sense in s. 23 (*f*) of the *Income Tax Assessment Act*.

The provision now found as s. 23 (*f*) appeared (except the words referring to Territories) as s. 11 (*c*) of the *Income Tax Assessment Act* 1915 (Cth.), which was the first such Act passed by the Commonwealth Parliament. The corresponding provisions in the New South Wales Act then in force, the *Income Tax (Management) Act* 1912 (No. 11 of 1912), was s. 10 (*d*), which made the Act inapplicable to the incomes of " societies registered under the *Friendly Societies Act*, 1899, or under any Act relating to trade unions "—a provision which had been enacted (as s. 17 (IV)) in the first such Act passed in New South Wales, the *Land and Income Tax Assessment Act* of 1895 (59 Vict. No. 15). In such a context, " trade unions " must have included employers' associations, for the only Act relating to trade unions in force in 1895 was the *Trade Union Act* 1881 (45 Vict. No. 12), which contained a definition similar to that in the English Act of 1871. A similar situation existed in Victoria. The Act there in force when the Commonwealth Act of 1915 was passed was the *Income Tax Act* 1915 (No. 2668), which exempted by s. 17 (*d*) all income derived or received by " all registered friendly societies provident societies building societies and trade unions ". These words had appeared as s. 7 (*d*) in the *Income Tax Act* 1895 (No. 1374); and the reference to registration carried the expression " trade union " back to the *Trade Unions Act* 1890, the then current successor to *The Trades Unions Act* 1884, containing a definition similar to that of the English Act of 1871.

The Commonwealth Act of 1915, the draftsman of which seems plainly to have had the State Acts before him, omitted all reference to registration in connexion with trade unions. Section 11 (*b*), relating to the income of a friendly society, was made to apply only to a society registered under a *Friendly Societies Act* of the Commonwealth or a State. The exemption in s. 11 (*c*) itself for associations other than trade unions was confined to associations registered under certain statutes. Yet the income of a trade union was exempted whether it was registered under any Act or not. No reference was made to the *Trade Union Acts* of the States, and no definition was provided.

This seems a deliberate departure from the policy of the State *Income Tax Acts*. It seems to me to require that " trade union ", in s. 11 (*c*) of the 1915 Act and in s. 23 (*f*) of the present Act, be interpreted in its ordinary sense, and not in an artificial sense under the influence of the definition in the *Trade Union Acts*. It is true that the second limb of the provision applies by its express terms to

employers' associations as well as employees', but that rather throws into relief the omission to follow the lead of the States by giving an indication that " trade union " is used with a special meaning of similarly wide application. It must be remembered that s. 23 (*f*) has a Commonwealth-wide operation. The *Trade Union Acts* of the several States were not in identical terms when the *Income Tax Assessment Act* was passed, and of course their terms may vary infinitely during the period of the Act's operation. The appellant's argument therefore cannot go to those Acts to find any one definition which it is possible to suppose that the *Income Tax Assessment Act* intended to adopt. It can and does appeal to those Acts for the purpose only of freeing the expression " trade union " in the *Income Tax Assessment Act* from its normal restriction to an organisation of employees. The only possible justification for that step would be (if it were the fact) that the use of the expression with an extended meaning in the *Trade Union Act* had resulted in a widening of its meaning in popular understanding. That in fact no such widening has occurred may be verified by turning to any modern work on trade unions or to articles on trade unions in standard encyclopaedias. All, so far as I have seen, accord with the view expressed by the economist Mr. *G. D. H. Cole* in *Chambers's Encyclopaedia* (1950) ed., vol. 13, p. 725 : " Legally a trade union can be an association of employers, and a few employers' associations are actually registered as trade unions under British law, but the name is usually applied only to an association of wage-earners or salary-earners . . . ".

This reference to a wider " legal " meaning adverts, of course, to the definitions in the *Trade Union Acts*. I have been pressed to hold, however, that the expression " trade union " has acquired a technical legal meaning corresponding with the definitions in the Acts, and that as a result the principle of interpretation applies which led to the decisions in *Chesterman* v. *Federal Commissioner of Taxation* (1) and *Salvation Army (Victoria) Property Trust* v. *Fern Tree Gully Corporation* (2). I think the short answer is that the expression has not, for the general purposes of the law, a meaning different from that which it has in popular usage ; and the existence even over a long period of a statutory definition for limited purposes is not a circumstance which attracts the principle relied upon. As Lord *Loreburn* L.C. said in *Macbeth & Co.* v. *Chislett* (3), to which Mr. *Nimmo* referred me : " it would be a new terror in the construction of Acts of Parliament if we were required to limit a word to an unnatural sense because in some Act which is not incorporated or

(1) (1926) A.C. 128.
(2) (1952) 85 C.L.R. 159.
(3) (1910) A.C. 220.

H. C. OF A. 1957.

VICTORIAN EMPLOYERS' FEDERATION v. FEDERAL COMMISSIONER OF TAXATION.

Kitto J.

referred to such an interpretation is given to it for the purposes of that Act alone" (1). I have no reason to think that even among lawyers "trade union" has come to include an association of employers, except in the universe of discourse of the *Trade Union Acts*.

For these reasons I am of the opinion that the appellant is not a trade union within the meaning of s. 23 (*f*), and that the appeal should be dismissed.

Appeal dismissed with costs.

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

Solicitor for the respondent, *H. E. Renfree*, Crown Solicitor for the Commonwealth of Australia.

R. D. B.

(1) (1910) A.C., at p. 223.