

[HIGH COURT OF AUSTRALIA.]

THE VEGETABLE CREEK TIN MINING }
 COMPANY NO LIABILITY } APPLICANT;

AND

THE COMMISSIONER OF STAMP DUTIES }
 (NEW SOUTH WALES) } RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF
 NEW SOUTH WALES.

H. C. OF A. *Stamp Duty*—"Share certificate"—Certificate that person is holder of shares—
 1921. *Liability to duty*—*Stamp Duties Act 1920 (N.S.W.) (No. 47 of 1920), sec. 4;*
Sched. II.

SYDNEY,
 Aug. 11.

Knox C.J.,
 Higgins,
 Gavan Duffy,
 Rich and
 Starke JJ.

Sec. 4 of the *Stamp Duties Act 1920 (N.S.W.)* provides that there shall be charged upon and in respect of the several instruments and matters described or mentioned in (*inter alia*) the Second Schedule thereto the several duties and at the several rates therein specified. In the Second Schedule appears, among other instruments, the following :—"Share certificate, or other document—(a) entitling any person to become the proprietor of any share or shares in any company or proposed company ; (b) issued or delivered in New South Wales, and entitling any person to become the proprietor of any share or shares in any company or proposed company registered or established or proposed to be registered or established at some place outside New South Wales."

Held, that a certificate issued by a company certifying that a certain person is the registered holder of certain shares in the company is within the words "share certificate" in the Second Schedule to the Act, and is accordingly liable to duty under sec. 4.

Special leave to appeal from the decision of the Supreme Court of New South Wales refused.

APPLICATION for special leave to appeal.

The Vegetable Creek Tin Mining Co. No Liability was a company duly registered under Part II. of the *Companies Act 1899 (N.S.W.)*, and Adolph G. Gabriel was entered in the register of the members kept by the Company in accordance with sec. 196 of that Act as the holder of shares numbered 25,401 to 25,500 prior to 6th April

1921. On that date the Company issued a certificate which stated (so far as is material) that "This is to certify that Adolphe G. Gabriel, Sydney, is the registered holder of one hundred shares, numbered as in the margin, in the above-named Company subject to the memorandum and articles of association thereof, which shares are issued as paid up to sixteen shillings and threepence." On the back of the certificate was printed a form for use as a transfer, and on 26th April 1921 the transfer, having been duly filled up as a transfer of the shares to William Soutar, was presented to the Commissioner of Stamp Duties of New South Wales for assessment and stamping as a transfer. The Commissioner, being of opinion that both the transfer and the certificate were liable to duty, in addition to charging a duty on the transfer claimed duty from the Company on the certificate as a share certificate, and assessed the duty payable thereon at sixpence, and claimed a fine of five pounds from the Company in respect thereof. The Company, contending that no duty was payable on the certificate, paid the amounts claimed under protest, and called upon the Commissioner to state a case for the determination of the Supreme Court. The Commissioner thereupon stated a case for the determination of the Supreme Court setting out the above facts, and asking the following questions (*inter alia*):—

(1) Is the certificate liable to duty as a share certificate? (2) If so, what is the duty?

The Full Court answered the first question in the affirmative, and in answer to the second question said that the amount of duty was sixpence.

The Company now applied to the High Court for special leave to appeal from that decision.

Maughan K.C. (with him *Wickham*), for the applicant. The words "share certificate" in the Second Schedule to the *Stamp Duties Act* 1920 are qualified by pars. (a) and (b), just as are the words "other document," and, therefore, a share certificate which certifies that a person is the holder of shares, and not that he is entitled to become the proprietor of shares, is not liable to duty. The words "share certificate" ordinarily mean a certificate relating to shares, and are not limited to a certificate which certifies that a

H. C. OF A.
1921.

VEGETABLE
CREEK TIN
MINING
CO. NO
LIABILITY
v.
COMMISSIONER OF
STAMP
DUTIES
(N.S.W.).

H. C. OF A.
1921.

VEGETABLE
CREEK TIN
MINING
Co. No
LIABILITY
v.
COMMISSIONER OF
STAMP
DUTIES
(N.S.W.).

person is the holder of shares. If "share certificate" is given that wide meaning, no ambiguity arises and the clause in the Schedule is quite easy of interpretation. The term "share certificate" is not defined in the *Companies Act* 1899, and is used only once in that Act, namely, in sec. 200, and there it is not necessary to limit the term to a document which certifies that a person is the holder of shares, but it may apply to a document which certifies that a person is entitled to become the holder of shares. In other sections where the word "certificate" is used its meaning is clearly expressed (see secs. 238, 202). The fact that the words "share certificate" have been substituted for the words "scrip certificate, scrip" which occurred in the First Schedule to the *Stamp Duties (Amendment) Act* 1914, does not require any different meaning to be given to "share certificate." The words "share certificate" were substituted as being more commonly used to express the same meaning as the words "scrip certificate, scrip" bore. There is no presumption that, because there is a change of language, there is intended to be a change of the law. Unless the words "share certificate" are governed by pars. (a) and (b) no meaning is given to the word "other." But some meaning should be given to it (*Re Miller; Daniel v. Daniel* (1)). Sec. 94 of the *Stamp Duties Act* 1920, which imposes a penalty upon any person "who issues or delivers out any document chargeable with duty as a share certificate or as scrip before the same is duly stamped," indicates that there are some share certificates which are not chargeable with duty. [Counsel also referred to *Palmer's Company Law*, 11th ed., p. 146; *Palmer's Company Precedents*, 11th ed., Part I., p. 1143, forms 543 *et seq.*; *Encyclopædia of Forms and Precedents*, vol. iv., p. 591, forms 279 *et seqq.*]

PER CURIAM. We do not think that this is a case for special leave. In our opinion the decision of the Full Court was correct.

Special leave to appeal refused.

Solicitors for the applicant, *Minter Simpson & Co.*

B. L.