Solicitors for the appellant, *Gillott, Moir & Ahern*, for *Baker, Glynn, Parsons & Co.*, Adelaide.

Solicitor for the respondent, *Gordon H. Castle*, Crown Solicitor for the Commonwealth.

B. L.

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CORNELL v. DEPUTY FEDERAL COMMISSIONER OF TAXATION (S.A.).

[HIGH COURT OF AUSTRALIA.]

RAMACIOTTI . . . . . APPELLANT;

AND

THE FEDERAL COMMISSIONER OF TAXATION . . . . . RESPONDENT.

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SYDNEY, *Nov.* 10, 11.

Knox C.J., Isaacs and Rich JJ.

Income Tax—Assessment—Exemption—Person on "active service"—Service within Australia during the War—Mobilization—Income Tax Assessment Act 1915-1916 (*No.* 34 *of* 1915—*No.* 39 *of* 1916), *sec.* 13—*Defence Act* 1903-1915 (*No.* 20 *of* 1903—*No.* 3 *of* 1915), *sec.* 4.

Sec. 13 of the *Income Tax Assessment Act* 1915-1916 provides that "this Act shall not apply to any person who is on active service during the present war with the military or naval forces of the Commonwealth . . . so far as regards income derived from personal exertion and earned prior to the commencement of this Act or during the present state of war."

Held, that the words "active service" in that section have the same meaning as they are given by sec. 4 of the *Defence Act 1903-1915*, namely, "service in or with a force which is engaged in operations against the enemy and includes any naval or military service in time of war."

Held, therefore, that an officer of the Military Forces of the Commonwealth who had been mobilized for duty in 1915, and during the year ending on 30th June 1917 was District Commandant of the 2nd Military District and Inspector-General of Administration, was on active service during that period and was entitled to the benefit of sec. 13 in respect of income tax for that year although his service was performed within Australia.

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CASE STATED.

On the hearing of an appeal to the High Court by Gustave Ramaciotti from an assessment of him for Federal income tax for the year 1916-1917, *Knox* C.J. stated the following case for the determination of the Full Court :—

1. On the outbreak of the War referred to in sec. 13 of the *Income Tax Assessment Act* 1915-1916, the appellant, then Brigadier of the 11th Infantry Brigade, a militia unit of the Military Forces of the Commonwealth, was in London, and there volunteered for active service with the Australian Forces in any capacity in the said War.

2. The appellant, being advised by the High Commissioner for Australia in London that no use could be made of his services there, returned to Australia.

3. Upon his return to Australia the appellant volunteered in Australia for active service abroad in the said War, but he was required by the Defence Department to remain in Australia for home service. On 1st August 1915 the appellant was mobilized for duty as Assistant Quartermaster-General, a position on the District Headquarters staff, 2nd Military District, which he held until the 1st November 1915.

4. On the last-mentioned date the appellant was appointed District Commandant of the 2nd Military District, and he held that office until 16th February 1917.

5. The appellant was subsequently appointed Inspector-General of Administration, which position he held until the year 1920.

6. From 1st August 1915 until the year 1920 his services in the Military Forces of the Commonwealth have been continuous. The whole of such services were performed within Australia.

7. On 15th May 1918 the Commissioner of Taxation made an assessment of the income of the appellant for the financial year 1916-1917, including in such assessment the pay and allowances of the appellant in respect of the offices above mentioned and certain other income derived by the appellant from personal exertion during the said financial year.

8. Under and by virtue of the provisions of the *Defence Act* 1903 the Governor-General of the Commonwealth of Australia on 3rd August 1914 proclaimed by his proclamation the existence of the

danger of a war as from that day, from which said day a state of war, which is referred to in sec. 13 of the *Income Tax Assessment Act* 1915-1916 as "the present war," has existed at all material times.

9. The appellant has paid the tax so assessed under protest, and contends that he was on active service during the present war with the Military Forces of the Commonwealth during the financial year 1916-1917 within the meaning of the *Income Tax Assessment Act* 1915, and that the said Act did not apply to him so far as regards income derived from personal exertion.

10. The question arising in the said appeal, which is in my opinion a question of law, is whether the appellant was liable to be assessed in respect of his said pay and allowances and the other income derived by him from personal exertion during the financial year 1916-1917 or to pay income tax thereon for the said financial year.

It was admitted at the hearing of the special case that the appellant as Assistant Quartermaster-General was in charge of all the Military Forces in New South Wales, expeditionary and otherwise.

Leverrier K.C. (with him *Delohery*), for the appellant. The appellant was at the material time on "active service" within the meaning of sec. 13 of the *Income Tax Assessment Act* 1915-1916. That term is defined in sec. 4 of the *Defence Act* 1903-1915 as including any military service in time of war, and has the same meaning in sec. 13 of the *Income Tax Assessment Act* 1915-1916. Active service in that Act is not limited to service abroad, as is shown by sec. 7 of the *Income Tax Assessment Act* 1918. [Counsel was stopped.]

Bavin (with him *Braddon*), for the respondent. The service of the appellant was no different from what it would have been in time of peace. If, the appellant having volunteered for service abroad, his service had been accepted, he would have been on "active service," but he was never under any obligation to go abroad. "Active service" in the *Income Tax Assessment Act* 1915-1916 has not the same meaning as in the *Defence Act* 1903-1915. Sec. 54A of the latter Act recognizes a class of persons who had volunteered for service abroad, and it is to that class that the term "active service" applies. The test is: Was the person who

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claimed exemption associated in any official way with a force which had been or was about to be engaged in active operations against the enemy? That force must have been mobilized for the purpose of meeting the enemy in the field. As to the meaning of "active service" see *In the Goods of Hiscock* (1).

[RICH J. referred to *Gattward* v. *Knee* (2).]

The meaning given to the words "active service" in the *Defence Act* 1903-1915 is no guide to their meaning in the *Income Tax Assessment Act* (*Maxwell on Statutes*, 2nd ed., p. 47; *Beale's Cardinal Rules of Legal Interpretation*, 2nd ed., p. 300). The limitation of "active service" to service outside Australia by sec. 7 of the *Income Tax Assessment Act* 1918 is a Parliamentary explanation of the meaning of that term (*Sir John Jackson Ltd.* v. *Owners of s.s. Blanche* (3); *Craies on Statute Law*, 4th ed., p. 137).

KNOX C.J. This is a special case raising a question as to the interpretation of sec. 13 of the *Income Tax Assessment Act* 1915-1916. The appellant, General Ramaciotti, as stated in the case, was an officer in the Australian Military Forces at the time of the outbreak of the War, and was then in England. He returned to Australia, and subsequently was mobilized for duty as Assistant Quartermaster-General on the District Headquarters Staff, 2nd Military District, which position he held until 1st November 1915. On that date he was appointed District Commandant of the 2nd Military District and held that office until 16th February 1917, and he was subsequently appointed Inspector-General of Administration, which position he held until 1920. It appears, therefore, that during the year of assessment, the financial year 1916-1917, the appellant was, at different times, Commandant of the 2nd Military District and Inspector-General of Administration. He has been assessed to income tax for that year without the allowance of any exemption under sec. 13 of the *Income Tax Assessment Act* 1915-1916, and it is against that assessment that he appeals. Sec. 13 provides that "this Act shall not apply to any person who is on active service during the present war with the military or naval forces of the Commonwealth . . . so far as regards income derived from

(1) (1901) P., 78.
(2) (1902) P., 99, at p. 102.
(3) (1908) A.C., 126.

personal exertion and earned prior to the commencement of this Act or during the present state of war." The whole question is whether the appellant, occupying the position with the military forces which he did occupy, was within the meaning of sec. 13 a person who was on active service. The first consideration is that in an Act of the Commonwealth Parliament, the *Defence Act*, which deals with the whole subject of the Military Forces of the Commonwealth, and which was in force at the time the *Income Tax Assessment Act* 1915-1916 was passed, the term "active service" was defined as meaning "service in or with a force which is engaged in operations against the enemy and includes any naval or military service in time of war." I think it is reasonable to suppose that the Parliament in framing the exemption in sec. 13 of the *Income Tax Assessment Act* and in fixing active service as the criterion of exemption had in mind that definition, and intended that "active service" should correspond with "active service" as defined in the *Defence Act*. The phrase is one of art in a sense; and when we find in another Act which for this purpose is *in pari materiâ* a definition of that phrase, I see no reason for not giving to it in the section now under consideration the same meaning as it bears in the other Act. It is suggested that the phrase "active service" in the *Income Tax Assessment Act* 1915 imports either service in the face of the enemy or service in connection with a force which is under orders to encounter, or is in some stage preparatory to encountering, the armed forces of the enemy. I do not see where the line is to be drawn if considerations of that kind are to be gone into. The appellant, it is admitted here, while he was Commandant of the 2nd Military District had charge of all troops and reinforcements then being trained in New South Wales for service abroad. According to Mr. *Bavin's* contention, most if not all of those men who were being trained would come within the exemption, but the man who was in charge of their training would not. That seems to be putting a strained construction upon the words used by the Legislature. It also appears from the case that the appellant was mobilized; and the verb "to mobilize" is defined in the *Oxford Dictionary* as meaning "to prepare (an army) for active service." That imports, therefore, that when the

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appellant was mobilized a step was taken connecting him with the active operations of the War, and he was subsequently placed by the authorities in command of the 2nd Military District. It is quite true that there was no fighting in Australia and that the armed forces of the enemy were never in Australia, but there was no reason why either of those events might not have happened, and at any time the armed forces in the Commonwealth in the 2nd Military District, there being a state of war existing, might have had to repel an invasion or deal with any armed force which had come into existence in Australia.

There is another circumstance which is also relevant. When the Parliament amended sec. 13 in a later Act, it expressly confined the exemption to active service outside Australia. That may not be conclusive, but it seems to afford some ground for supposing that the phrase "active service" in the *Income Tax Assessment Act* 1915 was not confined to active service outside Australia. When Parliament meant to limit active service to active service outside Australia, it said so.

For these reasons I think that the appellant comes within the exemption in sec. 13, and that the question asked by the special case should be answered in the negative.

ISAACS J. I agree with what the Chief Justice has said, and I have nothing to add except that on the view put by Mr. *Bavin* I doubt whether Lord Kitchener would have been considered to be on active service.

RICH J. I agree.

Question answered in the negative. Costs of special case costs in the appeal.

Solicitors for the appellant, *A. G. de L. Arnold & Co.*

Solicitor for the respondent, *Gordon H. Castle*, Crown Solicitor for the Commonwealth.

B. L.