

[HIGH COURT OF AUSTRALIA.]

THE COMMISSIONER OF TAXATION FOR }
 WESTERN AUSTRALIA } APPELLANT;

AND

NEWMAN RESPONDENT.

H. C. OF A. *Income Tax (W.A.)—Assessment—Sale of pastoralist's business as going concern*
 1921. —*Income of vendor—Assessment as to live-stock—Land and Income Tax Assessment Act 1907 (W.A.) (No. 15 of 1907), secs. 2, 16 (1) (a).*

PERTH,
 Sept. 8, 9.

KNOX C.J.,
 Higgins and
 Starke JJ.

Sec. 16 of the *Land and Income Tax Assessment Act 1907 (W.A.)* provides that “(1) Subject to the provisions of this Act and the regulations hereunder, there shall be charged, levied, collected, and paid to the Commissioner . . . an income tax at such rate per pound as Parliament shall from time to time declare and enact in respect of the annual amount of all incomes exceeding two hundred pounds per annum (a) arising or accruing to any person wheresoever residing, from any profession, trade, employment, or vocation carried on in Western Australia, whether the same is carried on by such person or on his behalf wholly or in part by any other person.”

A person who carried on business in Western Australia as a pastoralist sold his property, including live-stock and plant, as a going concern. The Commissioner of Taxation for that State made an apportionment of the purchase money in respect of the live-stock, and assessed the vendor on that amount as income derived from carrying on a business.

Held, that as the transaction was not in the course of carrying on the business or for the purpose of carrying on the business, but was for the purpose of putting an end to the business, neither the purchase money nor any part of it was taxable under sec. 16 (1) (a) of the Act.

Quære, per Higgins J., whether any profit had been shown even on realization of the business.

Decision of the Supreme Court of Western Australia affirmed.

APPEAL from the decision of the Supreme Court of Western Australia. H. C. OF A. 1921.

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The respondent, Robert Newman, was a pastoralist, and had carried on business as such for many years. On 15th October 1918 he sold his pastoral property, including live-stock and plant, as a going concern. The appellant, the Commissioner of Taxation, made an apportionment of the sale price of the live-stock, and assessed the respondent on that amount as income derived from the sale of live-stock. Respondent appealed to the Court of Review under secs. 49 and 50 of the *Land and Income Tax Assessment Act* 1907 (W.A.), and the Magistrate of the Local Court at Perth, sitting as the Court of Review, dismissed Newman's appeal, and stated a case, which was substantially as follows, for the opinion of the Supreme Court :—

1. The appellant (Robert Newman) is a pastoralist and for many years was the owner of Mount Sandiman Station and carried on the business of a pastoralist there.

2. On 15th October 1918 he sold the said station as a going concern including stock and plant for £16,000.

3. The respondent (the Commissioner of Taxation) apportioned the said purchase price of £16,000 as shown in the memorandum hereto annexed and marked "A" showing the amount referable to the sale of stock to be £6,770. The appellant admits this apportionment to be accurate.

4. The method followed for many years in arriving at the income of the appellant has been as follows: When stock was purchased it was debited in the accounts at the actual purchase price and this was allowed as a deduction; any stock remaining on hand at the end of the period was credited at sheep 7s., horses £15, and such stock was brought forward to the following return as on hand at the beginning of the period; stock as sold was credited at the actual sale price. This course was acceptable to both the appellant and the respondent.

5. In order to ascertain the income for the year 1st July 1918 to 30th June 1919, the appellant credited his stock account with sales of stock (except the stock mentioned in par. 2) and took in the balance of his stock (being the stock mentioned in par. 2) at opening prices, namely, standard prices for that district as mentioned in

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par. 4. The amount thus credited in respect of the stock mentioned in par. 2 was £3,050.

6. The respondent contends that the difference between the said sums of £6,770 and £3,050, viz., £3,720, is income chargeable with income tax, and claims income tax thereon in addition to income tax on all profits earned in carrying on the business of the said station up to 15th October 1918.

7. The appellant contends that no portion of the said sum of £16,000 is chargeable with income tax.

The question for the opinion of the Court is :

Is the appellant liable to pay income tax on the said sum of £3,720 ?

The memorandum referred to in par. 3 sufficiently appears in the judgments hereunder.

The Supreme Court answered the question in the negative, and reversed the decision of the magistrate.

The Commissioner of Taxation now appealed from the decision of the Supreme Court.

Stow, for the appellant. On principle the apportioned price of the stock is taxable. The whole question is : Is it income or not ? (*Mooney v. Commissioners of Taxation (N.S.W.)* (1)). The transaction was a sale of stock by a pastoralist.

[KNOX C.J. referred to *Foreman v. Commissioners of Taxation (N.S.W.)* (2).]

[HIGGINS J. referred to *Commissioners of Inland Revenue v. Blott and Greenwood* (3).]

[Counsel referred to *California Copper Syndicate v. Harris* (4); *Bisgood v. Henderson's Transvaal Estates Ltd.* (5); *Companies Act* (W.A.) 1893, sec. 7; *Land and Income Tax Assessment Act* 1907, sec. 16 (1) (a) and (c).] The question is whether the capital is being circulated or the business is ended (*Stevens v. Hudson's Bay Co.* (6); *Melbourne Trust Ltd. v. Commissioner of Taxes (Vict.)* (7)). The respondent was taxed on the profits on the sale of goods which he

(1) 3 C.L.R., 221; 4 C.L.R., 1439.

(2) 19 N.S.W.L.R., 197.

(3) 37 T.L.R., 762.

(4) 5 Tax Cas., 159.

(5) (1908) 1 Ch., 743.

(6) 101 L.T., 96.

(7) 15 C.L.R., 274, at p. 297; 18 C.L.R., 413; (1914) A.C., 1001.

sold in the regular way of business. It cannot be said that stock-in-trade loses its character when sold with the business: it was an act of carrying on his business (*Webb v. Australian Deposit and Mortgage Bank Ltd.* (1)).

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Sir Walter James (with him *Davy*), for the respondent. This was not the carrying on of a business but the winding up of a business, and what the transaction produced in excess of the previously assumed value of the stock was an accretion to capital. No cases have been cited that apply to the winding up of a business. [Counsel referred to *Commissioners of Inland Revenue v. Blott and Greenwood* (2).]

Cur. adv. vult.

The following judgments were delivered:—

Sept. 9.

KNOX C.J. This is an appeal against an order of the Full Court of Western Australia allowing an appeal against the decision of the Magistrate sitting as a Court of Review under the *Land and Income Tax Assessment Act* 1907. The relevant facts are stated in the special case as follows:—"1. The appellant (Robert Newman) is a pastoralist and for many years was the owner of Mount Sandiman Station and carried on the business of a pastoralist there. 2. On 15th October 1918 he sold the said station as a going concern including stock and plant for £16,000. 3. The respondent (the Commissioner of Taxation) apportioned the said purchase price of £16,000 as shown in the memorandum hereto annexed and marked 'A' showing the amount referable to the sale of stock to be £6,770. The appellant admits this apportionment to be accurate." The contentions of the parties respectively are stated in pars. 6 and 7 of the special case as follows:—"6. The respondent contends that the difference between the said sums of £6,770 and £3,050, viz., £3,720, is income chargeable with income tax, and claims income tax thereon in addition to income tax on all profits earned in carrying on the business of the said station up to 15th October 1918. 7. The appellant contends that no portion of the said sum of £16,000 is chargeable with income tax."

(1) 11 C.L.R., 223, at p. 242.

(2) (1920) 2 K.B., 657.

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The question to be decided turns on the provisions of sec. 16 (1) (a) of the *Land and Income Tax Assessment Act* 1907 (No. 15 of 1907).

That section provides that income tax shall be levied in respect of the annual amount of all incomes exceeding £200 per annum arising or accruing to any person wheresoever residing, from any profession, trade, employment, or vocation carried on in Western Australia; and sec. 2 of the same Act defines income as including "profits, gains, rents, interest, salaries, wages, allowances, pensions, stipends, charges, and annuities." The question is whether any portion of this sum of £16,000 is income liable to income tax within the scope of that Act.

The Act requires, in order to render the profits of the business or trade taxable as income, that those profits shall arise or accrue from a trade carried on in Western Australia. The facts stated in the special case show that for a considerable time the present respondent carried on a trade in Western Australia, but that on a certain date (in October 1918) he sold the whole of the land, stock and plant on which and with which that trade had been carried on, and thereupon ceased entirely to carry on that trade. The Commissioner contends that the money derived from that sale, or portion of it, that is to say, the portion representing the live-stock, was profit which arose in carrying on the trade. Dr. Stow admitted that there was no substantial difference, in that point at any rate, between the Act in force in Western Australia and that in force in Victoria. We were referred to the case of *Commissioner of Taxes (Vict.) v. Melbourne Trust Ltd.*, which ultimately went to the Privy Council, and from which I read an extract. The case is reported in the *Commonwealth Law Reports* (1), and the passage I read is at pp. 420-421. Their Lordships say there:—"Holding, then, that the shareholders of this company are shareholders in an ordinary venture, the only question that remains is whether the surpluses realized represent profits. Their Lordships think that the principle is correctly stated in the Scottish case, *California Copper Syndicate v. Harris* (2):—"It is quite a well settled principle in dealing with questions of assessment of income tax, that where the owner of an ordinary investment chooses to realize it, and obtains a greater

(1) 18 C.L.R., 413.

(2) 6 F., 894; 5 Tax Cas., 159.

price for it than he originally acquired it at, the enhanced price is not profit in the sense of Schedule D of the Income Tax Act of 1842 assessable to income tax. But it is equally well established that enhanced values obtained from realization or conversion of securities may be so assessable, where what is done is not merely a realization or change of investment, but an act done in what is truly the carrying on, or carrying out, of a business.' ” They then deal with the facts of that case, and say: “ In the present case the whole object of the company was to hold and nurse the securities it held, and to sell them at a profit when convenient occasion presented itself ” ; and, that being so, they held in that case that the profit made on the realization of those securities was assessable as income.

Now, applying that statement to the facts stated in this special case, it is clear, in my opinion, that the transaction out of which the £16,000 arose was entered into, not in the course of carrying on the business or for the purpose of carrying on the business, but for the purpose of putting an end to the business. That being so, I am of opinion that neither the £16,000 nor any part of it comes within the provisions of sec. 16 of the Act ; and that the decision of the Full Court of Western Australia was correct.

This appeal should be dismissed.

HIGGINS J. I concur with the view of the Chief Justice. Any profits made on realization of the estate, on conversion of the estate, including stock and plant, into money, is not income “ arising or accruing to any person wheresoever residing, from any profession, trade, employment, or vocation carried on ” within sec. 16 (1) (a) of the *Land and Income Tax Assessment Act 1907*.

The business carried on by the taxpayer was not that of station jobbing or speculating : it was the business of a pastoralist. The profit made, if any, was not made in carrying on that business, but in parting with it. But I doubt whether any profit has been disclosed, even on realization. As put by the Commissioner, the figures are :—Sale price Mount Sandiman Station walk in walk out £16,000 ; Adjustments—Deduct value of leases and fixed improvements as per transfer £9,000, rolling-stock and plant £170, and furniture £60—£9,230 : Balance, being value of live-stock, £6,770.

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Shown in return—8,000 sheep at 7s. £2,800 and 25 horses at £10 £250—£3,050 : Total deductions as per return (profit live-stock) £3,720. The sum of £3,720, which is treated as profit, is due, not to any appreciation in the value or quality of the live-stock or to the sale price being greater than the proper price or other cost, but to the fact that the arbitrary value put on the stock by the parties turned out to be less than the sum actually realized on sale. We do not know the cost of these stock, and cannot say what profit (if any) was realized.

STARKE J. I agree that the appeal must be dismissed. The matter is one of fact, and the fact to be determined is whether the transaction out of which the profits and moneys arose was a carrying on or carrying out of the trade or business of the taxpayer. There are only two paragraphs in the case stated which in any way describe that business. It is stated that the business of the taxpayer was that of a pastoralist, but, for some reasons appearing good to him, he resolved to and did sell his station and all the land, plant and stock connected with it. On that set of facts I am of opinion that the proper conclusion to be drawn is that the final transaction, in which he disposed of the station, plant and stock, was not a carrying on or a carrying out of his business, and the profit therefore was not derived from and did not accrue from any trade or business carried on by the taxpayer in Western Australia.

The judgment of the Supreme Court is right, and the appeal must be dismissed.

Appeal dismissed with costs.

Solicitor for the appellant, *F. L. Stow*, Crown Solicitor of Western Australia.

Solicitors for the respondent, *Darbyshire & Calder*.