

ORIGINAL

IN THE HIGH COURT OF AUSTRALIA.

THE KING AND THE COMMISSIONER OF
TAXATION

V.

WILLIAM BARBER THOMPSON

REASONS FOR JUDGMENT.

Delivered at Sydney

on 12th July, 1944.

THE KING AND THE COMMISSIONER OF TAXATION

v.

WILLIAM BARBER THOMPSON.

JUDGMENT

MR. JUSTICE RICH

THE KING AND THE COMMISSIONER OF TAXATION

V.
WILLIAM BARBER THOMPSON

Judgment.

Rich J.

This is a motion for judgment for the plaintiffs in terms of the relief specifically stated in the statement of claim. No defence was filed by the defendant within the time prescribed by the Rules of Court but the defendant applied for and obtained an extension of time for filing a defence until the 29th June on the understanding that the hearing of the matter was not to be delayed by reason of the extension. The defendant, however, has not filed any defence. In an ordinary proceeding by statement of claim where the defendant has made default in delivering a defence the facts stated in the statement of claim are taken to be admitted by the defendant, Order 26 r.7, Young v. Thomas, 1892 2 Ch. at p.137. The proceeding in this case is a taxation prosecution under Part VI of the Income Tax Assessment Act 1936-1942, but I do not propose to take into consideration the averments as set out in the statement of claim as they include matters relating to other income tax years. The admitted facts are that during the year ended 30th June 1942 the defendant carried on the profession of a medical practitioner at Sydney and that for the period from the 1st July 1941 to the 30th June 1942 he made a return of his income for this period which he declared to be true and correct in every particular and disclosed without any reservation or exception a true and complete statement of all income derived by him during that period. The gross income returned for his profession was stated by the defendant to be £1,620. Thus he knowingly and wilfully understated his gross income as it appears from the books of account kept by him in his own handwriting and admitted by him to be accurate in all details that his income during this period from his profession was £15,826. He thereby ~~misstated~~ understated his gross income as a medical practitioner for the period in question by the sum of £14,206 and avoided payment by this understatement of the sum of £8,803. These facts bring the case within the provisions of section 230 of the Income Tax Act under which a penalty may be imposed of not less than twenty - five pounds or more than five hundred pounds and in addition the Court may order the person to pay to the Commissioner a sum not exceeding double the amount of tax that would have been avoided if the statement

in the return had been accepted as correct.

Upon the defendant undertaking to file his petition in Bankruptcy for the sequestration of his estate within 24 hours of the receipt by his Solicitors herein of notices of assessment for income tax to date in respect of the income tax years beginning ^{1st} ~~10th~~ July 1933 I make the declaration in terms of the first prayer of the Statement of Claim and I order the defendant to pay as a penalty the sum of £500 and in addition I further order him to pay to the Commissioner the sum of £4,000. Defendant to pay the costs of these proceedings.