

7.
HIGH COURT OF AUSTRALIA

THE COMMISSIONER OF TAXATION

V.

ROGERS

REASONS FOR JUDGMENT

Judgment delivered at Sydney

on Friday, 17th April, 1953.

THE COMMISSIONER OF TAXATION

v.

ROGERS

JUDGMENT

WEBB J.

THE COMMISSIONER OF TAXATION

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JUDGMENT

WEBB J.

This is a prosecution instituted by the Commissioner of Taxation who alleges shortages in the income tax returns of the defendant and eighteen offences committed by him in respect thereof against ss. 227, 230 and 231 of the Income Tax and Social Services Contribution Assessment Act 1936-1952. The particulars are as follows:-

Year of Income Year ending 30th June	Date of Return	Net Income Returned	Net Income Omitted	True net Income	Amount of tax which would have been avoided if the return had been accepted as correct and the amount of tax attempted to be avoided.
1946	10/1/1947	1652	267	1919	£167. 3. 0
1947	23/12/1947	1541	625	2166	348. 1. 0
1948	30/9/1948	940	1607	2547	773.18. 0
1949	7/10/1949	1249	1396	2645	640. 5. 0
1950	24/1/1951	1649	1298	2947	551.18. 0
1951	11/1/1952	2453	681	3134	332.11. 0
<u>TOTAL :</u>		9484	5874	15358	£2813.16. 0
		=====	=====	=====	=====

The defendant entered a defence which he afterwards withdrew and abandoned; so I am to proceed on the assumption that he is guilty of all eighteen offences.

For the Commissioner Mr. Alderman of counsel submitted that there were no mitigating circumstances; but he also conceded that there were no aggravating circumstances. Actually, I am confined in determining punishment to the allegations in the statement of claim which are not now denied, as Mr. Harford of counsel for the defendant has not admitted anything further to the prejudice of his client.

The defendant's income in the years in question appears to have been derived from a service station of which he was the proprietor. It was common ground that the shortages were associated with the purchase by him of a house at a price above that fixed by law and also with the purchase of a motor car. Both purchases were for cash.

Having in mind what I said in Federal Commissioner of Taxation v. Chaplain and Ors (9 A.T.D. 351) and in Federal Commissioner of Taxation v. Dunlite Electrical Co. Limited (10 A.T.D. 52) as to determining punishment where there is more than one offence in respect of the same return, and taking the view that the moral turpitude involved in the breaches of S. 231 is no greater in this case than that involved in the breaches of S. 230, and further that the sixth and last offence committed calls for the heaviest punishment, I declare the defendant guilty and convict him of each of the eighteen offences, and

- (1) In respect of the offence against S.230 arising out of the return for the year ended 30th June, 1951, I impose a penalty of £375;
- (2) In respect of each of the other offences against S.230 and each of the offences against S.231 I impose a penalty of £25; and
- (3) In respect of each of the six offences against S.227 I impose a penalty of £2.

In addition to the above penalties I order the offence against S. 230 arising out of the return for the defendant to pay to the Commissioner in respect of each year a sum equal to two-thirds of the amount of tax that would have been avoided in that year if the statement in the return for that year had been accepted as correct.

These additional payments amount to £1,875.17. 4, and with the penalties amount to a total sum of £2,537.17. 4, of which amount £662, being penalties, is to be paid into Court.

Pending payment into Court of the said amount of ~~£2,537.17.4~~ £662 and of the payment of £1875:17:4 to the Commissioner of
Taxation

the defendant is committed to gaol.

I order the defendant to pay to the plaintiff Commissioner his costs of the proceedings, including the costs of the transfer of the proceedings from the Adelaide to the Sydney Registry, and the extra costs of the hearing in Sydney.
