

COLLIE POWER COMPANY

v.

THE FEDERAL COMMISSIONER OF TAXATION

JUDGMENT (ORAL)

DIXON O. J.

WEBB J.

57

22 October 1953

COLLIE POWER COMPANY

v.

THE FEDERAL COMMISSIONER OF TAXATION.

JUDGMENT (ORAL)

DIXON C.J.  
WEBB J.

This is an appeal from a decision of Taylor J. The appellant is a taxpayer who appealed from an assessment which was based on sec. 59 of the Income Tax and Social Services Contribution Assessment Act 1936-51. While this appeal was standing in the list of cases for hearing in the original jurisdiction in Perth the decision was delivered by the Full Court of this Court in Henty House Pty. Ltd. v. The Federal Commissioner of Taxation. The decision was given on 9th September 1953.

In the view of the appellant's counsel that decision made it impossible for him to succeed if it was followed. A recent decision of the Full Court would of course be followed without question both by the Judge sitting in the original jurisdiction and by the Full Court itself. But apparently the appellant wished to attack the decision. The appeal was therefore brought on for hearing before Mr. Justice Taylor, who as a matter of course dismissed it, and from his decision an appeal was immediately brought to the Full Court.

It is not contended that the Full Court can do otherwise than follow the decision in Henty House Pty. Ltd. v. The Federal Commissioner of Taxation, and that means that we must dismiss the appeal. Had it been intended to invite the Full Court to reconsider that decision or to do anything but act in accordance with the rules which govern the authority of decided cases as precedents, the Full Court would have been constituted of a greater number of judges. We expedited the appeal and heard it at once, not because we thought that the decision in the case of Henty House

Pty. Ltd. was open to question or ought to be reviewed here or elsewhere, but simply because it will be another year before this Court sits in Perth and we thought that, in the interests of time, we should hear the appeal at once.

There is nothing for us to do but dismiss the appeal following the decision in Henty House Pty. Ltd. v. The Federal Commissioner of Taxation. It is conceded that the present case is indistinguishable from it. The appeal will therefore be dismissed with costs.

ORDER

Appeal dismissed with costs.

---