IN THE HIGH COURT OF AUSTRALIA

PETRIE

V.

THE COMMISSIONER OF TAXATION FOR THE COMMONWEALTH OF AUSTRALIA

ORIGINAL

REASONS FOR JUDGMENT

Judgment delivered at SYDNEY

on WEDNESDAY, 10TH AUGUST 1966

A. C. Brooks, Government Printer, Melbourne

C.7639/60

PETRIE

v.

THE COMMISSIONER OF TAXATION
OF THE COMMONWEALTH OF AUSTRALIA

JUDGMENT

WINDEYER J.

PETRIE

v.

THE COMMISSIONER OF TAXATION
OF THE COMMONWEALTH OF AUSTRALIA

ORDER

Appeals dismissed.

The taxpayer to pay the Commissioner's costs to date.

Assessment remitted to the Commissioner for his further consideration of the amount of tax payable in accordance with this decision. In the event of a disagreement as to this the taxpayer to be at liberty for one month from this date to restore the case to the list, at his risk as to costs, for the assessment of the amount by the Court. Usual order as to exhibits.

PETRIE

v.

THE COMMISSIONER OF TAXATION
OF THE COMMONWEALTH OF AUSTRALIA

These are appeals against assessments of income tax in respect of the years ended 30th June 1961 and 30th June 1962. The question is the same in each case, namely whether a profit which the taxpayer made when he sold an area of about 180 acres of vacant land near Everton Park, a suburb of Brisbane, was part of the assessable income of the taxpayer. He bought this land in 1956 for £3,300. He sold it in 1960 for £45,715 to a company, Reid Murray Development (Queensland) Pty. Limited. This company, now in the course of winding up, was a land development company, one of the companies in what was known as the Reid Murray Group which crashed in a disastrous insolvency. The price that it paid the taxpayer was paid in two instalments, one in each of the income tax years in question. That is why there are two assessments and two appeals. But the issue is a single issue - and it is a familiar issue in income tax cases. It is best considered by reference to s. 26(a) of the Act which is a statutory declaration of the general principle by which capital profits are distinguished from income profits.

The questions that I have to consider are therefore whether the taxpayer acquired the land at Everton Park for the purpose of profit-making by sale: or, secondarily and in a sense alternatively, whether the profit which he made when he sold it arose from his carrying on or carrying out any profit-making undertaking or scheme. The Commissioner's contention is that on either basis, that is under either limb of s. 26(a), the profit which the taxpayer made was taxable. He says that this land was bought by the taxpayer for the purpose of re-selling

it later at a profit; and he says moreover that the taxpayer was a speculator in land, that his main source of income was from an undertaking of buying and selling real property and that this particular property was sold at a profit in the course of and as part of his carrying on this undertaking. But the Commissioner's case is not really advanced by the second limb of s. 26(a). If the subject land was acquired by the taxpayer for the purpose of profit-making by sale the profit he made is taxable. If not it is not. The fact that he had been engaged in buying and selling land as a profit-making undertaking is relevant simply as one of the facts from which an inference could be drawn that this land was bought for the purpose of re-sale sooner or later. The taxpayer was admittedly a speculator and dealer in land. But his case is that his business had been confined to the buying and selling of house properties in the urban and suburban area of Brisbane: and that his acquisition of the subject land, a large area of unsubdivided vacant land beyond the limits of suburban development, was not for the purpose of re-sale at a profit and was quite outside his ordinary business of buying and selling houses. Remembering that the Act throws upon the taxpayer the burden of shewing that the assessment is excessive (s. 190(b)), the taxpayer has the burden of making out his case. In considering whether he has done so, and in particular in considering what was the dominant purpose that he had in mind, or which must be imputed to him, it is "necessary to make both a wide survey and an exact scrutiny of the taxpayer's activities": Western Gold Mines N.L. v. Commissioner of Taxation (W.A.) (1938), 59 C.L.R. 729 at p. 740. When a man acquires something with more purposes than one in mind then what must be considered is whether his dominant purpose was profit-making by sale: Pascoe's Case (1956), 30 A.L.J.R. 402.

The taxpayer is a man seventy-three years of age.

In his youth he had worked on a cattle station, until about the year 1923. From then on he seems to have had a chequered career which included two periods in prison upon conviction of crimes of dishonesty and a lengthy period of bankruptcy. These events inevitably add to the caution with which his evidence of his purposes in buying the land must be received. Even where there is nothing that reflects upon the credibility of a witness what he says as to the purposes and intentions he had in mind when entering into a transaction must as Fullagar J., quoting Cussen J., said in Pascoe's Case, supra, "be tested most closely and received with the greatest caution". Moreover in the present case the facts falsify a statement that the taxpayer made in his notice of objection to the assessment. In this he stated that he had bought the property at Everton Park for grazing purposes, adding, "I have been a farmer and grazier amongst other things during the whole of my occupational lifetime". Yet, as he admitted in the box, he had had no farm or grazing property, and he was not, it seems, in any way interested in any farming or grazing business, at any time from 1928 to 1956. From 1949 to 1956 he was living in Brisbane with his wife and daughter. In this period he engaged extensively in buying and selling house properties. This, he says, was his principal means of livelihood during this period. He claimed that he had, and I have no doubt that he had, a very good knowledge of the value of house property in Brisbane. His transactions attracted the attention of the Taxation Department, and in 1960 the witness J. C. Sadd, an officer of the Department, began an investigation of his affairs. Sadd's evidence of conversations which he had with the taxpayer, and of which he had kept records, was not really disputed by the taxpayer; and I accept it. In

one interview, in November 1960, he said to the taxpayer, "I notice that there was a decline in the purchase of house properties in 1953 and none were purchased in your name in 1954 or 1955, although some were purchased in the names of your wife and daughter and members of your family". The taxpayer replied, "I didn't sell many houses after that. I got into bigger stuff". Later he said in reference to the same matter, "I was getting into bigger dealings". This statement is far from conclusive. It does not, I think, necessarily amount to an admission concerning the acquisition of the subject land. It does however help to place that in its setting among other activities of the taxpayer at about the same time. It is necessary to look back a little to events which preceded the acquisition.

In 1956 the taxpayer purchased a dairy farm having an area of 670 acres at Broadbeach for £12,500. This land was to the west of the Pacific Highway. Between it and the highway there was a subdivision consisting of twelve allotments. The taxpayer also purchased these from various owners for about £4,800 in all. He thus had a considerable area of land fronting the highway. He obtained a licence from the appropriate authority, and made arrangements with an oil company, to set up a petrol station on part of the land. Then within four months he sold all of this - the dairy farm as a going concern, the added lands with the licence to conduct a petrol station - to one purchaser who paid £25,000. The sale included the dairy herd less about forty head of cattle which the taxpayer kept. In his evidence he gave as his reason for selling that he had found that the dairy farm land, through which or beside which there was a drainage channel, was subject to flooding when the Nerang River banked up. That two floods occurred while he was in occupation and that these temporarily impeded the normal conduct of the dairy farm is no doubt quite true. How serious

were their effects, how much of the dairy farm paddocks were under water and for how long on each occasion is not very clear. The taxpayer said in evidence that about thirty acres were under three feet of water. However this may be, I am not satisfied that it was the floods that caused the taxpayer to sell out. On the contrary, I consider that the evidence as a whole shews fairly clearly that he bought the land at Broadbeach expecting that developments there would increase its value and that he would be able to sell it at a profit, keeping the dairy going in the meantime. He continued to live in Brisbane, although apparently he and his wife spent some time at Broadbeach. He had men employed there in running the dairy. The floods may have made him ready to sell when he did rather than wait longer in the hope of doing better. And they certainly provide him now with an explanation that he can give for selling so soon after he bought. In fact within four months he had got a price, after declining some earlier offers, which he thought yielded him profit enough. It is not insignificant that he was assessed in respect of the year 1956 on the basis that this profit was part of his assessable income, and this he did not dispute. It is said, however, that this ought not to be taken as an admission as the amount of tax attributable to it was small. I do not base my conclusion as to the character of the Broadbeach venture on this acceptance by the taxpayer of the Commissioner's assessment, but on the evidence as a whole. I have referred to the Broadbeach episode at some length because both parties treated it, although in different ways, as part of the history of the acquisition of the subject land at Everton Park.

Everton Park is an outer suburb of Brisbane. It is within the area controlled by the Brisbane City Council: but to say that can be misleading because under the Greater Brisbane Act the Council controls an area vastly more extensive

than the city proper. I was told that the area called a city covers about three hundred and seventy-five square miles. Everton Park is and was in 1956 a growing suburb, its main centre being about seven miles by road from the centre of the city proper.

The taxpayer had had some interest in this neighbourhood from shortly before he bought the land at Broadbeach. In 1954 or early 1955 his daughter, now Mrs. Hampson, had purchased for £1,500 a paddock of about eighty acres near Everton Park on which to keep some horses that she owned. This land was on the east side of a road known as Beckett Road. It was about a mile and a half from what might have been called the then outskirts of the settled area of Everton Park. The taxpayer was well aware of his daughter's purchase of this land. He advised her generally in the matter and he guaranteed an overdraft in her name.

When in 1956 the taxpayer sold his land and undertaking at Broadbeach he had the cattle that he had kept moved to his daughter's paddock at Everton Park. At about the same time he made an offer to buy land on the western side of Beckett Road, directly opposite his daughter's holding. The negotiations were conducted by one L.J. McCausland, an estate agent through whom Mrs. Hampson's land had been bought. The taxpayer said in evidence that he had known the land was for sale. It was owned by the persons from whom his daughter's land had been bought. In the result he bought this land, which is the subject land, 180 acres, in October 1956. The price was £3,300 which was £500 less than the price the vendors had first asked.

Before considering the evidence which bears directly upon the critical issue of the purpose which the taxpayer had in buying this land, I shall describe its condition in 1956. The oral evidence is in some respects conflicting. But I have been

able to check some aspects against an aerial photograph which was taken in July 1955. And at the wish of the parties I have seen the land. I drove along two sides of it - by Beckett Road and Old Northern Road - and walked over parts of it. Thus aided to appreciate and compare the various descriptions that were given, I have formed a definite view of what the land was like in 1956. It had, it is said, been used at some time as a dairy farm; but that was very many years ago. Afterwards a part had, according to some hearsay evidence, been used on occasions as a slaughter yard. But for some considerable time before 1956 it had been greatly neglected. The boundary fence was in very bad repair. There were no internal fences. There was an old cottage at the south-eastern corner. It was not in good order then. It is still there, now very dilapidated. There were also, it seems, a shed and some small yards of a sort still there in 1956. But they were old and poor structures. To-day there are only some useless remnants of them. There are now, and were in 1956, some cleared areas with good grass in a good season. To-day there is in addition to older trees a considerable growth of eucalyptus saplings, wattle and wallum. Some of this is of recent growth. But the aerial photograph shews that when it was taken most of the area was fairly thickly but probably lightly timbered. The property has permanent water in a creek. But it is not disputed that when the taxpayer bought it the whole place would not carry more than about a dozen head of cattle without hand-feeding. There was in fact not sufficient grass for the cattle which he first brought there, and some died from eating lantana. The taxpayer did some work towards improving the property. But I am not satisfied that he did anything like as much as he says he did. He made some attempt to fix up the boundary fence by straining loose wires and patching it with new wire here and there. But it remained insufficient to keep cattle put on the land from straying and

to prevent stray cattle getting in. The taxpayer said he was in constant trouble with the poundkeeper. Some attempt at clearing was done here and there by cutting down some small trees and by ringbarking. But no extensive or systematic clearing or timber treatment has been done on the place within the last ten years. My conclusions as to this are based partly on my own observation and partly on the evidence of the witness Trevor Jones, which I accept. Probably more was done on the paddock east of the road, Mrs. Hampson's land, than was done on the subject land. What work was done on the subject land seems to have been mainly directed to killing lantana of which there was a lot in one part. The taxpayer and Mrs. Hampson gave some indefinite evidence of the sowing of grass and of the purchase of artificial manures. But I do not accept the suggestion that any extensive or systematic pasture improvement was carried out. In short, when the taxpayer acquired the land it was neglected; it was not then, or while he held it, and is not now, of any great value for farming or grazing purposes. In 1956 its main value might well seem to lie in the possibilities of the future. It was just beyond the then outskirts of suburban development of an increasingly populous city. But, although only about eight miles by road from the city proper, and within a mile and a half of the residential area of Everton Park, it was then and still is in bush-land and beyond the limits of water supply, sewerage, gas and electricity. Under the Brisbane city plan it is now zoned as green-belt land. At relevant times it has been classified for town planning purposes as either rural land or green-belt land. The effect of the restrictions upon subdivision in force at different dates was explained by the Chief Planner of the Brisbane City Council, A. A. Heath, whose evidence as a whole was informative and helpful. I think I summarize it sufficiently by saying that until October 1959

the land might, with the approval of the City Council, have been subdivided into lots of not less than two and a half acres; and that Council's approval for such subdivision of land in that locality was then readily obtainable. After October 1959 a different procedure obtained. All applications for permission to subdivide scheduled land, which this was, were referred to the Greater Brisbane Planning Committee and then to the Registration Board for its recommendation. Subdivision, even into two and a half acre lots, of land zoned as this land now is was then not ordinarily permitted: five acres became the minimum area ordinarily approved.

In what may be called the general locality, north-west of Brisbane, where the subject land is some subdivisions of scheduled land into areas of less than five acres have been allowed, sometimes as the result of appeals to the Local Government Appeal Court. But subdivision into lesser areas than two and a half acres, that is into ordinary suburban allotments of about twenty-four perches, would be contrary to the present town plan and to the policy of the Council. Indeed the Council has acquired certain areas in the green-belt which many years ago some speculator had subdivided into small allotments but which remained vacant. It has done so simply to ensure that the green-belt shall remain intact as non-urban land, for the time being at all events, until perhaps 1970. But of course restrictions do not quell the hopes of land speculators and "land developers", as they are called. Indeed restrictions may do no more than suggest to them the possibility of getting land cheaply and waiting until the authority can be induced to modify its plan and release the land from restrictions. One may regret the destructive effect of economic pressures upon plans that are made to ensure that future development will best serve the interest of the whole community. But it would be a mistake to assume that such pressures do not exist. They prevent

plans being permanently unalterable. And after all restrictions upon the subdivision of open space near a growing city are not imposed because people do not wish to cut up the lands for suburban development but because they do. The restrictions are evidence of the possibility that, if they were not imposed, the land would be subdivided and built upon. And they are not incapable of modification. The nearest point of the subject land is only about half a mile from the present urban zone. And although in 1956 there had then been no residential development nearby, land was being sold and houses were being built westward from the suburbs of Chermside and West Chermside, and northwards from Everton Park, and also to some extent in Pine Shire which is adjacent to the City boundary and near the subject land. The restrictions upon subdivision of the subject land existing at the date it was acquired by the taxpayer, and the more stringent restrictions that came into force after 1959, do not, I think, weigh much in considering what the taxpayer, a land speculator, was likely to have had in mind. Even if he had no thought that he himself would sell the land in allotments, it does not follow that he had no thought of selling it at a profit to someone who might hope in time to see the restrictions lifted and subdivision allowed.

It was said for the taxpayer that I could consider not only what he said in the witness box had been the purpose for which he acquired the land but also statements he made confirmatory of this. Speaking generally, I do not think that self-serving statements by a party as to his intentions, motives or purposes, present or past, made out of court are admissible in his favour, unless they be somehow made admissible in the course of the trial, as for example by a suggestion that what he says in the witness box is a recent invention. Contemporaneous statements of intention or other state of mind made when entering into a particular transaction may, however, be admissible, if evidence of the transaction

is admissible, as forming part of the transaction and explaining it. For this reason I admitted certain evidence of what the taxpayer said to the estate agent through whom he bought the subject land. His instructions to the agent as to the kind of land he wanted to buy and the purposes for which it must be suitable are I think admissible. But of course the weight of this evidence depends upon how far one assumes that he is likely to have disclosed to the estate agent all that he had in mind. A man buying land and hoping to get the vendor to reduce his price is likely to be reticent about any hopes or expectations he has of selling it at a profit. Certain other statements made by the taxpayer were elicited in cross-examination and were relied upon by counsel for the Commissioner. They were clearly admissible either as admission of a purpose of profit-making by sale or as being inconsistent with his testimony in the box.

I shall state briefly what the taxpayer said in evidence was his purpose in acquiring the land and, to test this, notice what he had said on other occasions and what in fact he did. In approaching the question in this way I do not mean to suggest that the taxpayer is untruthful in the evidence he gave as to uses to which he had it in mind he might put the land. It is a question whether it is the whole truth. Property may be bought by a man with the purpose of making a profit by re-sale when the opportunity arises; and quite consistently with this, he can entertain a plan to put it to some economic or domestic use in the meantime.

The taxpayer and McCausland said in evidence that before the taxpayer bought the land he told McCausland that he "had in mind to buy a place to experiment with beasts that were immune from ticks". He explained in the box that his object was to conduct experiments in crossing other cattle with zebu cattle with a view to producing a tick-resistant strain.

He said that in 1956 the crossing of zebus with other cattle was not common practice. He had in fact bought a zebu bull a short time before he bought the subject land, and it was brought there with the cattle from Broadbeach. In reply to one question he said, "I had in mind two things . . . One was that eventually it would fall to the daughter when my time was up; and the other one was that I was going to make it into a stud farm and continue with the tick proposition. I had in mind that it was a first class position for hand-feeding stock, which was due mainly to closeness to the Roma Street markets at that time".

In his notice of objection to the assessment, dated 16th July 1962, the taxpayer said:

> " The property in question was purchased due to my having at that time disposed of a Grazing property at Southport and I required one close to my home at Toowong, Brisbane. On the property in question I experimented in relation to raising of tick-free cattle, and used same for grazing purposes generally.
>
> I have been a Farmer and Grazier amongst other things during the whole of my occupational lifetime.
>
> I did not purchase the property in question for the purpose of resale at a profit nor did I change or alter my intention at any time in this regard.
>
> The only reason why I at any time offered the property in question for sale or in fact did sell was due to the fact that I was very hard pressed financially. "

During the time he held the property the taxpayer did have some cattle there - some of them were the progeny of the zebu bull and cows of mixed breed. The total number varied from time to time. Apparently he engaged in some buying and selling of cattle. At one time he had about a hundred and forty. From 1961 or thereabouts he also had land at Brookfield, somewhat further from Brisbane. This land he still owns; and I am not concerned to consider for what purposes he acquired it. Cattle were sometimes moved from one place to the other. The taxpayer visited the subject land fairly frequently; but he continued to live nearer Brisbane. A neighbouring landholder halped him

in some way in looking after his cattle, mainly it seems in rounding them up when they got out. Taking the evidence as a whole I think that the most that can be said is that the land at Everton Park was used by the taxpayer as a convenient paddock for occasional cattle dealings in which he engaged. It was never used as a stud farm. And although I do not doubt that he was interested in a way in the tick-resistant characteristics of zebu cattle, he conducted no controlled or scientific experiments there. An area insecurely fenced on its boundaries, and having no internal fencing, stocked with some miscellaneous types of cows and more than one bull could hardly be said to be used for experimental breeding even in a crude and haphazard way.

In January 1959 the taxpayer put the land in the hands of an estate agent for sale. The evidence as to the sequence of events about this time is not quite clear. It seems that the taxpayer considered more than one proposal to buy the property. He said that it was only because he was being pressed by a creditor to whom he owed money that he gave any consideration to these proposals. But I am not satisfied that this was so.

In October 1959 the taxpayer was approached by a company called Torbreck Limited which apparently is an offshoot of, or in some way related to, Reid Murray Development Limited. Torbreck Limited offered to buy the subject land and also Mrs. Hampson's land for the remarkable sum of £600 an acre, conditionally upon approval for subdivision into building lots being obtained. The taxpayer was willing to sell at this price - not unnaturally one may think as he had paid only £18 an acre. He therefore employed a firm of surveyors to prepare a plan of subdivision and apply to the Council for its approval. The application, dated 28th October 1959, asked that the land be re-zoned as urban land for residential purposes. In reply the Town Clerk wrote on 23rd

December:

" I regret to advise that the Committee decided that the land may not be permitted to be subdivided in accordance with the application for the following reasons:-

(i) The development would be liable to cause excessive expenditure of public monies.

(ii) The development may adversely affect the City Plan now in course of preparation.

(iii) The land is not within a residential locality and is not within a locality which is or probably will become a residential locality.

(iv) Subdivision in the manner proposed would not be in the public interest. "

The significance of this episode is that it called forth a letter from the taxpayer to the Council in the following terms:

" Dear Sirs,

With reference to an application made by myself and Mrs. Hampson and your reply thereto on 21st Dec. 1959.

Would you be good enough to advise me if the Council is prepared to allow me the right to use this land for anything at all? When the land was acquired it was acquired for the purpose of certain experiments with cattle - improving - and subdivision, it is too large for pig raising - no use for farming - too expensive for grazing. Three pounds per acre has been expended on the land per year and on account of a writ and a caveat placed on the land forbidding anything done with the land, double this amount will be required in the coming year.

I was offered £600 per acre subject to the Council's consent to subdivide, I am now offered £250 per acre without the Council's consent - £500 has recently been refused for the adjoining property.

Some years past we made something of a similar application at Commercial Road, Teneriffe and met with similar fate ending up such property loss approaching £100,000. I am not aware whether the Council is adopting an attitude because it is J. J. Petrie or whether I don't know the right procedure in confronting the Council, or whether the Council is acting in the best interests of the public. I stress these facts in order that you might see fit to advise what economical purpose I may be allowed to put this land to, that I may be able to decide whether to proceed further or let your Council take it over for rates, one thing looks certain I cannot proceed further if I am prevented from putting it to its proper use. "

This seems to be a somewhat confused statement by the taxpayer of his purposes in buying the land. But it does say that subdivision was then in his mind. In his evidence he gave an unconvincing explanation of what he had meant by his reference to subdivision.

About the time of the abortive transaction with Torbreck Limited the taxpayer had other offers for the land. One of these was from a man named Kallay. He had offered to buy it as it stood for £80 an acre. He claimed that this offer had been accepted in writing. But the taxpayer disputed this. He was anxious to escape from any obligation to Kallay and he contended that there had been no completed agreement as to the terms of the sale. Kallay therefore sued for specific performance. The taxpayer settled the action by paying Kallay £7,000 and retained the land. This was not because he wanted to continue as a cattle breeder, but because he had seen the chance of an even better sale. He had given an option of purchase to Reid Murray Development Limited and on 28th October 1960 that company exercised the option and bought the land in question for £45,715. At the same time it bought also Mrs. Hampson's original holding and an adjoining paddock that, on the advice of the taxpayer, she had bought some little time before. The question whether the profit that accrued to Mrs. Hampson from the sale of her lands was taxable has been the subject of proceedings in this Court: Hampson v. Federal Commissioner of Taxation (1964), 13 A.T.D. 296. Owen J. there held that it was not taxable, holding that Mrs. Hampson's dominant purpose when she acquired her land was to have a suitable place to keep her horses. His Honour said, "I am not prepared to attribute to the appellant whatever profit-making purpose or motive her father may have had when he advised her to buy". The present appeal concerns only the profit made by her father the taxpayer by the sale of the subject land. That sale was conditional on the vendor

having a caveat which Kallay had placed on the land removed and providing evidence that Kallay had no claim against the land. It was to comply with this requirement that the taxpayer settled Kallay's claim by as I have said paying him £7,000.

At about the time that he made the sale to Reid Murray Development Limited the taxpayer bought from one Clarkson other land adjoining the subject land. This too he immediately sold to the Reid Murray company at a handsome profit. It is not denied that this is taxable for admittedly the taxpayer bought the Clarkson land for the purpose of making a profit. That transaction it seems to me really throws little light on what four years earlier had been his dominant purpose in acquiring the subject land.

What I have said sufficiently states the main facts. I do not think I need set out all details of all the matters given in evidence which it was contended would throw light, one way or the other, on the question that I have to decide. From some of them competing inferences might be drawn if they stood alone. But I have considered each in its relation to the evidence as a whole. Two particular episodes I may briefly mention. One is that soon after he bought the subject land the taxpayer had apparently some idea of starting a dairy farm. He made a tentative approach to those in control of the milk industry but was unable to obtain "a quota" for the supply of milk. In the light of the rest of the evidence it can hardly be said that he had running a dairy much in mind when he acquired the land. Had that been then a serious purpose of the acquisition one would have expected him to have first made some inquiries about the prospects of being able to give effect to it. The other matter is that soon after he got the land he sought to obtain from the appropriate authorities approval to set up a petrol station on Beckett Road. He said in evidence that he did this as it would lead indirectly to an

improvement of the road which was then an earth road in a bad state. Quite why he thought it important to have the road improved as a motor highway was not made clear - not for the droving of cattle obviously: a petrol station seems to be an accompaniment of suburban development rather than of a grazing property: perhaps he remembered that the petrol licence at Broadbeach was an element in the price he got for his property there. I do not attach much importance to this one way or the other.

My strong impression is that the taxpayer acquired the subject land with the dominant purpose of making a profit by selling it at some later date: that he intended to hold it until he could sell it at a profit that he deemed sufficient; and in the interim to use it as from time to time he best could in conjunction with the land in his daughter's name; but that he did not intend to spend, and did not in fact spend, much money on it that would not enhance its value in the future for subdivision as the suburbs extended.

Whether or not I be right in my view that the making of a profit by re-sale of the land was the taxpayer's dominant purpose, he has certainly failed to satisfy me that it was not. I must therefore dismiss the appeals. But I do not, as at present advised, confirm the assessments, because I am not sure of how exactly the Commissioner calculated the taxable profit arising from the sale. On the facts appearing in the evidence it seems that the £7,000 that the appellant paid to Kallay should be taken into account in reduction of this profit. But I heard no argument on this; and all the relevant facts may not be before me. To leave the matter open for the consideration of the parties, and to enable the taxpayer to make to the Commissioner any representations he may wish on this aspect, I shall ~~therefore~~ remit the case to the Commissioner for his determination of the amount to be

assessed in accordance with this decision. If there is any dispute as to this the case may be restored to the list for my decision.

I dismiss both appeals: the taxpayer is to pay the Commissioner's costs: I remit both assessments to the Commissioner for him to re-assess if necessary the tax payable. If there is a disagreement as to this the taxpayer is to be at liberty to restore the matter to the list at any time within one month of this date for the determination, at the taxpayer's risk as to costs, of the amount of tax payable.