

IN THE HIGH COURT OF AUSTRALIA

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CRADDOCK

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V.

THE COMMISSIONER OF TAXATION OF  
THE COMMONWEALTH OF AUSTRALIA

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## REASONS FOR JUDGMENT

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Judgment delivered at Sydney  
on Thursday 2nd October 1969

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CRADDOCK

v.

THE COMMISSIONER OF TAXATION  
OF THE COMMONWEALTH OF AUSTRALIA

ORDER

Appeal dismissed with costs. Usual order  
as to exhibits.

CRADDOCK

v.

THE COMMISSIONER OF TAXATION  
OF THE COMMONWEALTH OF AUSTRALIA

JUDGMENT

KITTO J.

CRADDOCK

v.

THE COMMISSIONER OF TAXATION  
OF THE COMMONWEALTH OF AUSTRALIA

This appeal is constituted by the reference to the Court of an objection against an assessment of the income tax payable by the appellant in respect of income derived by him in the year ended 30th June 1967. The ground of the objection is that the assessment has erroneously treated as assessable income the appellant's share of certain amounts of profit which in the relevant year were derived by four persons, of whom he was one, from the resumption of a part and the sale of other parts of a tract of land which they owned as tenants in common in equal shares. The only question which I find it necessary to consider is whether the appellant acquired his interest for the purpose of profit-making by sale; that is to say for that purpose alone or, if for more purposes than one, for that purpose predominantly: Pascoe v. Federal Commissioner of Taxation (1956) 6 A.I.T.R. 315. Under s. 190(b) the appellant has the burden of satisfying me on a balance of probabilities that profit-making by sale was neither the sole nor the dominant purpose of the purchase.

The appellant's co-owners of the land were his wife, his brother and his brother's wife. They bought the land in 1958. For some years before that they had been carrying on in partnership a drapery business in Bunbury, a seaport town on the south-west coast of Western Australia, and the brothers, if not their wives also, were familiar with the district, having lived most of their lives in the town. The country round about is devoted largely to farming, particularly the grazing of cattle and sheep, but until 1958 the brothers kept to their drapery business. Late in 1956 or early in 1957 they considered buying a semi-developed

grazing property of some 800 acres at Picton, six or seven miles to the east of Bunbury, which was offered to them for £20,000, but this they rejected and in the next year or two they considered no other property. In 1958, however, they were offered 150 acres of completely undeveloped bush country only two and a half miles to the south of Bunbury Post Office, belonging to a man named Money, and they bought 62 acres of it in the names of their respective wives and themselves for £6,200. It is the purpose of this purchase that I have to consider.

The appellant has given evidence before me to the effect that the purpose was to carry on farming as a hobby. He has not suggested that there was any difference as to purpose between his fellow purchasers and himself, but for some reason none of them has gone into the witness-box and their absence has not been accounted for. It does not follow, of course, that the appellant's evidence should necessarily be disbelieved; but the inference may fairly be drawn that if the brother or the wives had come forward as witnesses their evidence would not have assisted the appellant. His evidence must therefore be scrutinized with care.

His case is that he and his brother, having over the years heard constant talk of farming matters from their friends and associates in the town, had developed a general interest in farming, and that when an estate agent named Rodney Johnston directed their attention to the Picton property in 1956 or 1957 they made a definite decision to take up farming themselves. He says that their reason for deciding not to buy the Picton property was that it was too big: they would have had to put more work and more money into it than they could manage. Then, a year or two later, Mr. Johnston drew their attention to Money's land and they bought the 62 acres. This land was only some 400 or 500 yards to the south of the southernmost limit of the residential

development of the town. There were odd houses scattered to the north-west and north of the land but not closer than I have mentioned, and the planned roads thereabouts were unmade.

The appellant was quite definite in asserting that the purpose of buying the land was farming in the form of the grazing of cattle, and not profit-making by sale. He said in evidence: "This was the type of small area we wanted and if we did not decide now we would probably go ahead and keep looking at properties, so we went ahead.... We felt we would fence it, clear it and pasture it, and we felt it would take at least 30 head ( of cattle), may be more. This we had to find out, of course."

But they took no steps to find out before buying. When they had been considering the Picton property a year or so before, they had consulted a knowledgeable man, a Mr. Payne, the father-in-law of the appellant's brother, a retired farmer of long experience who had been for many years the Mayor of Bunbury. With the appellant's brother, Mr. Payne had inspected the Picton property thoroughly, and in deciding against the proposal to buy it they had been acting in accordance with his advice. They also had another friend of long standing, a Mr. Harold Johnston, a retired farmer upon whom they were to rely at a later stage for supervision of the fencing and clearing of the subject land, the putting down of pastures on it and the purchase of cattle. Moreover in their club and elsewhere in the town, they were constantly meeting and talking with people familiar with pastoral matters. Yet when offered Money's land they did the very opposite of what they had done in relation to the Picton property: they sought no advice from Mr. Payne, Mr. Harold Johnston or anyone else. In the case of the Picton property they had been considering partly developed land at about £25 an acre, yet they bought Money's land,

totally unimproved, uncleared and substantially unfenced, at about £100 an acre, discussing it with no one but the agent who submitted it to them, making no attempt to negotiate for a lower price, and not staying to see if there was any farming land further out which could be got more cheaply. All this would be understandable if their knowledge of town affairs, their discussions in the club and elsewhere, and their contact with people like the ex-Mayor of Bunbury had led them to look upon Money's land as likely to be saleable in a few years for residential purposes; but if their real object was to take up amateur farming it is not easy to understand at all.

What is still more difficult to understand is that was their object is that they gave no substantial consideration whatever to the economics of a farming enterprise on the land. The appellant says that he made a guess that the property would carry 30 head of cattle, but it was the guess of one whose ignorance of the subject was profound. He said that he based the guess upon a belief that there was a general feeling among farming people in the district that on a reasonable piece of land you should be able to get two beasts to the acre (which should have given him 12<sup>4</sup> head). He said that his brother and he, after walking over the land and deciding that it was the size they wanted, said, "If we do not buy it now we won't get around to buying it, like the other land which fell through when we thought we were going farming and we didn't"; and he added: "and at that stage we just said 'Let's go'". The other land was the Picton land. It had not fallen through because time had been taken in careful consideration: they had given it consideration and decided it was too big. There was nothing in that experience to suggest that a precipitate decision was desirable in the case of Money's land. If they were really thinking in terms of farming, even as a hobby, they could hardly have failed to find out something about the probable cost of clearing, fencing

and sowing to pasture, the carrying capacity, the cost of cattle to be bought and the likely proceeds of realization; for they were playing with a substantial sum of money, £6,200 plus the money that would have to be put into the developing of unimproved scrub land and stocking it. Yet the appellant said in evidence, "I don't think we worried about the economics. We wanted to have a little plot for farming. It was just the same as buying a boat. That also might be uneconomical. We just wanted a farm." "A bit of fun" was his description of the undertaking. I find this far from convincing. He conceded that they had in mind the possibility of selling the land in subdivision - five acre lots, he mentioned - but that was only "if anything went wrong ...so that if it proved uneconomic, or we did not like farming, we could get out of it." He had no recollection of any discussion at all with his brother, let alone with the wives, of any aspect of the economics of the property as a farming proposition. He said: "I was not terribly worried about the economics. I wanted to have a little go at farming...I thought we would cut square, or we might make a few per cents, but very little. I would have been perfectly happy cutting square." This one could well understand if the primary purpose was to buy the land for ultimate subdivision and there was a subsidiary purpose of putting it in the meantime to uses which might have advantageous consequences as regards rates, land tax and income tax; but otherwise two sensible business men were behaving quixotically.

Since enjoyment of farming for its own sake is said to have been the motivating purpose it seems odd that the impetuous decision to buy, the carefree "Let's go", was not followed at once by the clearing and fencing of the land and the purchase of stock. But two years went by before any move was made. Then there was a period occupied by

development, including bull-dozing some part of the land which the appellant could not remember at the hearing of the appeal, and spraying against something that likewise escaped his memory; but such pleasure as the supervision of these activities may have offered was left to the experienced Mr. Harold Johnston. For still another year the property was kept unstocked so that the grasses might re-seed. Not a single beast was bought until four years after the purchase of the land. Then over the next three years some cattle were bought and sold, not as many as 30 being on the property at any one time, but they were of such a quality, or lack of quality, that the venture turned out to be, as the appellant put it, "not too good". There was a loss in the first year, a small profit in the second and a rather larger one in the third. But the appellant says that he, and presumably he meant to include the others, did not care very much. Of course there was no need to care if the purpose of farming was only incidental and the real explanation of what the appellant referred to in evidence as the snap decision to buy was to be found in the prospect that urban expansion, and consequent profit from resale, were only a few years ahead.

The evidence does not establish that at the time of the purchase there were any clear indications to be seen of impending expansion of the residential area of Bunbury. But a town-planning scheme had been in the air, and as soon afterwards as December 1961 the land bought from Money was rezoned as urban land under a scheme which limited its use to residential purposes (with an exception in favour of non-conforming uses), and an area of other land to the west was in fact subdivided for sale in residential lots. While the evidence does not enable me to find that developments such as these must have seemed in 1958, to Bunbury people with their ears to the ground, sufficiently probable to warrant a

speculation in land just outside the existing purlieus of the town, it is obviously a possibility not to be completely disregarded in considering the evidence.

In October 1964 the Department of Public Works informed the Craddocks that a part of their land, in the south-east corner of it, was required for the purposes of a new High School and Primary School, and in due course an area of  $12\frac{1}{2}$  acres was resumed. The Craddocks thereupon adopted a scheme for subdividing the rest into residential allotments and sold some of them. The appellant has deposed that the area resumed had taken most of the low-lying portion of the land, and that as they had depended on that portion for summer pasture the resumption of it brought about the abandonment of the purpose of farming and a decision to subdivide and sell. But an odd feature of the case is that according to evidence which I accept, given by Mr. Harold Johnston and a Mr. Duncan, a valuer employed by the Department of Taxation, the low-lying land was in the north-east corner, not the south-east corner, and was not included in the resumption. Moreover, Mr. Harold Johnston, the Craddocks' adviser in the improving and stocking of the land, considered that the whole of the area bought from Money was reasonably good grazing land regardless of the season, and he did not distinguish between the low-lying land and the rest as regards suitability for summer grazing.

It seems to me that consideration after consideration tells against acceptance of the appellant's evidence as to the dominant purpose for which the land was bought. He has by no means satisfied me that that purpose was other than profit-making by sale. This being so, the appeal must fail.

In my opinion the assessment should be upheld, and I dismiss the appeal with costs.