

Judgment of the Judicial Committee of the Privy Council on the Appeal of the Commissioners of Taxation v. Teece, from the Supreme Court of New South Wales; delivered 10th December 1898.

Present :

LORD MACNAGHTEN.

LORD MORRIS.

SIR RICHARD COUCH.

[*Delivered by Lord Macnaghten.*]

The point to be determined in this case turns upon the language of the Land and Income Tax Assessment Act 1895. The question is whether in order to arrive at the amount of their income chargeable with income tax the Australian Mutual Provident Society are entitled to deduct from their taxable income all the outgoings and expenses incurred in the production of their income or only so much of those outgoings and expenses as may be properly attributable to that portion of their income which is taxable under the Act.

The Society is a mutual life assurance society. The incomes of such societies with the exception of "income derived from mortgages" are by Section 17 Sub-section II. declared to be "exempt from income tax."

Section 27 contains rules for ascertaining the sum on which (subject to the deductions therein-after mentioned) income tax is payable. This sum is termed in the Act "the taxable amount." It is not disputed that in the case of the Australian Mutual Provident Society "the taxable

“ amount ” is simply the amount of the Society’s mortgage income.

Section 28 declares that “ from the taxable amount so ascertained as aforesaid every taxpayer shall be entitled to deductions in respect of the annual amount of—

“ (I.) Losses outgoings including interest and
 “ expenses actually incurred in New
 “ South Wales by the taxpayer in
 “ the production of his income.”

The interpretation clause (Section 68) defines “ income chargeable ” as “ the taxable amount less the deductions allowed under this Act.”

For the year commencing the 1st of January and ending the 31st of December 1895 the Respondent Society returned their income in respect of “ interest on loans on mortgage in New South Wales ” at 161,599*l.* and the expenses incurred in the production of their income at 51,617*l.* and they claimed to deduct the latter sum from their mortgage income being the taxable amount of their income thus leaving the difference between those two sums as “ income chargeable.”

The Commissioners for Taxation disallowed the claim though apparently they were not unwilling to allow a deduction of so much of the Society’s expenses as could be shown to have been incurred in the production of the Society’s “ income derived from mortgages.”

The Society appealed to the Court of Review established under the Act Section 9. From the decision of this Court which was in favour of the Commissioners an appeal was brought to the Supreme Court on a case stated by the Judge of the Court of Review. The Supreme Court on appeal reversed the decision of the Lower Court and answered the question submitted to them in favour of the Society.

Darley C. J. with whom Simpson and Cohen J.J. agreed was of opinion that the last words of Section 28 Sub-section I. "must receive their "natural construction and mean the whole "income of the taxpayer arising from whatever "source and whether the Act exempts a portion "or not." Although perhaps the illustration to which the learned Chief Justice resorts in support of his view may be open to criticism their Lordships are of opinion that the principle of the decision is perfectly sound. It is obvious that the conclusion at which the Commissioners of Taxation arrived cannot be reached without introducing some limitation or some qualification which is not to be found in words of the Act. The words "in the production of his income"—that is in the production of the income of the taxpayer entitled to the deductions mentioned in the Act—in their natural and ordinary meaning apply to the income of the taxpayer as a whole. Though it would certainly have led to a variety of nice and difficult questions it might have been more logical it might have been more in accordance with the fitness of things it might have made the scheme of the Act look more symmetrical if the taxpayer claiming deduction had been confined to deductions immediately connected with or properly attributable to his taxable income. But that is not what the Act says. And it is the duty of the Court to construe the Act as they find it.

Their Lordships will therefore humbly advise Her Majesty that the Appeal ought to be dismissed.

The Appellants will pay the costs of the Appeal.
