

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Commissioners of Taxation v. Antill, from the Supreme Court of New South Wales; delivered the 5th June 1902.*

Present at the Hearing:

LORD MACNAGHTEN.

LORD DAVEY.

LORD ROBERTSON.

LORD LINDLEY.

SIR FORD NORTH.

[*Delivered by Lord Macnaghten.*]

This Appeal raises a question under "The Land and Income Tax Assessment Act of 1895." The Appeal is against a Judgment of the Supreme Court of New South Wales on a special case stated by the Court of Review under Section 45. The Appellants are the Commissioners of Taxation.

It appears from the special case which was founded on admissions made for the purpose of the appeal to the Supreme Court that Mr. Antill the present Respondent carried on business as a grazier on a station or run called "Mara" held under lease from the Crown. The special case set forth—

- (1.) The sum paid by Mr. Antill for the purchase of the station from the prior lessees;
- (2.) The rent payable to the Crown;
- (3.) The term unexpired;
- (4.) The value of the improvements at the time of Mr. Antill's purchase;

- (5.) The amount spent on improvements by Mr. Antill after the purchase ;
- (6.) The present value of Mr. Antill's interest ;
- (7.) The fair rental value of the premises apart from improvements over and above the rent payable to the Crown ;
- (8.) The present value of Mr. Antill's interest in the improvements ; and
- (9.) The fair rental value of such improvements.

The question on which the decision of the Supreme Court was pronounced was whether or not Mr. Antill was entitled to deduct or have deducted from the taxable amount of his income for the year 1899 "a sum representing the fair rental value of the said leasehold premises and improvements thereon for that year."

The Full Court consisting of Darley, C.J. and Owen and Simpson JJ. answered that question in the affirmative.

The Act of 1895 imposes both a land tax and an income tax. Under Parts II. and III. of the Act the land tax is to be assessed on the unimproved value of all lands with certain exceptions. It is common ground that the holding known as "Mara" station falls within the exception of "Crown lands" and is exempt from land tax.

The provisions as to income tax are contained in Part IV. of the Act, beginning with Section 15.

By Section 15 it is declared that subject to the provisions of the Act income tax is to be levied in respect of the annual amount of all incomes exceeding 200*l.* per annum :—

" i. Arising or accruing to any person wheresoever residing  
 " from any profession trade employment or vocation carried  
 " on in New South Wales whether the same be carried on by  
 " such person or on his behalf wholly or in part by any other  
 " person."

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“ iii. Derived from lands of the Crown held under lease or  
“ license issued by or on behalf of the Crown.”

“ iv. Arising or accruing to any person wheresoever residing  
“ from any kind of property except from land subject to land  
“ tax as hereinafter specifically excepted or from any other  
“ source whatsoever in New South Wales not included in the  
“ preceding sub-sections.”

Under Section 17 certain incomes including  
“ income derived from the ownership of land  
“ subject to land tax ” and “ income derived  
“ directly from the use or cultivation of land  
“ subject to land tax ” are exempt from income  
tax.

Sections 27 and 28 so far as material for the  
present question are as follows :—

“ 27. For the purpose of ascertaining the sum hereinafter  
“ termed ‘ taxable amount ’ on which (subject to the deductions  
“ hereinafter mentioned) income tax is payable the following  
“ direction and provisions shall be observed and carried  
“ out :—

“ i. The amount of taxable income from all sources for the  
“ year immediately preceding the year of assessment  
“ shall be taken as the basis of calculation.”

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“ iii. No tax shall be payable in respect of income earned  
“ outside the Colony of New South Wales.”

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“ vi. In all other cases the taxable amount shall be the total  
“ amount of taxable income arising or accruing to  
“ any person from all sources except to the extent  
“ of the exemptions provided by Section 17.”

“ 28. 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.”

It may be observed in passing that a tax-  
payer occupying for the purpose of business  
any land in respect of which land tax is  
payable by him is authorised by sub-section vi.  
of Section 28 to “ deduct a sum equal to 5 per  
“ cent. on the amount of the unimproved value  
“ of such lands plus 5 per cent. on the amount  
“ of the value of the improvements thereon  
“ which are used and required for the purposes

“ of such business.” No such deduction, however is authorised in the case of a taxpayer who occupies for the purpose of business land not subject to land tax.

The result of these enactments seems to be that the only deductions which Mr. Antill was entitled to make from the income arising or accruing to him from “ Mara ” station were those specified in Section 28 sub-section (i). In the opinion of their Lordships the deduction sanctioned by the Full Court under the head of “ fair rental value of the leasehold premises and “ improvements thereon ” is not an outgoing loss or expense within the meaning of that sub-section. The learned Chief Justice thought it fell “ exactly within the word ‘ expenses.’ ” His view was that the word “ income ” as used in the Act of 1895 was equivalent to the expression “ balance of gains and profits ” in “ the English Act.” “ The thing taxed ” he said “ is the same “ in both Acts ” and he relied on some well-known decisions in England in cases under Schedule D. His learned colleagues agreed with the Chief Justice. Owen J. was clearly of opinion that the principle in “ the Act of 1895 ” and “ the “ English Act ” was “ the same.” “ They both ” he said “ impose a tax on net income and net “ income only.” Simpson J. was of the same opinion principally for the reason that the tax was an income tax. “ Income ” he said “ means profit.” The terms were he thought “ synonymous.” Their Lordships may observe that the case of *Russell v. The Town and County Bank* (L.R. 13 A.C. 418) on which Owen J. relied has little or no bearing on the question. It merely decided that banking premises used by a bank for the purposes of its business were not used as a “ dwelling-house ” within the meaning of one of the rules under Schedule D. although an official of the bank was required to reside there.

Instead of collecting income tax by separate returns under different schedules of charge as is the case under the income tax code in force in this country the Act of 1895 in force in New South Wales first imposes a land tax upon all lands in the State with certain exceptions and then requires inclusive returns of all income arising from any kind of property in the State except from land subject to land tax. The Act of 1895 differs so much both in its general scheme and in its language from the income tax code in force in the United Kingdom that it is difficult to see how decisions in cases under Schedule D which imposes the tax on trade and professional incomes in this country can be any guide to the construction of "The Land and Income Tax Assessment Act of 1895."

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~~Their Lordships are of opinion that the decision of the Full Court cannot be supported and they will therefore humbly advise His Majesty that the Order of that Court should be varied by answering in the negative the question which has been answered in the affirmative.~~

Having regard to the terms on which leave to appeal was granted and to the fact that the difficulty was in a great measure due to directions issued by the Commissioners of Taxation their Lordships are of opinion that the costs of the Respondent of this Appeal, although it has been successful, ought to be paid by the Appellants.

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