

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Scottish Provident Institution v. The Commissioner of Taxes, from the Supreme Court of the Colony of Victoria; delivered 2nd March 1901.

Present at the Hearing :

LORD MACNAGHTEN.

LORD DAVEY.

LORD ROBERTSON.

LORD LINDLEY.

SIR FORD NORTH.

[Delivered by Lord Robertson.]

The Appellant Company has certain investments in Victoria, in the form of (1) money invested on mortgage and (2) lands acquired through foreclosure of mortgages. The present question is as to the mode in which the income derived from those investments is to be assessed to income tax in Victoria; and it depends on the soundness or unsoundness of the Appellants' claim that their institution comes within the 10th Section of the Victorian Income Tax Act of 1895. That section provides in the case (as the Appellants hold) of all companies whatsoever, or (as the Respondent, the Commissioner of Taxes, holds) in the case only of companies trading within the colony, a mode of computing the taxable income more complicated and less onerous than that applicable to taxpayers generally under Section 5 of the Act.

The original theory of the Appellants had been that their Company was entirely exempt from income tax, by reason of the 7th Section of the same Act; but this claim was rejected by

the Judicial Committee on a former appeal, to which reference will subsequently be made.

The facts are free from controversy. The Scottish Provident Institution is a Scotch mutual insurance company. Its trade is that of insurance and it has also trafficked to some extent in reversions. Neither in insurance nor in reversions has it dealt at all in Victoria. Its sole connection with Victoria is that it has property there. It "does not," as the special case expressly finds, "carry on any business in Victoria, unless the investment of its funds there amounts to a carrying on of business in Victoria."

The income arising from those investments must be held *prima facie* (and this the Appellants admit, for the sake of argument at least,) to fall under the 5th Section, which is the general taxing section; and the Appellants' whole contention is that their institution is one entitled to that mode of computing the taxable income which is set forth in Section 10. Now it must be allowed to the Appellants that in this Victorian Statute, the Legislature has greatly favoured companies, as distinguished from individuals. From reasons apparently of economic policy, companies have been virtually invited to settle in the Colony and aid in the development of its resources; for companies which have their principal office or place of business in Victoria pay no income tax at all, although an individual carrying on the same trade enjoys no similar privilege. In like manner, though in less degree, Section 10, even assuming it to have the narrower meaning contended for by the Respondent, allows certain companies having their principal office or place of business out of Victoria to calculate their taxable income in a more favourable mode than is allowed to an individual trading under similar conditions. The question remains, however,

whether this privilege applies to all companies, whether trading within the Colony or not, or only to those trading within it; and their Lordships are of opinion that the more limited construction of the section is the sound one.

The other sections which relate to the question are the second and the fifth; and, in order to give fair play to the Appellants' argument, it is well to advert to these before examining the terms of the 10th section which is directly and immediately in hand. The second, which is the interpretation clause, declares that "person" includes every company, except a company whose head or principal office or principal place of business is in Victoria; and "company" includes every corporate body howsoever incorporated and whether under the laws of Victoria or any other country and whether its head or principal place of business is in Victoria or elsewhere. Now it is plain enough that when these interpretations are applied to the fifth section, the Appellants' company is found to be subjected to the tax derived from the produce of property within Victoria. The Appellants maintain that the same interpretation of the word "company," being applied to Section 10, procures them admission to its privileges, and they argue that it is illegitimate to ascribe to the word "company" a shifting sense, where no restriction of the meaning is expressly imposed.

The words of Section 10 are as follows:—

"(1) For the purposes of this Act the income of a Company
 "not having its head or principal office or principal place of
 "business in Victoria shall be deemed to be income liable to tax
 "and the taxable income of a Company shall be such amount
 "as the Company sets apart or makes available for being paid
 "credited distributed or used for the purposes of dividend.

"(2) In the case of Companies which have not their head
 "or principal office or principal place of business in Victoria
 "the Company shall on or before the 31st day of March in
 "every year furnish to the Commissioner a return in the
 "prescribed form and containing the prescribed particulars.

“(3) Such return shall be verified by a declaration under
 “the hand of and made by the public officer of such Company
 “or if there be no such officer then under and by the principal
 “officer of such Company in Victoria showing the total amount
 “of the receipts or assets and liabilities (as may be prescribed)
 “of the Company during the year ended on the previous 31st
 “day of December the amount of such receipts or assets and
 “liabilities (as may be prescribed) in Victoria during that
 “year, the amount of all dividends declared by the Company
 “during that year and the dates when they were respectively
 “declared.

“(4) So much of the total dividends declared by the
 “Company during the year as is proportionate to the amount
 “of the receipts or assets and liabilities (as may be prescribed)
 “of the Company in Victoria during the year as compared
 “with the total receipts or assets and liabilities (as may be
 “prescribed) of the Company during the year shall be deemed
 “to be the income of such Company which is chargeable with
 “tax.”

Now, when this section is examined, with especial regard to the third and fourth subsections, it appears that the companies to which the provisions are capable of application are companies which have some part of their “receipts or assets and liabilities” outside Victoria, and some part of their “receipts or assets and liabilities” within Victoria. It is equally clear that those words “receipts or assets and liabilities” represent the component parts of a complete balance sheet of a trading company. Accordingly the hypothesis of this scheme of computing income is that there must be trade in Victoria, just as there is trade out of Victoria. Their Lordships therefore consider that Section 10 is, from its essential condition, applicable only to some of the companies “included” in the application of the word “company” which is permitted by the interpretation clause,—to wit, companies carrying on trade in Victoria, although not having their principal office or place of business there.

While founding their judgment on the terms of Section 10, their Lordships consider this conclusion to be supported by the decision in

England v. Webb, L. R. A. C. 1898, p. 758 already referred to. For while it is true, as pointed out by the Lord Advocate, that the question there arose under Section 7, and that the definition of Company did not directly enter the argument, yet the general considerations which led their Lordships to adopt the more restricted application of the exemption, apply, by a parity of reasoning, to the present case.

The Appellants advanced an alternative argument which their Lordships cannot accept as a valid objection to the judgment. They anxiously maintained that, in fact, they carried on business in Victoria, by holding investments there; and they founded on the second finding in the special case, that "it is a necessary part of the business of every company carried on for the purpose of mutual life assurance to invest its funds." That this is true could not be doubted even if the proposition were not a finding in a special case; but it falls short of what is required for the Appellants' argument. The investment of their funds somewhere is an operation incidental to the Appellants' trade as it is in the case of every trader using capital in his business; but their trade is not to invest but to insure. The 10th section does not use the word "business" (except about principal place of business) as affording any criterion of what the companies it treats of are supposed to be doing in the Colony, and their Lordships have considered that it requires those companies to be trading there. Now the holding of investments is not the trade of the Appellants.

Their Lordships will humbly advise His Majesty to dismiss the Appeal and the Appellants must pay the costs of the Appeal.
