**HIGH COURT OF AUSTRALIA**

Resch

Vs.

Federal Commissioner of Taxation

(Rich, Starke, Dixon and McTiernan JJ.)

4 February 1942

Rich J.

Case stated pursuant to sec. 51A (8) of the *Income Tax Assessment Act 1922-1930* on the hearing of an appeal by one Edmund Resch against the assessment made by the Commissioner upon his taxable income derived during the period of twelve months ending on 30th June 1930 under sec. 13 (1) of the *Income Tax Assessment Act 1922-1930*, which is the relevant Act under consideration. When the appeal first came before me in July 1938, counsel stated that the matter had been the subject of protracted negotiations between the parties with the object of preparing a case on admitted facts and thus avoiding a lengthy trial. In November 1938 it was stated that a case was being prepared with the assistance of accountants and taxation experts. The preparation of the case necessitated a careful scrutiny of documents and records dating back over a period of twenty years. In December 1940, when the case was submitted, I made certain amendments and alterations in it. In August 1941 the case as amended and altered was submitted to me and I was assured by senior counsel that the case set out all the relevant facts. Questions 11 and 12 by my direction were framed in accordance with that settled by the Court, consisting of *Knox* C.J., *Isaacs*, *Higgins*, *Starke* JJ. and myself, in *Australian Slate Quarries Ltd. v. Federal Commissioner of Taxation*[1].

The case stated arises out of the adoption in the income-tax legislation of this country of a provision putting a distribution of profits in the course of the winding up of the company on the same footing as a distribution by a company as a going concern.

By sec. 16B of the *Income Tax Assessment Act 1922-1930* a shareholder who receives profits earned by a company, but in the course of a distribution in a winding up, must include the profits in his assessment for the current year. It is unnecessary to repeat the exact terms of the provision. The taxpayer in the present case received a distribution in the course of a winding up which resulted from an absorption, or what is popularly called an amalgamation. He disputes the proposition that he received money or the equivalent of money in such a sense that it came within the words "amount distributed" which the section uses. But this contention arises rather from the ingenuity of counsel than any tenable ground afforded by the facts. The facts, in my opinion, show that the liquidators received the purchase price in money for distribution in the course of the winding up and had no control over and were not parties to that part of the transaction by which shares in Tooth & Co. Ltd.—the purchasing company—were allotted in exchange for the money thus distributed. Sec. 16B is not concerned with the method of distribution but with the matter distributed—"the amount distributed."

Logically the first contention made on behalf of the taxpayer is that the amended assessment was out of time. If this were true it would end all further discussion, but I regret to say that I am unable to

agree in the contention. I put my decision on this point on the very simple ground that the time at which the original tax was payable, within the meaning of sec. 37 (1A) of the *Income Tax Assessment Act 1922-1930*, was 17th June 1931; that is to say, the day stated at the foot of the original notice of assessment.

The ground taken secondly in point of logic is on a much higher level, but can be dealt with with equal brevity. It is that the whole of the taxing Act and the assessment Act is invalid on the ground that they jointly or severally offend against sec. 55 of the *Constitution*. The objection is based on the second paragraph of that section, which "goes to the whole Act" (*Osborne v. The Commonwealth*[2]). The phrase in the section "one subject of taxation" had for its purpose the prevention of what is known as "tacking" (*Harding v. Federal Commissioner of Taxation*[3]). And it is said that by reason of sec. 16B as well as a number of other sections, viz., secs. 16 (b) (ii), (d), (h), 21, 28, and 20 (2), which provide for other specific matters, the assessment Act includes in the subject of taxation many instances of capital profit. I have already dealt with sec. 16B and the other sections have been considered in decisions of this Court, in which the validity of the Act has been upheld.

It is maintained that the Act does not confine itself to one subject of income but extends to another subject of taxation, namely, capital profits. The subject is profits or gains, and the distinction between gains of an income nature and gains of a capital nature is neither instituted nor maintained by the assessment Act. An income-tax Act usually groups together more than one subject of income, profit, revenue or receipts, but such a grouping does not necessarily involve the conclusion that these subjects are separate and distinct. It is a question of fact in each case and the substance and provisions of the particular Act must be considered. That a particular label or a general name has been given to the Act is of little or no importance where there is no ambiguity in the provisions of the Act. The word "income" is comprehensive enough to include the subjects dealt with in the Act, and its use in this connection is in accordance with common understanding, which is one main clue to the meaning of the legislature: Cf. *Bank of Toronto v. Lambe*[4]. Over and over again this Court has upheld the validity of the Act by deciding that its subject matter is single and has been dealt with by Parliament as a unit. Moreover, "the objections should be grave, and the conflict between the statute and the Constitution palpable before the judiciary should disregard a legislative enactment upon the sole ground that it embraces more than one object" (*Montclair v. Ramsdell*[5]). "Unless ... it becomes clear beyond reasonable doubt that the legislation in question transgresses the limits laid down by the organic law of the Constitution, it must be allowed to stand as the true expression of the national will" (per *Isaacs* J., as he then was, cited by Lord *Sankey* L.C. in *Shell Co. of Australia Ltd. v. Federal Commissioner of Taxation*[6]). For these reasons I am of opinion that this contention fails.

The third question relates to the *quantum* of the assessment. Sec. 16 (b) (i) in combination with sec. 16B excepts from taxability undistributed income accumulated prior to 1st July 1914. The question is whether certain profits which were earned prior to that date have been distributed by capitalization to a greater degree than the Commissioner acknowledges, and this depends on the distribution or allocation of the profits of successive years to the capitalization which the company effected in 1923. Apart from the decision of this Court in *Symon's Case*[7] there would be no difficulty, but it is said that, under that decision, when a taxpayer makes no specific attribution or allocation among the constituent parts of a total fund out of which he is taking money, as for instance for the purpose of capitalization, there is deemed to be an allocation or attribution in the manner which is or turns out to be most favourable for the taxpayer and most against revenue. Having considered that decision I do not think that it establishes any such general proposition, and I

think the ordinary rule must prevail. The taxpayer therefore fails on this point.

[His Honour then dealt with matters not relevant to this report.]

Starke J.

Case stated pursuant to sec. 51A of the *Income Tax Assessment Act 1922-1930*.

On the hearing of an appeal pursuant to that section, the Court, that is, the Justice of the Court who hears the appeal, may state a case in writing for the opinion of the High Court upon any question which in the opinion of the Court is a question of law. The case is so prolix and obscure that I suspect that it was prepared by the parties and merely adopted by the Justice before whom the appeal came for hearing. That procedure will not, I hope, become the practice of the Court: the responsibility is upon the Justice to ascertain and state with precision the facts upon which the question of law arises.

A good deal of our time was taken up clarifying and explaining the matters arising upon the case. In the end, the following contentions emerged:—

1.

That the *Income Tax Assessment Act 1922-1930* infringed sec. 55 of the *Constitution*, which enacts that laws imposing taxation shall deal with one subject of taxation only, and was therefore invalid.

The sections of the assessment Act which were the subject of attack were 16 (*b*) (ii), 16 (*d*), 16 (*h*), 16*b*, 20 (2). Such an objection is rather late in the day, having regard to the many reported decisions upon the construction of the Federal *Income Tax Assessment Acts* (*Australian Digest* 1825-1933—Taxation), in some of which the constitutional provision in sec. 55 has been examined (*Harding's Case*[8]; *Cornell's Case*[9]; *British Imperial Oil Case*[10]; *Colonial Gas Case*[11]). It has been pointed out that the provisions of sec. 55 are complementary to those contained in sec. 53 of the *Constitution*, but whether an Act imposing taxation is void if it deals with more than one subject of taxation has been discussed in several cases but never, I think, actually resolved (*Osborne's Case*[12]; *Harding's Case*[13]; *British Imperial Oil Case*[14]). It might be enough, in view of the question stated in the present case, to say that the *Income Tax Assessment Act 1922-1930* is not a law imposing taxation within the meaning of the constitutional provisions: it makes provision for assessing and collecting the tax: it has nothing to do with the imposition of the tax except that it is legal machinery by which the obligation declared by the imposition is effectuated (*Osborne's Case*[15]; *Crespin & Son's Case*[16]; *British Imperial Oil Case*[17]).

But the attack was then transferred to the *Income Tax Acts 1930* (No. 51 as amended by No. 61), which incorporate the *Income Tax Assessment Act 1922-1930* and declare that it shall be read as one with the tax Acts. Ample power, of course, exists in the Commonwealth under its power in relation to taxation to enact the challenged sections (*Constitution*, sec. 51 (ii.)). But the incorporation of the assessment Act in the tax Acts causes the last-named Act, so it is contended, to deal with more than one subject of taxation, in contravention of the constitutional provision in sec. 55: See *Osborne's Case*[18]; *Harding's Case*[19]. The provision, however, allows, as *Higgins* J. said in *Osborne's Case*[20], the insertion of any provision that is fairly relevant or incidental to the imposition of a tax upon one subject of taxation.

Income is as large a word as can be used to denote a person's receipts (*Re Huggins; Ex parte Huggins*[21]); it signifies that which comes in. An "Act to impose a tax upon incomes" is not less general in scope; it must be liberally construed, and include everything which by reasonable understanding might fairly be regarded as income. Of course, Parliament cannot by any definition or provision that it may adopt contravene the provisions of the Constitution. But I am by no means convinced that the Parliament cannot under cover of an income tax tax anything that comes into a taxpayer without regard to the characteristics or attributes of capital and income in the works of economists or in the decisions of the courts. It is enough, however, for present purposes to say that the Parliament possesses power, without infringing the provisions of sec. 55 of the *Constitution*, to bring to charge in an income-tax Act all profits and gains accruing to a taxpayer, without distinguishing whether the profit or gain should be regarded as a receipt on capital or on income or revenue account.

Examined on this basis, the sections of the *Income Tax Assessment Act* which have been challenged do not contravene the constitutional provision. Thus sec. 16 (b) (ii) brings to charge profits which have been capitalized; sec. 16 (d) brings to charge amounts received by way of premium, fines or foregifts demanded in connection with leases, &c., which are a kind of gain or profit—see *Dalrymple's Case*[22]; sec. 16 (h) brings to charge receipts from any trading or live stock sold as part of the assets of a business. Such receipts are in substance the proceeds of the business carried on by the taxpayer; sec. 16B brings to charge undivided profits distributed in the course of the winding up of a company; sec. 20 (2) brings to charge, in substance, the interest or income of a company's debenture holders who are absentees or whose names are not supplied by the company. The clause is designed to prevent evasion, but it is a tax upon income, as was held in the *Colonial Gas Case*[23].

It follows that the attack upon the constitutional validity of the challenged sections fails, and it is therefore unnecessary for me to consider whether the tax Acts would have been invalid if the constitutional provision had been infringed.

2.

That an amended assessment dated 15th June 1934 was invalid because it was not made within three years from the date when the tax payable on the assessment was originally due and payable.

By the *Income Tax Assessment Act 1922-1930*, the Commissioner may cause to be made all alterations in or additions to any assessment as he thinks necessary in order to ensure its completeness and accuracy, notwithstanding that income tax may have been paid in respect of income included in the assessment. But the alteration in the present case could only be made within three years from the date when the tax payable on the assessment was originally due and payable (Act, sec. 37 (1), (1A) (c)). Tax is due and payable sixty days after the service by post of a notice of assessment (sec. 54 (1)), but the Commissioner may extend the time for payment as he considers the circumstances warrant (sec. 55). And the *Acts Interpretation Act* provides in sec. 29 that: "Where an Act authorizes or requires any document to be served by post ... then ... service shall be deemed ... to have been effected at the time at which the letter would be delivered in the ordinary course of post."

On 15th April 1931 the Commissioner assessed the appellant to income tax, but at the foot of the notice of assessment stated that the tax might be paid without fine up to 17th June 1931.

Notice was sent by post in the manner required by the *Acts Interpretation Act* and was delivered on 16th April 1931 in the ordinary course of post. On 15th June 1934 the Commissioner amended the assessment and notified that the date of payment of the additional tax was 14th August 1934. Notice of this amended assessment was sent by post in the manner required by the *Acts Interpretation Act*, and was delivered on 16th June 1934 in the ordinary course of post. Accordingly, the date when the tax payable on the assessment was originally due and payable was either sixty days after the 16th April 1931 or 17th June 1931, the date which the Commissioner notified the tax might be paid without fine. The sixty days is reckoned exclusively of the first day and inclusively of the last day. So the time would expire either on 15th June 1931 or 17th June 1931.

The amended assessment was made on 15th June 1934, though notice of it was not served until 16th June 1934. But the relevant provision of the Act (sec. 37) is that an alteration or addition to an assessment may be made within three years from the date when the tax payable on the assessment was originally due and payable. It was contended, however, that the amendment was not made until it was notified, that is, on 16th June 1934. But notification was not essential to the making of the amended assessment, though it was for determining when the tax was payable (sec. 54). If this view be wrong, still I think the Commissioner extended the time for payment until 17th June 1931 and the amended assessment was made and notified within three years of that date. Accordingly, the question stated must be answered in the negative.

3.

That the amended assessment was erroneous in several respects.

"Where in the course of the winding up of a company a distribution is made by the liquidator to the members or shareholders, the amount distributed shall, to the extent to which it represents income derived by the company (whether prior to or during liquidation) which would have been assessable in the hands of the members or shareholders if distributed to them by a company not in liquidation, be deemed to be assessable income of the members or shareholders derived in the year in which the distribution is made" (*Income Tax Assessment Act 1922-1930*, sec. 16B). Resch's Ltd. was a company carrying on business in New South Wales as brewers. It had in 1929 an issued capital of 750,000 one pound shares, of which the appellant and his brother Arnold each held 374,983 shares fully paid up, and the other thirty-four shares were acquired by them equally shortly before the winding up of the company. In July 1929 resolutions were duly passed at meetings of the company that the company be wound up voluntarily and liquidators were appointed, who, pursuant to the *Companies Act 1899* N.S.W., sec. 261, were authorized to sell to Tooth & Co. Ltd. the whole or any portion of the business and property of the company upon such terms and conditions as they thought fit, but subject nevertheless to the provisions of sec. 261 of the Act, and to enter into an agreement in the terms of a draft submitted to the meeting. A scheme had been arranged whereby Tooth & Co. Ltd., who were also brewers, took over the business and assets of Resch's Ltd. Accordingly, agreements were entered into between Resch's and its liquidators and Tooth & Co. Ltd., whereby Resch's business and assets, with some exceptions, were sold to Tooth & Co. Ltd., for a sum in the neighbourhood of three millions of pounds.

Tooth & Co. Ltd. paid the purchase money to Resch's liquidators in accordance with the terms of the sale, whereupon the liquidators established a credit with a bank and drew two separate cheques

against the credit, each for half the total amount of the purchase money, one of which was handed to the appellant and the other to his brother. But it had been arranged that upon the acquisition of the business by Tooth & Co. Ltd. the appellant and his brother should each apply for 625,000 ordinary shares of one pound each in Tooth & Co. Ltd. at a premium of twenty-five shillings per share, which they did, and paid for the shares by cheques drawn upon credits at the bank created by the cheques received from the liquidators and certain other money paid to them by Tooth & Co. Ltd. All this was done in the month of July 1929.

The Commissioner claims that the amount distributed to the appellant and his brother in the course of the winding up represented to a certain extent income derived by Resch's and brought to charge pursuant to the provisions of sec. 16B of the assessment Act. Doubtless sec. 16B cuts across the decision in *Burrell's Case*[24] and what I regard as the dubious decision of this Court in *Stevenson's Case*[25]. It is irrelevant for the purposes of this section that income derived by a company has been merged in the assets of the company. The amount distributed is brought to charge to the extent that income is found or is represented in that amount whether the income has been capitalized or accumulated or carried forward, but subject to this, that the income would have been assessable in the hands of the members if distributed to them by a company not in liquidation. The amount brought to charge under the section must depend upon a detailed examination of the accounts of any company and the circumstances of each particular case, which brings me to the particular facts in question here.

In February 1923 a sum of £515,058, undistributed profits, stood to the credit of an account in Resch's books called the Property Reserve Account. In the same month Resch's resolved to capitalize the sum of £450,000 out of its accumulated profits. The resolution was in these terms: "Resolved that the company capitalize the sum of £450,000 out of the accumulated profits of the company (excluding any part of the assessable income of the company which it is liable to include in its return for the purposes of its current assessment) and that in consequence and for the purpose of carrying out such capitalization, fully paid shares shall be issued to the shareholders of the face value of the said sum of £450,000, being one and one-half shares for every share held ... in the company and that any dividend necessary to be credited to the respective shareholders for the purpose of carrying out such capitalization and crediting the said 450,000 shares as fully paid in consequence of such capitalization be credited accordingly." This capitalization was duly effected through the Property Reserve Account.

The appellant and his brother thus acquired a considerable addition to their share capital in Resch's. Its capital and its undistributed profits, including capitalized profits, £450,000, were all invested in the business, in the form of fixed assets, plant, stock-in-trade, and so forth. The distribution which the liquidators made to the appellant and his brother resulted in a return to them of all the capital they had subscribed, also all the undistributed profits capitalized as already mentioned, and other sums as well.

Consequently, there is found or represented in the amount distributed by the liquidators to the appellant and his brother the sum of £450,000 income or profits derived by Resch's which had been capitalized. But the sum of £515,058 in the Property Reserve Account, through which the capitalization of £450,000 was effected, included a considerable amount of profits accumulated prior to 1st July 1914, and which were undistributed on 30th June 1914. The second proviso in the *Income Tax Assessment Act*, sec. 16 (b) (i) prescribes that where a company distributes to its members any undistributed income accumulated prior to 1st July 1914, which is the date, it may be observed, from which income first became assessable to income tax under the laws of the

Commonwealth, the sum so received shall not be included as part of his income: See *Tax Act 1915* No. 41, sec. 5; *Assessment Act 1915* No. 34, sec. 10.

The Commissioner treated the sum of £450,000, capitalized as already mentioned, as drawn proportionately from the amounts comprising the sum of £515,058 undistributed profits to the credit of the Property Reserve Account. A sum of £139,272 profits accumulated prior to 1st July and at credit on 30th June 1914 formed part of the sum of £515,058. Accordingly, for the purpose of capitalization, the sum of £121,680 was treated as drawn from this sum of £139,272. ( 450,000 515,058 of 139,272 = 121,680.) Accordingly, he concluded that the difference between the sums of £139,272 and £121,680, = £17,592, was the sum which represented undistributed income of profits accumulated prior to 1st July 1914 and not assessable to the appellant and his brother by force of the provisions contained in secs. 16B and 16 (b) (i) of the *Assessment Act*. On the other hand, the appellant insists that the profits or income accumulated prior to 1st July and not distributed at the date of liquidation was £65,058. He claims that the capitalized sum of £450,000 should be treated as drawn or appropriated from additions to the Property Reserve Account for the years 1914 to 1920 inclusive, £375,786, and the balance of the £450,000 (£74,214) from the profits or income accumulated prior to 1st July 1914, thus leaving the difference between £139,272 and £74,214, or £65,058, as the sum not assessable to the appellant and his brother by force of the provisions already mentioned.

*Symon's Case*[26] and the cases there referred to were much relied upon. But they are, I think, irrelevant to this case. They are dealing with the right of a person dealing with his own funds, whereas here we are dealing with the funds of a company in which the appellant was only a member, though holding half its share capital. The company never made any appropriation, but simply capitalized the sum of £450,000 through the Property Reserve Account, leaving a general balance of £65,058 remaining at credit of that account (*Inland Revenue Commissioners v. Crawshay*[27]). Accordingly, the appellant has no right to rely upon an appropriation by the company according to the method he propounds, because the company never made any such appropriation and simply resolved to capitalize £450,000 out of its accumulated profits. On the other hand, the method adopted by the Commissioner accords with methods which have been adopted in other cases of allocating or appropriating funds in cases in which no allocation or appropriation has been made. But I take leave to say that these so-called rules of appropriation are not so much rules of law as rules of convenience and of administration adopted to provide for cases in which no method of appropriation has been indicated or no particular intention is discoverable. It is, I think, for the Justice who hears the appeal to consider whether the method adopted by the Commissioner is now the only practicable method which exists of allocating the capitalized sum. If it is, the assessment of the Commissioner is so far right and should not be disturbed.

Another question arises in relation to a sum of £9,289, which represents the balance of profits transferred to the Property Reserve Account for the year ended 30th June 1914, after applying the method of appropriation adopted by the Commissioner. It represents the difference between the profits transferred to the Property Reserve Account for the year ended 30th June 1914 and the sum treated by the Commissioner as drawn from the profits of that year in the capitalization of the sum of £450,000, or in other words the sum of £73,543, less the sum of £64,254, or £9,289. The Commissioner did not treat this sum as undistributed income accumulated prior to 1st July 1914. For the purposes of the proviso, amounts carried forward by a company in its profit and loss account, appropriation account, revenue and expenses account, or any other account similar to any of the foregoing accounts, are not deemed to be accumulated income (Act, sec. 16 (b) (i), second proviso). The facts stated in relation to the matter are meagre, and whether the Commissioner was

right or wrong appears to me to be a question of fact. But the Commissioner insists that the profits of the year which ended on 30th June 1914 could not have been ascertained nor accumulated until after that date. The date on which the profits for the year were ascertained is not stated, nor is the date on which the sum of £73,543 from profits of the year was transferred to the Property Reserve Account. But when the sum of £73,543 was transferred to that account, then may it not be described as accumulated? It was credited to a particular account, not of the character excepted by the proviso, and separated from the other funds of the company. *Forrest's Case*[28] aids, I think, this view. However, the authority under which the transfer was made, when and how it was made, are all unstated, and for my part the question whether the sum of £9,289 should or should not be treated as undistributed income accumulated prior to 1st July 1914 should be determined by the Justice who hears this appeal with more detailed knowledge of the facts relevant to the question.

[His Honour then dealt with matters not relevant to this report.]

Dixon J.

This is a case stated in an income-tax appeal. The assessment under appeal is for the financial year ending 30th June 1931, and is based upon the taxpayer's income of the preceding year. It is governed by the provisions of the *Income Tax Assessment Act 1922-1930*. Among those provisions is sec. 16B, the material part of which is as follows:—"Where in the course of the winding up of a company a distribution is made by the liquidator to the members or shareholders, the amount distributed shall, to the extent to which it represents income derived by the company (whether prior to or during liquidation) which would have been assessable in the hands of the members or shareholders if distributed to them by a company not in liquidation, be deemed to be assessable income of the members or shareholders derived in the year in which the distribution is made."

It will be seen that the purpose of the section was to require the inclusion in the assessable income of a member of a company being wound up of so much of every distribution in the liquidation as upon a proper dissection or apportionment is found attributable to the existence among the assets of profits, whether reserved, accumulated, floating or even earned since liquidation, if those profits would, under the provisions of sec. 16 (b) (i), have formed part of the members' assessable income, had they been distributed by the company as a going concern.

The section thus impliedly concedes what was decided by this Court in *Stevenson's Case*[29], namely, that sec. 16 (b) (i) was confined to distributions of profit by a company as a going concern and did not apply to a distribution in a liquidation; so that under the provisions of that paragraph no part of a distribution in a winding up was taxable in the hands of the members, notwithstanding that it represented or reflected taxable income of the company.

But sec. 16B destroys this distinction and, if the profits are of a kind which could not be distributed among members or shareholders while the company was a going concern without exposing the member or shareholder to a liability to include them in his assessable income, then in the event of a winding up he must also include them when they are distributed as part of the surplus divided among shareholders or members or, as they ought technically to be called, contributories.

The mode of distribution will be different. In a winding up the liquidator distributes the surplus as a fund without distinguishing according to the source of the components. Profits are therefore not distributed as such; while a going concern must maintain a distinction between profits and share capital and distribute profits under a description or in a guise which so identifies them, e.g., as

dividend or bonus. Sec. 16B therefore does not, and logically could not, say that the distribution in a winding up must, to be taxable, be of the same character as a distribution that would be taxable in the case of a going concern. It is the liability to tax under sec. 16 (b) (i), not of the distribution, but of the thing distributed, the profit, that sec. 16B takes as the *discrimen* for the purpose of ascertaining what part of the surplus in a winding up a contributory must include in his assessable income.

The taxpayer who appeals and another member of Resch's Ltd. formed the only two substantial shareholders of that company. In 1929 an arrangement was made with Tooth & Co. Ltd. by which the latter should acquire the business of Resch's Ltd. As a result the following steps were taken:— Tooth & Co. Ltd. took over the assets of Resch's Ltd. except certain investments. Resch's Ltd. went into voluntary liquidation. Tooth & Co. Ltd. handed a cheque for almost the entire amount at which the assets were purchased to the liquidator, who gave corresponding cheques for half each to the taxpayer and the other shareholder. They applied for shares in Tooth & Co. Ltd. to be issued at a premium, thus giving a sum which would cover the purchase money so paid, and handed over to Tooth & Co. Ltd. accordingly their respective cheques.

The resolutions for voluntary winding up were confirmed as special resolutions on 31st July 1929, and on that day the whole transaction was completed.

A large part of the purchase money represented reserves of profit of Resch's Ltd., and the Commissioner of Taxation says that there was a distribution of those profits in the winding up of Resch's Ltd. and that the taxpayer and his fellow member became liable to include them in their respective returns of assessable income derived in the year then current.

In my opinion the case clearly falls within the intended operation of sec. 16B. It was said that the word "amount" in that section showed that it could have no application unless the distribution were made in money and that in the present case the shareholders in Resch's Ltd. received shares in Tooth & Co. Ltd. It is unnecessary to discuss to what degree the use of the word "amount" limits the application of sec. 16B. It is enough to say that what the liquidators distributed was money. No doubt the two companies and the taxpayer and his fellow shareholder had arranged that the transaction should be completed by the allotment of shares in Tooth & Co. Ltd., and that the cheques should all be exchanged. But so far as the liquidators were concerned they had nothing to distribute but the money they received as the purchase price and, in the capacity of liquidators, were strangers to the arrangement by which that money was to be applied in paying for the shares issued by Tooth & Co. Ltd. Sec. 16B is concerned with what happens in the liquidation, and it cannot matter that what there happened forms one step only in a transaction which, from the point of view of other parties, is incomplete until further steps are taken. The transaction must be dissected into its components, and if one or some of them are of a description covered by the language of sec. 16B, the case falls within its intended operation. This consideration entirely distinguishes the decision of *Messer v. Deputy Federal Commissioner of Taxation*[30], given upon sec. 16 (d), which in terms draws a distinction between a consideration paid in the form of shares and one paid in the form of money. Under that provision we decided that an entire transaction resulting in the allotment of shares as the substantial consideration ought not to be dissected so as to show that one step amounted to the payment of money; because, as we thought, the section meant to differentiate between the two results, it being well known that one way of accomplishing the allotment of paid-up shares involved a step which, taken by itself, would amount to the payment of money. The judgment said:—"The question depends rather upon the true interpretation of the enactment than upon the character of the transaction. For it appears to us to be indisputable upon the one hand, that

in point of law a payment was made in the course of the transaction by the company in respect of the lease, and, on the other hand, that as a result of the entire transaction when carried to its completion, the taxpayer obtained not money but shares in exchange for his interest in the lease"[31].

But upon the footing that his case fell within the operation of sec. 16B the appellant attacked the validity of the *Income Tax Act 1930* (No. 51 of 1930). He based his attack on the ground that more than one subject of taxation was included within the tax imposed by the statute, so that it contravened sec. 55 of the *Constitution*. The contention is that by sec. 16B and by some other provisions the *Income Tax Assessment Act 1922-1930* attempts to bring into assessable income a number of capital receipts and by doing so provides two subject matters for the tax imposed by the taxing Act, viz., income and capital receipts.

The instances of this upon which reliance is placed are as follows:—(*a*) In the assessable income of a shareholder is included the paid-up value of shares distributed by a company representing the capitalization of profits, subject to certain exceptions (sec. 16 (b) (ii)). (*b*) There is also included the amount which may be obtained by way of premium or the like by a lessor on the grant of a lease or by way of consideration for the assignment by an assignor of a leasehold interest, subject, in the latter case, to a right of deduction in the same or previous assessments of any consideration paid for the acquisition of the lease (sec. 16(d)). (*c*) The assessable income includes too that part of the amount obtained on the sale of the assets of a business which represents the sale value of stock-in-trade or of live stock (sec. 16 (h)). (*d*) Then there is the provision under which the present appellant has been assessed (sec. 16B). In addition certain provisions which the Court has already held to involve no violation of sec. 55 were mentioned, viz., those dealt with by *Cornell's Case*[32] (sec. 21), the *British Imperial Oil Cases*[33] (sec. 28), and the *Colonial Gas Case*[34] (sec. 20 (2)). In my opinion it is not possible at this date for the Court to say that the assessment Act provides more than one subject of taxation for the annual taxing Acts to "deal with."

The decisions of the Court do not deny that an enactment which offends against the second paragraph of sec. 55 of the *Constitution* is invalid. But they uniformly refuse to give to the words "one subject of taxation" any narrow or inflexible application.

The purpose of sec. 55 was to protect the Senate from any possible abuse of the restriction placed upon it by sec. 54, which provides that the Senate may not amend proposed laws imposing taxation. The protection consists in "guarding the Senate from compulsive acquiescence in one tax by the moral necessity of passing another distinct tax. To secure that end the test is unity of subject matter of taxation in each measure, so that each proposed tax may be fairly considered on its merits" (*Harding's Case*[35], per *Isaacs* J.).

The expression "subject of taxation" appears to suppose that some recognized classification of taxes exists according to subject matter. But in fact that was never so. Economists and lawyers have for their different purposes referred taxes to categories, the one for their incidence and economic consequences and the other for the legal mechanism employed to secure their collection and for their operation upon the creation, transfer and devolution of rights. But these are not the considerations to which sec. 55 is directed. It is concerned with political relations, and must be taken as contemplating broad distinctions between possible subjects of taxation based on common understanding and general conceptions, rather than on any analytical or logical classification.

The practice of the British legislature and of Dominion and colonial legislatures may serve as a

guide in determining whether a provision of a given kind is regarded as falling within a particular subject matter. What is the subject of the tax may be gathered from a general consideration of the enactment or enactments in question, remembering, however, that it is for the legislature to choose its own subject and that its choice is fettered neither by existing nomenclature nor by categories that have been adopted for other purposes.

Where the main or substantial subject of the tax has thus been ascertained, then the question whether particular provisions directed at defining or widening the area or incidence of the tax or the liability to it or preventing avoidance or evasion or facilitating collection have in truth introduced a new or second subject must be determined by considering their natural connection with or relevance to the main subject. It having been ascertained that the subject of the land tax was the unimproved value of interests, whether legal, equitable or substantive, of certain kinds in land when aggregated, no difficulty was felt in saying that no new subject was introduced by a provision requiring the inclusion in the assessment of a shareholder of so much of the unimproved value of the company's land as bore the same proportion to the whole as his interest in the paid-up capital of the company did to the whole paid-up capital (*Osborne v. The Commonwealth*[36]; *Morgan v. Deputy Federal Commissioner of Land Tax (N.S.W.)*[37]; *Attorney-General for Queensland v. Attorney-General for the Commonwealth*[38]).

The subject of the income tax has not been regarded as income in the restricted sense which contrasts gains of the nature of income with capital gains, or actual receipts with increases of assets or wealth. The subject has rather been regarded as the substantial gains of persons or enterprises considered over intervals of time and ascertained or estimated by standards appearing sufficiently just, but nevertheless practical and sometimes concerned with avoidance or evasion more than with accuracy or precision of estimation. To include the annual value of the taxpayer's residence owned by himself or used rent free and to fix it at five per cent of the capital value has not been considered to introduce a new subject (*Harding's Case*[39]). To treat part of the undistributed profits earned during the current year as part of the assessable income of the shareholder imports no new subject (*Cornell's Case*[40]—cf. *Kellow-Falkiner Pty. Ltd. v. Federal Commissioner of Taxation*[41]), nor does it to substitute, in the case of a foreign-controlled business, for taxable income ordinarily calculated a percentage of gross receipts fixed by the discretionary judgment of the Commissioner (*British Imperial Oil Cases*[42]).

Moreover, the nature of the subject taxed is not changed merely because the actual liability to pay is imposed upon a person not necessarily enjoying the income or increase in wealth but on someone having, or obtaining, or having had a means or opportunity of, recoupment or indemnification, as, for instance, in the case of a foreign-controlled business, the person carrying it on (*British Imperial Oil Cases*[43]) or, in the case of interest on debentures held by absentees or by unidentifiable debenture holders, on the company or body liable to pay the interest (*Colonial Gas Association Ltd. v. Federal Commissioner of Taxation*[44]), or, in the case of a business liable to wartime profits tax, on the transferee of the business (*Federal Commissioner of Taxation v. Hipsleys Ltd.*[45]).

We ought, I think, to hold that all the particular provisions upon which reliance is placed, and to which I have referred, have a sufficient connection with and relevance to the substantial subject upon which tax is imposed by the *Income Tax Act 1930*. They are in fact attempts to ensure that where income or profit has been earned or wealth increased, those whom it advantages shall at some point or other incur a proper measure of liability to tax on that account, or, in other words, that they shall not escape the consequent aggregation of taxable income. The distinction between profits of a capital nature and profits in the nature of income in the strict sense is not one which the Act

maintains. Nor is it a discrimination which the legislature is bound to regard. Indeed, in the United States, under the 16th Amendment which speaks of "income," the term is considered to include all profits whether on account of capital or on account of income in the strict sense. In *United States v. Stewart*[46] *Douglas* J. says: "Income is a generic term amply broad to include capital gains for purposes of income tax," citing *Merchants' Loan & Trust Co. v. Smietanka*[47]. On the other hand, a distribution of stock dividends in consequence of the capitalization of profits is considered to be a transaction in relation to capital and therefore outside the constitutional power (*Eisner v. Macomber*[48]). The Commonwealth enactment proceeds somewhat differently; it treats the appropriation of income in order to effect the capitalization as the occasion of taxing the shareholder: See *James v. Federal Commissioner of Taxation*[49] and *Nicholas v. Commissioner of Taxes (Vict.)*[50]. In requiring the inclusion of the paid-up value of shares distributed by a company representing the capitalization of profits sec. 16 (b) (ii) does not appear to me to introduce a new subject of taxation. The subject is profits and the occasion is the appropriation of the profits to be used for the advantage of the shareholder.

In bringing into tax the premium obtained by the lessor on the grant of a lease, the legislature is doing no more than treating it as a form of gain, as in truth it is. The manner in which such premiums have been treated as between life tenant and remainderman illustrates the necessity of some specific provision declaring how for purposes of income tax they shall be dealt with: See *Executor Trustee & Agency Co. of S.A. Ltd. v. Federal Commissioner of Taxation*[51]; *Lane v. Loughnan*[52]; *Begg v. Brown*[53]; *Re Stevens; Stevens v. Drysdale*[54]. Without going beyond the subject of profits or gains, it is open for the legislature to say that such a premium should be included as a lump sum in the assessment of the year in which it was received. The consideration obtained by a lessee on the assignment of a lease may represent a profit or gain. Doubtless any lump-sum consideration he gave for the lease should be allowed as a deduction. But the subject of the tax is not changed by reason of the manner in which the legislature has in fact treated the deduction, that is to say, instead of allowing it always in the year in which the consideration for the sale of the lease is obtained, providing for the allowance of an apportioned part of so much as has not been allowed in some prior year of income.

The provision in sec. 16 (h) requiring the inclusion of the value of stock-in-trade or of live stock sold as part of the assets of a business was introduced for the purpose of overcoming the effect of such decisions as *Commissioner of Taxation (W.A.) v. Newman*[55]; *New South Wales Land and Agency Co. Ltd. v. Commissioner of Taxation*[56]—cf. *De Grey River Pastoral Co. Ltd. v. Deputy Federal Commissioner of Taxation (W.A.)*[57]. This means that the legislature regarded the stock-in-trade or live stock as containing an unrealized profit converted into money upon the sale of the business, and accordingly directed how that profit should be ascertained and brought into account as part of the assessable income. Sir *John Salmond* so regarded such a transaction (*Anson v. Commissioner of Taxes*[58]) and by adopting this view the legislature clearly did not introduce what would ordinarily be considered another subject of taxation. Sec. 16B naturally falls into line with the general conception of the Act. It is directed against the consequences of *Inland Revenue Commissioners v. Burrell*[59]. The subject taxed is profits, the occasion is the liberation of the profits to the shareholder in the course of liquidation. The provisions dealt with in *Cornell's Case*[60], the *British Imperial Oil Cases*[61], and the *Colonial Gas Case*[62], are directed against possible means of avoiding tax by misrepresenting real profits or of escaping its collection, and, as the decisions of the Court show, they do not relate to any different subject of taxation.

For these reasons I am of opinion that the attack upon the validity of the *Income Tax Assessment Act 1930* on the ground that it contravenes sec. 55 of the *Constitution* must fail.

Upon the footing that the Act might be upheld, the appellant relied on another ground for invalidating the assessment in so far as it includes the distribution of profit in the course of liquidation, namely, that it was out of time. In the first assessment made upon the appellant for the financial year ended 30th June 1931, in respect of the year of income ended 30th June 1930, the Commissioner did not include this distribution or any part of it. He included it afterwards by an amended assessment. Notice of the original assessment dated 15th April 1931 was sent by post to the appellant and was delivered on 16th April 1931. It bore a statement: "This tax may be paid without fine up to 17th June 1931." Sec. 54 (1) of the *Income Tax Assessment Act 1922-1930* provides that income tax shall be due and payable sixty days after service by post of a notice of assessment. Service by post is defined by sec. 29 of the *Acts Interpretation Act 1901-1930*, and, under that definition, sixty days would begin from 16th April 1931. I take it that the first day would be excluded and the last included, so that tax would become payable on 15th June 1931, that is if it were not for the time named in the assessment. But sec. 55 (a) empowers the Commissioner to extend the time for payment as he considers the circumstances warrant. Probably in naming 17th June 1931 as the time upon which tax would become payable without penalty, the Commissioner was actuated by the desire to fix a specific time more than sixty days after the probable date of delivery of the assessment by the post, so that there would be a time certain, known to both him and the taxpayer, for the payment of the tax.

Under sec. 37 (1A) a limitation of time is imposed upon the power of the Commissioner to amend an assessment. The limitation, so far as material to this case, requires that an alteration in or addition to an assessment shall be made within three years from the date when the tax payable on the assessment was originally due and payable. The power of the Commissioner under sec. 37 (1) to amend an assessment is subject to a proviso that every alteration or addition which has the effect of imposing any fresh liability or increasing any existing liability shall be notified to the taxpayer affected. The amendment by which the distribution in the winding up was included in the appellant's assessment may have been made before 15th June 1934, but it was not until that date that the Commissioner of Taxation caused notice of that amendment to be posted to the appellant. The notice of amended assessment was dated 15th June 1934, and was received through the post on 16th June 1934. The appellant objects that the three years within which the Commissioner might exercise his power of alteration expired before the amendment was in fact made. He contends that the amendment was not "made" until he was notified, and that the three years ran, not from 17th June 1931, the date mentioned in the notice of assessment, but from 15th June 1931, sixty days from the receipt of the original assessment. I am not prepared to decide that the alteration or addition constituting the amendment was not "made" within the meaning of sec. 37 on 15th June 1934 when the notice of amended assessment was made out and signed, notification being a distinct and subsequent act. But however that may be, I think the tax was originally due and payable on, and not before, 17th June 1931, the date named by the Commissioner. It appears to me that he exercised the power given to him by sec. 55 of extending the time for payment as he considered the circumstances warranted it. That power resided in him at the time when he made the original assessment, and there is nothing in the section to support the view that his power arises only after an assessment has been made and served by post. The desire to fix a day so as to obtain complete certainty is a reason which is not foreign to the discretion given to the Commissioner by sec. 55. I am therefore of opinion that the amended assessment was made within due time.

Two questions remain as to the correctness of the assessment in point of amount. Sec. 16B makes taxable only so much of the distribution as represents income derived by the company which would have been assessable in the hands of the shareholders if distributed to them by a company not in liquidation. Among the profits which the Commissioner has included is an amount which the

taxpayer contends forms part of the profits accumulated by the company prior to 1st July 1914. The second proviso of sec. 16 (b) (i) enacts that where a company distributes to its members or shareholders any undistributed income accumulated prior to 1st July 1914, the sum so received by the member or shareholder shall not be included as part of his income. Accordingly the question arises whether the Commissioner has in fact included such an amount. Profits earned prior to 30th June 1920 and accumulated amounted to £515,058, of which the amount accumulated prior to 1st July 1914 and at credit on 30th June 1914 was £139,272. But on 14th February 1923 the company resolved to capitalize out of its accumulated profits, excluding any part of the assessable income which it was liable to include in its return for the purpose of its then current assessment, the sum of £450,000. The exclusion was no doubt made by reason of sec. 16 (b) (ii) of the *Income Tax Assessment Act 1922*, upon which was decided *Federal Commissioner of Taxation v. Hyland*[63]. The result was to capitalize £450,000 out of the £515,058, leaving £65,058. As the capitalization effected by the resolution did not discriminate, at all events expressly, between profits accumulated prior to 1st July 1914 and those accumulated subsequently, the Commissioner, for the purpose of ascertaining what part of the former profits remained, treated each and every pound of the £515,058 as contributing its ratable part of the £450,000. In other words he treated 450,000 515,058 of the £139,272 accumulated prior to 1st July 1914, or £121,680, as the amount of those profits that had been capitalized. Deducting this £121,680 from the £139,272 there is left £17,592, and that sum the Commissioner regarded as the part of the profits accumulated prior to 1st July 1914 still remaining in the possession of the company at the commencement of the winding up and so distributable in the liquidation without imposing liability to tax upon the shareholder.

The appellant now contends that the Commissioner was wrong in treating the capitalization as made ratably out of the accumulated profits to which the resolution expressly related. The appellant maintains that a process of appropriation or attribution should be gone through by which that part of the £515,058 composed of the profits last to be earned is treated as capitalized first. The result on the figures would be that, before reaching the profits accumulated prior to 1st July 1914, £375,786 would be supplied by the accumulations of the intervening years, leaving only £74,214 to be found out of the profits accumulated prior to 1st July 1914, in order to make up £450,000. On this mode of attribution or appropriation £65,058 (that is, the difference between £139,272 and £74,214), representing profits accumulated prior to 1st July 1914, would remain in the hands of the company at the commencement of the winding up.

The appellant claims that there is a principle or presumption of law governing in revenue matters the allocation or attribution of payments. It is said that if a payment by a taxpayer out of a particular fund or part of a fund would operate in reduction or relief of the taxpayer's liability to taxation or of that of a shareholder in the company, then, in the absence of some express appropriation of the debit to the contrary or of some inconsistent intention, the taxpayer or company is to be presumed to have applied his funds in that manner. Reliance is placed by the appellant on the decision in *Symon's Case*[64]. In that case the Court was dealing with a provision exempting gifts for certain purposes if made "out of" the assessable income derived during the year in which the gifts were made. The practical application of such a provision is obviously fraught with difficulties. In dealing with these difficulties, the majority of the Court found some assistance in certain decisions on a provision of the English income-tax Acts relating to taxation of interests, annuities and other annual payments at the source. They work out the application of a statutory direction to the effect that if and in so far as payment of tax is made by a taxpayer "out of the profits or gains brought into charge" he is entitled to retain for his own benefit the deduction on account of tax which he is authorized to make from payments of interest, annuity or other annual payments. I do not think the decision in *Symon's Case*[65] establishes the wide general principle or presumption of law for which the appellant in the

present case contends, and in this view I am supported by the decision of the Court of Appeal in *Inland Revenue Commissioners v. Crawshay*[66], which has been decided since *Symon's Case*[67]. The resolution of the directors under consideration for the capitalization of profits presents, in my opinion, a very ordinary example of an appropriation of a smaller sum out of a larger without regard to the source or sources whence the larger fund was derived. The company regarded its accumulated profits as an entire fund and did not concern itself with what may have been considered a mere matter of history, namely, the different years in which various amounts of profit had been earned and accumulated. The intention was to treat the fund as an entirety and not as an aggregation of separate funds. The liquidation of the company made it necessary to inquire to what degree the accumulations up to 1st July 1914 were exhausted. But until this happened there was no reason why the fund should be considered otherwise than as a single whole, and clearly the resolution of the directors so regarded it. In such a case the fund must be considered as ratably reduced. The smaller sum must be taken to have absorbed so much in the pound of every ingredient by which the fund was made up. Of this there are many examples in the law. The rule has been applied in relation to the discharge of guaranteed debts: Cf. *Ellis v. Emmanuel*[68]; *Re D. (a Lunatic Patient) [No. 2]*[69]; *Blackstone Bank v. Hill*[70]. It has been applied in revenue cases both in relation to the payment of share capital and in other connections: See *Commissioner of Stamp Duties (N.S.W.) v. Perpetual Trustee Co. Ltd.*[71], where it was said: "When a single payment is made on account of a total sum composed of several liabilities and there is no appropriation, it must be taken to reduce them ratably"; *W. & A. McArthur Ltd. v. Federal Commissioner of Taxation*[72], per *Starke* J.—Cf. *Douglass v. Federal Commissioner of Taxation*[73]. In my opinion the Commissioner's method of allocation was correct.

This view gives rise to a further question. The balance-sheet of the company for the year of earning ended 30th June 1914 showed a balance of profits of £73,543, of which the due proportion retained by the company on the Commissioner's method of ratable attribution would be £9,289. The Commissioner did not treat this sum of £9,289 as falling within the proviso of sec. 16 (b) (i). He regarded the sum as not forming undistributed income accumulated prior to 1st July 1914. The balance-sheet, of course, could not be made up before 1st July 1914, and the extent of the profits was therefore not ascertained on that date, although it might have been anticipated or assumed. No definite step was taken or resolved upon amounting to accumulation. All that could be said was that profits actually existed, although not ascertained or dealt with. The second proviso to sec. 16 (b) (i) goes on to state that for its purpose, amounts carried forward by a company in its profit and loss account appropriation account revenue and expenses account or any other account similar to any of the foregoing accounts shall not be deemed to be accumulated income. This makes it clear that accumulation is treated as something more than a mere failure to distribute. In my opinion it is impossible to say that the sum of which £9,289 forms a part was accumulated prior to 1st July 1914. Reliance was, however, placed by the appellant upon the decision of this Court in *Forrest v. Federal Commissioner of Taxation*[74]. How far that case is consistent with *Hooper & Harrison Ltd. (in Liquidation) v. Federal Commissioner of Taxation*[75] and *Sharp, Stevenson & Hare Pty. Ltd. v. Federal Commissioner of Taxation*[76] may be doubted. But at all events the decision is distinguishable upon the ground that there the Court was concerned with a specific capital profit made by a single definite transaction and not with an unascertained balance of a profit and loss or trading account. In my opinion it does not govern the present case.

[His Honour then dealt with matters not relevant to this report.]

McTiernan J.

I agree with the answers to the questions in the order to be published by *Rich* J.

As I agree substantially with the reasons of *Dixon* J. and there is nothing which I could usefully add, I do not think it necessary to add another to the three preceding judgments.

Questions 1 to 7 answered No. Question 8: Yes to the extent shown in the assessment subject, however, to the answer to the 10th question. Question 9: This question was not argued, but the answer is Yes. Question 10: The Commissioner wrongly included in the sum of £200,519 upon which he based the appellant's share of the amount appropriated as depreciation, the sum of £63,160, by which sum the said amount exceeded the amount which he ought to have included, viz. £137,159. Question 11: This question was not separately argued, but should be answered Yes. Question 12 (a): Yes. Question 12 (b): No. Question 13: No. Case remitted. Costs to be costs in the appeal.

Solicitors for the appellant, H. J. Aspinall & Son.

Solicitor for the respondent, H. F. E. Whitlam, Crown Solicitor for the Commonwealth.

[1] [1923] HCA 69; (1923) 33 C.L.R. 416.

[2] [1911] HCA 19; (1911) 12 C.L.R. 321, at p. 335.

[3] (1917) 23 C.L.R., at p. 130.

[4] (1887) 12 App. Cas. 575, at p. 582.

[5] (1882) 107 U.S. 147, at p. 155 [27 Law. Ed. 431, at p. 433].

[6] (1931) A.C. 275, at p. 298.

[7] [1932] HCA 31; (1932) 47 C.L.R. 538.

[8] [1917] HCA 13; (1917) 23 C.L.R. 119.

[9] [1920] HCA 65; (1920) 29 C.L.R. 39.

[10] [1926] HCA 58; (1927) 38 C.L.R. 153.

[11] [1934] HCA 12; (1934) 51 C.L.R. 172.

[12] [1911] HCA 19; (1911) 12 C.L.R. 321.

[13] [1917] HCA 13; (1917) 23 C.L.R. 119.

[14] [1926] HCA 58; (1927) 38 C.L.R. 153.

[15] [1911] HCA 19; (1911) 12 C.L.R. 321.

[16] [1916] HCA 13; (1916) 21 C.L.R. 205, at p. 217.

[17] [1926] HCA 58; (1927) 38 C.L.R. 153.

[18] (1911) 12 C.L.R., at pp. 350, 364.

[19] (1917) 23 C.L.R., at p. 134.

[20] (1911) 12 C.L.R., at p. 373.

[21] (1882) 51 L.J. Ch. 935, at p. 938.

[22] [1924] HCA 19; (1924) 34 C.L.R. 283.

[23] [1934] HCA 12; (1934) 51 C.L.R. 172.

[24] (1924) 2 K.B. 52.

[25] [1937] HCA 72; (1937) 59 C.L.R. 80.

[26] [1932] HCA 31; (1932) 47 C.L.R. 538.

[27] (1935) 153 L.T. 457.

[28] [1921] HCA 35; (1921) 29 C.L.R. 441.

[29] [1937] HCA 72; (1937) 59 C.L.R. 80.

[30] [1934] HCA 39; (1934) 51 C.L.R. 472.

[31] (1934) 51 C.L.R., at p. 482.

[32] [1920] HCA 65; (1920) 29 C.L.R. 39.

[33] [1925] HCA 4; (1925) 35 C.L.R. 422; (1926) 38 C.L.R. 153.

[34] [1934] HCA 12; (1934) 51 C.L.R. 172.

[35] (1917) 23 C.L.R., at p. 134.

[36] (1911) 12 C.L.R., at pp. 335-340, 349, 350, 355, 357, 362-364, 372, 373.

[37] [1912] HCA 88; (1912) 15 C.L.R. 661.

[38] [1915] HCA 39; (1915) 20 C.L.R. 148; (1916) 22 C.L.R. 322.

[39] [1917] HCA 13; (1917) 23 C.L.R. 119.

[40] [1920] HCA 65; (1920) 29 C.L.R. 39.

[41] (1928) 34 A.L.R. 276.

[42] [1925] HCA 4; (1925) 35 C.L.R. 422; (1926) 38 C.L.R. 153.

[43] [1925] HCA 4; (1925) 35 C.L.R. 422; (1926) 38 C.L.R. 153.

[44] [1934] HCA 12; (1934) 51 C.L.R. 172.

[45] [1926] HCA 34; (1926) 38 C.L.R. 219.

[46] (1940) 311 U.S., at p. 62 [85 Law. Ed., at p. 44].

[47] [1921] USSC 82; (1921) 255 U.S. 509 [65 Law. Ed. 751].

[48] [1919] USSC 119; (1920) 252 U.S. 189 [64 Law. Ed. 521].

[49] [1924] HCA 34; (1924) 34 C.L.R. 404.

[50] [1940] UKPCHCA 2; (1940) A.C. 744; 63 C.L.R. 191.

[51] [1932] HCA 25; (1932) 48 C.L.R. 26, at pp. 35, 38, 39, 41, 42.

[52] (1881) 7 V.L.R. (E.) 19.

[53] (1902) 2 S.R. (N.S.W.) Eq. 87; 19 W.N. 121.

[54] (1904) 21 W.N. (N.S.W.) 149.

[55] [1921] HCA 37; (1921) 29 C.L.R. 484.

[56] (1926) 26 S.R. (N.S.W.) 560; 43 W.N. 168.

[57] [1923] HCA 42; (1923) 35 C.L.R. 181.

[58] (1922) N.Z.L.R. 330.

[59] (1924) 2 K.B. 52.

[60] [1920] HCA 65; (1920) 29 C.L.R. 39.

[61] [1925] HCA 4; (1925) 35 C.L.R. 422; (1926) 38 C.L.R. 153.

[62] [1934] HCA 12; (1934) 51 C.L.R. 172.

[63] [1926] HCA 55; (1926) 37 C.L.R. 569.

[64] [1932] HCA 31; (1932) 47 C.L.R. 538.

[65] [1932] HCA 31; (1932) 47 C.L.R. 538.

[66] (1935) 153 L.T. 457.

[67] [1932] HCA 31; (1932) 47 C.L.R. 538.

[68] (1876) L.R. 1 Ex., at p. 163.

[69] (1926) V.L.R. 467, at pp. 485, 486.

[70] (1830) 10 Pickering, at p. 133.

[71] (1929) 43 C.L.R., at p. 266.

[72] [1930] HCA 47; (1930) 45 C.L.R. 1, at p. 20.

[73] [1931] HCA 18; (1931) 45 C.L.R. 95, at pp. 105, 106.

[74] [1921] HCA 35; (1921) 29 C.L.R. 441.

[75] (1923) 33 C.L.R., at pp. 480-482.

[76] (1927) 39 C.L.R., at p. 172.

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